

**2019 DRAFTING REQUEST**

**Bill**

For: **Adam Neylon (608) 266-5120**

Drafter: **mduchek**

By: **Joe**

Secondary Drafters:

Date: **1/23/2020**

May Contact:

Same as LRB: **-5560**

Submit via email: **YES**  
 Requester's email: **Rep.Neylon@legis.wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Scope statements

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 1/23/2020	aernstr 1/27/2020			
/P1	mduchek 1/30/2020		dwalker 1/27/2020		
/1	mduchek 1/30/2020	aernstr 1/30/2020	mbarman 1/30/2020	mbarman 1/30/2020	
/2			jmurphy 1/30/2020	jmurphy 1/30/2020	

FE Sent For: *Not Needed*

<END>

**Duchek, Michael**

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**From:** Zapf, Joe  
**Sent:** Wednesday, January 22, 2020 3:25 PM  
**To:** Duchek, Michael  
**Subject:** FW: Bill draft request

Michael -

I just left you a vmail to follow up on this. I assumed you would be the appropriate drafter for this request. Let me know if you have questions.

Best,

Joe Zapf  
Office of Rep. Adam Neylon  
(608) 266-5120

↳ Talked to Joe - OK to add "withdrawal" language too.

-----Original Message-----

**From:** Zapf, Joe <Joe.Zapf@legis.wisconsin.gov>  
**Sent:** Wednesday, January 22, 2020 12:08 PM  
**To:** LRB - Reference Services <LRB-Reference-Services@legis.wisconsin.gov>  
**Cc:** Sen.Nass <Sen.Nass@legis.wisconsin.gov>  
**Subject:** Bill draft request

LRB -

- >
- > Please draft a bill that states agencies can only use a approved scope statement for one rule. Essentially 1 scope for 1 administrative rule. Of course this would be for moving forward once this bill draft is signed into law by the Governor.
- >
- > Best,
- >
- > Joe Zapf
- > Office of Rep. Adam Neylon



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-5465/P1

MED: *che*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*in the Wisconsin Administrative Register*

*sa ✓*

*gen ✓*

1 **AN ACT ...; relating to:** statements of scope for administrative rules.

***Analysis by the Legislative Reference Bureau***

*Legislative Reference Bureau*

Under current law, in order to promulgate a rule, an agency must submit a statement of scope for the proposed rule for review by the Department of Administration and approval by the governor. Once the governor approves the statement, the agency must send the approved statement of scope to the LRB for publication before continuing with the rule promulgation process. A statement of scope expires after 30 months, after which the agency may not promulgate any rule based on that statement of scope that has not been submitted for legislative review by the expiration date. This bill does the following: ✓

1. Limits an agency to promulgating one permanent and one emergency rule per statement of scope. Current law does not limit how many rules an agency may promulgate based on a single statement of scope. ✓

2. Allows an agency to formally withdraw a statement of scope prior to its expiration date by sending a withdrawal notice for the statement to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register. Once a statement of scope has been withdrawn, the agency may not promulgate a rule based upon that statement of scope. ✓ *LRB*

3. Clarifies that, when a statement of scope expires, an agency also may not promulgate an emergency rule based upon that statement of scope.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1 † SECTION 1. 227.135 (5) of the statutes is amended to read:

2 227.135 (5) A statement of scope shall expire on the date that is 30 months after  
3 the date on which it is published in the register. After a statement of scope expires,  
4 an agency may not submit a proposed permanent rule based upon that statement of  
5 scope to the legislature for review under s. 227.19 (2), and any such rule that has not  
6 been submitted to the legislature for review before that date shall be considered  
7 withdrawn on that date as provided in s. 227.14 (6) (c) 1. a. After a statement of scope  
8 expires, an agency may not file a proposed emergency rule based upon that  
9 statement of scope with the legislative reference bureau under s. 227.24 (3). For  
10 purposes of this subsection, a revised statement of scope prepared under sub. (4)  
11 shall expire on the date that is 30 months after the date on which the revised  
12 statement is published in the register.

\*\*\*\*NOTE: This would clarify that an expired statement of scope may not be used  
for an emergency rule. Last session's act did not specify the effect of expiration with  
respect to an emergency rule, as emergency rules are not submitted for legislative review.

13 † SECTION 2. 227.135 (6) of the statutes is created to read:

14 227.135 (6) (a) Except as provided in par. (b), an agency may withdraw a  
15 statement of scope by sending a withdrawal notice for the statement to the legislative  
16 reference bureau for publication in the register. The notice may include a statement  
17 regarding the reasons the agency is withdrawing the statement of scope. The agency  
18 shall also notify the presiding officer of each house of the legislature and the  
19 legislative council staff of the withdrawal.

20 (b) 1. An agency may not withdraw a statement of scope under par. (a) after the  
21 agency has submitted a proposed permanent rule based on that statement of scope  
22 with the legislative council staff under s. 227.15 or has filed an emergency rule that  
23 is based upon that statement of scope with the legislative reference bureau under s.

1 227.24 (3)<sup>✓</sup>, unless all rules based on that statement of scope have also been  
2 withdrawn under s. 227.14 (6)<sup>✓</sup>.

3 2. An agency may not withdraw a statement of scope under par. (a)<sup>✓</sup> that has  
4 expired under sub. (5)<sup>✓</sup>.

\*\*\*\*NOTE: This would allow an agency to formally withdraw a statement of scope. Agencies occasionally ask us if they can formally withdraw a scope statement so the public can know that a scope statement will not be acted upon by the agency, but current law contains no formal process for doing so, so this would allow them to formally withdraw (expire) them early. Paragraph (b) 1.<sup>✓</sup> would prohibit an agency from withdrawing a scope statement once the agency had already submitted a proposed rule to the Legislative Council Clearinghouse or filed an emergency rule based on that scope statement.

5 (c) An agency may not promulgate a rule based upon a statement of scope that  
6 has been withdrawn.

7 **SECTION 3.** 227.135 (7) of the statutes is created to read:

8 227.135 <sup>or 7 add</sup> (6) An agency may not promulgate more than one permanent rule and  
9 one emergency rule based on a statement of scope.

\*\*\*\*NOTE: Agencies typically do a single scope statement that covers both an emergency and permanent rule. Sometimes emergency rules are used because the agency determines that a rule change is necessary to get into effect sooner, and other times the legislature specifically requires or authorizes the agency to do emergency rules in a bill, so having a single scope that covers both is the standard practice. This would continue to allow that, but would limit each scope statement to only one permanent rule and one emergency rule. <sup>statement</sup>

10 **SECTION 4. Initial applicability.**

11 (1) The treatment of s. 227.135 (7)<sup>✓</sup> first applies to statements of scope that are  
12 approved by the governor on the effective date of this subsection.<sup>✓</sup>

13 (END)

## Duchek, Michael

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**From:** Duchek, Michael  
**Sent:** Thursday, January 30, 2020 10:40 AM  
**To:** Zapf, Joe  
**Subject:** RE: Draft review: LRB -5465/P1

On your clarifying question – yes, I think that would be the case – we would certainly question an agency trying to do an emergency rule off of an expired scope, and agencies probably wouldn't try to use a 30 month old scope to do an emergency rule, but I threw it in there because it was never explicit, and since emergency rules never go to the legislature to begin with, I thought it would be best to nail it down. But let me know if you want to take that out.

Otherwise I can get this out ASAP.

-Mike

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**From:** Zapf, Joe <Joe.Zapf@legis.wisconsin.gov>  
**Sent:** Thursday, January 30, 2020 10:36 AM  
**To:** LRB.Legal <lrblegal@legis.wisconsin.gov>; Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>  
**Cc:** Field, Adam <Adam.Field@legis.wisconsin.gov>  
**Subject:** RE: Draft review: LRB -5465/P1

Michael –

Both Rep. Neylon and Sen. Nass need /1's of LRB 5465.

1 clarifying question. One page 2 line 4 and page 2 lines 7-9, isn't that already the case? The language is doing what we're intending for it to do but we thought that was already the case.

Any chance we can get this draft today?

jz

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**From:** LRB.Legal <lrblegal@legis.wisconsin.gov>  
**Sent:** Monday, January 27, 2020 3:01 PM  
**To:** Rep.Neylon <Rep.Neylon@legis.wisconsin.gov>  
**Subject:** Draft review: LRB -5465/P1

**Following is the PDF version of draft LRB -5465/P1.**



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

- 50
- 1 AN ACT *to amend* 227.135 (5); and *to create* 227.135 (6) and 227.135 (7) of the  
2 statutes; **relating to:** statements of scope for administrative rules.

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***Analysis by the Legislative Reference Bureau***

Under current law, in order to promulgate a rule, an agency must submit a statement of scope for the proposed rule for review by the Department of Administration and approval by the governor. Once the governor approves the statement, the agency must send the approved statement of scope to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register before continuing with the rule promulgation process. A statement of scope expires after 30 months, after which the agency may not promulgate any rule based on that statement of scope that has not been submitted for legislative review by the expiration date. This bill does the following:

1. Limits an agency to promulgating one permanent and one emergency rule per statement of scope. Current law does not limit how many rules an agency may promulgate based on a single statement of scope.
2. Allows an agency to formally withdraw a statement of scope prior to its expiration date by sending a withdrawal notice for the statement to the LRB for publication in the Wisconsin Administrative Register. Once a statement of scope has been withdrawn, the agency may not promulgate a rule based upon that statement of scope.

3. Clarifies that, when a statement of scope expires, an agency also may not promulgate an emergency rule based upon that statement of scope.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 227.135 (5) of the statutes is amended to read:

2           227.135 (5) A statement of scope shall expire on the date that is 30 months after  
3 the date on which it is published in the register. After a statement of scope expires,  
4 an agency may not submit a proposed permanent rule based upon that statement of  
5 scope to the legislature for review under s. 227.19 (2), and any such rule that has not  
6 been submitted to the legislature for review before that date shall be considered  
7 withdrawn on that date as provided in s. 227.14 (6) (c) 1. a. After a statement of scope  
8 expires, an agency may not promulgate a proposed emergency rule based upon that  
9 statement of scope. For purposes of this subsection, a revised statement of scope  
10 prepared under sub. (4) shall expire on the date that is 30 months after the date on  
11 which the revised statement is published in the register.

\*\*\*\*NOTE: This would clarify that an expired statement of scope may not be used for an emergency rule. Last session's act did not specify the effect of expiration with respect to an emergency rule, as emergency rules are not submitted for legislative review.

12           **SECTION 2.** 227.135 (6) of the statutes is created to read:

13           227.135 (6) (a) Except as provided in par. (b), an agency may withdraw a  
14 statement of scope by sending a withdrawal notice for the statement to the legislative  
15 reference bureau for publication in the register. The notice may include a statement  
16 regarding the reasons the agency is withdrawing the statement of scope. The agency  
17 shall also notify the presiding officer of each house of the legislature and the  
18 legislative council staff of the withdrawal.



1 (b) 1. An agency may not withdraw a statement of scope under par. (a) after the  
2 agency has submitted a proposed permanent rule based on that statement of scope  
3 with the legislative council staff under s. 227.15 or has filed an emergency rule that  
4 is based upon that statement of scope with the legislative reference bureau under s.  
5 227.24 (3), unless all rules based on that statement of scope have also been  
6 withdrawn under s. 227.14 (6).

7 2. An agency may not withdraw a statement of scope under par. (a) that has  
8 expired under sub. (5).

\*\*\*\*NOTE: This would allow an agency to formally withdraw a statement of scope. Agencies occasionally ask us if they can formally withdraw a scope statement so the public can know that a scope statement will not be acted upon by the agency, but current law contains no formal process for doing so, so this would allow them to formally withdraw (expire) them early. Paragraph (b) 1. would prohibit an agency from withdrawing a scope statement once the agency had already submitted a proposed rule to the Legislative Council Clearinghouse or filed an emergency rule based on that scope statement.

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10 has been withdrawn.

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12 227.135 (7) An agency may not promulgate more than one permanent rule and  
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\*\*\*\*NOTE: Agencies typically do a single scope statement that covers both an emergency and permanent rule. Sometimes emergency rules are used because the agency determines that a rule change is necessary to get into effect sooner, and other times the legislature specifically requires or authorizes the agency to do emergency rules in a bill, so having a single scope statement that covers both is the standard practice. This would continue to allow that, but would limit each scope statement to only one permanent rule and one emergency rule.

14 **SECTION 4. Initial applicability.**

15 (1) The treatment of s. 227.135 (7) first applies to statements of scope that are  
16 approved by the governor on the effective date of this subsection.

17 (END)

**Barman, Mike**

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**From:** LRB.Legal  
**To:** Rep.Neylon  
**Subject:** Draft review: LRB -5465/1  
**Attachments:** 19-5465/1

**State of Wisconsin - Legislative Reference Bureau  
One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Michael Duchek, Senior Legislative Attorney, at (608) 504-5830, at [michael.duchek@legis.wisconsin.gov](mailto:michael.duchek@legis.wisconsin.gov), or at One East Main Street, Suite 200.

**We will jacket this draft for introduction in the Assembly.**

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at [LRB.Legal@legis.wisconsin.gov](mailto:LRB.Legal@legis.wisconsin.gov) or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

**Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.**



1/30/20 - Call from Joe in Rep. Neylan's office

Wont rules to be automatically withdrawn, instead of  
as a prerequisite



## 2019 BILL

say regen ✓

that are in the process of being promulgated

1 AN ACT *to amend* 227.135 (5); and *to create* 227.135 (6) and 227.135 (7) of the  
2 statutes; **relating to:** statements of scope for administrative rules.

### *Analysis by the Legislative Reference Bureau*

Under current law, in order to promulgate a rule, an agency must submit a statement of scope for the proposed rule for review by the Department of Administration and approval by the governor. Once the governor approves the statement, the agency must send the approved statement of scope to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register before continuing with the rule promulgation process. A statement of scope expires after 30 months, after which the agency may not promulgate any rule based on that statement of scope that has not been submitted for legislative review by the expiration date. This bill does the following:

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2. Allows an agency to formally withdraw a statement of scope prior to its expiration date by sending a withdrawal notice for the statement to the LRB for publication in the Wisconsin Administrative Register. Once a statement of scope has been withdrawn, the agency may not promulgate a rule based upon that statement of scope.

and all <sup>proposed</sup> rules based upon that statement of scope are automatically withdrawn

**BILL**

3. Clarifies that, when a statement of scope expires, an agency also may not promulgate an emergency rule based upon that statement of scope.

---

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4 an agency may not submit a proposed permanent rule based upon that statement of  
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6 been submitted to the legislature for review before that date shall be considered  
7 withdrawn on that date as provided in s. 227.14 (6) (c) 1. a. After a statement of scope  
8 expires, an agency may not promulgate a proposed emergency rule based upon that  
9 statement of scope. For purposes of this subsection, a revised statement of scope  
10 prepared under sub. (4) shall expire on the date that is 30 months after the date on  
11 which the revised statement is published in the register.

12           **SECTION 2.** 227.135 (6) of the statutes is created to read:

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16 regarding the reasons the agency is withdrawing the statement of scope. The agency  
17 shall also notify the presiding officer of each house of the legislature and the  
18 legislative council staff of the withdrawal.

19           (b) 1. An agency may not withdraw a statement of scope under par. (a) after the  
20 agency has submitted a proposed permanent rule based on that statement of scope  
21 with the legislative council staff under s. 227.15 or has filed an emergency rule that

In s 2-18

**BILL**

1 is based upon that statement of scope with the legislative reference bureau under s.  
2 227.24 (3), unless all rules based on that statement of scope have also been  
3 withdrawn under s. 227.14 (6).

4 2. An agency may not withdraw a statement of scope under par. (a) that has  
5 expired under sub. (5).

6 (c) An agency may not promulgate a rule based upon a statement of scope that  
7 has been withdrawn.

8 **SECTION 3.** 227.135 (7) of the statutes is created to read:

9 227.135 (7) An agency may not promulgate more than one permanent rule and  
10 one emergency rule based on a statement of scope.

11 **SECTION 4. Initial applicability.**

12 (1) The treatment of s. 227.135 (7) first applies to statements of scope that are  
13 approved by the governor on the effective date of this subsection.

14

(END)

lws 3-10

2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-5465/2ins  
MED:...

*proposed*  
INS 2-18

1           When an agency withdraws a statement of scope as provided in this paragraph,  
2 each rule based upon that statement of scope that has not been filed under s. 227.20  
3 and that has not otherwise already been withdrawn shall also be considered  
4 withdrawn on that date as provided in s. 227.14 (6) (c) 1. c.

INS 3-10

5           **SECTION 1.** 227.14 (6) (c) 1. c. of the statutes is created to read:  
6           227.14 (6) (c) 1. c. On the date that the statement of scope for the proposed rule  
7 is withdrawn under s. 227.135 (6) (a).

**Murphy, Janice**

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**From:** LRB.Legal  
**To:** Rep.Neylon  
**Subject:** Draft review: LRB -5465/2  
**Attachments:** 19-5465/2

**State of Wisconsin - Legislative Reference Bureau**  
**One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Michael Duchek, Senior Legislative Attorney, at (608) 504-5830, at [michael.duchek@legis.wisconsin.gov](mailto:michael.duchek@legis.wisconsin.gov), or at One East Main Street, Suite 200.

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