ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 384

October 31, 2017 – Offered by Representative STEINEKE.

1   AN ACT *to renumber* 227.15 (3); *to amend* 227.114 (2) (intro.), 227.15 (7) and

2   990.01 (30m); and *to create* 35.93 (2) (b) 3. gm., 35.93 (2) (b) 3. gn., 35.93 (2)

3   (b) 3. gp., 35.93 (2) (c) 2m., 35.93 (3) (g), 227.135 (1) (g), 227.137 (3) (h), 227.15

4   (3) (b) and 227.225 of the statutes; **relating to:** the expiration of administrative

5   rules.

Analysis by the Legislative Reference Bureau

This substitute amendment establishes a process for readopting each chapter of the administrative code every nine years. Under the substitute amendment, any chapter of the administrative code that is not readopted will expire nine years after promulgation.

Under current law, an agency may promulgate administrative rules when it is granted rule–making authority. Once promulgated, administrative rules remain in effect indefinitely unless repealed or amended by the agency or suspended by the Joint Committee for Review of Administrative Rules.

This substitute amendment provides that each chapter of the code expires nine years after a rule that creates or repeals and recreates the chapter takes effect, or after the chapter is readopted. The substitute amendment requires JCRAR to establish a schedule for the expiration or readoption of all existing code chapters that

are in effect on the effective date of the substitute amendment. Under the substitute amendment, two years before a code chapter is set to expire, an agency must send a notice proposing to readopt the chapter to JCRAR. If one or both cochairpersons of JCRAR objects to the expiration of the code chapter, the chapter is considered readopted without further action. If neither cochairperson of JCRAR objects to readoption of a chapter that is set to expire, the chapter expires on its expiration date unless the agency promulgates a rule to readopt the chapter using the standard rule-making process. Under the substitute amendment, JCRAR may extend the effective date of the chapter that is set to expire for up to one year to accommodate readoption of the chapter through the standard rule-making process.

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

1   **SECTION 1.** 35.93 (2) (b) 3. gm. of the statutes is created to read:

2   35.93 **(2)** (b) 3. gm. Notices of readoption of Wisconsin administrative code

3   chapters received under s. 227.225 (2) (a).

4   **SECTION 2.** 35.93 (2) (b) 3. gn. of the statutes is created to read:

5   35.93 **(2)** (b) 3. gn. Objections to code chapter expirations under s. 227.225 (2)

6   (c).

7   **SECTION 3.** 35.93 (2) (b) 3. gp. of the statutes is created to read:

8   35.93 **(2)** (b) 3. gp. Statements of extension of Wisconsin administrative code

9   chapters received under s. 227.225 (4) (c).

10   **SECTION 4.** 35.93 (2) (c) 2m. of the statutes is created to read:

11   35.93 **(2)** (c) 2m. Chapters of the Wisconsin administrative code removed under

12   sub. (3) (g).

13   **SECTION 5.** 35.93 (3) (g) of the statutes is created to read:

14   35.93 **(3)** (g) On or after the date that a chapter of the Wisconsin administrative

15   code expires under s. 227.225, the legislative reference bureau shall remove the

16   chapter from the Wisconsin administrative code.

17   **SECTION 6.** 227.114 (2) (intro.) of the statutes is amended to read:

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1   227.114 **(2)** (intro.) When an agency ~~proposes or revises~~ <u>promulgates</u> a rule that

2   may have an effect on small businesses, the agency shall consider each of the

3   following methods for reducing the impact of the rule on small businesses:

4   **SECTION 7.** 227.135 (1) (g) of the statutes is created to read:

5   227.135 **(1)** (g) If the rule is a rule to readopt a chapter of the code under s.

6   227.225 (3), a statement to that effect.

7   **SECTION 8.** 227.137 (3) (h) of the statutes is created to read:

8   227.137 **(3)** (h) If the proposed rule seeks to readopt a chapter of the code under

9   s. 227.225 (3), an analysis of how actual costs for the rule compare to a previous

10   economic impact analysis, if any, for a rule affecting the chapter.

11   **SECTION 9.** 227.15 (3) of the statutes is renumbered 227.15 (3) (a).

12   **SECTION 10.** 227.15 (3) (b) of the statutes is created to read:

13   227.15 **(3)** (b) When a proposed readoption notice for a chapter of the code under

14   s. 227.225 (2) is before the joint committee for review of administrative rules, the

15   legislative council staff shall report to the committee on what actions, if any, were

16   taken by the joint committee for review of administrative rules the last time a

17   readoption notice for that chapter was considered or a rule affecting that chapter of

18   the code was before the legislature under s. 227.19.

19   **SECTION 11.** 227.15 (7) of the statutes is amended to read:

20   227.15 **(7)** RULES PROCEDURES MANUAL. The legislative council staff and the

21   legislative reference bureau shall prepare a manual to provide agencies with

22   information on drafting, promulgation and legislative review of rules. <u>The manual</u>

23   <u>shall prescribe the format for readoption rules under s. 227.225 (3).</u>

24   **SECTION 12.** 227.225 of the statutes is created to read:

1   **227.225 Expiration and readoption of rules. (1)** (a) Each chapter of the

2   code expires on the January 1 of the 9th year after one of the following:

3   1. The year in which a rule creating or repealing and recreating that chapter

4   of the code took effect as provided in s. 227.22, unless the rule provides for an earlier

5   repeal date.

6   2. The year in which the chapter was readopted under sub. (2) (d).

7   3. For a chapter that is readopted under sub. (3), the year after the year in

8   which the readoption notice for that chapter was filed under sub. (2) (a), unless the

9   readopted chapter provides for an earlier repeal date.

10   (b) 1. Notwithstanding par. (a), a chapter of the code that was in effect on the

11   effective date of this subdivision .... [LRB inserts date], and that is not repealed and

12   recreated by a rule prior to January 1, 2030, shall expire in accordance with the

13   schedule established under subd. 2. unless it is repealed earlier.

14   2. The joint committee for review of administrative rules, in consultation with

15   the affected agencies, shall, no later than December 1, 2018, establish a schedule for

16   the expiration of all chapters described under subd. 1. The schedule may provide for

17   the expiration of code chapters on any January 1 beginning with January 1, 2021,

18   and ending with January 1, 2030. The joint committee for review of administrative

19   rules shall have the schedule published on the legislature's Internet site and in the

20   register and shall provide a copy of the schedule to each affected agency.

21   (c) A change made by the legislative reference bureau under s. 13.92 (4) (b) does

22   not affect a chapter's expiration date under par. (a) or (b).

23   (d) This subsection does not apply to emergency rules promulgated under s.

24   227.24.

1   **(2)** (a) No earlier than January 1 and no later than March 1 of the year that

2   is 2 years before the expiration date of a chapter of the code under sub. (1), an agency

3   shall submit a notice of proposed readoption for the chapter to the joint committee

4   for review of administrative rules. An agency may not propose to readopt more than

5   one chapter per notice. The agency shall submit a copy of the notice, in an electronic

6   format approved by the legislative reference bureau, to the legislative reference

7   bureau for publication in the register. The notice shall contain all of the following:

8   1. A brief statement explaining the basis and purpose of the chapter.

9   1m. A statement as to whether the agency recommends that the chapter be

10   readopted, readopted with changes, or allowed to expire.

11   2. A reference to each statute that is interpreted by any rules contained in the

12   chapter, each statute that authorizes the promulgation of any rules contained in that

13   chapter, and an explanation of the agency's authority to promulgate the rules

14   contained in the chapter under those statutes.

15   3. A statement as to whether all rules contained in the chapter are in

16   compliance with the requirements under this subchapter and whether they are in

17   need of revision due to changes to state or federal law or for any other reason. If any

18   such revisions are needed, the notice shall also indicate what, if any, plans the agency

19   has to revise the chapter.

20   4. A list of all guidance documents that the agency has developed relating to

21   the chapter. Upon request of any member of the joint committee for review of

22   administrative rules, the agency shall provide the member with a copy of any such

23   guidance document.

1   (b) Upon receipt of a readoption notice for a code chapter under par. (a), the

2   cochairpersons of the joint committee for review of administrative rules shall provide

3   a copy of the notice to each other member of the committee.

4   (c) 1. The review period for the cochairpersons of the joint committee for review

5   of administrative rules extends for 30 working days after the agency submits a

6   readoption notice under par. (a).

7   2. Either cochairperson of the joint committee for review of administrative

8   rules may object to the expiration of the code chapter within the review period under

9   subd. 1.

10   3. If a cochairperson objects to the expiration of a code chapter, he or she shall

11   provide a copy of the objection to the agency that submitted the notice and to the

12   legislative reference bureau for publication in the register.

13   (d) If an objection to the expiration of a code chapter is filed under par. (c) 3. by

14   one or both cochairpersons of the joint committee for review of administrative rules

15   within the review period under par. (c) 1., the chapter shall be considered readopted

16   for purposes of sub. (1) (a) without further action.

17   (e) If the review period under par. (c) 1. expires without an objection to the

18   expiration of a code chapter being filed under par. (c) 3., the chapter shall, subject to

19   sub. (4), expire on its expiration date unless the agency promulgates a rule under

20   sub. (3) to readopt the chapter.

21   **(3)** If the review period under sub. (2) (c) 1. expires without an objection to the

22   expiration of a code chapter being filed under sub. (2) (c) 3., the agency may, using

23   the rule–making process in this chapter, promulgate a rule to readopt the chapter.

24   All of the following apply with respect to a rule promulgated under this subsection:

25   (a) An agency may not propose to readopt more than one chapter per rule.

1   (am) An agency may not submit a statement of scope under s. 227.135 for a

2   proposed rule to readopt a chapter under this subsection after the chapter has

3   expired under sub. (1).

4   (b) An agency may propose to readopt the chapter without changes or may

5   propose changes to the chapter.

6   (c) A rule promulgated under this subsection to readopt a chapter may take

7   effect after the chapter's expiration date, but rules contained in the chapter may not

8   be enforced during the period between the date the chapter expires and the date the

9   rule to readopt the chapter takes effect under s. 227.22.

10   **(4)** (a)   At the request of the agency, the joint committee for review of

11   administrative rules may, at any time after the review period under sub. (2) (c) 1.

12   expires without a notice of objection to the expiration of a code chapter being filed

13   under sub. (2) (c) 3. but prior to the expiration date of the chapter, extend the

14   expiration date for the chapter for a period specified by the committee not to exceed

15   one year.

16   (b) Any request by an agency to extend the effective date of a chapter shall be

17   made in writing to the joint committee for review of administrative rules no later

18   than 30 days before the expiration date of the chapter.

19   (c) Whenever the committee extends an expiration date for a chapter under par.

20   (a), it shall file a statement of its action with the agency and the legislative reference

21   bureau for publication in the register.

22   (d) An agency may not promulgate an emergency rule under s. 227.24 for the

23   purpose of extending a rule that is subject to expiration under this section.

24   **SECTION 13.** 990.01 (30m) of the statutes is amended to read:

1   990.01 **(30m)** PROMULGATE. "Promulgate," when used in connection with a rule,

2   as defined under s. 227.01 (13), means to repeal; renumber; consolidate, renumber

3   and amend; renumber and amend; amend; repeal and recreate; <u>readopt;</u> or create.

4   **(END)**