



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0490/P2
MPG&MED:kjf

DOA:.....Kraus, BB0128 - General Lame Duck Provisions

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

LEGISLATURE

Retention of legal counsel by the legislature

Current law allows representatives to the assembly and senators, as well as legislative employees, to receive legal representation from DOJ in most legal proceedings. However, current law also provides all of the following:

1. With respect to the assembly, that the speaker of the assembly may authorize a representative to the assembly or assembly employee who requires legal representation to obtain outside legal counsel if the acts or allegations underlying the action are arguably within the scope of the representative's or employee's legislative duties; and that the speaker may obtain outside legal counsel in any action in which the assembly is a party or in which the interests of the assembly are affected, as determined by the speaker.

2. With respect to the senate, that the senate majority leader may authorize a senator or senate employee who requires legal representation to obtain outside legal counsel if the acts or allegations underlying the action are arguably within the scope of the senator's or employee's legislative duties; and that the majority leader may obtain outside legal counsel in any action in which the senate is a party or in which the interests of the senate are affected, as determined by the majority leader.

3. That the cochairpersons of the Joint Committee on Legislative Organization may authorize a legislative service agency employee who requires legal representation to obtain outside legal counsel if the acts or allegations underlying the action are arguably within the scope of the employee's legislative duties; and that the cochairpersons may obtain outside legal counsel in any action in which the legislature is a party or in which the interests of the legislature are affected, as determined by the cochairpersons.

This bill eliminates these provisions. Under the bill, representatives to the assembly and senators, as well as legislative employees, may continue to receive legal representation from DOJ in most legal proceedings.

Advice and consent of the senate

Under current law, any individual nominated by the governor or another state officer or agency subject to the advice and consent of the senate, whose confirmation for the office or position is rejected by the senate, may not do any of the following during the legislative session biennium in which his or her nomination is rejected:

1. Hold the office or position for which he or she was rejected.
2. Be nominated again for that office or position.
3. Perform any duties of that office or position.

This bill eliminates those restrictions.

Capitol security

Under current law, DOA is required to submit any proposed changes to security at the capitol, including the posting of a firearm restriction, to JCLO for approval under passive review. This bill eliminates that requirement.

ADMINISTRATIVE RULES

Deference to agency interpretations of law

Under current law, courts are prohibited from giving deference to agency interpretations of law and agencies are prohibited from seeking such deference from a court. This bill repeals these prohibitions.

Suspension of administrative rules

Under current law, administrative rules that are in effect may be temporarily suspended by the Joint Committee for Review of Administrative Rules. If JCRAR suspends a rule, JCRAR must introduce bills in each house of the legislature to make the suspension permanent. If neither bill to support the suspension is ultimately enacted, the rule remains in effect. However, current law specifies that JCRAR may suspend a rule multiple times. This bill repeals the provision allowing JCRAR to suspend a rule multiple times.

Agency rule-making authority

Current law provides that a settlement agreement, consent decree, or court order does not confer rule-making authority and cannot be used by an agency as authority to promulgate rules. Additionally, no agency may agree to promulgate a rule as a term in any settlement agreement, consent decree, or stipulated order of a court unless the agency has explicit statutory authority to promulgate the rule at the time the settlement agreement, consent decree, or stipulated order of a court is executed. This bill repeals these limitations on agency rule-making authority.

Advisory committees for rule-making

Current law requires that, whenever an agency appoints a committee to advise the agency on rulemaking, the agency submit a list of the members of the committee to JCRAR. The bill repeals this requirement.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 13.124 of the statutes is repealed.

SECTION 2. 13.127 of the statutes is repealed.

SECTION 3. 16.84 (2m) of the statutes is repealed.

SECTION 4. 227.10 (2g) of the statutes is repealed.

SECTION 5. 227.11 (title) of the statutes is amended to read:

227.11 (title) **Agency Extent to which chapter confers rule-making authority.**

SECTION 6. 227.11 (3) of the statutes is repealed.

SECTION 7. 227.13 of the statutes is amended to read:

227.13 Advisory committees and informal consultations. An agency may use informal conferences and consultations to obtain the viewpoint and advice of interested persons with respect to contemplated rule making. An agency may also appoint a committee of experts, interested persons or representatives of the public to advise it with respect to any contemplated rule making. ~~Such a~~ The committee shall have advisory powers only. ~~Whenever an agency appoints a committee under this section, the agency shall submit a list of the members of the committee to the joint committee for review of administrative rules.~~

SECTION 8. 227.26 (2) (im) of the statutes is repealed.

SECTION 9. 227.57 (11) of the statutes is amended to read:

227.57 (11) Upon review of an agency action or decision affecting a property owner's use of the property owner's property, the court shall accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the property owner's property.

(END)