



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 42**

**Assembly Substitute  
Amendment 1 and Assembly  
Amendment 6 to Assembly  
Substitute Amendment 1**

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### **2017 ASSEMBLY BILL 42**

2017 Assembly Bill 42 makes various changes to the administrative rulemaking process, including aspects of the process relating to preparation of statements of scope, economic impact analysis, gubernatorial approval of rules, and promulgation of emergency rules.

#### **Statement of Scope and Initial Agency Rule Drafting**

With regard to statements of scope and initial agency rule drafting, Assembly Bill 42 provides for the review of an agency's scope statement by the Department of Administration (DOA), prior to presentation of the scope statement to the Governor for his or her approval. The bill also provides for the distribution of scope statements to the Co-Chairs of the Joint Committee for Review of Administrative Rules (JCRAR) upon publication of the statement with the Legislative Reference Bureau.

Assembly Bill 42 also creates a process for preliminary comment and hearing on a statement of scope. Under the bill, the comment period and hearing may be requested by a Co-Chair of JCRAR or held by the agency on its own initiative. Generally, under current law, an agency may not work on the drafting of a proposed rule until the scope statement is approved by the Governor and the agency head or board with policy-making authority. When applicable, the preliminary comment period and scope statement hearing would take place before approval of the scope statement by the agency.

#### **Economic Impact Analysis**

Assembly Bill 42 makes two changes relating to an agency's preparation of an economic impact analysis (EIA) as part of its rulemaking process. First, the bill directs an agency to

determine whether a proposed rule has \$10 million or more in implementation and compliance costs over a two-year period. Upon such a finding, an agency may not promulgate a rule absent authorizing legislation or germane modification to the proposed rule to reduce costs below the \$10 million threshold.

Additionally, Assembly Bill 42 authorizes a Co-Chair of JCRAR (prior to gubernatorial approval) or JCRAR itself (during the JCRAR review period) to request and contract for the preparation of an independent EIA of a proposed rule, with the cost of the independent EIA paid by the Legislature if the result varies by less than 42% from the agency's EIA, and paid by the agency that is proposing the rule if the result varies by more than 42%.

### **Gubernatorial Approval**

Assembly Bill 42 specifies that an agency must provide notice to the Co-Chairs of JCRAR when a proposed rule is submitted for gubernatorial approval.

### **Emergency Rules**

The bill specifies that the process for preliminary comment and hearing on a statement of scope applies to the promulgation of an emergency rule, but that emergency rules are not subject to the limitations relating to authorization of high-cost rules, described above.

### **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 (the "substitute amendment") differs from Assembly Bill 42 in the following ways:

- With regard to DOA review of an agency's statement of scope, the substitute amendment revises the language relating to the review to specify that DOA must determine whether the agency has explicit authority to promulgate the rule.
- With regard to the treatment of high-cost rules, the substitute amendment specifies that the process for authorizing such rules does not apply to certain rules promulgated by the Department of Natural Resources, if those rules are no more stringent than required under the federal Clean Air Act.
- The substitute amendment revises the manner in which costs of an independent EIA are, if applicable, assessed to an agency, with the effect of removing the appropriation from the bill under the substitute amendment.
- With regard to the determination of the manner in which costs of an independent EIA are paid, substitute amendment specifies that, if applicable, costs with respect to an independent EIA requested by a Co-Chair of JCRAR will be paid by his or her house of the Legislature.
- With regard to determination of the manner in which costs of an independent EIA are paid, substitute amendment specifies that the Joint Finance Committee may

determine the manner of payment if the maximum potential obligation under the contract for the independent EIA exceeds \$50,000.

- The substitute amendment creates a new procedure that would, as an alternative to the temporary objection process under current law, allow JCRAR to indefinitely object to any proposed rule, for the same reasons a temporary objection may be made under current law. Under this provision, an agency would not be able to promulgate a rule following indefinite objection unless a bill authorizing such promulgation was enacted into law.
- With regard to the applicability of the preliminary comment period and hearing on a statement of scope, the substitute amendment clarifies an internal inconsistency in Assembly Bill 42 to specify that drafting on an emergency rule may not commence until the scope statement is approved by the Governor and the agency head or board with policy-making authority, regardless of whether a comment period and hearing are requested or otherwise scheduled.

### **ASSEMBLY AMENDMENT 6 TO ASSEMBLY SUBSTITUTE AMENDMENT 1**

With regard to a request for independent EIAs by a Co-Chair of JCRAR, Assembly Amendment 6 to the substitute amendment requires approval of the Organization Committee of the Co-Chair's house of the Legislature. Under Assembly Amendment 6, a request for an independent EIA made by JCRAR must be approved by both the Committee on Assembly Organization and the Committee on Senate Organization.

### **BILL HISTORY**

Representative Neylon introduced Assembly Bill 42 on January 31, 2017. On April 26, 2017, Representative Neylon offered Assembly Substitute Amendment 1 to the bill. On May 3, 2017, the Assembly Committee on State Affairs recommended adoption of Assembly Amendment 6 to Assembly Substitute Amendment 1 and Assembly Substitute Amendment 1, as amended, on votes of Ayes, 10; Noes, 5. On the same day, the committee voted to recommend passage of Assembly Bill 42, as amended, on a vote of Ayes, 10; Noes, 5.

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