



1995 ASSEMBLY BILL 1068

March 21, 1996 - Introduced by Representatives KLUSMAN, DUFF, JOHNSRUD, ALBERS, AINSWORTH, GROTHMAN, MUSSER, GREEN, F. LASEE, GOETSCH, BRANDEMUEHL, OTTE, LORGE, GRONEMUS and JENSEN, cosponsored by Senators FARROW and WELCH. Referred to Committee on Environment and Utilities.

- 1 **AN ACT to amend** 227.19 (3) (intro.); and **to create** 227.115 of the statutes;
2 **relating to:** reports on the risks addressed by, and costs and benefits of, certain
3 rules promulgated by state agencies.

Analysis by the Legislative Reference Bureau

Current law requires a state agency to notify the legislature when a rule proposed by the agency is in final draft form. The agency is required to submit a report with this notification. The report must include, among other things, the proposed rule and an analysis of the proposed rule including an explanation of the need for the proposed rule.

Under this bill, for a rule promulgated by a state agency, under specified environmental laws, that relates to human health or safety or the environment, the report that accompanies the notification to the legislature must include a report by the head of the agency that analyzes the risks addressed by the rule and the costs and benefits of the rule. The report must compare the risk addressed by the rule to at least 3 risks that are regulated by state agencies and to at least 3 risks that are not regulated by the state or federal government. As part of the report, the head of the agency must certify all of the following or explain why he or she is unable to so certify:

1. That the estimates and analyses in the report are based upon a scientific evaluation and supported by the best available scientific evidence.
2. That the rule will substantially advance the purpose of protecting human health and safety or the environment against the risk that is addressed by the rule.
3. That the rule will produce benefits that will justify the public and private costs of implementing and complying with the rule.
4. That there is no regulatory alternative to the rule that is allowed by the statute under which the rule is promulgated that would result in the same reduction in risk in a more cost-efficient way.

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:

1 **SECTION 1.** 227.115 of the statutes is created to read:

2 **227.115 Rule making; human health and safety and environmental**
3 **considerations.** (1) In this section, “head of the agency” means, in relation to a
4 department, the constitutional officer, commission, secretary or board in charge of
5 the department and, in relation to an independent agency, the commission,
6 commissioner or board in charge of the independent agency.

7 (2) Except as provided in sub. (2m), for any rule promulgated by a state agency
8 under ch. 144, 147, 159, 160 or 162 that relates to human health and safety or the
9 environment, the head of the agency shall prepare a written report, for inclusion in
10 the report to the legislature under s. 227.19 (3), that analyzes the risks addressed by
11 the rule and the costs and benefits of the rule. The report shall include all of the
12 following:

13 (a) Estimates, made with as much specificity as practicable, of all of the
14 following:

15 1. The risk to the health and safety of individuals or to the environment that
16 is addressed by the rule.

17 2. The effect of the rule on human health and safety or the environment.

18 3. The costs associated with implementation of and compliance with the rule.

19 (b) A comparative analysis of the risk addressed by the rule relative to other
20 risks to which the public is exposed, including all of the following:

21 1. Comparison to at least 3 other risks that are regulated by state agencies.

1 2. Comparison to at least 3 other risks that are not directly regulated by the
2 state or federal government.

3 (c) An analysis of the costs of the rule, including the costs to state government,
4 to local governments and to the private sector of implementing and complying with
5 the rule, and of the benefits of the rule. The analysis shall specify quantifiable costs
6 and benefits, to the fullest extent they can be estimated, and shall include qualitative
7 descriptions of costs and benefits that are difficult to quantify.

8 **(2m)** Subsection (2) does not apply to any of the following:

9 (a) A rule that the head of the agency promulgating the rule estimates will have
10 no negative fiscal impact on persons regulated by the rule.

11 (b) A rule that consists of standards, requirements or methods that are
12 identical to standards, requirements or methods in a federal statute or regulation.

13 **(3)** The report under sub. (2) shall contain a certification by the head of the
14 agency of as many of the following items as possible:

15 (a) That the estimates and analyses provided under sub. (2) are based upon a
16 scientific evaluation of the risk to the health and safety of individuals or to the
17 environment that is addressed by the rule and are supported by the best available
18 scientific data.

19 (b) That the rule will substantially advance the purpose of protecting human
20 health and safety or the environment against the risk that is addressed by the rule.

21 (c) That the rule will produce benefits to human health and safety and to the
22 environment that will justify the public and private costs of implementing and
23 complying with the rule.

1 (d) That there is no regulatory alternative to the rule that is allowed by the
2 statute under which the rule is promulgated that would achieve an equivalent
3 reduction in risk in a more cost-efficient manner.

4 (4) The certification under sub. (3) (d) shall be accompanied by a brief
5 explanation of the regulatory alternatives to the rule that were considered by the
6 head of the agency and why those alternatives were determined to be less
7 cost-effective.

8 (5) If the head of the agency is unable to make any of the certifications under
9 sub. (3), the report under sub. (2) shall identify the items to which the head of the
10 agency is unable to certify and shall explain why the head of the agency is unable to
11 make those certifications.

12 (6) If the head of the agency promulgating a rule fails to comply with subs. (2)
13 to (5) with respect to the rule, the rule is invalid.

14 **SECTION 2.** 227.19 (3) (intro.) of the statutes is amended to read:

15 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
16 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
17 the material specified in ~~s. ss.~~ 227.14 (2) to (4) and 227.115, a copy of any
18 recommendations of the legislative council staff and an analysis. The analysis shall
19 include:

20 **SECTION 3. Initial applicability.**

21 (1) This act first applies to proposed rules that are submitted to the legislative
22 council staff for review under section 227.15 of the statues on the effective date of this
23 subsection.

24 (END)