State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-3570/1
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2013 BILL

1 AN ACT ***to repeal*** 106.20; ***to amend*** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92
2 (4) (f), 13.94 (4) (a) 5., 35.93 (2) (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e)
3 (intro.), 35.93 (3) (e) 1., 227.01 (13) (intro.), 227.11 (2) (intro.) and 227.27 (2); and
4 ***to create*** 13.92 (4) (bm) and 227.265 of the statutes; **relating to:** rule-making
5 procedures and repealing various rules promulgated by the Department of
6 Workforce Development.

Analysis by the Legislative Reference Bureau

STATUTORY TREATMENTS

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule–making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

TREATMENTS OF ADMINISTRATIVE RULES

Under current law, the Department of Workforce Development (DWD) has promulgated various rules governing the administration in this state of the federal Job Training Partnership Act of 1982 (JTPA). Those rules govern: 1) allowable costs under the JTPA; 2) performance–based contracting by agencies receiving funds under the JTPA; 3) administration of the Dislocated Worker Program under the JTPA; and 4) administration of certain other employment and training programs under the JTPA. The JTPA was replaced by the federal Workforce Investment Act of 1998. This bill repeals those rules.

Under current law, DWD has promulgated rules governing the Wisconsin Job Opportunity Business Subsidy (WISJOBS) Program. Statutory authority for the awarding of grants under the WISJOBS Program expired on June 30, 1993. This bill repeals those rules.

Under current law, DWD has promulgated rules governing the filing and hearing of mining damage claims. Statutory responsibility for the hearing of such claims was transferred to the Department of Commerce in 1996 and, subsequently, to the Department of Safety and Professional Services in 2011. This bill repeals those rules.

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

2 13.92 **(4)** (bm) If 2 or more rules filed under s. 227.20 or modified under s.
3 227.265 affect the same unit of the Wisconsin administrative code without taking
4 cognizance of the effect thereon of the other rules and if the legislative reference
5 bureau finds that there is no mutual inconsistency in the changes made by each such

rule, the legislative reference bureau shall incorporate the changes made by each rule into the text of the unit and document the incorporation in a note to the unit. For each such incorporation, the legislative reference bureau shall include in a correction bill a provision formally validating the incorporation. Section 227.27 (2) is not affected by printing decisions made by the legislative reference bureau under this paragraph.

SECTION 2. 13.92 (4) (c) of the statutes is amended to read:

13.92 **(4)** (c) The legislative reference bureau may insert in the Wisconsin administrative code a note explaining any change made under par. (b) <u>or (bm)</u>.

SECTION 3. 13.92 (4) (d) of the statutes is amended to read:

13.92 **(4)** (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not apply to any change made by the legislative reference bureau under par. (b) <u>or (bm)</u>.

SECTION 4. 13.92 (4) (e) of the statutes is amended to read:

13.92 **(4)** (e) The legislative reference bureau shall prepare and keep on file a record of each change made under par. (b) <u>or (bm)</u>.

SECTION 5. 13.92 (4) (f) of the statutes is amended to read:

13.92 **(4)** (f) The legislative reference bureau shall notify the agency involved of each change made under par. (b) <u>or (bm)</u>.

SECTION 6. 13.94 (4) (a) 5. of the statutes is amended to read:

13.94 **(4)** (a) 5. A local service agency ~~as defined in s. 106.20 (1) (d)~~ <u>designated under s. 101.35 (3), 1991 stats</u>.

SECTION 7. 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (b) 4. Copies of all rules filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> since the compilation of the preceding register, including emergency rules filed under s. 227.24 (3).

SECTION 8. 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(2)** (c) 1. Each chapter of the Wisconsin administrative code that has been affected by rules filed with <u>the</u> legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u>, in accordance with sub. (3) (e) 1.

SECTION 9. 35.93 (3) of the statutes is amended to read:

35.93 **(3)** The legislative reference bureau shall compile and deliver to the department for printing copy for a register which shall contain all the rules filed <u>under s. 227.20 or modified under s. 227.265</u> since the compilation of rules for the preceding issue of the register was made and those executive orders which are to be in effect for more than 90 days or an informative summary thereof. The complete register shall be compiled and published before the first day of each month and a notice section of the register shall be compiled and published before the 15th day of each month. Each issue of the register shall contain a title page with the name "Wisconsin administrative register", the number and date of the register, and a table of contents. Each page of the register shall also contain the date and number of the register of which it is a part in addition to the other necessary code titles and page numbers. The legislative reference bureau may include in the register such instructions or information as in the bureau's judgment will help the user to correctly make insertions and deletions in the code and to keep the code current.

SECTION 10. 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) (intro.) The legislative reference bureau shall incorporate into the appropriate chapters of the Wisconsin administrative code each permanent rule filed with the legislative reference bureau under s. 227.20 (1) <u>or modified under s. 227.265</u> and, for each chapter of the administrative code affected by a rule, do all of the following:

SECTION 11. 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

35.93 **(3)** (e) 1. Publish the chapter in the appropriate end–of–month register in accordance with the filing deadline for publication established in the rules procedures manual published under s. 227.15 (7) ~~or~~, in an end–of–month register agreed to by the submitting agency and the legislative reference bureau<u>, or, in the case of a rule modified under s. 227.265, in the end–of–month register for the month in which the bill modifying the rule is enacted</u>.

SECTION 12. 106.20 of the statutes is repealed.

SECTION 13. 227.01 (13) (intro.) of the statutes is amended to read:

227.01 **(13)** (intro.) "Rule" means a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. <u>"Rule" includes a modification of a rule under s. 227.265.</u> "Rule" does not include, and s. 227.10 does not apply to, any action or inaction of an agency, whether it would otherwise meet the definition under this subsection, which:

SECTION 14. 227.11 (2) (intro.) of the statutes is amended to read:

227.11 **(2)** (intro.) Rule–making authority is expressly conferred <u>on an agency</u> as follows:

1 **SECTION 15.** 227.265 of the statutes is created to read:

2 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
3 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
4 Instead, the legislative reference bureau shall publish the repeal or modification in
5 the Wisconsin administrative code and register as required under s. 35.93, and the
6 repeal or modification shall take effect as provided in s. 227.22.

7 **SECTION 16.** 227.27 (2) of the statutes is amended to read:

8 227.27 **(2)** The code shall be prima facie evidence in all courts and proceedings
9 as provided by s. 889.01, but this does not preclude reference to or, in case of a
10 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
11 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
12 of a rule shall also and in the same degree be prima facie evidence in all courts and
13 proceedings.

14 **SECTION 17.** Chapter DWD 82 of the administrative code is repealed.

15 **SECTION 18.** Chapter DWD 805 of the administrative code is repealed.

16 **SECTION 19.** Chapter DWD 811 of the administrative code is repealed.

17 **SECTION 20.** Chapter DWD 816 of the administrative code is repealed.

18 **SECTION 21.** Chapter DWD 820 of the administrative code is repealed.

19 **SECTION 22.** Chapter DWD 830 of the administrative code is repealed.

20 **SECTION 23. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
23 of the statutes takes effect on January 1, 2015.

24 **(END)**