2025 Enrolled Joint Resolution 13

A proposed constitutional amendment on legislative suspension of rules promulgated by state agencies

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Introduction

The 2025 Wisconsin Legislature adopted on first consideration 2025 Assembly Joint Resolution 133, published as 2025 Enrolled Joint Resolution 13, which would amend the Wisconsin Constitution to provide that the legislature may by joint resolution adopted by both houses suspend indefinitely, or for a period specified in the resolution, in whole or in part any administrative rule promulgated by a state agency. The proposal is now eligible for second consideration by the 2027 Wisconsin Legislature.

Legislative passage of a constitutional amendment on first consideration is the first step in the process of amending the constitution. Under Wis. Const. art. XII, § 1, amendments to the constitution must be adopted by two successive legislatures and then ratified by the voters in a statewide referendum.[1] On first consideration, a proposed amendment to the constitution is offered as a joint resolution in either the assembly or the senate. A joint resolution, unlike a bill, need not be submitted to the governor for approval, but must pass both houses in identical form to be effective. If the assembly and the senate both adopt the joint resolution, the Legislative Reference Bureau must publish the proposed constitutional amendment online, no later than August 1 preceding the next general election.[2]

In the next succeeding legislature, the proposed amendment may be offered on second consideration. Once again, the proposal takes the form of a joint resolution and may be offered in either the assembly or the senate. A second consideration joint resolution proposes the identical amendment that was proposed by the first consideration joint resolution and also specifies the date of the election at which the proposed amendment will be submitted to the voters and the wording of the question that will appear on the ballot. If the assembly and the senate both adopt the joint resolution without making changes to the proposed amendment, the proposed amendment is submitted to the voters. If voters ratify the amendment, the constitution is amended.

Background

Wisconsin executive branch agencies promulgate administrative rules to implement, interpret, and make specific the laws enacted by the Wisconsin Legislature. Agencies do so pursuant to rulemaking authority conferred under the statutes.[3]

A 1955 law created a joint legislative committee, now called the Joint Committee for

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1. Every Wisconsin legislature convenes in January of an odd-numbered year and adjourns in January of the next succeeding odd-numbered year.

2. Wis. Stat. § 35.07.

3. For a thorough history of legislative oversight of the rulemaking process, see: Michael E. Duchek, "Legislative Power to Suspend Administrative Rules: A Historical Look," Wisconsin Lawyer 97, no. 8 (Sept. 2024), https://www.wisbar.org/.

Review of Administrative Rules (JCRAR), to oversee the rulemaking process.[4] A decade later, a law was enacted to give JCRAR the power to suspend existing administrative rules.[5] In order for JCRAR's suspension of a rule to become permanent, the law required passage of a bill in support of the suspension.

The 1979 biennial budget act enshrined into law a review process by the legislature of proposed administrative rules, which included giving JCRAR the power to temporarily object to (block) proposed rules.[6] As with suspensions, a bill supporting the objection needed to be passed in order to sustain the objection.

Suspension and objection powers were used by JCRAR with varying frequency in the decades that ensued and served to provide the legislature with a tool to take action against administrative rules that lacked support in the legislature, especially during times of divided government.

In 1992, the Wisconsin Supreme Court upheld the constitutionality of JCRAR's suspension power against a challenge brought against the administration of then-Governor Tommy Thompson on the grounds that the power violated the principle of separation of powers between the legislative and executive branches of government. The court in that case, *Martinez v. Department of Industry, Labor and Human Relations*, found that the authority of JCRAR to temporarily suspend rules was constitutional and that the requirement that a bill be passed and signed by the governor to make a suspension permanent set Wisconsin apart from "the statutory schemes found to violate separation of powers doctrines in other states."[7]

During the 2017 legislative session, two laws were enacted to expand JCRAR's rule suspension and objection powers beyond what was evaluated and upheld in *Martinez*. First, 2017 Wisconsin Act 57 created a new procedure to allow JCRAR to object to any proposed rule *indefinitely* (permanently) without the need for JCRAR to secure passage of a bill in support of the action. Following an indefinite objection, an agency could not promulgate the rule unless a bill authorizing it was enacted into law. Second, 2017 Wisconsin Act 369 permitted JCRAR to suspend the same existing administrative rule multiple times. For example, if the bill introduced to support a temporary suspension failed to pass by the conclusion of a legislative session, this new law allowed JCRAR to vote to suspend the same rule again.

In 2023, Governor Tony Evers challenged in court JCRAR's power to object to and suspend administrative rules, citing instances in which JCRAR had blocked proposed rules indefinitely or held them up for significant periods of time. In the July 2025 decision *Evers v. Marklein*, the Wisconsin Supreme Court, citing separation of powers principles,

4. Ch. 221, Laws of 1955.

5. Ch. 659, Laws of 1965.

6. Ch. 34, Laws of 1979.

7. Martinez v. Department of Indus., Lab. & Hum. Rels., 165 Wis. 2d 687, 701, 478 N.W.2d 582 (1992).

concluded that a legislative committee such as JCRAR cannot block an administrative rule on its own and that blocking a rule instead requires passing a bill through both houses and presenting it to the governor. The court also overruled its prior holding from *Martinez*, concluding that JCRAR's preexisting powers to suspend or object to rules, even temporarily, were also unconstitutional.[8]

Following this 2025 ruling, the Wisconsin Legislature has no mechanism to unilaterally pause, object to, or suspend administrative rules. The ability of the legislature to modify or eliminate administrative rules now requires the legislature to pass a bill in both houses and for that bill to be signed by the governor or, if the governor vetoes the bill, for the legislature to override the veto by a two-thirds majority. 2025 Enrolled Joint Resolution 13 would amend the Wisconsin Constitution to grant the legislature the explicit authority to suspend existing rules by adopting a joint resolution, which would require a majority vote by both houses of the legislature.

Proposed amendment

2025 Enrolled Joint Resolution 13 would create Wis. Const. art. IV, § 35, to read as follows:

> The legislature may by joint resolution adopted by a majority vote of all members elected to each house suspend indefinitely, or for a period specified in the resolution, in whole or in part any rule promulgated by a state agency. A rule or part of a rule suspended by the legislature under this section shall have no force or effect during the pendency of the suspension. The legislature's suspension of a rule under this section is not subject to presentment to the governor or any other requirement under this constitution concerning the enactment of laws. For purposes of this section, "rule" shall have the meaning given by the legislature by law.

In testifying in favor of the proposal, the assembly author of the proposal, Representative Brent Jacobson, stated that the amendment would "ensure that the Legislature remains an effective check on the administrative state," arguing that the Wisconsin Supreme Court decision in *Evers v. Marklein* had "stripped the Legislature of its authority to meaningfully oversee agency rulemaking," "introduced tremendous uncertainty into the rulemaking process, and greatly empowered unelected, unaccountable, and unknown state bureaucrats at the expense of the people's representatives in the Legislature."[9]

The senate author of the proposal, Senator Stephen Nass, testified that the amendment "is an effort to ensure that the powers of each branch are adequately protected to

8. Evers v. Marklein, 2025 WI 36. The court's opinion has commonly been referred to as "Evers v. Marklein II" to distinguish it from an earlier ruling in the same action, Evers v. Marklein, 2024 WI 31 (Evers v. Marklein I). For a discussion of "Evers v. Marklein II," see: Scott Grosz, "Marklein II: Administrative Rulemaking," Issue Brief (Wis. Legis. Council, July 2025), https://docs.legis.wisconsin.gov.

9. Wis. Legis. Council, Hearing Materials for 2025 AJR 133, Testimony of State Rep. Brent Jacobson, Assembly Comm. on Government Operations, Accountability, and Transparency, AJR 133 (Feb. 4, 2026): 1, https://docs.legis.wisconsin.gov.

prevent government from harming its citizens."[10] He further argued that the proposed amendment is a means of "checking the executive" in the same way that the legislature is able to revoke a governor's emergency declaration by the adoption of a joint resolution.

There were no direct statements made in opposition to the proposal in committee hearings or on the senate or assembly floor.

The resolution passed in the assembly on February 12, 2026, by a 52–45 vote and in the senate on February 18, 2026, by an 18–15 vote. For the amendment to be adopted, the senate and the assembly must approve an identical joint resolution during the 2027 legislative session. If passed a second time, Wisconsin voters must subsequently vote to approve or reject the proposed amendment at a referendum.

Other states

Although state governments share the same general framework consisting of legislative, executive, and judicial branches, there is variation in how the governments are structured and operate, including in the oversight powers that the state legislatures have with respect to administrative rulemaking. A report from the State Democracy Research Initiative at the University of Wisconsin Law School (last updated in December 2024) classified, excluding Wisconsin, 23 states as having a legislative veto over administrative rulemaking, 11 states as having other binding methods of legislative oversight, and 15 states as having virtually no formal legislative oversight of rulemaking outside of lawmaking.[11]

Of the 23 states with a legislative veto, the report classified 14 as having a "strong-form legislative veto," meaning that certain legislative entities are authorized to reject or invalidate proposed or existing rules that have been approved by the executive branch. The report classified 14 of the 23 states with a legislative veto as having "temporary suspension" power, meaning legislatures can "temporarily delay or suspend the rulemaking process or a rule itself while considering legislation to block or amend the rule." Five states authorize both a strong-form legislative veto and a temporary suspension.

Among the 14 states with a strong-form veto, the report notes that seven require the agreement of both legislative houses to veto a rule, while the remaining seven allow a joint legislative committee to veto a rule. Further, the report states that in six states, the legal authority for the strong-form veto derives from the state's constitution, rather than state statute.[12]

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10. Wis. Legis. Council, Hearing Materials for 2025 AJR 133, Testimony of State Sen. Stephen Nass, Assembly Comm. on Government Operations, Accountability, and Transparency, AJR 133 (Feb. 4, 2026): 3, https://docs.legis.wisconsin.gov.

11. Derek Clinger and Miriam Seifter, "Unpacking State Legislative Vetoes," University of Wisconsin Legal Studies Research Paper, no. 1788 (Oct. 2023; last updated Dec. 2024): 5, https://uwmadison.app.box.com.

12. The six constitutional provisions, with the year of ratification in parentheses, are as follows: Ark. Const. art. 5, § 42 (2014); Conn. Const. art. II, as amended by art. XVIII (1982); Idaho Const. art. III, § 29 (2016); Iowa Const. art. III, § 40 (1984); Nev. Const. art. 3, § 1, subsec. 2 (1996); N.J. Const. art V, § IV, para. 6 (1992).

By ratifying 2025 Enrolled Joint Resolution 13, Wisconsin would join states such as Idaho, Iowa, and New Jersey in having an explicit constitutional provision providing for a two-house, strong-form legislative veto. ■

State of Wisconsin

2025 Assembly Joint Resolution 133

ENROLLED JOINT RESOLUTION 13

To create section 35 of article IV of the constitution; **relating to:** legislative suspension of rules promulgated by state agencies (first consideration).

Resolved by the assembly, the senate concurring, That:

SECTION 1. Section 35 of article IV of the constitution is created to read:

[Article IV] Section 35. The legislature may by joint resolution adopted by a majority vote of all members elected to each house suspend indefinitely, or for a period specified in the resolution, in whole or in part any rule promulgated by a state agency. A rule or part of a rule suspended by the legislature under this section shall have no force or effect during the pendency of the suspension. The legislature's suspension of a rule under this section is not subject to presentment to the governor or any other requirement under this constitution concerning the enactment of laws. For purposes of this section, "rule" shall have the meaning given by the legislature by law.

SECTION 2. Numbering of new provisions. If another constitutional amendment ratified by the people creates the number of any provision created in this joint resolution, the chief of the legislative reference bureau shall determine the sequencing and the numbering of the provisions whose numbers conflict.

Be it further resolved, That this proposed amendment be referred to the legislature to be chosen at the next general election and that it be published for three months previous to the time of holding such election.

Mary F. Felzkowski
Senator Mary Felzkowski
President of the Senate

Robin J. Vos
Representative Robin J. Vos
Speaker of the Assembly

February 25, 2026
Date

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