RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

☞ Appendix A ... has been added to the **2017 LRB-6071**

Appendix A ☞ LRB 17-5979
Appendix B ☞ LRB 17-5982
Appendix C ☞ LRB 17-5983
Appendix D ☞ LRB 17-5986
Appendix E ☞ LRB 17-5989
Appendix F ☞ LRB 17-5995
Appendix G ☞ LRB 17-5998
Appendix H ☞ LRB 17-6006
Appendix I ☞ LRB 17-6007
Appendix J ☞ LRB 17-6012
Appendix K ☞ LRB 17-6021
Appendix L ☞ LRB 17-6023
Appendix M ☞ LRB 17-6024
Appendix N ☞ LRB 17-6027
Appendix O ☞ LRB 17-6028
Appendix P ☞ LRB 17-6031
Appendix Q ☞ LRB 17-6036
Appendix R ☞ LRB 17-6037
Appendix S ☞ LRB 17-6038
Appendix T ☞ LRB 17-6046
Appendix U ☞ LRB 17-6047
Appendix V ☞ LRB 17-6048
Appendix W ☞ LRB 17-6049
Appendix X ☞ LRB 17-6050
Appendix Y ☞ LRB 17-6052
Appendix Z ☞ LRB 17-6059
Appendix AA ☞ LRB 17-6065
Appendix BB ☞ LRB 17-6067

2017 DRAFTING REQUEST

Bill

For:	**Joan Ballweg (608) 266-8077**	Drafter:	**mduchek**
By:	**Bethany**	Secondary Drafters:	
Date:	**11/12/2018**	May Contact:	

Same as LRB:

Submit via email: **YES**
Requester's email: **Rep.Ballweg@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Codify Coyne decision, make DPI rules not subject to gov. approval

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Submitted	Jacketed	Required
/?	mduchek 11/13/2018	wjackson 11/13/2018			
/P1			lparisi 11/13/2018		

FE Sent For: **<END>**

Duchek, Michael

From: Anderson, Bethany
Sent: Monday, November 12, 2018 3:28 PM
To: Duchek, Michael
Subject: Re: Rules

Current session.

Sent from my iPhone

On Nov 12, 2018, at 3:22 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:

> Is this a request for the current (i.e., 2017-18) session or for next session (2019-20)?
>
> ---
>
> **From:** Anderson, Bethany
> **Sent:** Monday, November 12, 2018 3:20 PM
> **To:** Duchek, Michael <Michael.Duchek@legis.wisconsin.gov>
> **Subject:** Re: Rules
>
> We're good on our end. Please move forward with the drafting request.
>
> Thanks!
> Bethany
>
> Sent from my iPhone
>
> On Nov 12, 2018, at 1:51 PM, Anderson, Bethany <Bethany.Anderson@legis.wisconsin.gov> wrote:
>
>> This is great, thank you!
>>
>> Can we start with the 3 pavers.
>>
>> Sent from my iPhone
>>
>> On Nov 12, 2018, at 1:45 PM, Duchek, Michael <Michael.Duchek@legis.wisconsin.gov> wrote:
>>
>> 1. Here is a link to the Coyne decision, where a divided court held that the gubernatorial approval of scope and final rule requirements can't be applied to DPI: https://scholar.google.com/scholar_case?case=10721047486853195456&q=2016+WI+38&hl=en&as_sdt=4,50&as_vis=1
>> 2. Here is a link to WILL's page for the current litigation, in which they are essentially asking the court to reverse its decision in Coyne: http://www.will-law.org/our-cases/good-government/koschkee-v-evers/#case-documents
>>
>> As to my history thing, I have a lengthy thing I put together and am still working on, which is about 30 pages long and isn't complete through

the present. I also have a 3 page document which basically condenses all of that into a single timeline. Let me know which of those is more along what you had in mind.

Mike Duchek
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 504-5830

State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5979/1
MED:...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** gubernatorial approval requirements for administrative rules.

Analysis by the Legislative Reference Bureau

Generally, under current law, an agency planning to promulgate an administrative rule, including an emergency rule, must first prepare a statement of the scope of the proposed rule (scope statement). A scope statement must be submitted to the Department of Administration for a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the scope statement. DOA must then report the statement and its determination to the governor who, in his or her discretion, may approve or reject the statement. Also under current law, after a proposed administrative rule, including an emergency rule, is in final draft form, the agency promulgating the proposed rule must submit the proposed rule to the governor, who may approve or reject the proposed rule. No agency may promulgate an administrative rule without the written approval of the governor.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of the scope statements and rules are unconstitutional as applied to the Superintendent of Public Instruction, who heads the Department of Public Instruction.

Consistent with the result in *Coyne*, this bill exempts rules promulgated by the DPI from the requirements that a) a scope statement be submitted to DOA for a determination of authority and that the scope statement be approved by the governor

in final draft form

and b) a proposed rule be submitted to the governor and that the governor approve the rule in writing.

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

1 **SECTION 1.** 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and
2 amended to read:

3 227.135 (2) (a) 1. ~~An~~ Except as provided in subd. 2., an agency that has
4 prepared a statement of the scope of the proposed rule shall present the statement
5 to the department of administration, which shall make a determination as to
6 whether the agency has the explicit authority to promulgate the rule as proposed in
7 the statement of scope and shall report the statement of scope and its determination
8 to the governor who, in his or her discretion, may approve or reject the statement of
9 scope. ~~The~~ Except as provided in subd. 2., the agency may not send the statement
10 to the legislative reference bureau for publication under sub. (3) until the governor
11 issues a written notice of approval of the statement.

12 (b) ~~The~~ An agency that has prepared a statement of the scope of the proposed
13 rule shall ~~also~~ present the statement to the individual or body with policy-making
14 powers over the subject matter of the proposed rule for approval. The individual or
15 body with policy-making powers may not approve the statement until at least 10
16 days after publication of the statement under sub. (3) and, if a preliminary public
17 hearing and comment period are held by the agency under s. 227.136, until the
18 individual or body has received and reviewed any public comments and feedback
19 received from the agency under s. 227.136 (5).

20 (c) No state employee or official may perform any activity in connection with
21 the drafting of a proposed rule, except for an activity necessary to prepare the

statement of the scope of the proposed rule, until ~~the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve~~ the statement has been approved as required under pars. (a) and (b). This ~~subsection~~ paragraph does not prohibit an agency from performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

History: 1995 a. 106; 2003 a. 118, 145; 2005 a. 249; 2007 a. 20; 2011 a. 21; 2013 a. 20, 165; 2017 a. 39, 57, 108.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

SECTION 2. 227.135 (2) (a) 2. of the statutes is created to read:

227.135 **(2)** (a) 2. The requirement under subd. 1. does not apply with respect to rules promulgated by the department of public instruction.

SECTION 3. 227.135 (3) of the statutes is amended to read:

227.135 **(3)** ~~If the governor approves a~~ An agency that prepares a statement of the scope of a proposed rule under sub. ~~(2), the agency~~ (1) shall, subject to sub. (2) (a) 1., send an electronic copy of the statement to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration and to the chief clerks of each house of the legislature, who shall distribute the statement to the cochairpersons of the joint committee for review of administrative rules. The agency shall include with any statement of scope sent to the legislative reference bureau the date of the governor's approval of the statement of scope if such approval is required under sub. (2) (a). The legislative reference bureau shall assign a discrete identifying number to each statement of scope and

shall include that number and the date of the governor's approval, if required, in the publication of the statement of scope in the register.

History: 1995 a. 106; 2003 a. 118, 145; 2005 a. 249; 2007 a. 20; 2011 a. 21; 2013 a. 20, 165; 2017 a. 39, 57, 108.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

SECTION 4. 227.185 of the statutes is amended to read:

227.185 Approval by governor. After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with a written notice of that approval. No proposed rule may be submitted to the legislature for review under s. 227.19 (2) unless the governor has approved the proposed rule in writing. The agency shall notify the joint committee for review of administrative rules whenever it submits a proposed rule for approval under this section. This section does not apply with respect to rules promulgated by the department of public instruction.

History: 2011 a. 21; 2017 a. 57.

NOTE: In *Coyne v. Walker*, 2016 WI 38, the Supreme Court held that provisions of 2011 Wisconsin Act 21 that give to the Governor, and in limited cases, the Secretary of Administration, the power to intervene in the process of drafting and promulgating administrative rules are unconstitutional as applied to the Superintendent of Public Instruction.

SECTION 5. 227.24 (1) (e) 1d. of the statutes is amended to read:

227.24 **(1)** (e) 1d. Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), send the statement to the legislative reference bureau for publication in the register as provided in s. 227.135 (3), and hold a preliminary public hearing and comment period if directed under s. 227.136 (1). If the agency changes the scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain approval of a revised statement of the scope of the proposed emergency rule as provided in s. 227.135 (4). No state employee or official may perform any

activity in connection with the drafting of a proposed emergency rule, except for an activity necessary to prepare the statement of the scope of the proposed emergency rule, until the governor approves the statement, if such approval is required, and the individual or body with policy-making powers over the subject matter of the proposed emergency rule ~~approve~~ approves the statement.

History: 1985 a. 182 ss. 6, 46, 55 (1), 57; 1985 a. 332 s. 253; 1987 a. 403; 1989 a. 31; 1995 a. 151; 1997 a. 185; 2003 a. 145; 2005 a. 249; 2007 a. 20; 2011 a. 21, 32, 46; 2013 a. 20, 165; 2017 a. 57, 364.

SECTION 6. 227.24 (1) (e) 1g. of the statutes is amended to read:

227.24 **(1)** (e) 1g. Submit the proposed emergency rule in final draft form to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves a proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule with the legislative reference bureau as provided in s. 227.20 and an emergency rule may not be published until the governor approves the emergency rule in writing. This subdivision does not apply with respect to proposed emergency rules promulgated by of the department of public instruction.

History: 1985 a. 182 ss. 6, 46, 55 (1), 57; 1985 a. 332 s. 253; 1987 a. 403; 1989 a. 31; 1995 a. 151; 1997 a. 185; 2003 a. 145; 2005 a. 249; 2007 a. 20; 2011 a. 21, 32, 46; 2013 a. 20, 165; 2017 a. 57, 364.

SECTION 7. Initial applicability.

(1) The treatment of ss. 227.135 (3), 227.185, and 227.24 (1) (e) 1d. and 1g., the renumbering and amendment of s. 227.135 (2), and the creation of s. 227.135 (2) (a) 2. first apply to a proposed rule or emergency rule whose statement of scope is submitted to the legislative reference bureau for publication under s. 227.135 (3) on the effective date of this subsection.

(END)

State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5979/P1
MED:wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ***to renumber and amend*** 227.135 (2); ***to amend*** 227.135 (3), 227.185,
2 227.24 (1) (e) 1d. and 227.24 (1) (e) 1g.; and ***to create*** 227.135 (2) (a) 2. of the
3 statutes; **relating to:** gubernatorial approval requirements for administrative
4 rules.

Analysis by the Legislative Reference Bureau

Generally, under current law, an agency planning to promulgate an administrative rule, including an emergency rule, must first prepare a statement of the scope of the proposed rule (scope statement). A scope statement must be submitted to the Department of Administration for a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the scope statement. DOA must then report the statement and its determination to the governor who, in his or her discretion, may approve or reject the scope statement. Also under current law, after a proposed administrative rule, including an emergency rule, is in final draft form, the agency promulgating the proposed rule must submit the proposed rule to the governor, who may approve or reject the proposed rule. No agency may promulgate an administrative rule without the written approval of the governor.

In *Coyne v. Walker*, 2016 WI 38, the Wisconsin Supreme Court held that provisions requiring gubernatorial approval of scope statements and rules are unconstitutional as applied to the superintendent of public instruction.

Consistent with the result in *Coyne*, this bill exempts rules promulgated by the Department of Public Instruction from the requirements that a) a scope statement

be submitted to DOA for a determination of authority and that the scope statement be approved by the governor and b) a proposed rule in final draft form be submitted to the governor and that the governor approve the rule in writing.

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

1 **SECTION 1.** 227.135 (2) of the statutes is renumbered 227.135 (2) (a) 1. and
2 amended to read:

3 227.135 **(2)** (a) 1. ~~An~~ Except as provided in subd. 2., an agency that has
4 prepared a statement of the scope of the proposed rule shall present the statement
5 to the department of administration, which shall make a determination as to
6 whether the agency has the explicit authority to promulgate the rule as proposed in
7 the statement of scope and shall report the statement of scope and its determination
8 to the governor who, in his or her discretion, may approve or reject the statement of
9 scope. ~~The~~ Except as provided in subd. 2., the agency may not send the statement
10 to the legislative reference bureau for publication under sub. (3) until the governor
11 issues a written notice of approval of the statement.

12 (b) ~~The~~ An agency that has prepared a statement of the scope of the proposed
13 rule shall ~~also~~ present the statement to the individual or body with policy-making
14 powers over the subject matter of the proposed rule for approval. The individual or
15 body with policy-making powers may not approve the statement until at least 10
16 days after publication of the statement under sub. (3) and, if a preliminary public
17 hearing and comment period are held by the agency under s. 227.136, until the
18 individual or body has received and reviewed any public comments and feedback
19 received from the agency under s. 227.136 (5).

(c) No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule, until ~~the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve~~ the statement has been approved as required under pars. (a) and (b). This ~~subsection~~ paragraph does not prohibit an agency from performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

SECTION 2. 227.135 (2) (a) 2. of the statutes is created to read:

227.135 **(2)** (a) 2. The requirement under subd. 1. does not apply to statements of scope prepared by the department of public instruction.

SECTION 3. 227.135 (3) of the statutes is amended to read:

227.135 **(3)** ~~If the governor approves a~~ An agency that prepares a statement of the scope of a proposed rule under sub. ~~(2), the agency~~ (1) shall, subject to sub. (2) (a) 1., send an electronic copy of the statement to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the statement to the legislative reference bureau, the agency shall send a copy of the statement to the secretary of administration and to the chief clerks of each house of the legislature, who shall distribute the statement to the cochairpersons of the joint committee for review of administrative rules. The agency shall include with any statement of scope sent to the legislative reference bureau the date of the governor's approval of the statement of scope if such approval is required under sub. (2) (a). The legislative reference bureau shall assign a discrete identifying number to each statement of scope and shall include that number and the date of the governor's approval, if required, in the publication of the statement of scope in the register.

1 **SECTION 4.** 227.185 of the statutes is amended to read:

2 **227.185 Approval by governor.** After a proposed rule is in final draft form,
3 the agency shall submit the proposed rule to the governor for approval. The governor,
4 in his or her discretion, may approve or reject the proposed rule. If the governor
5 approves a proposed rule, the governor shall provide the agency with a written notice
6 of that approval. No proposed rule may be submitted to the legislature for review
7 under s. 227.19 (2) unless the governor has approved the proposed rule in writing.
8 The agency shall notify the joint committee for review of administrative rules
9 whenever it submits a proposed rule for approval under this section. <u>This section</u>
10 <u>does not apply to proposed rules prepared by the department of public instruction.</u>

11 **SECTION 5.** 227.24 (1) (e) 1d. of the statutes is amended to read:

12 227.24 **(1)** (e) 1d. Prepare a statement of the scope of the proposed emergency
13 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.
14 227.135 (2), send the statement to the legislative reference bureau for publication in
15 the register as provided in s. 227.135 (3), and hold a preliminary public hearing and
16 comment period if directed under s. 227.136 (1). If the agency changes the scope of
17 a proposed emergency rule as described in s. 227.135 (4), the agency shall prepare
18 and obtain approval of a revised statement of the scope of the proposed emergency
19 rule as provided in s. 227.135 (4). No state employee or official may perform any
20 activity in connection with the drafting of a proposed emergency rule, except for an
21 activity necessary to prepare the statement of the scope of the proposed emergency
22 rule, until the governor <u>approves the statement, if such approval is required,</u> and the
23 individual or body with policy-making powers over the subject matter of the
24 proposed emergency rule ~~approve~~ <u>approves</u> the statement.

25 **SECTION 6.** 227.24 (1) (e) 1g. of the statutes is amended to read:

227.24 **(1)** (e) 1g. Submit the proposed emergency rule in final draft form to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves a proposed emergency rule, the governor shall provide the agency with a written notice of that approval. An agency may not file an emergency rule with the legislative reference bureau as provided in s. 227.20 and an emergency rule may not be published until the governor approves the emergency rule in writing. <u>This subdivision does not apply to proposed emergency rules of the department of public instruction.</u>

SECTION 7. Initial applicability.

(1) The treatment of ss. 227.135 (3), 227.185, and 227.24 (1) (e) 1d. and 1g., the renumbering and amendment of s. 227.135 (2), and the creation of s. 227.135 (2) (a) 2. first apply to a proposed rule or emergency rule whose statement of scope is submitted to the legislative reference bureau for publication under s. 227.135 (3) on the effective date of this subsection.

(END)