RESEARCH APPENDIX

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

☞ Appendix T ... has been added to the **2017 LRB-6074**

Appendix A ☞ LRB 17-5979
Appendix B ☞ LRB 17-5982
Appendix C ☞ LRB 17-5983
Appendix D ☞ LRB 17-5985
Appendix E ☞ LRB 17-5986
Appendix F ☞ LRB 17-5989
Appendix G ☞ LRB 17-5990
Appendix H ☞ LRB 17-5995
Appendix I ☞ LRB 17-5998
Appendix J ☞ LRB 17-6001
Appendix K ☞ LRB 17-6004
Appendix L ☞ LRB 17-6006
Appendix M ☞ LRB 17-6007
Appendix N ☞ LRB 17-6012
Appendix O ☞ LRB 17-6015
Appendix P ☞ LRB 17-6017
Appendix Q ☞ LRB 17-6019
Appendix R ☞ LRB 17-6021
Appendix S ☞ LRB 17-6023
Appendix T ☞ LRB 17-6024
Appendix U ☞ LRB 17-6025
Appendix V ☞ LRB 17-6027
Appendix W ☞ LRB 17-6028
Appendix X ☞ LRB 17-6031
Appendix Y ☞ LRB 17-6036
Appendix Z ☞ LRB 17-6037
Appendix AA ☞ LRB 17-6038
Appendix BB ☞ LRB 17-6039
Appendix CC ☞ LRB 17-6040
Appendix DD ☞ LRB 17-6041
Appendix EE ☞ LRB 17-6042
Appendix FF ☞ LRB 17-6043
Appendix GG ☞ LRB 17-6046
Appendix HH ☞ LRB 17-6047
Appendix II ☞ LRB 17-6048
Appendix JJ ☞ LRB 17-6049
Appendix KK ☞ LRB 17-6050
Appendix LL ☞ LRB 17-6051
Appendix MM ☞ LRB 17-6052
Appendix NN ☞ LRB 17-6058
Appendix OO ☞ LRB 17-6059
Appendix PP ☞ LRB 17-6065
Appendix QQ ☞ LRB 17-6067

2017 DRAFTING REQUEST

Bill

For:	**Joan Ballweg (608) 266-8077**	Drafter:	**mduchek**
By:	**Bethany**	Secondary Drafters:	
Date:	**11/15/2018**	May Contact:	

Same as LRB:

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

Pre Topic:

No specific pre topic given

Topic:

Codify elements of Walker Exec. Order #50

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Submitted	Jacketed	Required
/?	mduchek 11/15/2018	anienaja 11/16/2018			
/P1			dwalker 11/16/2018		

FE Sent For: **<END>**

EXECUTIVE ORDER # 50

Relating to Guidelines for the Promulgation of Administrative Rules

WHEREAS, 2011 Wisconsin Act 21 reformed the administrative rulemaking process in Wisconsin in order to increase accountability, clarify agency regulatory authority, and evaluate the economic impact of all new and amended state administrative rules; and

WHEREAS, Wis. Stat. § 227.10(1) requires that each agency statement of policy and each interpretation of a statute adopted to govern its enforcement or administration of that statute shall be promulgated as a rule, and Wis. Stat. § 227.01(13) defines a rule as "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;" and

WHEREAS, Wis. Stat. § 227.10(2m) requires an explicit grant of authority under statute or administrative rule before a state agency can implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency; and

WHEREAS, Wis. Stat. §§ 227.11(2)(a)1. to 3. defines agency authority to promulgate administrative rules, specifically providing the following:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.

- A statutory provision describing the agency's general powers or duties does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.

- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision; and

WHEREAS, Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. requires the Governor to approve a statement of scope before an agency may proceed with rulemaking, Wis. Stat. § 227.185 requires the Governor to approve a final draft rule before it is submitted to the Legislature for review, and Wis. Stat. § 227.24(1)(e)1g. requires the Governor to approve an emergency rule before it is filed with the Legislative Reference Bureau and published in the official state newspaper; and

WHEREAS, Wis. Stat. § 227.137 requires state agencies to complete an Economic Impact Analysis (EIA) for every proposed rule in coordination with local governmental units that may be affected and to solicit information and advice from and consult with businesses,

associations representing businesses, local governmental units and individuals that may be affected by the proposed rule; and

WHEREAS, Wis. Stat. § 227.10(2m) establishes that "[t]he Governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with [Subchapter II of Chapter 227 of the Wisconsin Statutes]."

NOW THEREFORE, I, Scott Walker, Governor of the State of Wisconsin, by virtue of the authority vested in me by the Constitution and the laws of Wisconsin, specifically Wis. Stat. § 227.10(2m), do hereby direct that state agencies shall comply with the requirements of Subchapter II of Chapter 227 and this Executive Order when promulgating administrative rules.

I. General Provisions

1. To assure timely and proficient review of administrative rules in accordance with this Executive Order and with Wis. Stat. § 227.10(2m), the Governor's Office of Regulatory Compliance is hereby established.

2. Each agency that develops any document interpreting, clarifying, or explaining statutes and rules that regulate individuals or entities or local governmental units, shall submit a copy to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to its finalization by that agency.

3. Each agency shall submit to the Governor's Office of Regulatory Compliance all materials required to be submitted under Subchapter II of Chapter 227. This includes all publicly available materials submitted to the Legislative Council Rules Clearinghouse, Legislative Reference Bureau, Department of Administration, Chief Clerks of the State Assembly and State Senate, legislative standing committees, and the Joint Committee for Review of Administrative Rules.

4. The electronic submission of materials to the State Budget Office, via SBOAdminRules@wisapps.wi.gov or as the State Budget Office otherwise prescribes, shall fulfill an agency's duty, under Chapter 227 and Paragraph I.3. of this Executive Order, to submit materials to the Governor, the Governor's Office of Regulatory Compliance, or the Department of Administration.

5. Each statement of scope submitted by an agency on or after June 8, 2011 is subject to review and approval by the Governor as required by Wis. Stat. §§ 227.135(2), 227.24(1)(e)1d. and Paragraph II.1. of this Executive Order. An EIA shall be prepared as required by Wis. Stat. § 227.137 and Paragraph IV.1. of this Executive Order if the draft rule is submitted to the Legislative Council Rules Clearinghouse under Wis. Stat. § 227.15 on or after June 8, 2011. An EIA is not required when an agency promulgates an emergency rule. A final draft rule or emergency rule is subject to review and approval by the Governor, as required by Wis. Stat. §§ 227.185, 227.24(1)(e)1g. and Paragraph V.1. of this Executive Order, if the statement of scope for the rule or emergency rule was submitted on or after June 8, 2011.

6. The language of Wis. Stat. § 990.001(11) concerning severability and Wis. Stat. § 990.01 concerning construction of words and phrases are intended to apply to this Executive Order.

II. Statements of Scope

1. A statement of scope shall be submitted to the Governor's Office of Regulatory Compliance for approval by the head of the agency proposing a rule or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§ 15.04(2) or 15.05(3). Statements of scope shall be submitted electronically, as prescribed in Paragraph I.4. of this Executive Order, and contain the following information as required by Wis. Stat. § 227.135(1).

   a. A detailed description of the objective of the rule.

b. A detailed description of existing policies relevant to the rule and new policies proposed to be included in the rule and an analysis of policy alternatives. The description shall include an overview of the requirement or program that the rule will implement. If the proposed rule will amend an existing rule, the description shall also include an overview of the existing rule and the general changes. If the proposed rule will replace an emergency rule currently in effect, the agency shall summarize the status of any legislative action under Wis. Stat. § 227.24(2) or § 227.26(2) and identify any implementation issues that have arisen since the rule was promulgated.

c. A detailed description of the statutory authority for the rule. The agency shall reference each statute that authorizes the promulgation of the proposed rule and each statute or rule that will affect the proposed rule or be affected by it. The agency shall also explain in detail the agency's authority to promulgate the proposed rule under those statutes. An agency shall rely on an explicit grant of authority from the Legislature to promulgate a rule, if one exists. An agency shall not rely upon general statements of legislative purpose or legislative findings or agency general powers and duties clauses to confer authority to promulgate rules. Pursuant to Wis. Stat. § 227.11(2)(a), in the absence of an explicit grant of rulemaking authority, an agency may promulgate a rule if:

   i. The agency considers it necessary to effectuate the purpose of the statute; and
   ii. The agency has a general grant of rulemaking authority to administer or enforce the chapter, subchapter, or section of the Wisconsin statutes.

d. An estimate of the amount of time that state employees will spend to develop the rules and of other resources necessary to develop the rule.

e. A description of all of the entities that may be affected by the rule. This includes a description of any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule.

f. A summary and preliminary comparison, with state law, of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

2. A statement of scope shall also include a statement of whether the agency anticipates that the proposed rule will have minimal or no economic impact, may have a moderate economic impact, or is likely to have a significant economic impact locally or statewide.

3. A statement of scope for a proposed emergency rule shall also include an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare. If the rule is exempt from the required finding of emergency, the statement of scope shall cite the Wisconsin Act number and section authorizing the promulgation of an emergency rule or the statute section providing the exemption. The statement of scope shall also indicate whether the agency will promulgate a non-emergency rule and when it will begin the non-emergency rulemaking process.

4. An agency that intends to simultaneously draft an emergency and a non-emergency rule that are identical in substance may submit one scope statement indicating this intent.

5. Pursuant to Wis. Stat. § 227.135(2), no state employee may begin work on a proposed rule or emergency rule until the statement of scope has been approved by the Governor, published in the Administrative Register, and approved by the agency head or body with policy making powers for the agency.

6. A statement of scope not submitted in accordance with Wis. Stat § 227.135(1) and this Executive Order will be returned to the agency and the Governor's Office of

Regulatory Compliance's review will be suspended until a complete description and analysis is resubmitted.

7. The Governor's Office of Regulatory Compliance may request an agency to withdraw a statement of scope and resubmit separate statements of scope if, in the Governor's discretion, the original statement of scope encompasses more than one rule change.

8. Following a review of the statement of scope, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the statement of scope is approved or disapproved. A disapproval by the Governor may be accompanied by suggested modifications in the event an agency chooses to submit a revised statement of scope.

9. An agency must file a statement of scope approved by the Governor for publication by the Legislative Reference Bureau within thirty calendar days of approval if the agency intends to proceed with rulemaking, or the Governor's Office of Regulatory Compliance will deem the statement of scope to be withdrawn.

10. If at any time during the rulemaking process prior to final approval by the Governor, the scope of a proposed rule is changed in any meaningful or measureable way, including changing the scope so as to include any activity, business, material or product that is not specifically included in the original statement of scope under Wis. Stat. § 227.135(4), a revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance for approval. A meaningful or measurable change includes a change to the following:

a. The objectives of the proposed rule;
b. The basis and purpose of the proposed rule;
c. The policies to be included in the proposed rule;
d. The entities affected by the proposed rule; or
e. The overall breadth or scope of the regulation in the proposed rule.

11. If at any time following the Governor's approval of a statement of scope, prior to the submission of a final draft rule to the Legislature for review, the Governor's Office of Regulatory Compliance requests a revised statement of scope from the agency because the rule has been changed in a meaningful or measureable way under Wis. Stat. § 227.135(4), the agency shall submit the revised statement of scope to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within fourteen calendar days of receiving the request.

III. Additional Agency Actions in the Rule-Making Process

1. If an agency intends to establish an advisory committee under Wis. Stat. § 227.13, it shall provide a list of members to ~~the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to establishing the advisory committee.~~ JCRAR

2. The agency's draft rule analysis required under Wis. Stat. § 227.14(2) shall be submitted to the Governor's Office of Regulatory Compliance electronically, as prescribed in Paragraph I.4. of this Executive Order, upon completion and prior to finalization and submittal to the Legislative Council under Wis. Stat. § 227.15(1). In accordance with Wis. Stat. § 227.14(2m), the agency shall include a statement within the analysis describing how the requirements for ensuring the accuracy, integrity, objectivity and consistency of data were used in preparing the proposed rule and related analysis.

IV. Economic Impact Analysis

1. For each proposed rule that is not an emergency rule, an Economic Impact Analysis (EIA) shall be submitted to the Legislative Council, the Governor, the Department of Administration, and the Legislature by the head of the agency proposing a rule as required by § 227.137(4). An EIA shall be submitted electronically to the

Governor's Office of Regulatory Compliance as prescribed in Paragraph I.4. of this Executive Order and this submission shall also fulfill the requirement under § 227.137(4) to submit the EIA to the Governor and the Department of Administration.

2. Prior to initiating an EIA of a proposed rule, the agency shall review the statement of scope to determine whether it was changed in any meaningful or measureable way, under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order, while the rule was being developed. If a meaningful or measurable change has been made, the agency shall revise and resubmit the statement of scope for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order.

3. In preparing an EIA, under Wis. Stat. § 227.137(3), the agency shall solicit information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule by making information about the rule available and requesting comments.

   a. Information including the proposed rule language shall be made available by posting on the agency website and the Wisconsin administrative rules website, submitting the information to the Governor's Office of Regulatory Compliance, as prescribed in Paragraph I.4. of this Executive Order, and by e-mailing individuals who have requested to receive information and other persons identified by the agency as potentially interested parties.

   b. The agency shall accept comments for a period of at least fourteen calendar days if the statement of scope indicates that the draft rule will have no or minimal economic impact locally or statewide, at least thirty calendar days if the statement of scope indicates a moderate economic impact locally or statewide and at least sixty calendar days if the statement of scope indicates that the draft rule may or is likely to have a significant economic impact locally or statewide or on a sector of the economy. If the agency determines that the anticipated economic impact will be greater than indicated in the statement of scope, it shall adjust the comment period accordingly and a revised statement of scope is not required. If an agency determines that the anticipated economic impact will be less than indicated in the statement of scope, it may adjust the comment period accordingly and a revised statement of scope is not required.

   c. The agency shall review the comments received and the statement of scope description of all of the persons that may be affected by the proposed rule. The agency shall update the list of businesses, business sectors, associations representing businesses, local governmental units, and individuals included in the statement of scope and submit the list to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov.

4. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall prepare the EIA in coordination with the local governmental units that respond to the agency's solicitation of comments and request to coordinate with the agency, as required by Wis. Stat. § 227.137(3). The agency shall contact those local governmental units to discuss such comments and incorporate them into the EIA to the extent feasible. The agency may at the same time consult with the local governmental units about whether the proposed rule would adversely affect in any material way the economy, a sector of the economy, productivity, jobs or the overall economic competitiveness of the state as required by Wis. Stat. § 227.137(3)(e) and Paragraph IV.3. of this Executive Order.

5. After soliciting information and advice from businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule, the agency shall make a determination in the EIA as required by Wis. Stat. § 227.137(3)(e), in consultation with those businesses, business sectors, associations representing businesses, local governmental units, and individuals as to whether the proposed rule would adversely affect in a material way

the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state in the following manner:

a. The agency shall compile a list of affected persons and economic concerns identified in the comments solicited by the agency.
b. The agency shall contact those affected persons to discuss economic concerns and give consideration to those concerns in its EIA determination.
c. The agency shall document in the EIA the affected persons who were consulted and whether the agency's determination is disputed by any of the affected persons.

6. For purposes of developing an EIA for a proposed rule that is anticipated to have a significant economic impact locally or statewide, or on a sector of the economy, agencies are encouraged to establish an advisory committee of affected persons following its solicitation of comments in order to coordinate with local governmental units and consult with other affected persons. An agency that previously established an advisory committee under Wis. Stat. § 227.13 to advise it during rulemaking, including the development of the EIA, shall add to the committee affected persons, identified following the agency's solicitation of comments, who wish to serve on the committee.

7. The final EIA shall contain the following information as required by Wis. Stat. § 227.137 on the economic impact of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole:

a. An analysis and quantification of the policy problem that the proposed rule is intending to address, including comparisons with approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

b. An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by the businesses, local government units, and individuals that may be affected by the proposed rule. A summary of comments related to the implementation and compliance costs received by businesses, local governmental units, and individuals shall be included in the final analysis.

c. An analysis of the actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

d. An analysis of the alternatives to the proposed rule including the alternative of not promulgating the proposed rule.

e. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. Included in the final analysis shall be a summary of comments related to whether the proposed rule would adversely affect, in a material way, the economic competitiveness of this state received by businesses, local governmental units, and individuals.

f. If the agency finds that a proposed rule will not have an economic effect on public utilities or their ratepayers, it shall state this conclusion in the EIA. If the agency finds that a proposed rule will have an economic impact on public utilities or their ratepayers or both, it shall request the information necessary from the Public Service Commission to provide an estimate of the increased costs or resulting savings for public utilities and their ratepayers.

g. Pursuant to Wis. Stat. § 227.137(3)(f), if an EIA relates to a rule of the Department of Safety and Professional Services establishing standards for dwelling construction, the EIA shall address whether the rule would increase the cost of constructing or remodeling the dwelling by more than $1,000.

8. If the agency finds that a proposed rule will not have an economic impact after a review of comments submitted in response to the agency's solicitation, it may complete the EIA without additional coordination with local governmental units or consultation with other affected parties. The agency shall detail in the EIA the information supporting the conclusion that the proposed rule will not have an economic impact.

9. If at any time after the final EIA is submitted under Wis. Stat. § 227.137(4) and before the final draft rule is submitted to the Governor's Office of Regulatory Compliance for an approval, the economic impact of the proposed rule is significantly changed, a revised EIA shall be submitted to the Legislative Council, the Legislature, the Department of Administration, and the Governor, as required by under Wis. Stat. § 227.137(4).

a. A significant change includes an increase or a decrease of at least 10 percent or $50,000, whichever is greater, in the estimated compliance costs reasonably expected to be incurred by a majority of the businesses, business sector, local governmental units, or individuals that may be affected by the proposed rule or a significant change in the persons affected by the proposed rule.

b. If in addition to a significant change in the economic impact of the proposed rule, there is also a meaningful or measureable change in the scope of the rule, the agency shall prepare a revised statement of scope and submit it to the Governor's Office of Regulatory Compliance for approval as required by Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order. If a revised statement of scope is approved by the Governor, published in the Administrative Register and approved by the agency head or body with policy making powers for the agency, the agency shall prepare the revised EIA in accordance with Wis. Stat. § 227.137 and Paragraph IV.9. of this Executive Order.

c. If a revised statement of scope is not required because the scope of the proposed rule has not changed in a meaningful or measurable way, the agency may proceed with the development of the revised EIA using the list of businesses, business sectors, local governmental units, and individuals affected by the proposed rule developed following the agency solicitation of information and advice under Wis. Stat. § 227.137(3) and Paragraph IV.3. of this Executive Order. The agency shall comply with the remaining requirements of Wis. Stat. § 227.137 and this Executive Order.

10. If at any time after the final EIA is submitted under Wis. Stat. § 227.137(4), the Governor's Office of Regulatory Compliance requests a revised EIA because the economic impact of the proposed rule has significantly changed under Wis. Stat. § 217.137(4) and Paragraph IV.9. of this Executive Order, the agency shall submit the revised EIA electronically as prescribed in Paragraph I.4. of this Executive Order within ninety calendar days of receiving the request.

11. If the final EIA submitted under Wis. Stat. § 227.137(4) indicates that a total of $20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses, local governmental units and individuals as a result of the proposed rule, the Department of Administration shall review the rule and issue a report under Wis. Stat. § 227.137(6). Any cost savings identified in the analysis of actual and quantifiable benefits as required by Wis. Stat. § 227.137(3)(c) shall not reduce the total estimated implementation and compliance costs for purposes of determining whether the Department of Administration shall issue a report under Wis. Stat. § 227.137(6).

12. If the Department of Administration is required to complete a report under Wis. Stat. § 227.137(6), an agency shall not submit a proposed rule to the legislature for review under § 227.19(2) until the report has been received.

13. If an agency makes modifications to a proposed rule following the agency public hearing, the agency shall review the rule to determine whether the scope has been changed in any meaningful or measurable way under Wis. Stat. § 227.135(4) and Paragraph II.10. of this Executive Order and whether the economic impact of the proposed rule is significantly changed under Wis. Stat. § 227.137(4) and Paragraph IV.9. of this Executive Order.

a. The agency shall notify the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov if it will submit a revised statement of scope to the Governor's Office of Regulatory Compliance for approval or a revised EIA to the Governor's Office of Regulatory Compliance, the Department of Administration, the Legislative Council Rules Clearinghouse and the Legislature, or both a revised statement of scope and a revised EIA. A revised statement of scope shall be submitted to the Governor's Office of Regulatory Compliance electronically as prescribed in Paragraph I.4. of this Executive Order within seven calendar days of the notification.

b. If neither a revised statement of scope nor a revised EIA is required, the agency shall submit the final draft rule to the Governor's Office of Regulatory Compliance for approval within thirty calendar days of the close of the public comment period following the public hearing if it intends to proceed with rulemaking, unless the agency has a policy making board that is required to approve the final rule language before it is submitted to the Governor's Office of Regulatory Compliance.

V. Final Draft Rule

1. A final draft rule shall be submitted electronically as prescribed in Paragraph I.4. of this Executive Order to the Governor's Office of Regulatory Compliance for approval by the head of the agency proposing a permanent or emergency rule or by a deputy or executive assistant who has been authorized to do so by the agency head under Wis. Stat. §§15.04(2) or 15.05(3).

2. For each non-emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:

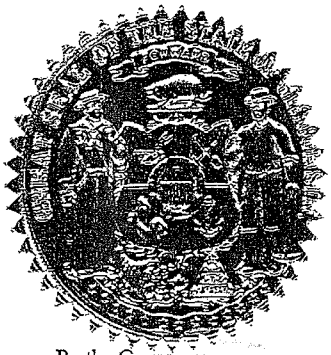
   a. The documents required under Wis. Stat. § 227.15(1), with any necessary updates;
   b. A statement describing how the rule complies with any applicable requirement under Wis. Stat. § 227.116;
   c. The final EIA required under Wis. Stat. § 227.137(2);
   d. The report of the Department of Administration if required under Wis. Stat. § 227.137(6);
   e. Any energy impact report completed under Wis. Stat. § 227.117(2), and a statement describing the agency's consideration of the energy impact report in accordance with Wis. Stat. § 227.117(3);
   f. The report of the Small Business Regulatory Review Board required under Wis. Stat. § 227.14(2g);
   g. Any regulatory flexibility analysis completed under Wis. Stat. § 227.114;
   h. A list of persons who appeared or registered for or against the rule at the hearing;
   i. A summary of public comments to the proposed rule and the agency's response to those comments;
   j. An explanation of any modifications made in the proposed rule as a result of public comments or testimony received at the public hearing.; and
   k. The Legislative Council Rule Clearinghouse report completed under Wis. Stat. § 227.15 and the agency's response to the report as required by Wis. Stat. § 227.19(3)(d).

3. For each emergency rule, the final draft rule submitted to the Governor's Office of Regulatory Compliance shall contain the following information:

   a. A fiscal estimate in the format required by Wis. Stat. § 227.14(4); and

b. A plain language analysis of the rule in the format required under Wis. Stat. § 227.14(2).

4. Following a review of the final draft rule, the Governor's Office of Regulatory Compliance shall notify the agency in writing whether the rule is approved or disapproved. A disapproval may be accompanied by suggested modifications. The agency may submit a revised rule for approval under the statement of scope that was previously approved by the Governor.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this second day of November, in the year two thousand eleven.

SCOTT WALKER
Governor

By the Governor:

DOUGLAS LA FOLLETTE
Secretary of State

STATE OF WISCONSIN – **LEGISLATIVE REFERENCE BUREAU**

LRB Research (608–266–0341) Library (608–266–7040) Legal (608–266–3561) **LRB**

11/14/18 - Meeting w/ Bethany in Ballweg office - codify elements of Walker Exec. Order #50 per attached

11/19/18 - Followup meeting w/ Bethany and Rep. Ballweg. No changes

State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6024/P1
MED:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ***to renumber and amend*** 227.135 (4) and 227.137 (3) (e); ***to amend***
2 227.13, 227.135 (2), 227.137 (2) and 227.137 (4); and ***to create*** 227.135 (1) (g),
3 227.135 (1) (h), 227.135 (4) (a) 1. to 6., 227.135 (6), 227.137 (3) (e) 1. to 4., 227.137
4 (3m) and 227.18 (3m) of the statutes; **relating to:** various changes regarding
5 administrative rules.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

6 **SECTION 1.** 227.13 of the statutes is amended to read:

7 **227.13 Advisory committees and informal consultations.** An agency may
8 use informal conferences and consultations to obtain the viewpoint and advice of
9 interested persons with respect to contemplated rule making. An agency ~~also~~ may

also appoint a committee of experts, interested persons or representatives of the public to advise it with respect to any contemplated rule making. ~~The~~ Such a committee shall have advisory powers only. Whenever an agency appoints a committee under this section, the agency shall submit a list of the members of the committee to the joint committee for review of administrative rules.

SECTION 2. 227.135 (1) (g) of the statutes is created to read:

227.135 **(1)** (g) A statement as to whether the agency anticipates that the proposed rule will have minimal or no economic impact, a moderate economic impact, or a significant economic impact, whether locally, statewide, or on a sector of the economy.

****NOTE: The executive order does not define what these standards mean and therefore leaves it up to the agency to decide. Since this is part of the scope statement, the agency may not have much sense of what the impact of the rule will be, but you could try to further define what these terms would mean so as to avoid a lot of variation from agency to agency and rule to rule. The agency's determination here, under the executive order, also determines how long the agency's EIA comment period must be, though it does provide for the adjustment of the comment period based on later changes in the agency's assessment. That material is in SECTION 11 of the bill.

SECTION 3. 227.135 (1) (h) of the statutes is created to read:

227.135 **(1)** (h) For a proposed emergency rule promulgated under s. 227.24, an explanation of why the rule is necessary for the preservation of the public peace, health, safety, or welfare. If the rule is exempt from the required finding of emergency, the statement of scope shall cite the act number and section or the statute section authorizing the promulgation of an emergency rule or a statement that the rule is promulgated at the direction of the joint committee for review of administrative rules under s. 227.26 (2) (b). The agency shall also include a statement as to whether the agency will promulgate a corresponding permanent rule and the agency's anticipated time line for promulgating the permanent rule.

SECTION 4. 227.135 (2) of the statutes is amended to read:

227.135 **(2)** An agency that has prepared a statement of the scope of the proposed rule shall present the statement to the department of administration, which shall make a determination as to whether the agency has the explicit authority to promulgate the rule as proposed in the statement of scope and shall report the statement of scope and its determination to the governor who, in his or her discretion, may approve or reject the statement of scope. The agency may not send the statement to the legislative reference bureau for publication under sub. (3) until the governor issues a written notice of approval of the statement <u>and may not, without the written approval of the governor, send the statement to the legislative reference bureau for publication under sub. (3) more than 30 days after the date of the governor's approval of the statement of scope</u>. The agency shall also present the statement to the individual or body with policy-making powers over the subject matter of the proposed rule for approval. The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement under sub. (3) and, if a preliminary public hearing and comment period are held by the agency under s. 227.136, until the individual or body has received and reviewed any public comments and feedback received from the agency under s. 227.136 (5). 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. This subsection does not prohibit an agency from performing an activity necessary to prepare a petition and proposed rule for submission under s. 227.26 (4).

1 **SECTION 5.** 227.135 (4) of the statutes is renumbered 227.135 (4) (a) (intro.) and
2 amended to read:

3 227.135 **(4)** (a) (intro.) If at any time after a statement of the scope of a proposed
4 rule is approved under sub. (2) the agency changes the scope of the proposed rule in
5 any meaningful or measurable way, ~~including changing the scope of the proposed~~
6 ~~rule so as to include in the scope any activity, business, material, or product that is~~
7 ~~not specifically included in the original scope of the proposed rule,~~ the agency shall
8 prepare and obtain approval of a revised statement of the scope of the proposed rule
9 in the same manner as the original statement was prepared and approved under
10 subs. (1) and (2). ~~No~~ For purposes of this subsection, a meaningful or measurable
11 change includes any of the following:

12 (b) Whenever an agency is required to prepare a revised statement of scope
13 under this subsection, no state employee or official may perform any activity in
14 connection with the drafting of the proposed rule except for an activity necessary to
15 prepare the revised statement of the scope of the proposed rule until the revised
16 statement is ~~so~~ approved as provided in sub. (2).

17 **SECTION 6.** 227.135 (4) (a) 1. to 6. of the statutes are created to read:

18 227.135 **(4)** (a) 1. A change to the objectives of the proposed rule.

19 2. A change to the basis and purpose of the proposed rule.

20 3. A change to the policies to be included in the proposed rule.

21 4. A change to the entities affected by the proposed rule.

22 5. A change to the overall breadth or scope of the regulation in the proposed
23 rule.

6. A change to the scope of the proposed rule so as to include in the scope any activity, business, material, or product that is not specifically included in the original statement.

SECTION 7. 227.135 (6) of the statutes is created to read:

227.135 **(6)** An agency that intends to concurrently promulgate an emergency rule and a permanent rule that are identical in substance may submit one statement of scope indicating this intent.

SECTION 8. 227.137 (2) of the statutes is amended to read:

227.137 **(2)** An agency shall prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the legislative council staff under s. 227.15. Prior to preparing an economic impact analysis as provided in this subsection, the agency shall review the statement of scope for the proposed rule prepared under s. 227.135 to determine whether a revised statement of scope is required under s. 227.135 (4).

SECTION 9. 227.137 (3) (e) of the statutes is renumbered 227.137 (3) (e) (intro.) and amended to read:

227.137 **(3)** (e) (intro.) A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state. The agency shall make the determination required under this paragraph by doing all of the following:

SECTION 10. 227.137 (3) (e) 1. to 4. of the statutes are created to read:

227.137 **(3)** (e) 1. Compiling a list of affected persons and potential economic concerns identified in the comments solicited by the agency.

1 2. Contacting affected persons to discuss economic concerns.

2 3. Considering any raised concerns in drafting the economic impact analysis.

3 4. Documenting in the economic impact analysis the persons who were
4 consulted and whether the agency's determination is disputed by any of the affected
5 persons.

6 **SECTION 11.** 227.137 (3m) of the statutes is created to read:

7 227.137 **(3m)** (a) When soliciting comments under sub. (3) for an economic
8 impact analysis, an agency shall accept comments for a period of at least 14 calendar
9 days if, under s. 227.135 (1) (g), the statement of scope for the proposed rule indicates
10 that the proposed rule will have minimal or no economic impact, at least 30 calendar
11 days if it indicates a moderate economic impact, and at least 60 calendar days if it
12 indicates a significant economic impact or if the agency anticipates that the proposed
13 rule will result in $10,000,000 or more in implementation and compliance costs being
14 incurred by or passed along to businesses, local governmental units, and individuals
15 over any 2-year period. If the agency subsequently determines that the anticipated
16 economic impact will be greater than indicated in the statement of scope, the agency
17 shall adjust the comment period accordingly. An agency may not reduce a comment
18 period once determined under this subsection.

19 (b) This subsection does not apply to a person preparing an independent
20 economic impact analysis under sub. (4m).

21 **SECTION 12.** 227.137 (4) of the statutes is amended to read:

22 227.137 **(4)** On the same day that the agency submits the economic impact
23 analysis to the legislative council staff under s. 227.15 (1), the agency shall also
24 submit that analysis to the department of administration, to the governor, and to the
25 chief clerks of each house of the legislature, who shall distribute the analysis to the

presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, as designated by those presiding officers, and to the cochairpersons of the joint committee for review of administrative rules. If a proposed rule is modified after the economic impact analysis is submitted under this subsection so that the economic impact of the proposed rule is significantly changed, the agency shall prepare a revised economic impact analysis for the proposed rule as modified. For purposes of this subsection, a significant change includes an increase or a decrease of at least 10 percent or $50,000, whichever is greater, in the expected implementation and compliance costs reasonably expected to be incurred by or passed along to a majority of the businesses, local governmental units, and individuals as a result of the proposed rule, as identified under sub. (3) (b), or a significant change in the persons expected to be affected by the proposed rule. A revised economic impact analysis shall be prepared and submitted in the same manner as an original economic impact analysis is prepared and submitted.

SECTION 13. 227.18 (3m) of the statutes is created to read:

227.18 **(3m)** If, after holding a hearing under this section, an agency makes any changes to the proposed rule, the agency shall do all of the following:

(a) Review the statement of scope of the proposed rule prepared under s. 227.135 to determine whether a revised statement of scope is required under s. 227.135 (4).

(b) Review the economic impact analysis for the proposed rule prepared under s. 227.137 to determine whether a revised economic impact analysis is required under s. 227.137 (4).

(END)