2017 BILL

1 AN ACT *to renumber* 227.15 (3); *to renumber and amend* 227.14 (6) (c); *to*

2 *amend* 227.114 (2) (intro.), 227.15 (7) and 990.01 (30m); and *to create* 35.93

3 (2) (b) 3. gm., 35.93 (2) (b) 3. gn., 35.93 (2) (b) 3. gp., 35.93 (2) (c) 2m., 35.93 (3)

4 (g), 227.10 (3) (f), 227.135 (1) (g), 227.137 (3) (h), 227.14 (6) (c) 2., 227.15 (3) (b)

5 and 227.225 of the statutes; **relating to:** the expiration of administrative rules.

Analysis by the Legislative Reference Bureau

This bill provides for the expiration of each chapter of the Wisconsin Administrative Code after seven years, unless the chapter is readopted by the agency through the readoption process established under the bill.

Under current law, an agency may promulgate administrative rules when it is granted rule-making authority under the statutes. Once promulgated, administrative rules remain in effect indefinitely unless repealed or amended by the agency or suspended by the Joint Committee for Review of Administrative Rules.

This bill provides that each chapter of the code expires seven years after a rule that creates, or repeals and recreates, the chapter takes effect or after the chapter is readopted. The bill requires JCRAR to establish a schedule for the expiration of all existing code chapters that are in effect on the effective date of the bill. Under the bill, in the year before a code chapter is set to expire, an agency may send a readoption notice to JCRAR and the appropriate standing committees proposing to readopt the chapter. If no member of JCRAR or the standing committees objects to the readoption notice, the chapter is considered readopted without further action. If any

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member of JCRAR or either standing committee objects to readoption of the chapter, the chapter expires on its expiration date unless the agency promulgates a rule to readopt the chapter using the standard rule-making process. Under the bill, JCRAR may extend the effective date of the chapter that is set to expire for up to one year to accommodate readoption of the chapter through the standard rule-making process. The bill also requires agencies to avoid the use in rules of words and phrases that are outdated or that are now understood to be derogatory or offensive.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1   **SECTION 1.** 35.93 (2) (b) 3. gm. of the statutes is created to read:

2   35.93 **(2)** (b) 3. gm. Notices of readoption of Wisconsin administrative code

3   chapters received under s. 227.225 (2) (a).

4   **SECTION 2.** 35.93 (2) (b) 3. gn. of the statutes is created to read:

5   35.93 **(2)** (b) 3. gn. Objections to readoption notices under s. 227.225 (2) (c).

6   **SECTION 3.** 35.93 (2) (b) 3. gp. of the statutes is created to read:

7   35.93 **(2)** (b) 3. gp. Statements of extension of Wisconsin administrative code

8   chapters received under s. 227.225 (4) (c).

9   **SECTION 4.** 35.93 (2) (c) 2m. of the statutes is created to read:

10   35.93 **(2)** (c) 2m. Chapters of the Wisconsin administrative code removed under

11   sub. (3) (g).

12   **SECTION 5.** 35.93 (3) (g) of the statutes is created to read:

13   35.93 **(3)** (g) On or after the date that a chapter of the Wisconsin administrative

14   code expires under s. 227.225, the legislative reference bureau shall remove the

15   chapter from the Wisconsin administrative code.

16   **SECTION 6.** 227.10 (3) (f) of the statutes is created to read:

1   227.10 **(3)** (f) An agency shall avoid the use in rules of words or phrases that

2   are outdated or that are now understood to be derogatory or offensive.

3   **SECTION 7.** 227.114 (2) (intro.) of the statutes is amended to read:

4   227.114 **(2)** (intro.) When an agency ~~proposes or revises~~ promulgates a rule that

5   may have an effect on small businesses, the agency shall consider each of the

6   following methods for reducing the impact of the rule on small businesses:

7   **SECTION 8.** 227.135 (1) (g) of the statutes is created to read:

8   227.135 **(1)** (g) If the rule is a rule to readopt a chapter of the code under s.

9   227.225 (3), a statement to that effect.

10   **SECTION 9.** 227.137 (3) (h) of the statutes is created to read:

11   227.137 **(3)** (h) If the proposed rule seeks to readopt a chapter of the code under

12   s. 227.225 (3), an analysis of how actual costs for the rule compare to a previous

13   economic impact analysis, if any, for a rule affecting the chapter.

14   **SECTION 10.** 227.14 (6) (c) of the statutes is renumbered 227.14 (6) (c) 1. and

15   amended to read:

16   227.14 **(6)** (c) 1. ~~A~~ Except as provided in subd. 2., a proposed rule shall be

17   considered withdrawn on December 31 of the 4th year after the year in which it is

18   submitted to the legislative council staff under s. 227.15 (1), unless it has been filed

19   with the legislative reference bureau under s. 227.20 (1) or withdrawn by the agency

20   before that date.

21   3. No action by a legislative committee or by either house of the legislature

22   under s. 227.19 delays the date of withdrawal of a proposed rule under this

23   paragraph.

24   **SECTION 11.** 227.14 (6) (c) 2. of the statutes is created to read:

1   227.14 **(6)** (c) 2. A proposed rule to readopt a chapter of the code under s.

2   227.225 (3) shall be considered withdrawn on the date that chapter expires under s.

3   227.225 (1) unless it has been filed with the legislative reference bureau under s.

4   227.20 (1) or withdrawn by the agency before that date.

5   Section 12. 227.15 (3) of the statutes is renumbered 227.15 (3) (a).

6   Section 13. 227.15 (3) (b) of the statutes is created to read:

7   227.15 **(3)** (b) When a proposed readoption notice for a chapter of the code under

8   s. 227.225 (2) is before a standing committee of the legislature or the joint committee

9   for review of administrative rules, the legislative council staff shall report to that

10   committee on what actions, if any, were taken by standing committees or the joint

11   committee for review of administrative rules the last time a readoption notice for that

12   chapter was considered or a rule affecting that chapter of the code was before the

13   legislature under s. 227.19.

14   Section 14. 227.15 (7) of the statutes is amended to read:

15   227.15 **(7)** Rules procedures manual. The legislative council staff and the

16   legislative reference bureau shall prepare a manual to provide agencies with

17   information on drafting, promulgation and legislative review of rules. The manual

18   shall prescribe the format for readoption rules under s. 227.225 (3).

19   Section 15. 227.225 of the statutes is created to read:

20   **227.225 Expiration and readoption of rules. (1)** (a) Each chapter of the

21   code expires on the January 1 of the 7th year after the year in which a rule creating,

22   repealing and recreating, or readopting that chapter of the code takes effect as

23   provided in s. 227.22, unless the rule provides for an earlier repeal date, or on the

24   January 1 of the 7th year after the year in which the chapter is readopted under sub.

25   (2) (d).

1   (b) 1. Notwithstanding par. (a), a chapter of the code that was in effect on the

2   effective date of this subdivision .... [LRB inserts date], and that is not repealed and

3   recreated by a rule prior to January 1, 2025, shall expire in accordance with the

4   schedule established under subd. 2. unless it is repealed earlier.

5   2. The joint committee for review of administrative rules shall, in consultation

6   with the affected agencies and within one year after the effective date of this

7   subdivision .... [LRB inserts date], establish a schedule for the expiration of all

8   chapters described under subd. 1. The schedule may provide for the expiration of

9   code chapters on any January 1 beginning with January 1, 2020, and ending with

10   January 1, 2025. The joint committee for review of administrative rules shall have

11   the schedule published on the legislature's Internet site and shall provide a copy of

12   the schedule to each affected agency.

13   (c) A change made by the legislative reference bureau under s. 13.92 (4) (b) does

14   not affect a chapter's expiration date under par. (a) or (b).

15   (d) This subsection does not apply to emergency rules promulgated under s.

16   227.24.

17   **(2)** (a) No earlier than January 1 and no later than March 1 of the year

18   preceding the expiration date of a chapter of the code, an agency may submit a notice

19   to the chief clerk of each house of the legislature and to the joint committee for review

20   of administrative rules that it intends to readopt the expiring chapter. The notice

21   shall be submitted in triplicate. An agency may not propose to readopt more than

22   one chapter per notice. The presiding officer of each house of the legislature shall,

23   within 10 working days after the date on which the notice is received, direct the

24   appropriate chief clerk to refer the notice to one standing committee and to enter a

25   statement that a proposed code chapter readoption notice has been received in the

1   journal of his or her house. The agency shall submit a copy of the notice, in an

2   electronic format approved by the legislative reference bureau, to the legislative

3   reference bureau for publication in the register. The notice shall contain all of the

4   following:

5   1. A brief statement explaining the basis and purpose of the chapter.

6   2. A reference to each statute that is interpreted by any rules contained in the

7   chapter, each statute that authorizes the promulgation of any rules contained in that

8   chapter, and an explanation of the agency's authority to promulgate the rules

9   contained in the chapter under those statutes.

10   3. A statement affirming that all rules contained in the chapter are in

11   compliance with the requirements under this subchapter and are not otherwise in

12   need of revision due to changes to state or federal law or for any other reason.

13   (b) Upon receipt of a readoption notice under par. (a), the chairperson or

14   chairpersons of each standing committee and the joint committee for review of

15   administrative rules shall provide a copy of the notice to each other member of the

16   committee.

17   (c) The review period for each standing committee and the joint committee for

18   review of administrative rules extends for 40 days after the agency submits the

19   readoption notice under par. (a). Any member of either standing committee or of the

20   joint committee for review of administrative rules may object to readoption of the

21   code chapter within that period. Such an objection shall be made in writing. If a

22   committee member objects to the readoption, the chairperson or chairpersons of the

23   committee shall provide a copy of the objection to each other committee that received

24   the notice under par. (a), to the agency that submitted the notice, and to the

25   legislative reference bureau for publication in the register.

1 (d) If the review period under par. (c) expires with no objection from a member

2 of either standing committee or the joint committee for review of administrative

3 rules, the chapter shall be considered readopted for purposes of sub. (1) (a) without

4 further action.

5 (e) If a member of either standing committee or the joint committee for review

6 of administrative rules objects to readoption of the chapter within the review period

7 under par. (c), the chapter shall, subject to sub. (4), expire on its expiration date

8 unless the agency promulgates a rule under sub. (3) to readopt the chapter.

9 **(3)** If a committee member objects to the readoption of a chapter under sub. (2)

10 (e), the agency may, using the rule–making process in this chapter, promulgate a rule

11 to readopt the chapter. All of the following apply with respect to a rule promulgated

12 under this subsection:

13 (a) An agency may not propose to readopt more than one chapter per rule.

14 (b) An agency may propose to readopt the chapter without changes or may

15 propose changes to the chapter.

16 **(4)** (a) At the request of the agency, the joint committee for review of

17 administrative rules may, at any time prior to the expiration date of a chapter, extend

18 the expiration date for the chapter for a period specified by the committee not to

19 exceed one year.

20 (b) Any request by an agency to extend the effective date of a chapter shall be

21 made in writing to the joint committee for review of administrative rules no later

22 than 30 days before the expiration date of the chapter.

23 (c) Whenever the committee extends an expiration date for a chapter under par.

24 (a), it shall file a statement of its action with the agency and the legislative reference

25 bureau for publication in the register.

1   (d) An agency may not promulgate an emergency rule under s. 227.24 for the

2   purpose of extending a rule that is subject to expiration under this section.

3   SECTION 16. 990.01 (30m) of the statutes is amended to read:

4   990.01 **(30m)** PROMULGATE. "Promulgate," when used in connection with a rule,

5   as defined under s. 227.01 (13), means to repeal; renumber; consolidate, renumber

6   and amend; renumber and amend; amend; repeal and recreate; <u>readopt;</u> or create.

7   **(END)**