



State of Wisconsin
2011 – 2012 LEGISLATURE

January 2011 Special Session



LRB-0929/1
GMM/MGG/MDK:all:rs

BILL

1 **AN ACT** *to repeal* 227.137 (1), 227.137 (2) (a), 227.137 (2) (b), 227.137 (5), 227.138
2 (title) and (1) and 227.138 (4); *to renumber* 196.378 (4g) (a) 1., 227.138 (2) (b),
3 227.138 (2) (c), 227.138 (2) (d) and 227.24 (1) (e) 1.; *to renumber and amend*
4 227.11 (2) (a), 227.137 (2) (intro.), 227.138 (2) (intro.), 227.138 (2) (a) and
5 227.138 (3); *to amend* 59.692 (6m), 62.231 (6m), 87.30 (1) (d), 196.378 (4g) (b),
6 196.378 (4g) (e), 227.135 (2), 227.135 (3), 227.137 (title), 227.137 (3) (intro.),
7 227.137 (3) (a), 227.137 (3) (b), 227.137 (3) (c), 227.137 (4), 227.14 (2) (a) 6.,
8 227.15 (1), 227.19 (3) (intro.), 227.40 (1), 281.165 (1) and 801.50 (3); *to repeal*
9 *and recreate* 227.135 (4); and *to create* 196.378 (4g) (a) 1g., 196.378 (4g) (a)
10 2g., 196.378 (4g) (a) 2r., 196.378 (4g) (a) 5., 196.378 (4g) (am), 196.378 (4g) (br),
11 196.378 (4g) (c) 5., 196.378 (4g) (c) 6., 196.378 (4g) (c) 7., 196.378 (4g) (dm),
12 227.10 (2m), 227.11 (2) (a) 1. to 3., 227.137 (3) (d), 227.137 (3) (e), 227.15 (1m)
13 (bm), 227.17 (3) (em), 227.185, 227.24 (1) (e) 1d., 227.24 (1) (e) 1g., 227.24 (3g)
14 and 281.165 (4) of the statutes; **relating to:** the authority of a state agency to

1 promulgate rules interpreting the provisions of a statute enforced or
2 administered by the agency and to implement or enforce any standard,
3 requirement, or threshold as a term or condition of a license issued by the state
4 agency; gubernatorial approval of proposed administrative rules; economic
5 impact analyses of proposed rules and emergency rules; venue in a declaratory
6 judgment action seeking judicial review of the validity of an administrative rule
7 and in an action in which the sole defendant is the state; requirements for wind
8 energy systems; an exemption from water quality standards for wetlands and
9 from certain other regulatory provisions concerning water quality and surface
10 water use that apply to a wetland area in Brown County; review of certain
11 changes to shoreland, wetland, and floodplain zoning ordinances that apply to
12 a wetland area in Brown County; providing an exemption from emergency rule
13 procedures; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

This bill makes various changes relating to: 1) the authority of a state agency (agency) to promulgate administrative rules (rules) interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the agency; 2) gubernatorial approval of proposed rules; 3) economic impact analyses for proposed rules; 4) venue in declaratory judgment actions seeking judicial review of the validity of a rule and in actions in which the sole defendant is the state; 5) requirements for certain wind energy systems; and 6) an exemption from water quality regulatory requirements for a wetland area in Brown County.

Agency authority to promulgate rules and implement standards

Under current law, an agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, except that a rule is not valid if the rule exceeds the bounds of correct interpretation.

This bill provides that all of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

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

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

3. 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.

The bill also prohibits an agency from implementing or enforcing any standard, requirement, or threshold as a term or condition of any license issued by the agency unless such implementation or enforcement is expressly required or permitted by statute or by a rule that has been promulgated in accordance with statutory rule-making procedures. In addition, the bill permits the governor, by executive order, to prescribe standards to ensure that rules are promulgated in compliance with the subchapter of the statutes governing rule making.

Gubernatorial approval of proposed rules

Current law requires an agency that is planning to promulgate a rule to prepare a statement of the scope of the proposed rule (statement of scope), present the statement of scope to the individual or body with policy-making powers over the subject matter of the proposed rule (policy-making individual or body) for approval, and send the statement of scope to the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Register (register). Currently, the policy-making individual or body may not approve a statement of scope until at least tenth days after publication of the statement of scope in the register. Current law also provides that if the policy-making individual or body does not disapprove the statement of scope within 30 days after it is presented to that individual or body, or by the eleventh day after its publication in the register, whichever is later, the statement is considered to be approved. Finally, current law prohibits a state employee or official from performing any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of scope, until the policy-making individual or body approves the statement of scope.

This bill makes the following changes with respect to statements of scope:

1. Requires a statement of scope to be approved by the governor as well as by the policy-making individual or body before the statement of scope may be sent to the LRB for publication in the register and prohibits a state employee or official from performing any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of scope, until the governor as well as the policy-making individual or body approves the statement of scope.

2. Eliminates automatic approval of a statement of scope if the policy-making individual or body does not disapprove the statement of scope within 30 days after

it is presented to that individual or body, or by the eleventh day after its publication in the register, whichever is later.

3. Requires an agency to prepare and obtain approval of a revised statement of scope if after a statement of scope is approved the agency changes the scope of the proposed rule in any meaningful or measurable way.

4. Requires an agency to prepare and obtain approval of a statement of scope for a proposed emergency rule in the same manner as a statement of scope is prepared and approved for a nonemergency rule. A statement of scope for a proposed emergency rule must be published at the same time that the emergency rule is published. If the agency changes the scope of a proposed emergency rule, the agency must prepare and obtain approval of a revised statement of scope for the proposed emergency rule in the same manner as a revised statement of scope is prepared and approved for a nonemergency rule.

In addition, the bill requires an agency to submit a proposed rule in final draft form to the governor for approval before the rule may be submitted to the legislature for review or filed with the LRB for publication and to submit a proposed emergency rule in final draft form to the governor for approval before the emergency rule may be filed with the LRB for publication.

Economic impact analyses for proposed rules

Under current law, before the Department of Agriculture, Trade and Consumer Protection (DATCP), the Department of Commerce (Commerce), the Department of Natural Resources (DNR), the Department of Transportation (DOT), or the Department of Workforce Development (DWD) may submit a proposed rule to the legislature for review, a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons that would be affected by the proposed rule may submit a petition to the Department of Administration (DOA) requesting the secretary of administration (secretary) to direct DATCP, Commerce, DNR, DOT, or DWD to prepare an economic impact report for the proposed rule. The secretary may direct the preparation of an economic impact report in any case and must direct the preparation of such a report if: 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. An economic impact report, however, is not required for an emergency rule.

An economic impact report must contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and must include all of the following: 1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address. The agency must submit the economic impact report

to the legislative council staff and DOA and may not submit the proposed rule to the legislature until DOA has issued a report on the proposed rule and the secretary has approved the proposed rule.

This bill requires *any* state agency to prepare an economic impact *analysis*, rather than a *report*, before the agency may submit *any* proposed rule to the *legislative council staff* for review, which must be done before a public hearing is held on the proposed rule or, if no public hearing is held, before the proposed rule is submitted to the legislature for review. The bill also requires an economic impact analysis to be prepared before a proposed emergency rule is filed with the LRB, which must be done before the emergency rule becomes valid.

The bill also requires certain additional information to be included in an economic impact analysis. Specifically, in addition to the information that must be included in an economic impact report under current law, an economic impact analysis must also include:

1. Information on the effect of a proposed rule on public utility ratepayers.
2. An analysis of alternative to the proposed rule, including the alternative of not promulgating the rule.
3. A determination made in consultation with the businesses 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.
4. Comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem that the proposed rule is intending to address 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.
5. An assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

In addition, the bill requires all of the following:

1. An agency to submit an economic impact statement not only to the legislative council staff and DOA as under current law but also to the governor and to the chief clerk of each house of the legislature for distribution to the presiding officers of each house, the chairpersons of the appropriate standing committees of each house, and the cochairpersons of the Joint Committee for Review of Administrative Rules (JCRAR).
2. DOA to issue a report on a proposed rule, and the secretary to approve a proposed rule, if the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed rule.
3. An agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.
4. The legislative council staff to provide on its Internet site an economic impact analysis submitted to the legislative council staff or a link to that analysis.

5. A notice of a public hearing on a proposed rule to include the economic impact analysis for the proposed rule and any report on the proposed rule prepared by DOA, or a summary of that analysis and report and a description of how the full analysis and report may be obtained from the agency at no charge.

6. An agency to prepare an economic impact analysis for a proposed emergency rule and to submit that analysis to DOA, to the governor, and to the chief clerks of each house of the legislature for distribution to the presiding officers of each house, to the chairpersons of the appropriate standing committees of each house, and to the cochairpersons of JCRAR. If the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed emergency rule, DOA must review the proposed rule and issue a report, and the agency may not file the proposed emergency rule with the LRB until the agency receives a copy of that report and the approval of the secretary.

Venue in judicial review actions and in actions against state

Under current law, subject to certain exceptions, the exclusive means of judicial review of the validity of a rule is by an action for declaratory judgment as to the validity of the rule brought in the circuit court for Dane County. This bill permits a declaratory judgment action seeking judicial review of the validity of a rule to be brought in the county where the party asserting the invalidity of the rule resides or has its principal place of business.

Under current law, any civil action or special proceeding in which the state, a state board or commission, or a state officer, employee, or agent acting in his or her official capacity is the sole defendant, is venued in Dane County. Under the bill, those actions are venued in the county where the plaintiff resides unless a different venue is specifically authorized by law. Under the bill, if a plaintiff is not a resident of the state or is not a natural person, the action is venued in the county where the dispute arose.

Wind energy systems

Under current law, the Public Service Commission (PSC), with the advice of the wind siting council, must promulgate rules specifying the restrictions that a city, village, town, or county may impose on the installation or use of a “wind energy system,” which is defined as equipment and associated facilities that convert and then store or transfer wind energy into usable forms of energy. The restrictions must satisfy certain conditions, including preserving or protecting the public health or safety and not significantly increasing the cost of a wind energy system or significantly decreasing its efficiency. In addition, the subject matter of the rules must include setback requirements and decommissioning, and may include any of the following: visual appearance, lighting, electrical connections to the power grid, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. Current law prohibits a city, village, town, or county from placing a restriction on the installation or use of a wind energy system that is more restrictive than the PSC’s rules.

This bill imposes additional requirements on the PSC's rules. The bill requires that, if a PSC rule involves a person who is affected by a wind energy system, including a rule that requires written notice, the rule must ensure that such a person includes an "affected owner," which the bill defines as the owner of property located within one-half mile of property on which a wind energy system is installed or proposed to be installed. In addition, the rules must allow an affected owner who has entered into an agreement with an owner or operator of a wind energy system regarding the installation or use of the wind energy system to terminate the agreement upon giving written notice of the termination no later than 10 working days after entering into the agreement. Also, the rules must require any individual who negotiates an agreement with an affected owner on behalf of an owner or operator regarding an interest in real estate related to the installation or use of a wind energy system to make a written disclosure that the individual is licensed as a real estate broker or is exempt from such licensure. The rules must also require inclusion of the written disclosure as an addendum to such an agreement. Additionally, the rules must require an owner or operator to provide a copy of a brochure prepared by the PSC to an affected owner prior to entering into an agreement with the affected owner regarding the installation or use of the wind energy system. The brochure must describe wind energy systems, requirements under state law applicable to wind energy systems, including any provisions of the PSC's rules that allow for waiver of any such requirements, and the possible impacts of wind energy systems on property owners, including affected owners.

In addition, the bill eliminates the requirement for the PSC to promulgate rules regarding setback requirements, and requires instead that the owners of certain wind energy systems comply with setback requirements specified in the bill. The bill's setback requirements apply to the owner of a "large wind energy system," which the bill defines as a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. The bill defines the owner of a large wind energy system as any of the following: 1) a person with a direct ownership interest in such a system, regardless of whether the person was involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the system; or 2) a person acting as a developer of a large wind energy system by acquiring the necessary rights, permits, and approvals for or by planning for the construction and operation of the system, regardless of whether the person will own or operate the system. The foregoing definition is similar to a definition in rules promulgated by the PSC.

Under the bill, the owner of a large wind energy system must design and construct the system so that the setback distance is at least 1,800 feet. However, the bill allows for a setback distance of less than 1,800 feet if the owners of all of the following agree in writing: 1) properties adjoining the property on which the large wind energy system is located; and 2) properties separated only by a right-of-way from the property on which the large wind energy system is located. The bill also specifies that setback distance must be measured as a straight line from the vertical center line of the wind turbine tower of the large wind energy system to the nearest

point on the property line of the property on which the large wind energy system is located. This requirement is similar to a requirement in rules promulgated by the PSC.

Current law requires the wind siting council to submit a report to the legislature every five years that describes the following: 1) peer-reviewed scientific research regarding the health impacts of wind energy systems; and 2) state and national regulatory developments regarding the siting of wind energy systems. The report must also include any recommendations for legislation. The bill requires the wind siting council to study the impacts of wind energy systems on property values and to include the results of its study in the report.

Compliance with water regulatory requirements for a wetland area in Brown County

Under this bill, an activity affecting a wetland in Brown County is considered to be in compliance with the water quality standards applicable to wetlands and exempts the activity from other laws administered by DNR that relate to water quality and navigable waters if the activity meets certain criteria. These criteria include that the wetland area to be affected must be less than three acres in size, that the site of the activity is in a tax incremental district, and that the person engaged in the activity will complete mitigation at a ratio of at least 1.5 acres of wetlands created or mitigation bank credits purchased to one acre of wetland affected depending on whether the wetland is a federal or nonfederal wetland.

For further information see the ***state and local*** 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.** 59.692 (6m) of the statutes is amended to read:

2 59.692 **(6m)** For an amendment to an ordinance enacted under this section that
3 affects an activity that meets all of the requirements under s. 281.165 (2) ~~or~~ (3) (a),
4 or (4) (a), the department may not proceed under sub. (6) or (7) (b) or (c), or otherwise
5 review the amendment, to determine whether the ordinance, as amended, fails to
6 meet the shoreland zoning standards.

7 **SECTION 2.** 62.231 (6m) of the statutes is amended to read:

8 62.231 **(6m)** CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
9 ordinance enacted under this section that affects an activity that meets all of the

1 requirements under s. 281.165 (2) ~~or~~ (3) (a), or (4) (a), the department of natural
2 resources may not proceed under sub. (6), or otherwise review the amendment, to
3 determine whether the ordinance, as amended, fails to meet reasonable minimum
4 standards.

5 **SECTION 3.** 87.30 (1) (d) of the statutes is amended to read:

6 87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects
7 an activity that meets all of the requirements under s. 281.165 (2) ~~or~~ (3) (a), or (4)
8 (a), the department may not proceed under this subsection, or otherwise review the
9 amendment, to determine whether the ordinance, as amended, is insufficient.

10 **SECTION 4.** 196.378 (4g) (a) 1. of the statutes is renumbered 196.378 (4g) (a) 1r.

11 **SECTION 5.** 196.378 (4g) (a) 1g. of the statutes is created to read:

12 196.378 (4g) (a) 1g. “Affected owner” means the owner of property located
13 within one-half mile of property on which a wind energy system is installed or
14 proposed to be installed.

15 **SECTION 6.** 196.378 (4g) (a) 2g. of the statutes is created to read:

16 196.378 (4g) (a) 2g. “Large wind energy system” means a wind energy system
17 that has a total installed nameplate capacity of more than 300 kilowatts and that
18 consists of individual wind turbines that have an installed nameplate capacity of
19 more than 100 kilowatts.

20 **SECTION 7.** 196.378 (4g) (a) 2r. of the statutes is created to read:

21 196.378 (4g) (a) 2r. “Large wind energy system owner” means any of the
22 following:

23 a. A person with a direct ownership interest in a large wind energy system,
24 regardless of whether the person was involved in acquiring the necessary rights,

1 permits, and approvals or otherwise planning for the construction and operation of
2 a large wind energy system.

3 b. At the time a large wind energy system is being developed, a person who is
4 acting as a large wind energy system developer by acquiring the necessary rights,
5 permits, and approvals for or by planning for the construction and operation of a
6 large wind energy system, regardless of whether the person will own or operate the
7 large wind energy system.

8 **SECTION 8.** 196.378 (4g) (a) 5. of the statutes is created to read:

9 196.378 (4g) (a) 5. “Working day” means each day except Saturday, Sunday, or
10 a legal holiday under s. 995.20.

11 **SECTION 9.** 196.378 (4g) (am) of the statutes is created to read:

12 196.378 (4g) (am) 1. A large wind energy system owner shall design and
13 construct a large wind energy system so that the setback distance is at least 1,800
14 feet, unless the owners of all of the following properties agree in writing to a setback
15 distance of less than 1,800 feet:

16 a. Properties that adjoin the property on which the large wind energy system
17 is located.

18 b. Properties separated only by a right-of-way from the property on which the
19 large wind energy system is located.

20 2. For purposes of this paragraph, setback distance shall be measured as a
21 straight line from the vertical center line of the wind turbine tower of the large wind
22 energy system to the nearest point on the property line of the property on which the
23 large wind energy system is located.

24 **SECTION 10.** 196.378 (4g) (b) of the statutes is amended to read:

1 196.378 (4g) (b) The commission shall, with the advice of the wind siting
2 council, promulgate rules that specify the restrictions a political subdivision may
3 impose on the installation or use of a wind energy system consistent with the
4 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules
5 shall include ~~setback requirements that provide reasonable protection from any~~
6 ~~health effects, including health effects from noise and shadow flicker, associated with~~
7 ~~wind energy systems.~~ The subject matter of these rules shall also include
8 decommissioning and may include visual appearance, lighting, electrical
9 connections to the power grid, ~~setback distances~~, maximum audible sound levels,
10 shadow flicker, proper means of measuring noise, interference with radio, telephone,
11 or television signals, or other matters. A political subdivision may not place a
12 restriction on the installation or use of a wind energy system that is more restrictive
13 than these rules.

14 **SECTION 11.** 196.378 (4g) (br) of the statutes is created to read:

15 196.378 (4g) (br) Any rules promulgated under par. (b) that involve a person
16 who is affected by a wind energy system, including rules requiring written notice,
17 shall ensure that such a person includes an affected owner.

18 **SECTION 12.** 196.378 (4g) (c) 5. of the statutes is created to read:

19 196.378 (4g) (c) 5. Allow an affected owner who has entered into an agreement
20 with the owner or operator of a wind energy system regarding the installation or use
21 of the wind energy system to terminate the agreement upon giving written notice of
22 the termination no later than 10 working days after entering into the agreement.

23 **SECTION 13.** 196.378 (4g) (c) 6. of the statutes is created to read:

24 196.378 (4g) (c) 6. Require the owner or operator of a wind energy system to
25 provide a copy of the brochure specified in par. (dm) to an affected owner prior to

1 entering into an agreement with the affected owner regarding the installation or use
2 of the wind energy system.

3 **SECTION 14.** 196.378 (4g) (c) 7. of the statutes is created to read:

4 196.378 (4g) (c) 7. Require any individual who negotiates an agreement with
5 an affected owner on behalf of the owner or operator of a wind energy system
6 regarding an interest in real estate related to the installation or use of the wind
7 energy system to make a written disclosure that the individual is licensed as a real
8 estate broker under ch. 452 or is exempt from such licensure. The rules shall also
9 require inclusion of the written disclosure as an addendum to the agreement.

10 **SECTION 15.** 196.378 (4g) (dm) of the statutes is created to read:

11 196.378 (4g) (dm) The commission shall prepare and make available to the
12 public a brochure that describes wind energy systems, requirements under state law
13 applicable to wind energy systems, including any provisions of the commission's
14 rules that allow for waiver of any such requirements, and the possible impacts of
15 wind energy systems on property owners, including affected owners.

16 **SECTION 16.** 196.378 (4g) (e) of the statutes is amended to read:

17 196.378 (4g) (e) The wind siting council shall survey the peer-reviewed
18 scientific research regarding the health impacts of wind energy systems and study
19 state and national regulatory developments regarding the siting of wind energy
20 systems. The wind siting council shall also study the impacts of wind energy systems
21 on property values. No later than October 1, 2014, and every 5 years thereafter, the
22 wind siting council shall submit a report to the chief clerk of each house of the
23 legislature, for distribution to the appropriate standing committees under s. 13.172
24 (3), describing the research ~~and~~, regulatory developments, and property value

1 impacts, and including any recommendations of the council for legislation that is
2 based on the research ~~and~~, regulatory developments, and property value impacts.

3 **SECTION 17.** 227.10 (2m) of the statutes is created to read:

4 227.10 **(2m)** No agency may implement or enforce any standard, requirement,
5 or threshold as a term or condition of any license issued by the agency unless such
6 implementation or enforcement is expressly required or permitted by statute or by
7 a rule that has been promulgated in accordance with this subchapter. The governor,
8 by executive order, may prescribe standards to ensure that rules are promulgated in
9 compliance with this subchapter.

10 **SECTION 18.** 227.11 (2) (a) of the statutes is renumbered 227.11 (2) (a) (intro.)
11 and amended to read:

12 227.11 **(2)** (a) (intro.) Each agency may promulgate rules interpreting the
13 provisions of any statute enforced or administered by ~~it~~ the agency, if the agency
14 considers it necessary to effectuate the purpose of the statute, but a rule is not valid
15 if it the rule exceeds the bounds of correct interpretation. All of the following apply
16 to the promulgation of a rule interpreting the provisions of a statute enforced or
17 administered by an agency:

18 **SECTION 19.** 227.11 (2) (a) 1. to 3. of the statutes are created to read:

19 227.11 **(2)** (a) 1. A statutory or nonstatutory provision containing a statement
20 or declaration of legislative intent, purpose, findings, or policy does not confer
21 rule-making authority on the agency or augment the agency's rule-making
22 authority beyond the rule-making authority that is expressly conferred on the
23 agency by the legislature.

24 2. A statutory provision describing the agency's general powers or duties does
25 not confer rule-making authority on the agency or augment the agency's

1 rule-making authority beyond the rule-making authority that is expressly
2 conferred on the agency by the legislature.

3 3. A statutory provision containing a specific standard, requirement, or
4 threshold does not confer on the agency the authority to promulgate, enforce, or
5 administer a rule that contains a standard, requirement, or threshold that is more
6 restrictive than the standard, requirement, or threshold contained in the statutory
7 provision.

8 **SECTION 20.** 227.135 (2) of the statutes is amended to read:

9 227.135 (2) Until An agency that has prepared a statement of the scope of the
10 proposed rule shall present the statement to the governor and to the individual or
11 body with policy-making powers over the subject matter of –a– the proposed rule
12 approves a statement of the scope of the proposed rule, a state employee or official
13 may not perform any activity in connection with drafting the proposed rule except
14 for an activity necessary to prepare the statement for approval. The agency may not
15 send the statement to the legislative reference bureau for publication under sub. (3)
16 until the governor issues a written notice of approval of the statement. The
17 individual or body with policy-making powers may not approve –a– the statement
18 until at least 10 days after publication of the statement in the register as required
19 under sub. (3). If the individual or body with policy-making powers does not
20 disapprove the statement within 30 days after the statement is presented to the
21 individual or body, or by the 11th day after publication of the statement in the
22 register, whichever is later, the statement is considered to be approved No state
23 employee or official may perform any activity in connection with the drafting of a
24 proposed rule except for an activity necessary to prepare the statement of the scope
25 of the proposed rule until the governor and the individual or body with

1 policy-making powers over the subject matter of the proposed rule approves the
2 statement.

3 **SECTION 21.** 227.135 (3) of the statutes is amended to read:

4 227.135 (3) ~~The agency shall send the~~ If the governor approves a statement of
5 the scope of a proposed rule under sub. (2), the agency shall send the statement to
6 the legislative reference bureau for publication in the register. On the same day that
7 the agency sends the statement to the legislative reference bureau, the agency shall
8 send a copy of the statement to the secretary of administration.

9 **SECTION 22.** 227.135 (4) of the statutes is repealed and recreated to read:

10 227.135 (4) If at any time after a statement of the scope of a proposed rule is
11 approved under sub. (2) the agency changes the scope of the proposed rule in any
12 meaningful or measurable way, including changing the scope of the proposed rule so
13 as to include in the scope any activity, business, material, or product that is not
14 specifically included in the original scope of the proposed rule, the agency shall
15 prepare and obtain approval of a revised statement of the scope of the proposed rule
16 in the same manner as the original statement was prepared and approved under
17 subs. (1) and (2). No state employee or official may perform any activity in connection
18 with the drafting of the proposed rule except for an activity necessary to prepare the
19 revised statement of the scope of the proposed rule until the revised statement is so
20 approved.

21 **SECTION 23.** 227.137 (title) of the statutes is amended to read:

22 **227.137 (title) Economic impact reports analyses of proposed rules.**

23 **SECTION 24.** 227.137 (1) of the statutes is repealed.

24 **SECTION 25.** 227.137 (2) (intro.) of the statutes is renumbered 227.137 (2) and
25 amended to read:

1 ~~227.137 (2) After an agency publishes a statement of the scope of a proposed~~
2 ~~rule under s. 227.135, and before the agency submits the proposed rule to the~~
3 ~~legislature for review under s. 227.19 (2), a municipality, an association that~~
4 ~~represents a farm, labor, business, or professional group, or 5 or more persons that~~
5 ~~would be directly and uniquely affected by the proposed rule may submit a petition~~
6 ~~to the department of administration asking that the secretary of administration~~
7 ~~direct the agency to prepare an economic impact report for the proposed rule. The~~
8 An agency shall prepare an economic impact report analysis for a proposed rule
9 ~~before submitting the proposed rule to the legislature for review under s. 227.19 (2)~~
10 ~~if the secretary of administration directs the agency to prepare that report. The~~
11 ~~secretary of administration may direct the agency to prepare an economic impact~~
12 ~~report for the proposed rule before submitting the proposed rule to the legislature for~~
13 ~~review under s. 227.19 (2). The secretary of administration shall direct the agency~~
14 ~~to prepare an economic impact report for the proposed rule before submitting the~~
15 ~~proposed rule to the legislature for review under s. 227.19 (2) if the secretary~~
16 ~~determines that all of the following apply: legislative council staff under s. 227.15.~~

17 **SECTION 26.** 227.137 (2) (a) of the statutes is repealed.

18 **SECTION 27.** 227.137 (2) (b) of the statutes is repealed.

19 **SECTION 28.** 227.137 (3) (intro.) of the statutes is amended to read:

20 227.137 (3) (intro.) An economic impact report analysis of a proposed rule shall
21 contain information on the economic effect of the proposed rule on specific
22 businesses, business sectors, public utility ratepayers, and the state's economy as a
23 whole. When preparing the report analysis, the agency shall solicit information and
24 advice from the ~~department of commerce, and from governmental units,~~
25 associations, businesses, associations representing businesses, local governmental

1 units, and individuals that may be affected by the proposed rule. The agency may
2 request information that is reasonably necessary for the preparation of an economic
3 impact report analysis from other state agencies, ~~governmental units, associations,~~
4 ~~businesses, associations, local governmental units,~~ and individuals and from other
5 agencies. The economic impact report shall include all of the following:

6 **SECTION 29.** 227.137 (3) (a) of the statutes is amended to read:

7 227.137 (3) (a) An analysis and quantification of the policy problem, including
8 ~~any risks to public health or the environment,~~ that the proposed rule is intending to
9 address, including comparisons with the approaches used by the federal government
10 and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and,
11 if the approach chosen by the agency to address that policy problem is different from
12 those approaches, a statement as to why the agency chose a different approach.

13 **SECTION 30.** 227.137 (3) (b) of the statutes is amended to read:

14 227.137 (3) (b) An analysis and detailed quantification of the economic impact
15 of the proposed rule, including the implementation and compliance costs that are
16 reasonably expected to be incurred by ~~the state, governmental units, associations,~~
17 ~~or passed along to the businesses,~~ and affected individuals that may be affected by
18 the proposed rule.

19 **SECTION 31.** 227.137 (3) (c) of the statutes is amended to read:

20 227.137 (3) (c) An analysis of the actual and quantifiable benefits of the
21 proposed rule, including ~~how the rule reduces the risks and addresses the problems~~
22 an assessment of how effective the proposed rule will be in addressing the policy
23 problem that the rule is intended to address.

24 **SECTION 32.** 227.137 (3) (d) of the statutes is created to read:

1 227.137 (3) (d) An analysis of alternatives to the proposed rule, including the
2 alternative of not promulgating the proposed rule.

3 **SECTION 33.** 227.137 (3) (e) of the statutes is created to read:

4 227.137 (3) (e) A determination made in consultation with the businesses and
5 individuals that may be affected by the proposed rule as to whether the proposed rule
6 would adversely affect in a material way the economy, a sector of the economy,
7 productivity, jobs, or the overall economic competitiveness of this state.

8 **SECTION 34.** 227.137 (4) of the statutes is amended to read:

9 227.137 (4) The On the same day that the agency shall submit submits the
10 economic impact report analysis to the legislative council staff, under s. 227.15 (1),
11 the agency shall also submit that analysis to the department of administration, and
12 to the petitioner to the governor, and to the chief clerks of each house of the
13 legislature, who shall distribute the analysis to the presiding officers of their
14 respective houses, to the chairpersons of the appropriate standing committees of
15 their respective houses, as designated by those presiding officers, and to the
16 cochairpersons of the joint committee for review of administrative rules. If a
17 proposed rule is modified after the economic impact analysis is submitted under this
18 subsection so that the economic impact of the proposed rule is significantly changed,
19 the agency shall prepare a revised economic impact analysis for the proposed rule as
20 modified. A revised economic impact analysis shall be prepared and submitted in the
21 same manner as an original economic impact analysis is prepared and submitted.

22 **SECTION 35.** 227.137 (5) of the statutes is repealed.

23 **SECTION 36.** 227.138 (title) and (1) of the statutes are repealed.

24 **SECTION 37.** 227.138 (2) (intro.) of the statutes is renumbered 227.137 (6)
25 (intro.) and amended to read:

1 227.137 **(6)** (intro.) If an economic impact report will be prepared under s.
2 ~~227.137 (2)~~ analysis regarding a proposed rule indicates that a total of \$20,000,000
3 or more in implementation and compliance costs are reasonably expected to be
4 incurred by or passed along to businesses and individuals as a result of the proposed
5 rule, the department of administration shall review the proposed rule and issue a
6 report. The agency shall may not submit a proposed rule to the legislature for review
7 under s. 227.19 (2) until the agency receives a copy of the department's report and
8 the approval of the secretary of administration. The report shall include all of the
9 following findings:

10 **SECTION 38.** 227.138 (2) (a) of the statutes is renumbered 227.138 (6) (a) and
11 amended to read:

12 227.138 **(6)** (a) That the economic impact report ~~and the analysis required~~
13 ~~under s. 227.137 (3) are~~ is supported by related documentation contained or
14 referenced in the economic impact report analysis.

15 **SECTION 39.** 227.138 (2) (b) of the statutes is renumbered 227.137 (6) (b).

16 **SECTION 40.** 227.138 (2) (c) of the statutes is renumbered 227.137 (6) (c).

17 **SECTION 41.** 227.138 (2) (d) of the statutes is renumbered 227.137 (6) (d).

18 **SECTION 42.** 227.138 (3) of the statutes is renumbered 227.137 (7) and amended
19 to read:

20 227.137 **(7)** Before issuing a report under sub. ~~(2)~~ **(6)**, the department of of
21 administration may return a proposed rule to the agency for further consideration
22 and revision with a written explanation of why the proposed rule is being returned.
23 If the agency head disagrees with the department's reasons for returning the
24 proposed rule, the agency head shall so notify the department in writing. The

1 secretary of administration shall approve the proposed rule when the agency has
2 adequately addressed the issues raised during the department's review of the rule.

3 **SECTION 43.** 227.138 (4) of the statutes is repealed.

4 **SECTION 44.** 227.14 (2) (a) 6. of the statutes is amended to read:

5 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
6 used in support of the agency's determination of the rule's effect on small businesses
7 under s. 227.114 or that was used when the agency prepared an economic impact
8 report analysis under s. 227.137 (3).

9 **SECTION 45.** 227.15 (1) of the statutes is amended to read:

10 227.15 (1) SUBMITTAL TO LEGISLATIVE COUNCIL STAFF. Prior to a public hearing
11 on a proposed rule or, if no public hearing is required, prior to notice under s. 227.19,
12 an agency shall submit the proposed rule to the legislative council staff for review.
13 The proposed rule shall be in the form required under s. 227.14 (1), and shall include
14 the material required under s. 227.14 (2) ~~to (4), (3), and (4)~~ and the economic impact
15 analysis required under s. 227.137 (2). An agency may not hold a public hearing on
16 a proposed rule or give notice under s. 227.19 until after it has received a written
17 report of the legislative council staff review of the proposed rule or until after the
18 initial review period of 20 working days under sub. (2) (intro.), whichever comes first.
19 An agency may give notice of a public hearing prior to receipt of the legislative council
20 staff report. This subsection does not apply to rules promulgated under s. 227.24.

21 **SECTION 46.** 227.15 (1m) (bm) of the statutes is created to read:

22 227.15 (1m) (bm) The economic impact analysis required under s. 227.137 (2).

23 **SECTION 47.** 227.17 (3) (em) of the statutes is created to read:

24 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2) and
25 any report prepared by the department of administration under s. 227.137 (6), or a

1 summary of that analysis and report and a description of how a copy of the full
2 analysis and report may be obtained from the agency at no charge.

3 **SECTION 48.** 227.185 of the statutes is created to read:

4 **227.185 Approval by governor.** After a proposed rule is in final draft form,
5 the agency shall submit the proposed rule to the governor for approval. The governor,
6 in his or her discretion, may approve, modify, or reject the proposed rule. If the
7 governor approves a proposed rule, the governor shall provide the agency with a
8 written notice of that approval. No proposed rule may be submitted to the legislature
9 for review under s. 227.19 (2) or filed with the legislative reference bureau under s.
10 227.20 for publication under s. 227.21 unless the governor has approved the proposed
11 rule in writing.

12 **SECTION 49.** 227.19 (3) (intro.) of the statutes is amended to read:

13 **227.19 (3) FORM OF REPORT.** (intro.) The report required under sub. (2) shall be
14 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
15 the material specified in s. 227.14 (2) ~~to, (3), and~~ (4), a copy of any economic impact
16 report analysis prepared by the agency under s. 227.137 (2), a copy of any report
17 prepared by the department of administration under s. ~~227.138~~ 227.137 (6), a copy
18 of any energy impact report received from the public service commission under s.
19 227.117 (2), and a copy of any recommendations of the legislative council staff. The
20 report shall also include all of the following:

21 **SECTION 50.** 227.24 (1) (e) 1. of the statutes is renumbered 227.24 (1) (e) 1m.

22 **SECTION 51.** 227.24 (1) (e) 1d. of the statutes is created to read:

23 **227.24 (1) (e) 1d.** Prepare a statement of the scope of the proposed emergency
24 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.
25 227.135 (2), and send the statement to the legislative reference bureau for

1 publication in the register under s. 227.135 (3) at the same time that the proposed
2 emergency rule is published. If the agency changes the scope of a proposed
3 emergency rule as described in s. 227.135 (4), the agency shall prepare and obtain
4 approval of a revised statement of the scope of the proposed emergency rule as
5 provided in s. 227.135 (4).

6 **SECTION 52.** 227.24 (1) (e) 1g. of the statutes is created to read:

7 227.24 (1) (e) 1g. Submit the proposed emergency rule in final draft form to the
8 governor for approval as provided in s. 227.185. An agency may not file an emergency
9 rule for publication until the governor approves the emergency rule in writing.

10 **SECTION 53.** 227.24 (3g) of the statutes is created to read:

11 227.24 (3g) ECONOMIC IMPACT ANALYSIS. Before filing a proposed emergency rule
12 under sub. (3), an agency shall prepare an economic impact analysis for the proposed
13 emergency rule in the manner required under s. 227.137 (3) and shall submit that
14 analysis to the department of administration, to the governor, and to the chief clerks
15 of each house of the legislature, who shall distribute the analysis to the presiding
16 officers of their respective houses, to the chairpersons of the appropriate standing
17 committees of their respective houses, as designated by those presiding officers, and
18 to the cochairpersons of the joint committee for review of administrative rules. If the
19 economic impact analysis indicates that a total of \$20,000,000 or more in
20 implementation and compliance costs are reasonably expected to be incurred by or
21 passed along to businesses and individuals as a result of the proposed emergency
22 rule, the department of administration shall review the proposed rule and issue a
23 report under s. 227.137 (6). The agency may not file the proposed emergency rule
24 until the agency receives a copy of the department of administration's report and the
25 approval of the secretary of administration under s. 227.137 (7).

1 **SECTION 54.** 227.40 (1) of the statutes is amended to read:

2 227.40 (1) Except as provided in sub. (2), the exclusive means of judicial review
3 of the validity of a rule shall be an action for declaratory judgment as to the validity
4 of such the rule brought in the circuit court for the county where the party asserting
5 the invalidity of the rule resides or has its principal place of business or, if that party
6 is a nonresident or does not have its principal place of business in this state, in the
7 circuit court for Dane County. The officer, ~~board, commission~~ or other agency whose
8 rule is involved shall be the party defendant. The summons in such the action shall
9 be served as provided in s. 801.11 (3) and by delivering a copy to ~~such that~~ officer or,
10 if the agency is composed of more than one person, to the secretary or clerk of the
11 agency ~~where composed of more than one person~~ or to any member of ~~such the~~ agency.
12 The court shall render a declaratory judgment in ~~such the~~ action only when it
13 appears from the complaint and the supporting evidence that the rule or its
14 threatened application interferes with or impairs, or threatens to interfere with or
15 impair, the legal rights and privileges of the plaintiff. A declaratory judgment may
16 be rendered whether or not the plaintiff has first requested the agency to pass upon
17 the validity of the rule in question.

18 **SECTION 55.** 281.165 (1) of the statutes is amended to read:

19 281.165 (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply
20 with the water quality standards that are applicable to wetlands and that are
21 promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,
22 requirement, permit, license, approval, authorization, fee, notice, hearing,
23 procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292
24 or 299 or specified under any rule promulgated, order issued or ordinance adopted

1 under any of those sections or chapters, if the activity meets all of the requirements
2 under either sub. (2) ~~or~~ (3), or (4).

3 **SECTION 56.** 281.165 (4) of the statutes is created to read:

4 281.165 (4) BROWN COUNTY. (a) Subsection (1) applies to an activity that meets
5 all of the following requirements:

6 1. The wetland area that will be affected by the activity is less than 3 acres in
7 size.

8 2. The site of the activity is zoned for community business use and is part of a
9 tax incremental district.

10 3. The site of the activity is located in Brown County.

11 4. The person engaged in the activity is in compliance with par. (b) 1. or 2.

12 (b) 1. For a wetland that is other than a nonfederal wetland, as defined in s.
13 281.36 (1) (c), before engaging the activity described in par. (a), the U.S. Army Corps
14 of Engineers shall have issued a permit for the activity that contains a mitigation
15 plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland
16 affected by the activity.

17 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in
18 the activity described in par. (a), the person who will engage in the activity shall have
19 purchased credits from any of the wetland mitigation banks that are located in the
20 state and that are approved by the department at the ratio of at least 1.5 acres of
21 wetland purchased for each acre of wetland affected by the activity and shall have
22 provided to the department a written affidavit that the purchase occurred. The
23 department may not require that the person meet any additional wetland mitigation
24 requirements.

25 **SECTION 57.** 801.50 (3) of the statutes is amended to read:

1 801.50 (3) All actions in which the sole defendant is the state, any state board
2 or commission or any state officer, employee or agent in an official capacity shall be
3 venued in ~~Dane County~~ the county where the plaintiff resides unless another venue
4 is specifically authorized by law. If the plaintiff is a nonresident or is not a natural
5 person, the action shall be venued in the county where the dispute arose.

6 **SECTION 9139. Nonstatutory provisions; Public Service Commission.**

7 (1) The public service commission shall submit in proposed form the rules that
8 are necessary to comply with section 196.378 (4g) (br) of the statutes, as created by
9 this act, and that are required under section 196.378 (4g) (c) 5., 6., and 7. of the
10 statutes, as created by this act, to the legislative council staff under section 227.15
11 (1) of the statutes no later than the first day of the 4th month beginning after the
12 effective date of this subsection.

13 (2) The public service commission shall comply with section 196.378 (4g) (br)
14 of the statutes, as created by this act, by using the procedure under section 227.24
15 of the statutes to promulgate rules under section 196.378 (4g) (b) of the statutes, for
16 the period before the effective date of the rules submitted under subsection (1), but
17 not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject
18 to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24
19 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not required
20 to provide evidence that promulgating rules under this subsection as emergency
21 rules is necessary for the preservation of the public peace, health, safety, or welfare
22 and is not required to provide a finding of emergency for rules promulgated under
23 this subsection.

24 (3) Using the procedure under section 227.24 of the statutes, the public service
25 commission shall promulgate rules required under section 196.378 (4g) (c) 5., 6., and

1 7. of the statutes, as created by this act, for the period before the effective date of the
2 rules submitted under subsection (1), but not to exceed the period authorized under
3 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
4 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
5 the public service commission is not required to provide evidence that promulgating
6 rules under this subsection as emergency rules is necessary for the preservation of
7 the public peace, health, safety, or welfare and is not required to provide a finding
8 of emergency for rules promulgated under this subsection.

9 **SECTION 9309. Initial applicability; Circuit Courts.**

10 (1) VENUE IN DECLARATORY JUDGMENT ACTIONS. The treatment of section 227.40
11 (1) of the statutes first applies to an action for declaratory judgment commenced on
12 the effective date of this subsection.

13 (2) VENUE IN CERTAIN ACTIONS AGAINST THE STATE. The treatment of section
14 801.50 (3) of the statutes first applies to an action commenced on the effective date
15 of this subsection.

16 **SECTION 9339. Initial applicability; Public Service Commission.**

17 (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to
18 large wind energy systems for which design or construction commences on the
19 effective date of this subsection.

20 **SECTION 9355. Initial applicability; Other.**

21 (1) RULE-MAKING AUTHORITY; RULES INTERPRETING STATUTES. The renumbering
22 and amendment of section 227.11 (2) (a) of the statutes and the creation of section
23 227.11 (2) (a) 1. to 3. of the statutes first apply to a proposed administrative rule
24 submitted to the legislative council staff under section 227.15 of the statutes on the
25 effective date of this subsection.

1 (2) ECONOMIC IMPACT ANALYSES. The treatment of sections 227.137 (title), (1), (2)
2 (intro.), (a) and (b), (3) (intro.), (a), (b), (c), (d), and (e), (4), and (5), 227.138 (title), (1),
3 (2) (intro.), (a), (b), (c), and (d), (3), and (4), 227.14 (2) (a) 6., 227.15 (1) and (1m) (bm),
4 227.17 (3) (em), 227.19 (3) (intro.), and 227.24 (3g) of the statutes first applies to a
5 proposed administrative rule submitted to the legislative council staff under section
6 227.15 of the statutes, as affected by this act, and to a proposed emergency rule filed
7 with the legislative reference bureau under section 227.24 (3) of the statutes on the
8 effective date of this subsection.

9 (3) GUBERNATORIAL APPROVAL OF PROPOSED RULES AND EMERGENCY RULES. The
10 treatment of sections 227.135 (2), (3), and (4), 227.185, and 227.24 (1) (e) 1., 1d., and
11 1g. of the statutes first applies to a proposed rule or emergency rule whose statement
12 of scope is presented to the governor for approval on the effective date of this
13 subsection.

14 **SECTION 9439. Effective dates; Public Service Commission.**

15 (1) The treatment of section 196.378 (4g) (a) 1., 1g., 2g., 2r., and 5., (am), (b),
16 (br), (c) 5., 6., and 7., (dm), and (e) of the statutes and SECTION 9139 of this act take
17 effect on the first day of the 4th month beginning after publication.

18 **(END)**