



Standing Committee Review of Administrative Rules

Prepared by: Scott Grosz, Principal Attorney

State agencies promulgate administrative rules pursuant to rulemaking authority conferred by the Legislature, following the process prescribed in ch. 227, Stats. Under this process, the Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

The initial steps of the rulemaking process include drafting a proposed rule, economic impact analysis of the rule, review by the Legislative Council staff, agency public hearing, and gubernatorial approval of the final draft of the proposed rule.¹ Once the Governor has approved a final draft rule, the agency may submit the rule, accompanied by a report, to the Chief Clerk of each house of the Legislature for referral by the presiding officer to a standing committee in each house.

This issue brief describes the role of legislative standing committees in the oversight of administrative rulemaking, and offers practice tips to committee chairs, individual legislators, and staff, which may be used to assist in the review of proposed rules.

LEGISLATIVE STANDING COMMITTEE REVIEW

When a rule is referred to a standing committee, the committee chair notifies the committee members of the referral and the date on which the committee's jurisdiction ends. Generally, the standing committee review period extends for 30 days after referral of a proposed rule by the presiding officer.² However, a committee review period may be extended for an additional 30 days if the committee chair, within the initial 30-day period, takes either of the following actions:

- Requests in writing that the agency meet with the committee to review the proposed rule.
- Publishes or posts a notice that the committee will hold a meeting or hearing to review the proposed rule and immediately sends a copy of the notice to the agency.

Oversight actions during the period of standing committee review may be categorized in one of three ways: actions that require a vote of the committee in executive session; actions that may be commenced by the chair of the committee; and actions that may be taken by the agency that proposed the rule.

Standing Committee Actions

By a majority vote of a quorum, a committee may take one or more of three actions on a proposed rule. First, the committee may vote to waive its jurisdiction or affirmatively approve the rule. Second, a committee may request modifications to a proposed rule. In that case, if the agency, in writing, agrees to consider making modifications, the committee's review period is extended for both standing committees for 10 days from the time the modifications are received from the agency. Third, a committee may object to all or part of a rule. A committee may object only for one or more statutory reasons, including absence of statutory authority; emergency; failure to comply with legislative intent; or arbitrariness or capriciousness, or imposition of an undue hardship. Objection by a committee triggers mandatory consideration of the rule by JCRAR.

Absent any committee action on the proposed rule, the rule is deemed approved under passive review at the end of the committee's review period and is referred to JCRAR for its own review.³

Committee Chair Actions

As noted above, a committee chair, individually, may extend the committee review period by requesting that an agency meet with the committee to review a proposed rule or by publishing a notice of a committee hearing on a proposed rule. Similarly, the question of whether to schedule an executive session of the committee rests within the chair's discretion. Informally, other legislators and interested parties may lobby the chair to take such actions.

Agency-Initiated Actions

In addition to actions by the Legislature, an agency may take certain actions with respect to its proposed rule during the period of legislative review. First, an agency may submit modifications to the proposed rule, provided the modifications are germane to the subject matter of the rule. If modifications are submitted late in the committee review period, the committee's jurisdiction is extended for 10 working days following their receipt. If modifications are submitted after the committee's review period ends, standing committee review is revived for the full, statutory period.

Second, an agency may "recall" a rule from the Legislature, and may resubmit it for legislative review at a later date, either with or without germane modifications.

Last, an agency may choose to "withdraw" a proposed rule. In the case of withdrawal, an agency must begin a new rulemaking process in order to promulgate the subject matter of the withdrawn rule.⁴

TIPS FOR RULE REVIEW

Numerous resources are available to aid in the understanding and review of a proposed rule by legislative committee members and their staff. As noted above, an agency must submit its final draft of a proposed rule, accompanied by a report on the rule, to the Chief Clerk of each house of the Legislature for referral by the presiding officer to a standing committee in each house.

Several sections of this report are particularly useful to the review of a proposed rule:

- The agency's plain language analysis of the rule.
- A description of the agency's authority for the rule.
- An itemized description of changes made to the proposed rule following comments from the public and the Legislative Council staff.
- The fiscal estimate and economic impact analysis for the rule.

Other useful sources of information include the rule text (available for both the initial and final draft of the rule), and the comments made by the Legislative Council staff in its review of the proposed rule.⁵

¹ For a description of the complete rulemaking process, see the Legislative Council's, "Wisconsin Legislator Briefing Book, Chapter 4: Administrative Rulemaking" (November 2018).

² s. 227.19 (4) (b), Stats.

³ s. 227.19 (4) (b) 2., (d), and (e), Stats.

⁴ ss. 227.14 (6) and 227.19 (4) (b) 3., 3m., and 4., Stats.

⁵ During the legislative review period, information on a particular proposed rule, arranged by the number assigned by the Administrative Rules Clearinghouse, may be viewed at: <https://docs.legis.wisconsin.gov/code/chr/active>.