

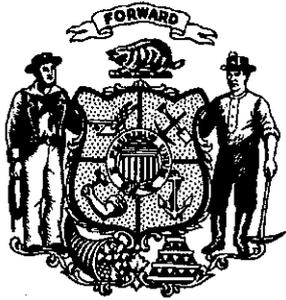
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LEGISLATIVE REFERENCE BUREAU



LEGISLATIVE REVIEW OF STATE AGENCY ADMINISTRATIVE RULES

INFORMATION BULLETIN 93-2*

INTRODUCTION

An "administrative rule" is a regulation, standard, policy statement or order of general application promulgated by a state agency. An administrative rule has the force of law. Rules are issued by an agency (1) to make specific, implement or interpret provisions of statutes that are enforced or administered by the agency or (2) to establish procedures for the agency to follow in administering its programs. Rules are published in the Wisconsin Administrative Code.

The purpose of this Information Bulletin is to set forth the procedure by which the Legislature (1) reviews proposed administrative rules during the process of their promulgation and (2) reviews the policies contained in existing administrative rules.

The legislative rules review procedure is contained in ch. 227, Stats. This review procedure affords Legislators the opportunity to affect the content of policies, having the force of law, that regulate the lives of Wisconsin citizens. These procedures are summarized in Chart 1 and Chart 2 attached to this Bulletin.

Any questions regarding the rules review process may be directed to Ronald Sklansky, Senior Staff Attorney (266-1946), or Richard Sweet, Senior Staff Attorney (266-2982), Legislative Council Administrative Rules Clearinghouse.

I. A RULE BEGINS WITH AN AGENCY

When an agency decides to promulgate an administrative rule (that is, to either create a new rule or modify an existing rule), it must first draft the proposed rule. The *Administrative Rules*

*This Information Bulletin was prepared by Ronald Sklansky, Senior Staff Attorney.

Procedures Manual, prepared by the Legislative Council Staff and the Revisor of Statutes Bureau, sets forth, in detail, the format and style to be used by the agency in preparing rule drafts.

When the draft of a rule is ready, it must be submitted to the Legislative Council Administrative Rules Clearinghouse for review.

2. DUTIES OF THE RULES CLEARINGHOUSE

The Administrative Rules Clearinghouse is operated by the Legislative Council Staff. Upon receipt of a proposed administrative rule, the Legislative Council Staff assigns the rule a Clearinghouse rule number, records the date of the submission of the rule in the Bulletin of Proceedings of the Wisconsin Legislature and prepares two numbered rule jackets, one for the Assembly and one for the Senate.

Following receipt of a proposed rule, the Council Staff reviews the proposed rule for form, style and technical adequacy. Of particular importance to the legislative branch, the Council Staff specifically:

- a. Reviews the proposed rule to determine whether there is statutory authority for the agency to adopt the proposed rule; and
- b. Reviews the text of the proposed rule for clarity and the use of plain language.

The Council Staff review will reveal whether an agency is attempting to regulate matters beyond its legal authority or whether a lack of clarity and precision in a proposed rule will inappropriately affect those persons regulated by the rule.

The period for Rules Clearinghouse review is 20 working days following receipt of the proposed rule. With the consent of the Director of the Legislative Council Staff, the review period may be extended for an additional 20 working days. [Extensions are very rarely necessary.] A written report containing the staff critique of the rule is then forwarded to the agency promulgating the rule.

3. AGENCY RESPONSIBILITIES

After the completion of the Rules Clearinghouse review, an agency is required to hold a public hearing on the proposed rule in most instances. Following the hearing, or if no hearing is required, the agency is required to submit the final version of the proposed rule to the Legislature.

When the agency sends the final draft of a rule to the presiding officers of each House, the agency must include a report that contains, among other things:

a. Conclusions and recommendations of the agency that demonstrate the need for the proposed rule.

b. Explanations of modifications made in the proposed rule as a result of testimony received at public hearings.

c. A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency.

d. A response to Legislative Council Staff recommendations, contained in the Rules Clearinghouse report, indicating acceptance of the recommendations in whole, acceptance of the recommendations in part, rejection of the recommendations and specific reasons for not accepting recommendations.

e. A final regulatory flexibility analysis, if the proposed rule will have an effect on small businesses.

The other parts of the report include a plain language analysis of the proposed rule, copies of related forms and a fiscal estimate of the cost of the rule.

4. REFERRAL OF RULE BY PRESIDING OFFICER

Within seven working days, following receipt of a proposed administrative rule, the presiding officer of each House refers the rule to one committee. The committee to which a rule is referred may be either a standing committee or a joint legislative committee created by law, other than the Joint Committee for Review of Administrative Rules (JCRAR).

5. COMMITTEE REVIEW PERIOD

Generally, the committee review period extends for 30 days after referral of a proposed rule by the presiding officer. However, a committee review period may be extended. Specifically, the review period may be extended for 30 days from the date of either of the following actions, if taken by the chairperson, within the initial 30-day period:

a. The chairperson requests in writing that the agency meet with the committee to review the proposed rule; or

b. The chairperson 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.

The agency is prohibited from promulgating the proposed rule until the conclusion of the committee review period, unless both committees waive their jurisdiction over the rule prior to the end of the review period.

6. AUTHORITY OF REVIEWING COMMITTEES

If both committees fail to take any action during the review period, the agency may complete promulgation of the proposed rule.

If a committee, by majority vote of a quorum of the committee, recommends modifications in a proposed rule (and the agency, in writing, agrees to make modifications), the review period for both committees is extended to the later of:

- a. The 10th working day following receipt by the committees of the modified proposed rule; or
- b. The expiration of the initial or extended committee review period.

There is no limit on the number of times that modifications may be sought, prior to the conclusion of the committee review period.

An agency may unilaterally propose rule modifications during, or following, the committee review period.

A committee may object to a proposed rule, or part of a proposed rule, only for one or more of the following reasons:

- a. An absence of adequate statutory authority.
- b. An emergency relating to public health, safety or welfare.
- c. Failure to comply with legislative intent.
- d. Being contrary to state law.
- e. A change in circumstances since the original date of passage of the earliest law upon which the rule is based.
- f. Being arbitrary and capricious or imposing an undue hardship.

7. RESPONSIBILITIES OF THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES (JCRAR)

If either reviewing committee objects to a proposed rule, the rule must be referred to the JCRAR. The JCRAR must take executive action on the rule and may:

- a. Nonconcur in a committee objection;
- b. Object to the rule (that is, concur with the reviewing committee); or
- c. Seek rule modifications.

The review period for the JCRAR is 30 days. The review period may be extended for an additional 30 days (or more, if modifications are agreed to) in the same manner as by the initial reviewing committee.

If the JCRAR objects to a rule, it must introduce, within 30 days, a bill in each House of the Legislature to prevent the promulgation of the rule. If both bills are defeated, or fail to be enacted in any other manner, the agency may promulgate the proposed rule that received an objection. If either bill is enacted, the agency may not promulgate the proposed rule that was objected to unless a subsequent law specifically authorizes its promulgation.

8. LEGISLATIVE REVIEW AFTER PROMULGATION OF A RULE

The statutes give the JCRAR authority to suspend rules that have been promulgated and are being enforced:

- a. If the JCRAR has first received testimony on the suspension at a public hearing; and

- b. If the suspension is based on one or more of the reasons set forth in item 6, above, for a committee objecting to a proposed rule. If JCRAR suspends a rule, it must introduce, within 30 days, a bill in each House of the Legislature to repeal the suspended rule. If both bills are defeated or fail to be enacted in any other manner, the rule remains in effect and the JCRAR may not suspend it again. If either bill is enacted, the rule is repealed and may not be promulgated again by the agency, unless a subsequent law specifically authorizes such action.

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Attachments

CHART 1

REVIEW OF PROPOSED ADMINISTRATIVE RULES IN WISCONSIN

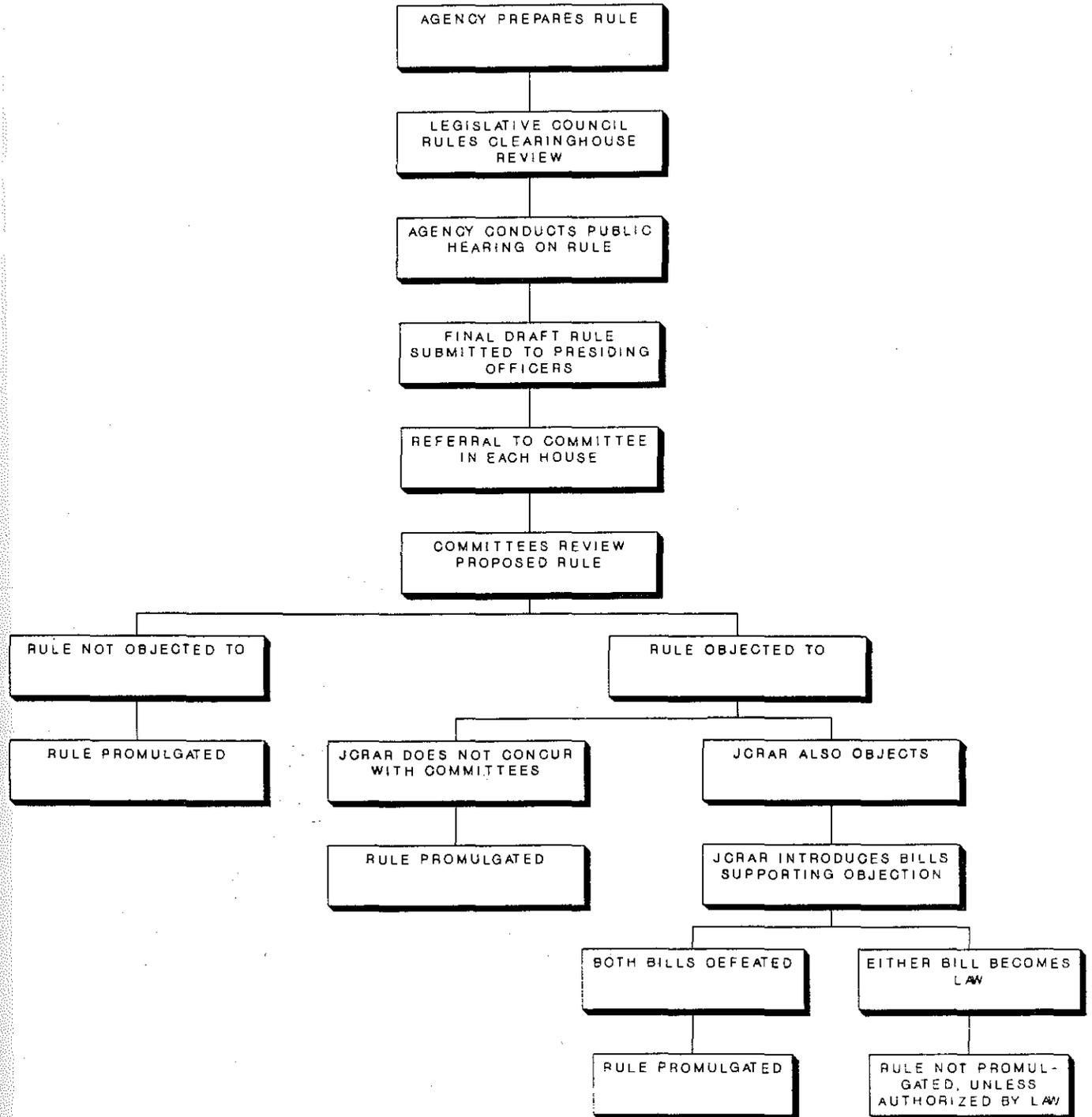


CHART 2

REVIEW OF EXISTING ADMINISTRATIVE RULES IN WISCONSIN

