

**3. Assembly Bill 32: Communications by legislators:**

AB32 was referred to committee and had a public hearing on June 2, 2011. The bill would modify the statute which prohibits legislators who are up for re-election from distributing more than 49 pieces of substantially identical material between June 1<sup>st</sup> of the election year and the date of the election. The bill would create an exception for communications to constituents during the 45 days following a declaration of emergency if the communication relates to the subject of the emergency.

**4. Senate Bill 35: Reducing legislative districts**

SB35 reduces the number of State Senators from 33 to 25 and the number of Assembly Representatives from 99 to 75. The bill would apply to the next decennial legislative redistricting that occurs after its enactment. The bill was referred to committee and has not been scheduled for public hearing.

**5. Senate Bill 25 and Assembly Bill 36: Dissolving regional transit authorities**

SB25 and AB36 are companion bills which would eliminate legislative authorization to create regional transit authorities, dissolve any existing regional transit authority and the Southeastern Regional Transit Authority, and eliminating the Southeast Wisconsin transit capital assistance program. RTAs may conduct referendum elections, and therefore this legislation would affect the Board's administration of SVRS. The companion bills have been referred to the respective oversight committees.

**6. Senate Bill 115 and Assembly Bill 162: Changing the Presidential Preference Primary**

SB115 and AB162 are companion bills which would change the date of the presidential preference primary from the 3<sup>rd</sup> Tuesday in February to the first Tuesday in April in those years in which the president and vice president are elected. The bills also change the dates of all related election events to accommodate the change in the date of the primary. Both SB115 and AB162 were referred to committee and had public hearings on June 02, 2011.

AB 162 remains in committee. SB 115 was amended with one senate substitute amendment and passed on June 08, 2011. The Assembly has received SB 115 and referred it to committee.

**7. Senate Bill 116 and Assembly Bill 161: Changing the September Partisan Primary**

SB116 and AB161 are companion bills which would change the date of the September primary from the 2nd Tuesday in September to the 2nd Tuesday in August, and rename it the "Partisan Primary". SB116 and AB 161 also change the dates of related election events to accommodate the change in the date of the primary. In addition, the bills make various changes in the laws pertaining to absentee voting by military and overseas electors.

SB116 and AB161 were referred to committee and had public hearings on June 02, 2011. AB161 remains in committee. SB116 was amended in the Senate with one substitute amendment and passed on June 08, 2011. The Assembly has received SB 116 and referred it to committee.

**9. Assembly Bill 169: Residency of election officials**

AB169 provides that an individual who serves as an election official at a polling place on Election Day need be an elector only of the county where he or she serves. AB169 was referred to committee and has had a public hearing on June 9, 2011

**10. Assembly Bill 196: Restrictions on campaign finance rule making authority**

AB196 prohibits the promulgation of certain rules concerning campaign financing by the Government Accountability Board. It was referred to committee and has not been scheduled for public hearing.

Under AB196, the Board is unable to promulgate a rule that affects the authority of a corporation or cooperative to make a disbursement independently of a candidate or any agent or authorized committee of such a candidate. In addition, apart from the requirements imposed under the campaign finance law, the board is unable to impose upon any person, including any organization, any registration, reporting, filing, accounting, treasury, or fee payment requirement, or any attribution requirement in making communications.

**11. Assembly Bill 198: Redistricting Standards**

AB198 requires the Legislative Reference Bureau and the Government Accountability Board to jointly develop standards for legislative and congressional districts based on population requirements under the Wisconsin Constitution and the U.S. Constitution and requirements under Section 2 of the Voting Rights Act. It was referred to committee and has not been scheduled for public hearing.

**12. Senate Bill 148 and Senate Bill 149 and Senate Bill 150: Redistricting**

SB148, SB149, and SB150 are companion bills related to the state redistricting plans based on the 2010 federal census. SB148 redistricts state legislative districts and SB149 redistricts congressional districts. SB150 requires that municipal ward plans, and the aldermanic and supervisory districts upon which they are based, reflect municipal boundaries on April 1 of the year of each federal decennial census.

SB148, SB149, and SB150 were all referred to committee and had public hearings on July 13, 2011. The bills passed in the Senate on July 19, 2011. SB148 was amended with one senate amendment, and SB150 was amended with two senate amendments. SB149 was not amended. All bills were then concurred in the Assembly on July 20, 2011.

# LEGISLATIVE STATUS REPORT

August 2, 2011 Meeting

## Assembly Bills

### Assembly Bill 7

Introduced by Representatives Stone, Tauchen, Honadel, J. Ott, Vos, Pridemore, Bernier, LeMahieu, August, Spanbauer, Kramer, Petersen, Ziegelbauer, Kestell, Ripp, Van Roy, Kerkman, Jacque, Litjens, Nass, Kaufert, Strachota, Steineke, Kapenga, Krug, Farrow, Knodl, Kleefisch, Kooyenga, Ballweg, Endsley, Rivard, Thiesfeldt, A. Ott, Petryk, Williams, Severson, Wynn, Knudson, Kuglitsch, Petrowski, Nygren, Meyer, Tiffany, Bies, Knilans, J. Fitzgerald and Klenke; cosponsored by Senators Leibham, Lazich, Vukmir, Kapanke, Grothman, Darling, Galloway, Wanggaard, Kedzie, Ellis, Zipperer, Olsen, Schultz, Moulton, Lasee, Cowles, HopperHarsdorf, S. Fitzgerald and Carpenter.

**Relating to:** requiring certain identification in order to vote at a polling place or obtain an absentee ballot, verification of the addresses of electors, absentee voting procedure in certain residential care apartment complexes and adult family homes, identification cards issued by the Department of Transportation, creating an identification certificate issued by the Department of Transportation, requiring the exercise of rule-making authority, and providing a penalty.

**Status:** Referred to committee on Election and Campaign Reform. Public hearing held 4/27/11. Assembly substitute amendment 1 offered by committee on Election and Campaign Reform. Referred to joint committee on Finance. Assembly substitute amendment 2 offered by joint committee on Finance. Assembly amendment 1 to Assembly substitute amendment 2 offered by joint committee on Finance. Joint committee on Finance recommended adoption of Assembly substitute amendment 2 and Assembly amendment 1 to Assembly substitute amendment 2. Referred to the committee on Rules and made a special order of business on 5/11/2011 pursuant to Assembly Resolution 9. Assembly substitute amendment 2 and Assembly amendment 1 to Assembly substitute amendment 2 adopted. Assembly passed on 5/11/2011; Senate concurred on 5/19/2011. Approved by the Governor on 5/25/2011 as Wisconsin Act 23. Published on 6/9/2011.

### Assembly Bill 28

Introduced by Representatives Spanbauer, Bernard Schaber, Bernier, Hintz, Hulsey, Mason, Pope-Roberts, Rivard and Steineke; cosponsored by Senators Harsdorf, Cowles, T.Cullen and Holperin.

**Relating to:** reporting of information by nonresident registrants under the campaign finance law.

**Status:** Referred to committee on Election and Campaign Reform. Public hearing held on 06/09/2011.

### **Assembly Bill 32**

Introduced by Representatives Toles, Young, Pasch, E. Coggs, Zepnick, Turner, Berceau, Grigsby, Kessler and Bernard Schaber; cosponsored by Senators Schultz and Taylor.

**Relating to:** communications by members of the legislature.

**Status:** Referred to committee on Election and Campaign Reform. Public hearing held on 06/02/2011.

### **Assembly Bill 36**

Introduced by Representatives Nass, Ripp, Vos, Wynn, Pridemore, Mursau, Petersen, Nygren, Kerkman, August and LeMahieu; cosponsored by Senators Grothman, Wanggaard, Lazich, Vukmir, Lasee and Moulton.

**Relating to:** eliminating authorization to create a regional transit authority, dissolving any existing regional transit authority and the Southeastern Regional Transit Authority, and eliminating the Southeast Wisconsin transit capital assistance program.

**Status:** Referred to committee on Transportation.

### **Assembly Bill 67**

Introduced by Representatives Pridemore, Strachota, Thiesfeldt and LeMahieu; cosponsored by Senators Grothman and Darling.

**Relating to:** late voter registration, absentee voting in person, and implementation of a voter identification requirement at elections.

**Status:** Referred to committee on Election and Campaign Reform.

### **Assembly Bill 161**

Introduced by Representatives Tauchen; cosponsored by Senator Lazich.

**Relating to:** the dates of the September primary and certain other election occurrences and absentee voting.

**Status:** Referred to committee on Election and Campaign Reform. Assembly substitute amendment 1 offered by committee on Election and Campaign Reform. Assembly

amendment 1 and 2 to Assembly substitute amendment 1 offered by committee on Election and Campaign Reform. Assembly amendment 3 to Assembly substitute amendment 1 offered by Representatives Kessler and Zamarripa.

### **Assembly Bill 162**

Introduced by Representatives Tauchen; cosponsored by Senator Lazich.

**Relating to:** the date of the presidential preference primary and certain other election occurrences.

**Status:** Referred to committee on Election and Campaign Reform. Public hearing held on 06/02/2011. Assembly substitute amendment 1 offered by committee on Election and Campaign Reform.

### **Assembly Bill 169**

Introduced by Representatives Pridemore and Spanbauer.

**Relating to:** residency of elections officials.

**Status:** Referred to committee on Election and Campaign Reform. Public hearing held on 06/09/2011.

### **Assembly Bill 196**

Introduced by joint committee for review of Administrative Rules. Representatives Pridemore and Spanbauer.

**Relating to:** prohibiting the promulgation of certain rules concerning campaign financing by the Government Accountability Board.

**Status:** Referred to committee on Election and Campaign Reform.

### **Assembly Bill 198**

Introduced by Representatives Hulse, Sinicki, Young, Roys, Ringhand, Bernard Schaber, Poca, Clark, Fields, Berceau, Hintz, Pope-Roberts and Barca; cosponsored by Senators S. Coggs, Risser and Wirch.

**Relating to:** preparation of legislative and congressional districting plans by the Legislative Reference Bureau and the Government Accountability Board.

**Status:** Referred to committee on Homeland Security and State Affairs.

### **AB 200 (07.20.11)**

## **Assembly Joint Resolutions**

- **None**

**AJR 48 (07.20.11)**

## Senate Bills

### Senate Bill 6

Introduced by Senators Leibham, Lazich, Vukmir, Kapanke, Grothman, Darling, Galloway, Wanggaard, Kedzie, Ellis, Zipperer, Olsen, Schultz, Moulton, Lasee, Cowles, Hopper, Harsdorf, S. Fitzgerald and Carpenter; cosponsored by Representatives Stone, Tauchen, Honadel, J. Ott, Vos, Pridemore, Bernier, LeMahieu, August, Spanbauer, Kramer, Petersen, Ziegelbauer, Kestell, Ripp, Van Roy, Kerkman, Jacque, Litjens, Nass, Kaufert, Strachota, Steineke, Kapenga, Krug, Farrow, Knodl, Kleefisch, Kooyenga, Ballweg, Endsley, Rivard, Thiesfeldt, A. Ott, Petryk, Williams, Severson, Wynn, Knudson, Kuglitsch, Petrowski, Nygren, Meyer, Bies and Tiffany.

**Relating to:** requiring certain identification in order to vote at a polling place or obtain an absentee ballot, verification of the addresses of electors, absentee voting procedure in certain residential care apartment complexes and adult family homes, identification cards issued by the Department of Transportation, creating an identification certificate issued by the Department of Transportation, requiring the exercise of rule-making authority, and providing a penalty.

**Status:** Referred to committee on Transportation and Elections. Representative Knilans added as a cosponsor. Public hearing held on 1/26/11. Senate substitute amendment 1 offered by Senators Lazich and Leibham. Referred to joint committee on Finance by committee on Senate Organization. Withdrawn from joint committee on Finance and made available for scheduling by committee on Senate Organization. Senate amendment 1 to Senate substitute amendment 1 offered by Senator Leibham and adopted on 2/24/11. LRB corrections to Senate Substitute Amendment 1 on 2/24/11/ and 4/27/11. LRB corrections to Senate Amendment 1 to Senate Substitute Amendment 1 on 3/01/11 and 4/27/11. Senate laid on the table 6/08/11 .

### Senate Bill 17

Introduced by Senators Harsdorf, Cowles, Holperin and T.Cullen; cosponsored by Representatives Spanbauer, Bernier, Hintz, Hulsey, Mason, Parisi, Pope-Roberts, Rivard, Steineke and Bernard Schaber.

**Relating to:** reporting of information by nonresident registrants under the campaign finance law.

**Status:** Referred to committee on Transportation and Elections.

### **Senate Bill 25**

Introduced by Senators Grothman, Wanggaard, Lazich, Vukmir, Lasee and Moulton; cosponsored by Representatives Nass, Ripp, Vos, Wynn, Pridemore, Mursau, Petersen, Nygren, Kerkman, Suder, August and LeMahieu.

**Relating to:** eliminating authorization to create a regional transit authority, dissolving any existing regional transit authority and the Southeastern Regional Transit Authority, and eliminating the Southeast Wisconsin transit capital assistance program.

**Status:** Referred to committee on Transportation and Elections.

### **Senate Bill 35**

Introduced by Senators Carpenter; cosponsored by Representatives Kaufert.

**Relating to:** the number of legislative districts.

**Status:** Referred to committee on Judiciary, Utilities, Commerce, and Government Operations.

### **Senate Bill 115**

Introduced by Senator Lazich; cosponsored by Representative Tauchen.

**Relating to:** the date of the presidential preference primary and certain other election occurrences.

**Status:** Referred to committee on Transportation and Elections. Public hearing held on 6/02/11. Adoption of senate substitute amendment 1 recommended by committee on Transportation and Elections. Senate substitute amendment 1 adopted and bill passed on 6/08/11. Assembly received from the Senate and referred to committee on Election and Campaign Reform.

### **Senate Bill 116**

Introduced by Senator Lazich; cosponsored by Representative Tauchen.

**Relating to:** the dates of the September primary and certain other election occurrences and absentee voting.

**Status:** Referred to committee on Transportation and Elections. Public hearing held on 06/02/2011. Senate substitute amendment 1 offered by Senator Lazich. Senate substitute amendment 1 adopted. Senate passed on 06/08/2011. Assembly received and referred to committee on Election and Campaign Reform.

### **Senate Bill 148**

Introduced by committee on Senate Organization.

**Relating to:** legislative redistricting.

**Status:** Referred to committee on Judiciary, Utilities, Commerce, and Government Operations. Senate amendment 1 offered by committee on Senate Organization. Senate amendment 2 offered by Senator Zipperer. Adoption of Senate Amendment 2 recommended by committee on Judiciary, Utilities, Commerce, and Government Operations. Senate adopted Senate amendment 2 and passed on 07/19/2011. Assembly concurred on 07/20/2011.

### **Senate Bill 149**

Introduced by committee on Senate Organization.

**Relating to:** congressional redistricting.

**Status:** Referred to committee on Judiciary, Utilities, Commerce, and Government Operations. Public hearing held on 07/13/2011. Passage recommended by committee on Judiciary, Utilities, Commerce, and Government Operations. Senate passed on 7/19/2011. Assembly concurred on 07/20/2011.

### **Senate Bill 150**

Introduced by committee on Senate Organization.

**Relating to:** division of municipalities into wards and redistricting of supervisory and aldermanic districts and appointing a panel to hear challenges to the apportionment of a congressional or legislative district, and hearing certain appeals.

**Status:** Referred to committee on Judiciary, Utilities, Commerce, and Government Operations. Public hearing held on 07/13/2011. Senate amendments 1, 2, and 3 offered by Senators Erpenbach and Risser. Senate amendment 4 offered by Senator Zipperer. Adoption of Senate Amendment 4 recommended by committee on Judiciary, Utilities, Commerce, and Government Operations. Place on Senate calendar for 07/19/2011. Senate amendment 5 offer by Senator Zipperer. Senate adopted Senate Amendments 4 and 5, and passed. Assembly concurred on 7/20/2011.

### **SB 153 (07.20.11)**

## **Senate Joint Resolutions**

- None

**SJR 35 (07.19.11)**

# State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

## MEMORANDUM

**DATE:** For the August 2, 2011 Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Prepared by:

Shane W. Falk, Staff Counsel

**SUBJECT:** Administrative Rule-Making Post 2011 Act 21 (as amended by 2011 Act 32)

### **Introduction:**

The Legislature adopted and Governor Walker signed into law 2011 Act 21 (enacted May 23, 2011 and effective June 8, 2011). This Act significantly alters authority of agencies to promulgate administrative rules and also prescribes new procedures that are a significant departure from longstanding procedures. Unfortunately, 2011 Act 21 required additional clarifications, which were made in the State Budget (2011 Act 32, §§2725d-2740) which the Legislature adopted and Governor Walker signed into law. (enacted June 26, 2011 and effective July 1, 2011.)

This Memorandum provides a brief summary of rule-making procedures following adoption of 2011 Act 21 (as amended by 2011 Act 32.) Staff makes several recommendations and proposed motions to address some issues associated with the new rule-making procedures.

In addition, staff has reworked the previous format of the status of the Board's pending rule-making to organize all pending rules according to the various effective dates of 2011 Act 21, grouping pending rules in categories according to the level of the application of the new rule-making procedures. Proposed motions and the Status Report on Pending Administrative Rule-Making begins on page 11 of this Memorandum.

### **I. Summary of Rule-Making Procedures Following Adoption of 2011 Wisconsin Act 21 (as amended by 2011 Wisconsin Act 32) relating to the Authority to Promulgate Admin. Rules and Rule-Making Procedures**

There are various effective dates for 2011 Act 21, depending upon the current status of any rule-making. Further complicating the process, several provisions of 2011 Act 21 were amended by the State Budget (2011 Act 32), which has different enactment and effective dates.

Regardless, since the State Budget was effective on July 1, 2011, the combined revisions to the administrative rule-making procedures from both Acts are now effective. A brief summary is found in Section I(A) below.

In addition, 2011 Act 21 adopted new venue provisions for declaratory judgment actions on administrative rules. A brief summary is found in Section I(B) below.

The summary of an agency's authority to promulgate administrative rules is found in Section I(C) below.

The summary of administrative rule-making procedures is found in Section I(D) below and attempts to combine the new procedures created by both Acts.

**A. Significant Effective Dates:**

New requirements regarding the authority to promulgate administrative rules and adding a detailed economic impact analysis for every proposed rule-making, are effective for any rule submitted to the legislative council staff for review on or after June 8, 2011. (2011 Act 21, §9355(1-2)).

New statutory provisions clarifying the legislative review of proposed administrative rules are effective for any rule submitted to the Legislature on or after June 8, 2011. (2011 Act 21, §9355(4)). However, in the State Budget (2011 Act 32, §§2738m, 2739c through 2739L), amendments were made to 2011 Act 21, which are effective on or after July 1, 2011.

New requirements regarding gubernatorial approval of permanent and emergency administrative rules are effective for any proposed rule or emergency rule whose statement of scope is presented to the governor for approval on or after June 8, 2011. (2011 Act 21, §9355(3)). However, in the State Budget (2011 Act 32, §§2739n and 2739p), amendments were made to 2011 Act 21, which are effective on or after July 1, 2011.

**B. Judicial Review and Venue:**

The exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule and brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The agency shall be a party defendant. (2011 Act 21, §62; §227.40, Wis. Stats.)

The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question. (Id.)

Upon entry of a final order in a declaratory judgment action, the court shall notify the legislative reference bureau of the court's determination as to the validity or invalidity of the rule and the

legislative reference bureau shall publish a notice of that determination in the administrative register and insert an annotation of that determination in the administrative code. (2011 Act 21, §62g; §227.40(6), Wis. Stats.)

The effective date for these venue provisions in declaratory judgment cases apply to actions for declaratory judgment commenced on or after June 8, 2011. (2011 Act 21, §9309(1)).

### **C. Authority to Promulgate Administrative Rules**

All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency (2011 Act 21, §§2-3; §227.11(2)(a), Wis. Stats.):

1. A statutory or non-statutory 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 explicitly 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 explicitly conferred on the agency by the Legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the statutory provision.

### **D Rule-Making Procedures Post 2011 Act 21 (as amended by 2011 Act 32)**

The following procedures now apply to permanent rule-making. Several of these provisions also apply to emergency rule-making. For clarity and brevity purposes, the emergency rule procedures are specifically noted in *italicized* print.

1. Statement of Scope (2011 Act 21, §§4-6; §227.135, Wis. Stats.)
  - a. An agency that has prepared a statement of the scope of a proposed rule shall present the statement to the governor and to the individual or body with policy-making authority over the subject matter of the proposed rule for approval. The agency may not send the statement to the legislative reference bureau for publication until the governor issues a written notice of approval of the statement. The body with policy-making authority may not approve the rule until at least 10 days after the publication of the statement in the administrative register by the legislative reference bureau.

No state employee or official may perform any activity in connection with the drafting of the proposed rule until the governor and the body with policy-making authority approves the statement.

- b. If the governor approves the statement of scope, the agency shall send the statement to the legislative reference bureau for publication in the administrative register and also provide a copy of the statement to the secretary of administration.
- c. If at any time after the scope of a proposed rule is approved by the Governor and body with policy-making authority the agency changes the scope of the proposed rule in any meaningful or measurable way, the agency shall prepare and obtain approval of a revised statement of scope in the same manner as the original statement.
- d. *An agency shall prepare a statement of scope of any proposed emergency rule and obtain approval of the governor and the body with policy-making authority in the same process as for a permanent rule. The statement of scope is sent to the legislative reference bureau for publication in the administrative register and copied to the secretary of DOA, only after receipt of written approval from the governor. The body with policy-making authority may not approve the statement until at least 10 days after publication in the administrative register.*

*No state employee or official may perform any activity in connection with the drafting of the proposed emergency rule except for preparation of the statement of scope, until the governor and the body with policy-making authority approves the statement. (2011 Act 21, §60; 2011 Act 32, §2739n; §227.24(1)(e)1d, Wis. Stats.)*

- 2. Economic Impact Analyses of Proposed Rules (2011 Act 21, §7-28; §§227.137-138, Wis. Stats.)

An economic impact analysis is now required for any proposed permanent rule-making. This requirement also applies to any emergency rule-making. For clarity and brevity purposes, the emergency rule requirements are specifically noted in *italicized* print.

- a. An agency shall prepare and economic impact analysis for a proposed rule before submitted the proposed rule to the legislative council staff.
- b. An economic impact analysis of a proposed rule shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local government units, and the state's economy as a whole. When preparing the analysis, the agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by

the proposed rule. The agency shall prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule. The agency may request information that is reasonably necessary for the preparation of the economic impact analysis from other businesses, associations, local governmental units, individuals, and from other agencies.

- c. The economic impact report shall include all of the following:

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

An analysis and detailed quantification of the economic impact of the rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the rule.

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

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

A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the rule as to whether the 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.

- d. On the same day that the agency submits the economic impact analysis to the legislative council staff, the agency shall also submit that analysis to the DOA, the governor, and to the 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 and to the co-chairpersons of the joint committee for review of administrative rules. The agency shall revise this analysis, if the rule is modified after submission such that the economic impact of the rule is significantly changed. A revised analysis shall be prepared and submitted in the same manner as an original analysis.

- e. If the economic impact analysis regarding the rule 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, local governmental units, or individuals as a result of the rule, the DOA shall review the rule and issue a report. The agency may not submit the rule to the Legislature for review until the agency receives the DOA report and approval.

3. Submittal to Legislative Council Staff (2011 Act 21, §29; §227.15, Wis. Stats.)

Prior to a public hearing on a proposed rule, or if no public hearing is required, prior to submittal to the governor and legislature, the agency shall submit the proposed rule to the legislative council staff for review in the form required by §227.14(1), Wis. Stats., and shall include the economic impact analysis required under §227.137, Wis. Stats.

4. Public Hearing, if Required (No changes)(§§227.16-18 and 227.24, Wis. Stats.)

5. Approval by Governor (2011 Act 21, §32; §227.185, Wis. Stats.)

After a proposed rule is in final draft form, the agency shall submit the proposed rule to the governor for approval. The governor, in his or her discretion, may approve or reject the proposed rule. If the governor approves a proposed rule, the governor shall provide the agency with written notice of that approval. No proposed rule may be submitted to the legislature for review under §227.19(2), Wis. Stats., unless the governor has approved the proposed rule in writing.

*An agency shall submit the proposed emergency rule in final draft form to the governor for approval in the same fashion as approval. The governor, in his or her discretion, may approve or reject the proposed emergency rule. If the governor approves the proposed emergency rule, the governor shall provide the agency with a written notice of that approval.*

*An agency may not file an emergency rule with the legislative reference bureau as provided in §227.20, Wis. Stats., and an emergency rule may not be published until the governor approves the emergency rule in writing.*

6. Legislative Review Prior to Promulgation (2011 Act 21, §§33-58; 2011 Act 32, §§2738m, 2739c through 2739L; §227.19, Wis. Stats.)

An agency shall submit a notice to the chief clerk of each house of the legislature when a proposed rule is in final draft form. The notices shall be submitted in triplicate and shall be accompanied by a report in the form specified in §227.19(3), Wis. Stats., including a copy of any economic impact analysis. The agency shall submit to the legislative reference bureau for publication in the register a statement that a proposed rule has been submitted to

the chief clerk of each house of the legislature. Each chief clerk shall enter a similar statement in the journal of his or her house.

The major change adopted by 2011 Act 21 and 2011 Act 32 address the elimination of the previous passive approval provisions for standing committees in the legislature. In the past, if the two standing committees did not act within their 30 day review period, an agency could promulgate the proposed rule based solely on the legislature's passive approval. Under the new provisions, even if there are no objections by the standing committees, they must still refer the proposed rule to the Joint Committee for Review of Administrative Rules, which then has 30 days to review the proposed rule.

An agency may not promulgate a proposed rule until the Joint Committee for Review of Administrative Rules nonconcur in any objections of a committee, concurs in the approval of the committees, waives its jurisdiction over the proposed rule, or until the expiration of the JCRAR review period (if no committee has objected to the proposed rule), or until a bill to prevent promulgation fails to be enacted.

If JCRAR objects to the proposed rule or a part of a proposed rule, it shall, within 30 days of the date of the objection, meet and take executive action regarding the introduction, in each house of the legislature, of a bill to support the objection. These bills shall be introduced within 5 working days after JCRAR takes executive action.

The legislature may not consider a bill to prevent promulgation of the proposed rule until JCRAR has submitted a written report on the bill, which shall be printed as an appendix to each bill and contain the contents required by §227.19(6)(a)1-4, Wis. Stats.

In addition, some jurisdiction changes were adopted to clarify that the end of a legislative session will not terminate legislative review, but rather the jurisdiction continues to the next legislative session where a new 30 day review period begins.

7. Submission of Final Draft Rule to Legislative Reference Bureau for Publication in the Administrative Register and Code (No changes)(§227.20, Wis. Stats.)

## **II. Governor, DOA, and Legislative Reference Bureau Direction**

The legislative reference bureau is in the process of updating and significantly revising its Administrative Rules Procedures Manual, following the effective date of 2011 Act 21. Since the changes are so substantial, it likely will not be completed for some time.

In the meantime, the Governor's office, Department of Administration and the Legislative Reference Bureau have provided staff with some direction on the new rules procedure.

Following this Memorandum is a June 7, 2011 email from the Governor's Chief Legal Counsel providing some direction on the gubernatorial approval process. See exhibit A.

Following this Memorandum is a June 8, 2011 email from DOA providing some direction and a form for the economic impact analysis. See exhibit B.

Following this Memorandum are June 7, June 13, and July 1, 2011 emails from the Legislative Reference Bureau attempting to clarify procedures and provide some direction on the form of filings with that office. These early communications likely resulted in the clarification provisions inserted into the State Budget to address the emergency rule procedures following 2011 Act 21. See exhibit C.

Finally, as staff was preparing this Memorandum, DOA issued another guidance Memo dated July 19, 2011, which follows and does not contradict staff's Memorandum. See exhibit D. The DOA Memo provides notice that the Governor intends to issue an Executive Order with more detailed guidelines.

### **III. Staff Identified Rule-Making Procedural Issues and Recommendations**

Staff has identified two major concerns for G.A.B. rule-making, pending and future, as a result of the adoption of 2011 Act 21 (as amended by 2011 Act 32).

#### **A. Significant Delays in Rule-Making**

**Recommendation: Staff recommends that the Board direct staff to return to the Board at the next meeting with recommendations prioritizing the Board's rule-making with an effort to avoid expiration of pending rules.**

Staff is concerned that the procedure of requiring gubernatorial approval at two steps of the rule-making procedure, without any deadline for completion of the review, the extensive economic impact analysis requirements, and the elimination of the passive approval by the Legislature's standing committees will delay rule-making considerably.

To even get a rule-making off the ground, the Statement of Scope must first be submitted to the Governor for approval. If approved by the Governor, the Statement of Scope can be published in the administrative register; however, the Board cannot act on approval of the Statement of Scope until at least 10 days after it has been published in the administrative register. The statutes now specifically prohibit staff from working on any rule-making activity, until both the Governor and the Board have approved the Statement of Scope. The deadlines for submission of materials for publication in the register have generally been mid-month (for the publication released the first week of the following month) and the end of the month (for the publication released mid-month of the following month.) With the limited frequency of Board meetings and the need for the Board to approve the Statement of Scope at least 10 days after it is published in the register, the earliest staff could actually work on drafting a proposed rule for the Board's consideration is likely 2 months from submission of the statement of scope to the Governor's office, and this is assuming gubernatorial approval occurs within 14 days.

The same procedure for gubernatorial and Board approval of a statement of scope applies to proposed emergency rules, which would also result in the 2 month delay before staff could even begin activity drafting the proposed emergency rule for the Board's consideration.

Both proposed permanent rules and emergency rules must be submitted to the Governor for approval. For permanent rules, this step occurs after legislative council review of the rule and prior to submitting the proposed rule to the Legislature for review. A proposed permanent rule would have been approved by the Board prior to its submission to the Legislative Council, but there is no statutory deadline for the gubernatorial review period.

The emergency rule process will now be much lengthier than in the past. After the estimated 2 month period discussed above resulting in the Board approval of the Statement of Scope, staff may draft an emergency rule for the Board's consideration; however, the Board will still have to approve the draft emergency rule before it can be submitted to the Governor. In light of the frequency of Board meetings, this likely will add another month to the process of getting an emergency rule off the ground before it is even submitted to the Governor for approval. The emergency rule may only be published in the paper and filed with the Legislative Reference Bureau after the G.A.B. receives written approval of the emergency rule from the Governor.

In the future, these delays will make it very difficult for the Board to respond to immediate needs for rules.

Once a Statement of Scope is published in the administrative register, the rule-making process for that rule expires within 4 years and thereafter, the G.A.B. will have to start the rule-making from the beginning. The G.A.B. has many rule-makings pending and which will expire on various dates in 2012. It is possible some of these rule-makings will expire and have to be restarted.

B. Economic Impact Analyses Procedures

**Recommendation:** Staff recommends that the Board adopt a reasonable policy of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 10 day deadline to respond to G.A.B., and of only the following for the provided subjects:

1. All clerks for proposed election and campaign finance rules;
2. All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;
3. Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;
4. Registered lobbyists and lobbying principals for proposed ethics rules;

- 5. Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;**
- 6. Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.**

The new procedures mandate that the G.A.B. prepare an economic impact analysis for any proposed rule that "shall contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local government units, and the state's economy as a whole." Staff is very concerned about the onerous burdens on G.A.B. as a result of the mandates to solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule and to prepare the economic impact analysis in coordination with local governmental units that may be affected by the proposed rule.

The new procedures do provide the G.A.B. with authority to "request information that is reasonably necessary for the preparation of the economic impact analysis from other businesses, associations, local governmental units, individuals, and from other agencies." A combination of use of the G.A.B. website and email is the only effective way to solicit this information in a cost-effective and timely manner. Limiting the number of persons or entities is another reasonable way to manage this process. The recommendation above appears limited in nature, but depending upon the subject matter of the proposed rule actually would include solicitations from thousands of persons or entities, including a large percentage of Wisconsin businesses, every Legislator via his or her campaign committee, all political parties registered as such in Wisconsin, several non-partisan organizations particularly interested in the Board's activities, and all 1,850 county and municipal clerks in Wisconsin.

With this more reasonable and manageable solicitation procedure and most importantly the deadline for a response, staff would more readily be able to review and consider incorporating responses into the economic impact analysis. In addition to the Board's open meeting process which permits public comment by Wisconsin clerks, this procedure would complete compliance with the requirement to prepare an economic impact analysis in coordination with local governmental units that may be affected by the rule.

This process will still be onerous, particularly if there are hundreds or thousands of responses to a solicitation, as that information must be reviewed and somehow incorporated into the economic impact analysis.

#### **IV. Proposed Motions**

- A. **MOTION:** The Board directs staff to return to the Board at the next meeting with recommendations prioritizing the Board's rule-making with an effort to avoid expiration of pending rules.
- B. **MOTION:** The Board adopts a reasonable policy of soliciting information and advice from those that may be affected by a proposed rule-making - solicitations via an email notice directing the recipient to the G.A.B. website for detailed information, with a 10 day deadline to respond to G.A.B., and of only the following for the provided subjects:
1. **All clerks for proposed election and campaign finance rules;**
  2. **All campaign finance registrants for proposed campaign finance, ethics and lobbying rules;**
  3. **Top state public officials who have filed a Statement of Economic Interests with the G.A.B. for proposed ethics rules;**
  4. **Registered lobbyists and lobbying principals for proposed ethics rules;**
  5. **Wisconsin Manufacturer's and Commerce for all campaign finance, ethics, and lobbying rules with a recommendation that it circulates the solicitation to all its members for comment directly to the G.A.B.;**
  6. **Wisconsin Democracy Campaign, League of Women Voters, Common Cause of Wisconsin, Disability Rights of Wisconsin, and the Wisconsin Board for Persons with Developmental Disabilities for proposed elections, campaign finance, ethics, and lobbying rules.**

#### **STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING**

##### **I. Pending Rule-Making Not Subject to 2011 Act 21**

###### **Create 1.91**

**Relating to:** Organizations Making Independent Disbursements

**Status:** See separate Memorandum for the August 2, 2011 Meeting.

## **II. Pending Rule-Making Subject only to Act 21's Revision of Legislative Approval**

The following rules are subject to several provisions of Act 21, but only as they relate to the new procedures for Legislative review because Legislative Council has already reviewed the following rules.

### **A. Repeal and Recreate Chapter 4**

**Relating to:** Election Observers

**Status:** Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings. Board reviewed the rule and took renewed action on September 13, 2010. Emergency Rule was published on September 24, 2010. Scope statement published and was approved by the Board at its October 11, 2010 meeting. The final version of Chapter 4 was submitted to Legislative Council for review and returned. A public hearing was held on December 13, 2010 at the Board's meeting. The rule awaits submittal to the Legislature before publication.

### **B. Repeal and Recreation of Chapter 5**

**Relating to:** Security of Ballots and Electronic Voting Systems

**Status:** Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Additions approved by the Board at the November 9, 2009 meeting. Legislative Report will be submitted and upon return, publication.

### **C. Revise 6.05**

**Relating to:** Filing Campaign Finance Reports in Electronic Format

**Status:** Board original action on March 30, 2009. Scope statement published. Legislative Council Report back June 25, 2009. Need to make revisions suggested by Legislative Council and publish Notice of Hearing. Thereafter, submittal to Legislature.

### **D. Repeal 21.01, 21.04 and Revise 20.01**

**Relating to:** 21.01—filing of all written communications and documents intended for former Ethics Board

21.04—transcripts of proceedings before former Ethics Board

20.01—procedures for complaints before former Elections Board

**Status:** Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and

no petition for public hearing was filed. These rules are ready for completion of legislative report and submittal to Legislature. Thereafter, publication.

**E. Creation of Chapter 22**

**Relating to:** Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

**Status:** Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Submitted to Legislative Council and report has been returned. Revisions made and Notice of Public Hearing published. Public Hearing held July 28, 2009 and reviewed by Board at the August 10, 2009 meeting. Legislative Report will be submitted and upon return, publication.

**III. Pending Rule-Making Subject Act 21's Limitation of Rule-Making Authority, Economic Impact Analyses, and Revision of Legislative Approval**

The following rules are subject to several provisions of Act 21, including the limitations on rule-making authority, requirement to submit an economic impact analysis, and the new procedures for Legislative review because the following rules have not yet been submitted to Legislative Council for review.

**A. Revise 6.02**

**Relating to:** Registration Statement Sufficiency.

**Status:** Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009 meeting. Must complete economic analysis and submit the rule to the Legislative Council for review to continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to the Governor and then the Legislature (unless someone petitions for a hearing.)

**B. Revise 6.04**

**Relating to:** Filing Documents by FAX or Electronic Means

**Status:** Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009. Must complete economic analysis and submit it and the rule to the Legislative Council for review to continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to the Governor and then the Legislature (unless someone petitions for a hearing.)

**C. Creation of Chapter 13**

**Relating to:** Training Election Officials

**Status:** Board original action on January 28, 2008. Scope statement published on October 30, 2010. Board approved draft rule at the August 10, 2009 meeting. Must now complete economic impact analysis and submit it and the draft rule to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and before approval by the Governor and submittal to Legislature.

**D. Creation of Chapter 26**

**Relating to:** Contract Sunshine

**Status:** Board original action at the July 21-22, 2010 meeting, at which the Board approved the scope statement. Staff published the scope statement. Proposed rule approved by the Board at the August 30, 2010 Board meeting. On September 10, 2010, staff distributed the rule to all agencies for preview and comment. Staff must now complete an economic impact analysis and submit it to Legislative Council for review. Likely will proceed with a public hearing upon return of the rule from Legislative Council. Then submit it for approval by the Governor before submission to the Legislature for review.

**IV: Pending Rule-Making Subject to Act 21's Gubernatorial Approval, Limitation of Rule-Making Authority, Economic Impact Analyses, and Revision of Legislative Approval**

The following rules are subject to all provisions of Act 21, including the limitations on rule-making authority, requirement to submit an economic impact analysis, gubernatorial approval of the scope statement and final draft rule, and the new procedures for Legislative review because the Statements of Scope for the following rules have not yet been published.

Economic impact analyses must be completed for all of the following rules, but staff is only authorized to begin work on that after the Board has approved the Statement of Scope.

**A. Revise 1.10**

**Relating to:** Registration by Nonresident Committees and Groups

**Status:** Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which now must be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval of the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**B. Revise 1.15**

**Relating to:** Filing Reports of Late Campaign Activity (Postmarked Reports)

**Status:** Board original action on March 30, 2009. Scope statement approved at August 10, 2009 meeting, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**C. Revise 1.20**

**Relating to:** Treatment and Reporting of In-Kind Contributions

**Status:** Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to remove a reference to an old form, Schedule 3-C, that is no longer necessary due to the implementation of CFIS. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**D. Create 1.21**

**Relating to:** Treatment of Joint Account Contributions

**Status:** Board original action on June 9, 2008. Scope statement approved at August 10, 2009 meeting, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to create a rule addressing treatment of contributions from joint accounts. Upon approval of the scope statement by the Board, staff can begin to draft a rule and will return to the Board for approval. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**E. Revise 1.26**

**Relating to:** Return of Contribution

**Status:** Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to correct grammatical error. Likely will complete with 30 day notice rule-making, which will

not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**F. Revise 1.28**

**Relating to:** Scope of Regulated Activity

**Status:** See separate Memorandum for the August 2, 2011 meeting.

**G. Revise 1.43**

**Relating to:** Referendum-related activities by committees; candidate-related activities by groups.

**Status:** Board original action on May 5, 2008. Scope statement approved by the Board at the August 10, 2009 meeting, but must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**H. Revise 1.85 and 1.855**

**Relating to:** Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

**Status:** Board original action on October 6, 2008. Scope statement approved at August 10, 2009 meeting, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**I. Create 1.90**

**Relating to:** MCFL Corporation Registration and Reporting Requirements

**Status:** Board original action August 27, 2008. Scope statement approved by the Board at the December 17, 2009 meeting. Draft rule was approved by the Board at the March 23-24, 2010 meeting. The scope statement must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process. Will likely have to hold public hearing, so following submittal to

Legislative Council will hold public hearing and then submittal to Governor for approval and Legislature before publication.

**J. Revise Chapter 3**

**Relating to:** Voter Registration, HAVA Checks

**Status:** Board original action August 27, 2008. Must draft scope statement, which must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval of the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**K. Revise 3.01(6) and 12.01(2)**

**Relating to:** Election Cycle Period for SRD and Municipal Clerk Training

**Status:** Board original action August 30, 2010. Scope Statement was approved by the Board at the August 30, 2010 meeting and must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to change the election cycle for special registration deputy and municipal clerk training so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year. Likely will complete with 30 day notice rule-making, which will not require a public hearing before approval by the Governor and submittal to Legislature (unless someone petitions for a hearing.)

**L. Revise 6.03**

**Relating to:** Assistance by Government Accountability Board Staff

**Status:** Board original action on March 30, 2009. Scope statement approved by the Board at the December 17, 2009 meeting, but must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with a statutory procedure that will not require a public hearing before approval by the Governor and submittal to Legislature.

**M. Revise Chapter 7**

**Relating to:** Approval of Electronic Voting Equipment

**Status:** Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement, which must now be submitted to the Governor for approval before publishing with the

Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before approval by the Governor and submittal to Legislature.

**N. Revise 9.03**

**Relating to:** Voting Procedures for Challenged Electors

**Status:** Board original action on May 5, 2008. Scope statement approved by the Board at the December 17, 2009 meeting, but must now be submitted to the Governor for approval before publishing with the Legislative Reference Bureau. The scope statement must return to the Board for approval before staff can continue the rule-making process to remove a reference to lever voting machines. Likely will complete with statutory procedure that will not require a public hearing before approval by the Governor and submittal to Legislature.

**O. Revise 12.01(2) See 3.01(6) above.**



**Falk, Shane - GAB**

**From:** Kennedy, Kevin - GAB  
**Sent:** Wednesday, June 08, 2011 7:45 AM  
**To:** Becker, Jonathan - GAB; Robinson, Nathaniel E - GAB; Haas, Michael R - GAB; Falk, Shane - GAB  
**Subject:** FW: Administrative Rules Changes  
**Attachments:** Memo..pdf

Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board  
608-266-8005  
kevin.kennedy@wi.gov

**From:** Hock, Suzanne - DOA  
**Sent:** Tuesday, June 07, 2011 3:10 PM  
**To:** Abrahamson, Shirley S - COURTS; Alexander, James C - COURTS; Anderson, Eloise - DCF; Anderson, Terry - LEGIS; Baumbach, Scott C - DWD; Bildsten, Peter J - DFI; Bolger, T. Michael - MWC; Bozarth, Keith S - SWIB; Brancel, Ben - DATCP; Brown, Ellsworth H - WHS; Bruemmer, Heather - BOALTC; Buhl, Michael - UWHC; Chandler, Richard G - DOR; Clancy, Dan - WTCS; Cupp, Mark E - LWR; Dunbar, Donald P - DMA; Ellis, Mike - LEGIS; Evers, Anthony S - DPI; Fitzgerald, Jeff - LEGIS; Frenette, Rick P - SFP; Fuller, Patrick - LEGIS; Gilkes, Keith - GOV; Gottlieb, Mark - DOT; Gracz, Greg L - OSER; Hamblin, Gary H - DOC; Huebsch, Mike - DOA; Jadin, Paul F - COMMERCE; Kennedy, Kevin - GAB; Kiesow, Harlan - FRNSA; Reed, Margaret - DOA; Klett, Stephanie - TOURISM; La Follette, Doug J - SOS; Lang, Bob - LFB; Marchant, Robert - LEGIS; Miller, Steve - LEGIS; Montgomery, Phil - PSC; Mueller, Janice L - LAB; Nelson, Sherrie A - HEAB; Nelson, Tia - BCPL; Neumann, Paul F - DNR; Nickel, Ted - OCI; Nines, Larry - WHEFA; Piliouras, Elizabeth - OCR; Plale, Jeff - DOA; Purcell, Gene P - ECB; Reilly, Kevin - UWS; Ross, Dave - DRL; Schuller, Kurt - OST; Scott, James R - WERC; Smith, Dennis G - DHS; Snyder, MaryAnne - CTF; Southwick, April - COURTS; Stella, Dave - ETF; Stepp, Cathy L - DNR; Swede, Beth - BPDD; Thompson, Kelli - OSPD; Tzougros, George - WAB; Van Hollen, John B - DOJ; Voelker, A. John - COURTS; Werner, Phil W - DOA; Wild, Rev. Robert - Marquette University; Williams, Donna L - DVA; Winston, Wyman; Ylvisaker, Jeff - LEGIS  
**Subject:** FW: Administrative Rules Changes

All: Please see attachment and message below.

**From:** Hitt, Andrew A - GOV  
**Sent:** Tuesday, June 07, 2011 3:08 PM  
**To:** Hock, Suzanne - DOA  
**Subject:** Administrative Rules Changes

**To:** All State Agencies  
**From:** Brian K. Hagedorn, Chief Legal Counsel  
**Subject:** Act 21, changes to the administrative rules process

Reforms to Wisconsin's administrative rulemaking procedures (Act 21) are effective on Wednesday, June 8, 2011. Agencies beginning the process of drafting new or amended rules, including emergency

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rules, must first submit a scope statement to the Governor for approval. The scope statement must include the information set forth in Wis. Stat. § 227.135.

All scope statements should be submitted to the Governor's Office in PDF format via e-mail at [administrativerules@wisconsin.gov](mailto:administrativerules@wisconsin.gov), which can be found on the contact page of the Office of Governor Scott Walker at <http://www.wisgov.state.wi.us/>. Following a review of the materials submitted, the Governor will notify the agency in writing whether the scope statement is approved, should be modified before the rulemaking proceeds, or is rejected. The Governor's Office may be in contact with agencies during the Governor's review of the scope statement in order to request any additional information, clarification, or documentation necessary for evaluation and to discuss any concerns. The above procedure will also be utilized for submission of proposed rules.

Please remember that until approval of the scope statement by the Governor and individual or body with policy-making powers, agency staff may not work on any activity in connection with the drafting of the proposed rule.

As the rulemaking process goes forward, please note that "any meaningful or measurable change" in the proposed rule's scope requires the submission of a revised scope statement. Such changes include, but are not limited to, adding any activity, business, material, or product that is not specifically included in the original scope statement.

The Governor's Office is committed to efficient and timely review of the scope statement and proposed rules. If your request is time sensitive, please provide details and we will try to accommodate those requests.

Additional guidance will be provided going forward as we begin to implement the Act 21 process. In the meantime, questions should be directed to Jodi Jensen.

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**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

**To: All State Agencies**  
**From: Brian K. Hagedorn, Chief Legal Counsel**  
**Subject: Act 21, changes to the administrative rules process**

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**Falk, Shane - GAB**

**From:** Nelson, Linda S - DOA  
**Sent:** Wednesday, June 08, 2011 11:01 AM  
**To:** Nelson, Linda S - DOA; Sweet, Richard - LEGIS; Sorenson, Donna - DOA; Matson, James K - DATCP; Schultz, Karen E - DATCP; Tzougros, George - WAB; Schlei, Mark S - DFI; Anderson, Kathryn R - DOC; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; Dies, David C - EAB; Haas, Michael R - GAB; Falk, Shane - GAB; Nispel, David - ETF; McClure, Mike - DOA; Schwarz, David - DOA; Nepple, Fred - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Williams, Quinn L - DNR; Eckdale, Robert B - DNR; Loomans, Scott D - DNR; Krake, Kellie - OSPD; Connelly, Johnston P - DNR; Riley, Julia B - DNR; Nelson, Kathryn J - DNR; Slauson, Lori L - DPI; Lorence, John - PSC; Wood, Doug - OCR; Haack, Pamela - DRL; Kleven, Dale S - DOR; Stewart, Jimmy A - DVA; Foy, Morna - WTCS; Parker, Deborah - WTCS; Bernstein, Howard I - DWD; Pridgen, Elaine - DCF; Radue, Jane S - UW; Greer, Rosie J - DHS; Davis, Peter G - WERC; Miller, Steve - LEGIS; Kennedy, Kevin - GAB; Hutchison, Connie L - HEAB; Hamblen, L Jane - SWIB; O'Donnell, Jessica L - OSER; Williams, Inger J - OCI; Alexander, James C - COURTS; Leatherwood, Shancethea N - DRL; Haag, Marianne - DOT; Alexander, James C - COURTS; 'Altenburg, Rana - Marquette University'; Anderson, Bonnie R - DOJ; Annen, Kathy - LEGIS; Banoul, Arlene - OPD; Barkelar, Craig D - SFP; Barkelar, Deb K - LAB; Benisch, Pam - LEGIS; Bormett, Michael R - DPI; Brescoll, Deborah E - COURTS; Bruemmer, Heather - BOALTC; Brunker, Maureen - WHEDA; 'Buechner, Mark - SLOH'; 'Buhl, Michael - UWHC'; 'Christiansen, Megan - SPD'; Collins, Mike - OST; Coomber, Brett - DMA; Cornelius, Louie - COMMERCE; Couey, Roland - DOC; Cupp, Mark E - LWR; Dietzel, Susan J - DFI; Dokken, Larry L - ECB; Emery, Lynn - LEGIS; Forsaith, Andrew C - DHS; Frank, Gina M - OCI; Fuller, Patrick - LEGIS; Gilkes, Keith - GOV; Hammer, Paul - DOT; Hanaman, Cathlene - LEGIS; Harris, Freda J - UW; Hauge, Sharrie - GAB; Holtan, Colleen - DVA; 'Holtan, Vicki - LFB'; Hoyt, Cindy L - DOJ; Kennedy, Kelly J - DOJ; Kerner, Martha - DOA; 'Kiesow, Harlan - FRNSA'; Kramer, Georgann F - WERC; Kranz, Jon - ETF; 'Kuhn, Kathryn - MCW'; Lang, Bob - LEGIS; Lashore, Patricia M - DOR (Pat); Linton, Suzanne L - DPI; Loniello, Sue A - WAB; Marchant, Robert - LEGIS; Mero, Tim R - OCI; Muenich, Laura A - TOURISM; Nechvatal, Denise - BCPL; Nelson, Sherrie A - HEAB; Nelson, Tia - BCPL; Neumann, Paul F - DNR; Nikolay, Robert A - DCF; 'Nines, Larry - WHEFA'; Nooyen, Cindy - DOT; Olson, Anne C - PSC; Opsahl, Richard - WTCS; Parker, James A - DRL; Parkinson, Greg T - WHS; Piliouras, Elizabeth - OCR; Polasek Jr, Joseph P - DNR; Purcell, Gene P - ECB; Rajani, Has Mukh - SOS; Running, Tom - OCR; Schmalle, Verlynn C - DWD; Schutt, Eric - GOV; Snyder, MaryAnne - CTF; Southwick, April - COURTS; Stephenson, Renee M - UW; Swedeen, Beth - BPDD; Timmons, Anthony A - DOR; VanSchoonhoven, Karen A - DATCP; Walker, William D - DATCP; Wendt, Shannon - WHS; Werner, Phil W - DOA; Wersal, Lori A - SWIB; Wierzba, Aimee M - ECB; Ylvisaker, Jeff - LEGIS; Zylstra, James E - WTCS; Neumann, Paul F - DNR  
**Cc:** DOA DL Budget TL; DOA DL Budget AN  
**Subject:** RE: UPDATED Administrative Rules Fiscal Estimate Form  
**Attachments:** Administrative Rules Fiscal Estimate - DOA-2049.doc

Attached is an updated form DOA-2049 (REV 05/2011) which replaces the form revised 04/2011. The field limits on #11 and #12 have been removed so that the form will expand to two pages as you type so that you can add as much as you want in #11 and #12.

The link is: <http://doa.wi.gov/refcenter.asp?locid=0#list> and type in fiscal estimate in the keyword box to access the Administrative Rules Fiscal Estimate Form.

*Linda S. Nelson*  
Department of Administration  
Division of Executive Budget and Finance  
101 East Wilson Street, 10th Floor  
P.O. Box 7864  
Madison, WI 53707-7864  
Telephone Number: (608) 266-3330  
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E-Mail: [linda.nelson@wisconsin.gov](mailto:linda.nelson@wisconsin.gov)

B-2

**ADMINISTRATIVE RULES – FISCAL ESTIMATE**

1. Fiscal Estimate Version

Original     Updated     Corrected

2. Administrative Rule Chapter Title and Number

3. Subject

4. State Fiscal Effect:

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No    May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR     FED     PRO     PRS     SEG     SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. Local Government Fiscal Effect:

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns     Villages     Cities     Counties     School Districts     WTCS Districts     Others:

9. Private Sector Fiscal Effect (small businesses only):

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No    May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No    May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

11. Fiscal Analysis Summary

12. Long-Range Fiscal Implications

13. Name - Prepared by	Telephone Number	Date
14. Name – Analyst Reviewer	Telephone Number	Date
Signature –Secretary or Designee	Telephone Number	Date

This document can be made available in alternate formats to individuals with disabilities upon request.



**From:** Hoesly, Bruce [Bruce.Hoesly@legis.wisconsin.gov]  
**Sent:** Tuesday, June 07, 2011 1:51 PM  
**To:** Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; Slauson, Lori L. - DPI; Lorence, John - PSC; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; Parker, Debbie; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD  
**Cc:** Sweet, Richard - LEGIS; Shannon, Pam - LEGIS  
**Subject:** Administrative Rules and Act 21

Greetings all:

Please take note that effective TOMORROW, June 8, no Scope Statement can be submitted for publication in the Register unless it has been approved in writing by the governor under s. 227.135 (2), as affected by 2011 Act 21. Also please note that commencing tomorrow there is no longer default approval of a Scope Statement by the agency policy-maker. This means that no activity in connection with the rule, except for drafting the scope statement itself, can take place until affirmative approval of the scope statement by the agency's policy maker. The policy maker cannot approve until at least 10 days after publication in the Register.

Also please take note that effective tomorrow, June 8, no emergency rule may be filed and published unless a scope statement for the rule has been approved as discussed above and the proposed rule has been approved in writing by the governor.

Finally, I want to call your attention to what has been identified as a problem in the new emergency rules procedure in Act 21. Section 227.24 (1) (e) 1d. as created by section 60 of Act 23 provides that an agency adopting an emergency rule must:

"Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), and send the statement to the legislative reference bureau for publication in the register under s. 227.135 (3) at the same time that the proposed emergency rule is published."

Approval under s. 227.135 (2) requires both governor and policy-maker approval. Policy-maker approval cannot occur until at least 10 days after publication of the scope statement in the register, which arguably contradicts the provision that says the scope must be sent to LRB for publication in the register at the same time the proposed emergency rule is published. It also appears unclear whether the requirements in s. 227.135 (2) for approval referred to in the new provision includes the provision in s. 227.135 (2) that the rule cannot be worked on until both approvals have been obtained are applicable to the emergency rule scope procedure.

I have consulted with Legislative Council Staff and we have concluded that while the procedural requirements are unclear, we recommend the following steps as the safest path to follow in enacting emergency rules.

1. Draft a scope statement in accordance with s. 227.135 (1) and submit it to the governor for approval under s. 227.135 (2).
2. Upon receiving approval of the governor, publish the scope statement in the register in accordance with 227.135 (2) and its reference to publication upon the governor's approval and cross-reference to s. 227.135 (3).
3. Obtain the affirmative approval of the scope statement by the agency policy maker at least 10 days after the publication of the scope statement in the Register, not doing any work on the rule until after having obtained the policy-maker's approval.
4. Upon approval by the policy-maker, draft the emergency rule and submit it to the governor for written approval.
5. Upon receipt of written approval by the governor publish the emergency rule and at the same time resubmit the scope statement for republication in the Register so that the requirement is met that requires the scope be submitted for publication in the Register at the same time as the rule is published.

C-2

While double publication seems redundant and probably unintended it is the only method that seems to allow meeting all the requirements s., 227.24 (1) (e) 1d.

Bruce J. Hoesly  
Revising Attorney/Code Editor  
Legislative Reference Bureau

**From:** Hoesly, Bruce [Bruce.Hoesly@legis.wisconsin.gov]  
**Sent:** Monday, June 13, 2011 7:46 AM  
**To:** Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; Slauson, Lori L. DPI; Lorence, John - PSC; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; Parker, Debbie; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD  
**Cc:** Sweet, Richard - LEGIS; Shannon, Pam - LEGIS; Grosz, Scott - LEGIS; Renk, Jeffrey - LEGIS; Inabnet, Kay - LEGIS  
**Subject:** RE: Administrative Rules and Act 21 Follow-up

After reviewing Act 21 and consulting with Legislative Council Staff, we are asking that the following additions be made to the following documents in order that the required approvals can be traced. Also, beginning with Scope Statements filed after June 8, being those that will be affected by Act 21, LRB will assign a discrete identifying number to the Scope statement in the following format: SS 001-11. By including this information in these filings, all of the approvals will be noted in the register and also will be shown in the permanent electronic history for each rule that is maintained on the Internet.

1. Scope Statements under s. 227.135 (including scope statements for emergency rules under s. 227.24 (1) (e) 1d.): Insert the date of the governor's approval of the statement prior to sending for publication by LRB.
2. Notice of submittal to legislative council staff under s. 227.14 (4m): For rules submitted to Leg. Council for which the rule's scope statement is subject to Act 21, insert the following:

The statement of scope for this rule, SS \_\_\_\_, was approved by the governor on \_\_\_\_ (date), published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), and approved by \_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2)) on \_\_\_\_ (date).

Example: The statement of scope for this rule, SS 001-11, was approved by the governor on July 20, 2011, published in Register 668, on August 14, 2011, and approved by the Natural Resources Board on August 28, 2011.

For rules submitted to Leg. Council for which the rule's scope statement is not subject to Act 21, insert the following:

This rule is not subject to s. 227.135 (2), as affected by 2011 Wis. Act 21. The statement of scope for this rule, published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), was sent to LRB prior to the effective date of 2011 Wis. Act 21.

(For scopes subject to Act 21, the information allows a reader to see that both required approvals were obtained and that the agency approval was within the timing requirements of Act 21. For those rules with a pre Act 21 scope a pre June 8 publication will show Act 21 did not apply. There will be a few scopes that will be published after June 8 that were filed before June 8 and are not subject to Act 21 as well.)

3. Notices to the chief clerk of each house of the legislature when a proposed rule is in final draft form and to LRB that the rule has been submitted to the chief clerks under s. 227.19 (2). For rules for which the scope statement required governor's approval under Act 21, insert the date of the governor's approval of the rule under s. 227.185.

For rules for which there was a pre-Act 21 scope statement, insert the following:

This rule is not subject to s. 227.185. The statement of scope for this rule, published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), was sent to LRB prior to the effective date of 2011 Wis. Act 21.

4. Emergency rules filed with LRB under s. 227.24. Insert the date of the governor's approval required under s.

All of these items will be included in the Rules Procedure Manual that will be updated and distributed this fall. Feel free to contact me with any concerns.

Bruce Hoesly

---

**From:** Hoesly, Bruce

**Sent:** Tuesday, June 07, 2011 1:51 PM

**To:** Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; 'Slauson, Lori L. DPI'; 'Lorence, John PSC'; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; 'Parker, Debbie'; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD

**Cc:** Sweet, Richard; Shannon, Pam

**Subject:** Administrative Rules and Act 21

Greetings all:

Please take note that effective TOMORROW, June 8, no Scope Statement can be submitted for publication in the Register unless it has been approved in writing by the governor under s. 227.135 (2), as affected by 2011 Act 21. Also please note that commencing tomorrow there is no longer default approval of a Scope Statement by the agency policy-maker. This means that no activity in connection with the rule, except for drafting the scope statement itself, can take place until affirmative approval of the scope statement by the agency's policy maker. The policy maker cannot approve until at least 10 days after publication in the Register.

Also please take note that effective tomorrow, June 8, no emergency rule may be filed and published unless a scope statement for the rule has been approved as discussed above and the proposed rule has been approved in writing by the governor.

Finally, I want to call your attention to what has been identified as a problem in the new emergency rules procedure in Act 21. Section 227.24 (1) (e) 1d. as created by section 60 of Act 23 provides that an agency adopting an emergency rule must:

"Prepare a statement of the scope of the proposed emergency rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s. 227.135 (2), and send the statement to the legislative reference bureau for publication in the register under s. 227.135 (3) at the same time that the proposed emergency rule is published."

Approval under s. 227.135 (2) requires both governor and policy-maker approval. Policy-maker approval cannot occur until at least 10 days after publication of the scope statement in the register, which arguably contradicts the provision that says the scope must be sent to LRB for publication in the register at the same time the proposed emergency rule is published. It also appears unclear whether the requirements in s. 227.135 (2) for approval referred to in the new provision includes the provision in s. 227.135 (2) that the rule cannot be worked on until both approvals have been obtained are applicable to the emergency rule scope procedure.

I have consulted with Legislative Council Staff and we have concluded that while the procedural requirements are unclear, we recommend the following steps as the safest path to follow in enacting emergency rules.

1. Draft a scope statement in accordance with s. 227.135 (1) and submit it to the governor for approval under s. 227.135 (2).
2. Upon receiving approval of the governor, publish the scope statement in the register in accordance with 227.135 (2) and its reference to publication upon the governor's approval and cross-reference to s. 227.135 (3).
3. Obtain the affirmative approval of the scope statement by the agency policy maker at least 10 days after the publication of the scope statement in the Register, not doing any work on the rule until after having obtained the policy-maker's approval.
4. Upon approval by the policy-maker, draft the emergency rule and submit it to the governor for written approval.

C-5

5. Upon receipt of written approval by the governor publish the emergency rule and at the same time resubmit the scope statement for republication in the Register so that the requirement is met that requires the scope be submitted for publication in the Register at the same time as the rule is published.

While double publication seems redundant and probably unintended it is the only method that seems to allow meeting all the requirements s,. 227.24 (1) (e) 1d.

Bruce J. Hoesly  
Revising Attorney/Code Editor  
Legislative Reference Bureau

**Falk, Shane - GAB**

**From:** Hoesly, Bruce [Bruce.Hoesly@legis.wisconsin.gov]  
**Sent:** Friday, July 01, 2011 7:08 AM  
**To:** Hoesly, Bruce - LEGIS; Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; Slauson, Lori L. DPI; Lorence, John - PSC; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; Parker, Debbie; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD  
**Cc:** Sweet, Richard - LEGIS; Shannon, Pam - LEGIS; Grosz, Scott - LEGIS  
**Subject:** RE: Administrative Rules and Act 21 Follow-up to Follow-up

Please affix to any emergency rules to allow for tracking of the necessary approvals.

The statement of scope for this rule, SS \_\_\_\_, was approved by the governor on \_\_\_\_ (date), published in Register \_\_\_\_ (Register Number), on \_\_\_\_ (Register publication date), and approved by \_\_\_\_ (name of policy making body or individual for the agency as required by s. 227.135 (2)) on \_\_\_\_ (date). This emergency rule was approved by the governor on \_\_\_\_ (date).

Thanks.

Bruce

---

**From:** Hoesly, Bruce  
**Sent:** Thursday, June 30, 2011 8:30 AM  
**To:** Hoesly, Bruce; Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; 'Slauson, Lori L. DPI'; 'Lorence, John PSC'; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; 'Parker, Debbie'; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD  
**Cc:** Sweet, Richard; Shannon, Pam; Grosz, Scott  
**Subject:** RE: Administrative Rules and Act 21 Follow-up

The problem identified in my earleir memo below regarding emergency rule procedure has been clarified in the budget. Effective July 1, 2011, the process is amended in s. 227.24 so that it incorporates the scope statement requirements in s. 227.135 for proposed permanent rules and the language regarding publication of the rule at the same time as the scope statement is removed. Now, like a permanent rule, the scope must be submitted to the governor for approval, then published in the Register, then affirmatively approved by the agency policy maker, which approval cannot be given until at least 10 days after the Register publication. No work on the rule can be undertaken until the agency approval is obtained. The completed emergency rule is then submitted to the governor for approval, and upon receiving the governor's approval the rule can be filed with LRB and published in the paper.

Since the procedures now match, I see no impediment to combining a proposed permanent rule and emergency rule in the same scope as long as the scope identifies that both rules are covered by the scope.

Bruce

**From:** Hoesly, Bruce

**Sent:** Tuesday, June 07, 2011 1:51 PM

**To:** Sorenson, Donna - DOA; Schultz, Karen E - DATCP; Tzougros, George - WAB; Pridgen, Elaine - DCF; Rockweiler, Sam - COMMERCE; Quast, Jim - COMMERCE; McReynolds, Norma J - COMMERCE; Anderson, Kathryn R - DOC; Dies, David C - EAB; Davis, Peter G - WERC; Nispel, David - ETF; Schlei, Mark S - DFI; Subach, Dan - DOA; Falk, Shane - GAB; Haas, Michael R - GAB; Greer, Rosie J - DHS; Schwarz, David - DOA; Welsh-Steinmeyer, Lynn A - OCI; Luck, Robert R - OCI; Walsh, Julie E - OCI; Haddix, Linda L - DNR; Pakes, Kathleen - OSPD; 'Slauson, Lori L. DPI'; 'Lorence, John PSC'; Wood, Doug - OCR; Anderson, Kristine - DRL; Leatherwood, Shancethea N - DRL; Henes, Sharon - DRL; Kleven, Dale S - DOR; Foy, Morna - WTCS; 'Parker, Debbie'; Muenich, Laura A - TOURISM; LaSage, Stephanie A - DOT; Nilsen, Paul - DOT; Radue, Jane S - UW; Stewart, Jimmy A - DVA; Diaz-Martinez, Micabil - DVA; Bernstein, Howard I - DWD

**Cc:** Sweet, Richard; Shannon, Pam

**Subject:** Administrative Rules and Act 21

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I have consulted with Legislative Council Staff and we have concluded that while the procedural requirements are unclear, we recommend the following steps as the safest path to follow in enacting emergency rules.

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While double publication seems redundant and probably unintended it is the only method that seems to allow meeting all the requirements s., 227.24 (1) (e) 1d.





**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

SCOTT WALKER  
GOVERNOR  
MIKE HUEBSCH  
SECRETARY  
Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
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Fax (608) 267-3842



**Date:** July 19, 2011  
**To:** State Agency Heads  
**From:** Mike Huebsch *MDA*  
Secretary of Administration  
**Subject:** Guidance for Administrative Rules under 2011 Wisconsin Act 21

2011 Wisconsin Act 21 establishes new requirements on state agencies in promulgation of administrative rules, including emergency rules. Chapter 227 of the Wisconsin Statutes governs the process and requirements for promulgation of administrative rules.

The information below provides initial process guidance as to requirements for completing statements of scope for administrative rules, including emergency rules, as well as guidance for completing economic impact analyses and transmitting proposed rules for review.

As authorized under Act 21, the Governor will be issuing an executive order soon to provide comprehensive guidance to agencies regarding compliance with the requirements of Chapter 227.

The Governor's Office and State Budget Office will act expeditiously to review agency submittals. Most submittals will be acted upon with a few days. More complex rules may require additional follow-up and information.

Agencies should also continue to follow the instructions provided by the Legislative Reference Bureau and Legislative Council regarding preparation and transmittal of documents involved in the administrative rule promulgation process.

Questions regarding the administrative rule review process should be addressed to Jodi Jensen in the Governor's Office (266-7493), or your assigned state budget analyst.

These instructions and templates for agency scope statements and economic impact analyses are available on the State Budget Office SharePoint Site: <http://wisapps.wi.gov/sites/sbo/default.aspx>. Agencies should follow the document naming conventions contained in these instructions and E-mail all documents to the State Budget Office at [SBOAdminRules@APWMADOP1025.forward.us](mailto:SBOAdminRules@APWMADOP1025.forward.us). There is a link

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to this address on SharePoint. Technical questions regarding the SharePoint site should be directed to Scott Thornton in the State Budget Office (266-5051). Agencies are no longer required to submit documents via the [GovAdministrativeRules@wisconsin.gov](mailto:GovAdministrativeRules@wisconsin.gov) as directed by a June 7, 2011, memo from the Governor's Office. However, agencies may continue to use the address to communicate with the Governor's Office about issues related to the promulgation of rules.

**Statement of Scope**

***Provisions of Act 21***

- An agency is required to prepare a statement of scope of any rule it plans to promulgate, including emergency rules, that must contain all of the following:
  1. Description of the objective of the rule;
  2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives;
  3. Statutory authority for the rule;
  4. Estimates of the amount of time and other resources required to develop the rule;
  5. Description of all of the entities that may be affected by the rule; and
  6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.
  
- The statement of scope must be submitted to the Governor and to the individual or board with policy-making powers over the subject matter of the proposed rule for approval.
  1. The agency may not send the statement to the Legislative Reference Bureau for publication until the Governor issues a written notice of approval of the statement.
  2. The individual or body with policy-making powers may not approve the statement until at least 10 days after publication of the statement.
  3. 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 scope until the Governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve the statement.
  
- If the Governor approves a statement of scope, the agency then sends the statement to the Department of Administration (DOA) Secretary and to the Legislative Reference Bureau for publication in the Wisconsin Administrative Register. If the scope of a proposed rule is subsequently modified, the agency must prepare and obtain approval of a revised statement of scope and have it approved in the same manner as for the original statement.

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### ***Implementation Guidance***

The scope statement is one of the most critical elements of the rule review and promulgation process. In the interest of ensuring timely review, please be as thorough as possible in completing the scope statements. This should include an explanation of the statutory authority for the rule; key background information on the need for the rule, including any historical context of prior rules; interrelationship with other rules; and the objective of the rule.

In the interest of creating a streamlined review process, a template for completing scope statements has been prepared. The State Budget Office and Governor's Office will review scope statements and may follow-up with agencies for additional information.

Instructions and templates are available on the State Budget Office SharePoint Site: <http://wisapps.wi.gov/sites/sbo/default.aspx>. Completed documents should be E-mailed to the State Budget Office at [SBOAdminRules@APWMADOP1025.forward.us](mailto:SBOAdminRules@APWMADOP1025.forward.us).

Agencies should follow the following conventions for naming files:

The Statement of Scope should be named "Agency # - Rule or Chapter - Short Name".  
E.g. 505-16-Agency Budget Requests

### **Economic Impact Analyses**

#### ***Provisions of Act 21***

- An agency must prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the Legislative Council.
- The analysis must contain information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.
- The analysis must be prepared in coordination with local governmental units that may be affected by the proposed rule and must solicit information and advice from businesses, associations representing business, local governmental units, and individuals that may be affected by the proposed rule.
- The analysis must include all of the following:
  1. An analysis and quantification of the policy problem the proposed rule is intending to address, including comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address that policy problem and, if the approach chosen by the agency is different from those approaches, a statement as to why the agency chose a different approach.

2. 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 or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule.
  3. 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.
  4. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the proposed rule.
  5. A determination made in consultation with the businesses, local governmental units, and individuals that may be affected by the proposed rules 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 must submit the economic impact analysis to the Legislative Council when the analysis is submitted to DOA, the Governor, and the chief clerks of each house of the Legislature. If the rule is subsequently modified so that the economic impact is significantly changed, a revised economic impact analysis must be prepared.
  - If an economic analysis indicates that \$20 million or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, DOA must review the proposed rule and issue a report. The rule may not be submitted to the Legislature for review until the agency receives a copy of DOA's report and approval of the DOA Secretary.

#### ***Implementation Guidance***

In the interest of creating a streamlined review process, a new single template for completing economic impact analyses and fiscal estimates has been prepared. Instructions and templates are available on the State Budget Office SharePoint Site: <http://wisapps.wi.gov/sites/sbo/default.aspx>. Completed documents should be E-mailed to the State Budget Office at [SBOAdminRules@APWMAD0P1025.forward.us](mailto:SBOAdminRules@APWMAD0P1025.forward.us).

The State Budget Office will review the economic impact analysis and may follow-up with agencies for additional information.

Agencies should follow the following conventions for naming files:

The Economic Impact Analysis should be named "Agency # - Rule or Chapter - 'EIA' Short Name". E.g. 505-16-EIA Agency Budget Requests

## **Gubernatorial Approval of Proposed Rules**

### ***Provisions of Act 21***

- Agencies must submit all proposed rules and emergency rules to the Governor for review and approval.
- Prior to a public hearing on a proposed rule, or if no hearing is required prior to notice, an agency must submit the proposed rule to the Legislative Council for review. A notice of a public hearing must include the economic impact analysis and any report prepared by DOA, or a summary and a description of how the full analysis and report may be obtained at no charge.
- Once a proposed rule is in final draft form, the agency must submit the proposed rule to the Governor for approval.
- The Governor may approve or reject the proposed rule.
  - If the Governor approves a proposed rule, the Governor shall provide the agency with a written notice of that approval.
  - No proposed rule may be submitted to the Legislature for review unless the Governor has approved the proposed rule in writing.

### ***Implementation Guidance***

Agencies should E-mail proposed rules and emergency rules and final draft rules to the State Budget Office. Instructions and templates are available on the State Budget Office SharePoint Site: <http://wisapps.wi.gov/sites/sbo/default.aspx>. Completed documents should be E-mailed to the State Budget Office at [SBOAdminRules@APWMADOP1025.forward.us](mailto:SBOAdminRules@APWMADOP1025.forward.us). The State Budget Office and Governor's Office will notify agencies of the status of proposed rules in final draft form that require the Governor's review and approval.

Agencies should follow the following conventions for naming files:

The form of the proposed rule after Legislative Council review but prior to the public hearing should be named "Agency # - Rule or Chapter - 'Pre-Hearing Draft' Short Name". E.g. 505-16-Pre Hearing Draft Agency Budget Requests Rule

The Proposed Rule in final draft form should be named "Agency # - Rule or Chapter - 'Final Draft Form' Short Name". E.g., 505-16-Final Draft Form Agency Budget Requests Rule

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State Agency Heads  
July 19, 2011  
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Thank you in advance for your efforts in implementing this important review and transparency legislation.

- cc: State Budget Office
- Governor's Legal Counsel Staff
- Agency Deputy Secretaries
- Agency Budget Directors
- Agency Administrative Rule Coordinators
- Agency Administrative Officers
- Legislative Reference Bureau
- Legislative Council

# State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

## MEMORANDUM

**DATE:** For the August 2, 2011 Meeting

**TO:** Members, Wisconsin Government Accountability Board

**FROM:** Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Prepared by:  
  
Shane W. Falk, Staff Counsel

**SUBJECT:** Status--Promulgation of Amended ch. GAB §1.28(3)(b), Wis. Adm. Code

### **Introduction:**

This Memorandum is provided to the Board for informational purposes only and no immediate action is recommended or necessary.

The proposed Statement of Scope, Notice of Proposed Order Adopting Rule, and proposed Notice of Hearing was approved by the Board at the March 22-23, 2011 meeting; however, staff's work on the permanent rule was subject to any new rule-making procedures adopted by the Legislature. Also at the same meeting, the Board directed staff to seek all available extensions of EmR 1049 (GAB 1.28) from the Joint Committee for Administrative Rules.

Emergency Rule 1049 (GAB 1.28) was adopted by the Board at the December 22, 2010 meeting and published on January 7, 2011. This Emergency Rule was effective for 150 days and would have expired at the end of the day on June 5, 2011. A public hearing occurred on Emergency Rule 1049 (GAB 1.28) on February 16, 2011, with only Attorney Matt O'Neil reasserting the same written comments the Board received at its December 22, 2010 meeting. Litigation is pending and the Wisconsin Supreme Court continues an injunction of the permanent Rule 1.28 that was effective on August 1, 2010, expanding the definition of political purpose. Upon advice of DOJ counsel the Board adopted an Emergency Rule 1.28 to remove the second sentence of Rule 1.28(3)(b).

On May 6, 2011, staff delivered a request to the Joint Committee for Review of Administrative Rules seeking to extend EmR 1049 (GAB 1.28) for 60 days. JCRAR revised the request in executive session on June 2, 2010, voting unanimously to grant the 60 day extension. The Emergency Rule is scheduled to expire at the end of the day on August 4, 2011. Pursuant to the Board's direction from the March 22-23, 2011 meeting, staff delivered a request to JCRAR

on July 14, 2011, seeking to extend EmR 1049 (GAB 1.28) for the second and final 60 day period. This request is scheduled to be considered in a JCRAR executive session on July 20. If the extension is granted, this will at least extend the Emergency Rule past the September 6, 2011 oral arguments before the Wisconsin Supreme Court.

The Supreme Court was originally scheduled to hear oral arguments on challenges to permanent Rule GAB 1.28, effective August 1, 2010, in March 2011 with an expected decision prior to the expiration of the Emergency Rule 1049 (GAB 1.28); however, the Supreme Court canceled oral the Spring oral arguments and only recently rescheduled them to occur on September 6, 2011. Since the Emergency Rule 1049 (GAB 1.28) was likely to expire prior to oral arguments or a decision by the Supreme Court, DOJ counsel advised staff that the Board should proceed with permanent rule-making. However, in the interim, 2011 Act 21 (as amended by 2011 Act 32) was adopted, which significantly altered the administrative rule-making procedure as is more fully explained in a separate Memorandum to the Board for the August 2, 2011 meeting.

**Status:**

Pursuant to the new administrative rule-making procedures prescribed by 2011 Act 21 (as amended by 2011 Act 32) and a communication outlining the gubernatorial procedures from the Governor's Chief Legal Counsel, staff submitted a Statement of Scope for the proposed permanent Rule 1.28 to the Governor's office on July 14, 2011. This submission in its entirety follows this Memorandum. At the time of preparing this Memorandum, staff had not yet received a written rejection or approval from the Governor.

A memo released by the Department of Administration on July 19, 2011 notes that the Governor's office intends to reject or approve statements of scope and proposed administrative rules in writing within a few days of submission, unless further follow up with an agency is needed for more complex rules. The same memo from DOA advises that the Governor intends to issue an Executive Order that will provide more comprehensive guidance on the new rule-making procedures.

Upon receipt of an approval by the Governor, staff will submit the Statement of Scope to the Legislative Reference Bureau for publication in the Administrative Register. Staff hopes to have the Statement of Scope before the Board for approval at its September 12, 2011 meeting, assuming the Governor's written approval arrives soon and staff can meet the publication deadline for the Register such that the Statement of Scope has been in the Register for at least 10 days before the meeting.

Technically, staff is prohibited from any activities on the proposed rule until after the Board approves the Statement of Scope; however, since this is permanent rule mirrors an Emergency Rule already in effect and since the Board approved the form of both the Emergency Rule and proposed permanent rule prior to the effective date of Act 21, perhaps the Board may also re-affirm the proposed rule at the September 12, 2011 meeting, so that staff may then complete an economic impact analysis and submit both it and the proposed rule to the Legislative Council for review.

# State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

July 14, 2011

Governor Scott Walker  
Room 115 East  
State Capitol  
Madison, WI 53702

Via Email Only ([administrativerules@wisconsin.gov](mailto:administrativerules@wisconsin.gov))

Re: Administrative Rules of the Government Accountability Board: GAB 1.28  
Ch. GAB 1.28, relating to the definition of the term "political purpose"

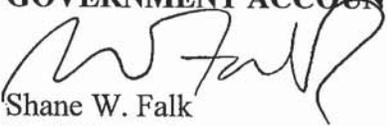
Dear Governor Walker:

Pursuant to 2011 Wisconsin Act 21 (amended 2011 Wisconsin Act 32) and §227.135(2), Wis. Stats., please find enclosed with this correspondence the Government Accountability Board's Statement of Scope for proposed permanent rule GAB 1.28, relating to the definition of the term "political purpose." Please review and provide the written approval required by §227.135(2), Wis. Stats., at your earliest convenience so that this rulemaking may continue. This rule is in compliance with a Federal Court recommendation, statements to the Wisconsin Supreme Court in pending litigation, and was recommended by our counsel, the Wisconsin Attorney General. Further explanation is provided in the analysis for the Emergency Rule 1049 (GAB 1.28).

Please note that prior to the enactment of 2011 Wisconsin Act 21, Emergency Rule 1049 (GAB 1.28) was published and became effective on January 7, 2011. The Joint Committee for Review of Administrative Rules has extended EmR 1049 through August 4, 2011 and the GAB has requested a second and final 60 day extension. Please find attached a copy of EmR 1049, currently in effect, to supplement your review of the Statement of Scope for the proposed permanent rule GAB 1.28.

In closing, the Government Accountability Board respectfully requests written approval to proceed with publishing the Statement of Scope for the proposed permanent rule GAB 1.28. If you have any questions about this matter, or if I can be of any other assistance, please feel free to contact me.

Sincerely,  
**GOVERNMENT ACCOUNTABILITY BOARD**

  
Shane W. Falk  
Staff Counsel  
Enclosures

cc: Bruce Hoesly, Legislative Reference Bureau (via email only)  
Via Email: [adminrules@wisconsin.gov](mailto:adminrules@wisconsin.gov)

Statement of Scope  
Government Accountability Board  
The definition of the term “political purpose,” s. GAB 1.28(3)(b)

**Subject**

Amend s. GAB 1.28(3)(b) relating to the definition of the term “political purpose.”

**Objective of the Rule**

The present amendment involves only the repeal of the second sentence of s. GAB 1.28(3)(b). All other portions of GAB 1.28 effected on August 1, 2010, including the first sentence of s. GAB 1.28(3)(b), are unchanged.

The first sentence of s. GAB 1.28(3)(b), provides that any communication that “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate” is a communication “for political purposes” within the meaning of s. 11.01(16), Stats., and hence is subject to all of the campaign finance regulations under ch. 11 of the Wisconsin Statutes that apply to communications for a political purpose — subject, of course, to any additional requirements or limitations contained in particular statutes.

The second sentence of s. GAB 1.28(3)(b) additionally identifies communications which are susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. That is, any communications that possess the characteristics enumerated in the second sentence of s. GAB 1.28(3)(b) would automatically be deemed communications for a political purpose and, as a result, would automatically be subject to the applicable campaign finance regulations under ch. 11 of the Wisconsin Statutes.

As a result of litigation challenging the validity of the August 1, 2010, amendments to s. GAB 1.28, the Board has entered into a stipulation to refrain from enforcing the second sentence of s. GAB 1.28(3)(b). The Board, through its litigation counsel, has also represented that it does not intend to defend the validity of that sentence and has sought judicial orders permanently enjoining its application or enforcement. This sentence is removed by this rule.

**Policy Analysis**

The revised rule will subject to regulation communications that are “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” The revised rule will subject communications meeting this criterion to the applicable campaign finance regulations and requirements of ch. 11, Stats. The scope of regulation will be subject to the United States Supreme Court Decision, *Citizens United vs. FEC* (No. 08-205), permitting the use of corporate and union general treasury funds for independent expenditures.