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**To:** Chairman Horlacher and members of the Assembly Committee on Regulatory Licensing Reform

**From:** Representative Jim Steineke, 5<sup>th</sup> Assembly District

**Date:** September 19, 2017

**Re:** 2017 Assembly Bill 384

Thank you for hearing Assembly Bill 384, creating an expiration date for administrative rules. This bill stems from a belief that is shared by members of this committee and by the citizens who sent us here: the state's regulatory power is given to it by the people. Therefore the people, exercising their voice on their own and through their elected officials, should have periodic oversight of our regulations.

Fourteen states around the country require either mandatory legislative review of, or automatic expiration of, their administrative rules. Administrative code carries the force and weight of statute without the accountability of it being written by elected officials. Wisconsin should join these other states and adopt a sunset clause in our rulemaking procedure that will give its citizens new opportunities for public input, legislative and executive oversight, and economic analyses. We should also have a framework in place to ensure that rules accomplish the goals they were written to accomplish, and that doing so costs what it was anticipated to cost.

Under AB 384, Wisconsin's administrative code chapters would expire seven years after their initial adoption. For existing code chapters, the Joint Committee for the Review of Administrative Rules (JCRAR), working with state agencies, would determine the effective date of adoption and expiration. Before a code chapter expires, an agency may choose to petition the legislature to readopt the sunset chapter. JCRAR and the appropriate standing committee will review the petition, and if no members of the committee object, the rule is automatically readopted for another seven years. If a committee member of either the majority or minority party objects, then the code chapter must go through the existing process in place for rule promulgation in order to be readopted. New economic impact analyses (EIAs) will be drafted and compared to any other EIAs or committee action on the rule in the past. If JCRAR so decides, they can grant limited flexibility in this timeline to allow for the agency to complete its work.

This bill was designed to re-emphasize the importance of legislative oversight in the rulemaking process without adding undue burdens onto state agencies. While this bill may require some additional work to be done for compliance, it is better to spend time removing unnecessary and burdensome regulations from Wisconsin's rulebooks than it is to keep costly, confusing, cursory, or contradictory mandates in place on our hunters and fishers, farmers, and small businesses. Allowing our regulated citizens to give feedback on the thousands of pages of administrative code will allow for better collaboration and public policy.

Based on the experience of other states with sunset clauses, I expect the overwhelming majority of administrative rules will be readopted without objection. The rules that do receive objections from either party are the ones that we should be looking at anyways – the type of code that might be a better statute, the code that was pushed through without adequate legislative or public debate. I look forward to putting a system in place that reaffirms our commitment to ensuring that our regulations achieve what we say they should achieve, and that Wisconsin's rules work for Wisconsin's citizens.

**Alberta Darling**  
**Wisconsin State Senator**  
Co-Chair, Joint Committee on Finance

Sunset Clauses

Testimony on Assembly Bill 384

Assembly Committee on Regulatory Licensing Reform

September 19, 2017

Thank you Chair Horlacher and members of the Assembly Committee on Regulatory Licensing Reform for hearing this bill. Assembly Bill 384 increases transparency in the rulemaking process, ensures our code is up-to-date, and makes agencies more accountable to the people of Wisconsin and their elected representatives.

Wisconsinites deserve a regulatory system that works for them. This can be done by having a lean administrative code that protects the health, safety, and welfare of Wisconsinites while leaving them the maximum amount of freedom possible. Wisconsin currently has 1,967 chapters of code containing 12,182 pages of regulations. Over time, regulations become outdated and harmful to both individual freedom and economic productivity. This bill will create transparency, encourage efficiency, and help Wisconsin's economy continue to grow by reducing red tape.

The sunset process is very similar to the normal rule promulgation process. Each chapter of administrative code will sunset after seven years, meaning the code chapter is eliminated if it is not readopted. One year before the rule is scheduled to sunset the agency must submit a notice of its intent to readopt a rule to the Chief Clerk of each house of the Legislature. The notice is then conveyed to the appropriate standing committees in each house and the Joint Committee for the Review of Administrative Rules (JCRAR) under a passive review procedure. If no member objects, then the code chapter is automatically readopted. If any member of any of these committees objects, then the code chapter must go through the standard promulgation process to be readopted. Code chapters that do not make it through the promulgation process by their sunset date are eliminated. JCRAR may extend the sunset date for one year at an agency's request in order to ensure necessary rules have adequate time to be readopted.

Regularly going through the promulgation process updates the government and public on the costs of regulation and provides public input. This bill requires an agency to prepare a new economic impact analysis (EIA) of how the actual costs of the rule compared with the previous economic analysis. This information is valuable for regulators and lawmakers because it is a more accurate assessment of how the rule impacts businesses and communities. Further, repromulgation provides an opportunity for the regulated community and general public to comment on how those rules have effected them in practice instead of in theory. The information gained from EIAs and public comments can then be used by the Legislature and agencies to make evidence based decisions on if statutes or regulations should be changed.

# **Alberta Darling**

## **Wisconsin State Senator**

**Co-Chair, Joint Committee on Finance**

Reducing red tape and increasing accountability is valuable for both regulators and the regulated. Sunset clauses are a common sense reform that will reduce unnecessary regulations, increase individual freedom, and spur innovation and economic growth.

I want to thank my colleague, Representative Steineke, for his leadership on this issue and thank the committee for taking the time to hear this bill. I look forward to working with you all on it, and urge your support.



GREATER GREEN BAY  
CHAMBER

To: Assembly Committee on Regulatory Licensing Reform

From: Jayme Sellen, Government Affairs Director

Date: September 19, 2017

RE: Assembly Bill 384 – The Expiration of Administrative Rules

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Thank you for the opportunity to speak in support of Assembly Bill 384. The Greater Green Bay Chamber is made up of about 1,200 diverse businesses with a variety of sizes that work in all sectors of our economy. About 80 percent of our members are small businesses with 50 or fewer employees. Our mission is to strengthen member businesses by enhancing economic and workforce development resulting in an improved quality of life in our region.

AB 384 requires state agencies to go through a similar process that businesses routinely undertake to review and update their employee handbooks and standard operating procedures. A transparent and open administrative rule review process is healthy not only for businesses but also for the State's administrative rules. We need a regulatory system that is dynamic and can evolve.

Our organization performs hundreds of business retention visits each year. During these visits we ask businesses about their concerns for their company's sustainability and growth. Many of our smaller employers express concerns over what they see as the regulatory burden of inefficient and out dated administrative rules.

We know that research, technology and best practices are changing on a constant basis. AB 384 would ensure our state's administrative rules are up-to-date and applicable for today's standards making Wisconsin more attractive for business expansion, attraction and retention.

The Greater Green Bay Chamber respectfully asks for your support of AB 384.

Thank you for your consideration of our comments.

**Statement of the Sierra Club John Muir Chapter,  
Wisconsin Lakes, Wisconsin League of Conservation Voters, Clean Wisconsin and  
River Alliance of Wisconsin  
in opposition to  
Assembly Bill 384  
September 19, 2017**

Chairman Horlacher and members of the committee, my name is Bill Davis. I am the Chapter Director with the John Muir Chapter of the Sierra Club. I would like to thank you for the opportunity to provide comments in opposition to Assembly Bill 384.

The undersigned organizations are opposed to AB 384 because it is unnecessary given the review authority the legislature already has over administrative rules, and because it retards Wisconsin's ability to carry out its duty to protect the health and well-being of Wisconsinites and the environment. This bill would affect all aspects of the Department of Natural Resources (DNR) operations from bag limits to recreational activities such as snowmobiling and boating to forestry as well as environmental regulations that protect human health such as Safe Drinking Water Act, Clean Air Act and Clean Water Act. In addition, the bill applies to entire Chapters of code, not specific provisions so if a single legislator did not like, for example, the bag limit on Walleye it this bill would repeal *all* bag limits.

**The Bill is unnecessary**

The legislature already has the ability to review and suspend administrative rules through the Joint Committee for Review of Administrative Rules (JCRAR). This process is designed to avoid the constitutional issues referred to below.

**AB 384 Potentially would put Wisconsin in violation of federal law**

Over the decades, Wisconsin has elected to implement various Federal environmental laws such as the Clean Air Act, Clean Water Act and Safe Drinking Water Act. This allows Wisconsin DNR to tailor implementation of these laws (within the limits set by U.S. E.P.A.) to fit the circumstances in Wisconsin. It also means those affected by these laws to be able to work with the Wisconsin Department of Natural Resources instead of the U.S. E.P.A. To maintain the ability to implement these laws Wisconsin must stay in compliance with the requirements EPA has set out for delegation. Compliance with federal law relies heavily on administrative rules. If some of these rules were repealed to under AB 384 Wisconsin would be out of compliance with federal law and our programs could revert back to EPA.

**Will create confusion**

This bill would create confusion in a number of ways. First, many chapters of the administrative code are linked. For example, NR 102 set water quality standards and NR 217 lays out the methodology of how those standards are translated into permit limits. If one of Chapters is repealed but other isn't it would create confusion over how to put legal limits in Clean Water Act permits. This potentially endangers our water resources and creates uncertainty for

permitted facilities.

Second, under the timelines in AB 384 an agency would appear to have a maximum of a 1.75 years (this assumes they are given the one year extension by JCRAR) to re-promulgate a rule that is objected to. Given the 2011 changes to Chap 227 and the passage of Act 57 this year, it now takes longer than this to promulgate a rule. This means there will be gaps when a rule is not in effect. During that time industry and individuals will have no guidance as to how Wisconsin law will be applied to them. This will cause confusion, delay and unnecessary litigation.

#### **Administrative Rules are necessary**

Administrative rules are necessary to ensure uniform application of policy in the state. This is true for many reasons. First, it is difficult and unadvisable to spell out the level of detail needed in statute; difficult because it is hard to foresee all situations that may arise and unadvisable because information changes and it would be very difficult for the legislature to keep up with current information and technology. Second, the administrative process allows those with expertise in an area to craft rules that fit Wisconsin. For example, our water law and the water chemistry in our lakes and streams is different than say, Arizona yet the Clean Water Act applies to both. Administrative rules can be tailored to the situations that exist here. Finally, the administrative process allows for direct input by those affected to make sure the rules will work as intended.

#### **Separation of Powers**

We believe AB 384 violates Wisconsin's constitution Separation of Powers provisions. Wisconsin's state government is made up of three co-equal branches; each elected by the people of Wisconsin. The Legislatures role is to pass laws. The role of the Executive branch is to enforce those laws which it does through administrative rules. By allowing a single legislator to overturn a promulgated rule AB 384 violates the Separation of Powers; to repeal a promulgated rule requires the full legislative process i.e. passage of a law as is the case in the current JCRAR process.

For all these reasons we urge the committee to oppose AB 384.

Thank you again for the opportunity to testify.

Sierra Club – John Muir Chapter  
Wisconsin Lakes  
Wisconsin League of Conservation Voters  
Clean Wisconsin  
River Alliance of Wisconsin



125 N. Superior St.  
Appleton, WI 54911

September 19, 2017

**TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON REGULATORY LICENSING REFORM**

Chairman Horlacher and Committee Members,

Thank you for holding a hearing on AB 384 related to the expiration of administrative rules.

My name is Mark Rahmlow, and I am the Vice President of Public Policy for the Fox Cities Chamber of Commerce and Industry located in Appleton, Wisconsin. The chamber's mission is a simple one: to promote growth and prosperity in the Fox Cities. We currently serve more than 900 member businesses, representing a diverse pool of businesses in our region.

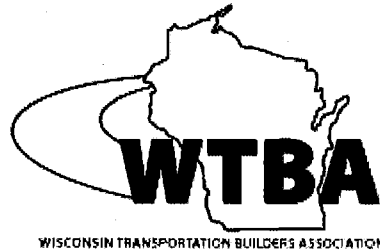
The Fox Cities Chamber has appreciated the legislature's recent efforts to "Right the Rules", to review outdated or redundant regulations. This bill is certainly part of that broader effort, and I am here today to offer support for AB 384.

Many regulations have been on the books for years without ever being reviewed to ensure they are still relevant. AB 384 requires state agencies to review regulations, establishes a process to re-promulgate rules, and gives the legislature an opportunity to fulfill its important role providing "checks and balances" on the administrative code.

Let me be clear. Businesses understand the need for regulations. It is not in any company's interest to have employees get hurt, or be exposed to unsafe working conditions. But businesses are still dedicating precious time and resources to compliance, which in turn either increases the cost of doing business or increases the cost to the consumer.

The regulatory environment has gradually improved over the last few years, and this bill will further create an environment where businesses have more certainty. It's my understanding that fourteen other states have a similar review process on the books. Still, this legislation gives lawmakers – Republican and Democrat – an opportunity to weigh in on the rules being promulgated by various state agencies.

Thank you in advance for your consideration of this bill.



To: Members of the Assembly Committee on Regulatory Licensing Reform

From: Pat Goss, Executive Director

Date: September 19, 2017

Subject: WTBA Testimony in Support of Assembly Bill 384

On behalf of the members of the Wisconsin Transportation Builders Association (WTBA), we are pleased to submit testimony in support of Assembly Bill (AB) 384.

We applaud Representative Steineke, Senator Darling and the other co-sponsors of AB 384 for their efforts to continue to make positive, regulatory reforms within our state's agencies. AB 384 will help eliminate bureaucratic red tape by automatically sun setting administrative code every seven years and giving more legislative oversight by having the agencies get approval to renew codes from the legislature. WTBA views these as positive reforms.

Eliminating unnecessary administrative code will help my members spend more time focusing on their work versus perhaps spending time complying with an archaic regulation. Getting government out of the way, no matter how small, is a positive step forward in helping businesses like my members.

Again, WTBA is happy to support AB 384. We are grateful to Chairman Horlacher for holding a public hearing and are hopeful this legislation will continue to make its way through the legislative process. If you have any questions, please do not hesitate to contact me at 608-256-6891 or [pgoss@wtba.org](mailto:pgoss@wtba.org).



## **Wisconsin Wildlife Federation Testimony Opposing AB 384**

Chairman Horlacher and Members of the Assembly Committee on Regulatory Licensing Reform, thank you for this opportunity to testify on Assembly Bill 384.

As many of you know the Wisconsin Wildlife Federation is the state's largest conservation organization comprised of 204 hunting, fishing and trapping organizations in Wisconsin. Our clubs are very interested in and impacted by the hunting, fishing and trapping regulations that are adopted through a process involving the Conservation Congress, the Department of Natural Resources, the Natural Resources Board and the Legislature. Virtually all the hunting, fishing and trapping regulations involving game fish and wildlife throughout the state are adopted through the Conservation Congress process.

It is because of the impact of AB 384 on the Conservation Congress rulemaking process that the Federation opposes the bill. As you all know the Congress process is by far, the most democratic, public participatory process for rule adoption in the state. It is unrivaled in terms of sportsmen and women's input of any state in the country. Virtually all of the hunting, fishing and trapping regulations are voted on by citizens attending the Congress Spring Hearings on the first Monday of April each year in every county of the state. No other rules receive as much public input as these rules.

AB 384 provides that each chapter of the Wisconsin Administrative Code expires after seven years, unless the chapter is readopted by the agency through the readoption process established under the bill. The bill requires that the Joint Committee for Review of Administrative Rules establish a schedule for the expiration of all existing code chapters that are in effect on the effective date of the bill. Under the bill, in the year before a code chapter is set to expire, an agency may send a readoption notice to JCRAR and the appropriate standing committees proposing to readopt the chapter. If no member of JCRAR or the standing committees objects to the readoption notice, the chapter is considered readopted without further action. If any member of JCRAR or either standing committee objects to readoption of the chapter, the chapter expires on its expiration date unless the agency promulgates a rule to readopt the chapter using the standard rule-making process.

Here are our specific concerns on the application of the bill to hunting, fishing and trapping regulations:

1. First, despite the fact that each hunting, fishing and trapping rule has been voted on by thousands of sportsmen and women at Conservation Congress hearings in every county of the state, **it would take only one legislator** of the 30 total legislators on the Assembly Natural Resources Committee, the Senate Sporting Heritage Committee and the Joint Committee for Review of Administrative rules to suspend a rule, as an example

setting the minimum size limit of bass on a lake. This would require the DNR to start a readoption process involving the DNR, the Conservation Congress, the Natural Resources Board and the Legislature.

2. Secondly the bill provides that if a legislator would object to any one rule, say the minimum bass size limit on Lake Koshonong in Jefferson County, the whole chapter of rules that the size limit is in would have to be readopted by the DNR. To show the ramifications of this proposed bill requirement, I have attached the first page of Chapter NR 20, WAC, for your review. That is the title page and table of contents for the chapter which is 137 pages long. The chapter not only contains the minimum bass size limit for Lake Koshkonong, it contains all the types of fishing regulations for every inland lake and stream in the state and the outlying waters including the Mississippi River and the Great Lakes. The tens of thousands of hours invested in establishing those regulations by sportsmen and women in the state, DNR staff and the Natural Resources Board would be undone and would have to be started over if this bill is adopted.
  
3. Thirdly, under the timelines set out in AB 384 an agency would appear to have a maximum of a 1.75 years (this assumes they are given the one year extension by JCRAR) to re-promulgate the rules that are objected to . Given the 2011 Act 21 changes to Chap 227 and the passage of Act 57 this year, it now takes significantly longer than this to promulgate a rule in the state and even longer for hunting, fishing and trapping regulations which have to go through the Conservation Congress Spring Hearings. This means there will be lengthy gaps in time when a rule would not be in effect. So not only would there be a fishing season or two when there would be no minimum size limit on bass on Lake Koshkonong, there would be no fishing regulations on every other inland stream and lake and on the outlying waters such as the Mississippi River and the Great Lakes.

The Federation is confident that the authors and this Committee would not want to see these unintended consequences affecting the millions of hunters, anglers and trappers in the state. We respectfully request that the bill be revised so as to recognize the unique and highly participative process by which fish and game regulations are adopted in Wisconsin.

Thank you for this opportunity to testify on this bill.

George Meyer  
Executive Director  
Wisconsin Wildlife Federation  
September 19, 2017

## Chapter NR 20

## FISHING: INLAND WATERS; OUTLYING WATERS

**Subchapter I — Purpose and Definitions**

- NR 20.01 Purpose.  
NR 20.03 Definitions.

**Subchapter II — Prohibited Methods**

- NR 20.05 General restrictions.  
NR 20.06 Hook and line fishing.  
NR 20.07 Special sturgeon hook and line fishing restrictions.  
NR 20.08 Restrictions on the use of bait.  
NR 20.09 Spearing restrictions.  
NR 20.10 Special sturgeon spearing restrictions.  
NR 20.105 Sturgeon spearing licenses.  
NR 20.11 Ice fishing and fishing shelter restrictions.  
NR 20.12 Setline and set or bank pole restrictions.  
NR 20.13 General netting restrictions.  
NR 20.14 Minnow collecting restrictions.

**Subchapter III — Authorized Methods, Open Seasons, Daily Bag Limits and Size Restrictions on Specified Waters**

- NR 20.15 Authorized methods.

- NR 20.16 Special early catch and release season for trout.  
NR 20.18 Total daily bag limits.  
NR 20.20 County and statewide table.

**Subchapter IV — Department Authority**

- NR 20.25 License waiver.  
NR 20.30 Department permitted to take fish.  
NR 20.33 Special open and closed seasons.  
NR 20.35 Alternate size and bag limits.  
NR 20.36 Modifications in daily bag limit and minimum size limit in response to tribal harvest.  
NR 20.37 Special size and bag limits for Lac du Flambeau reservation.  
NR 20.38 Control of detrimental fish.  
NR 20.39 Permits for use of nonstandard minnow gear on inland waters.  
NR 20.40 Fishing tournaments.  
NR 20.41 Experimental waters.  
NR 20.60 Monthly sport trolling fishing reports.  
NR 20.65 Report of licensed guides.

Note: Chapter NR 20 as it existed on May 31, 1999, was repealed and a new chapter NR 20 was created effective June 1, 1999. This chapter interprets ss. 29.014 and 29.041, Stats.

**Subchapter I — Purpose and Definitions**

**NR 20.01 Purpose.** This chapter establishes open and closed seasons, bag limits, possession limits, size restrictions and other rules governing the taking of fish in the inland and outlying waters of Wisconsin.

**History:** Cr. Register, May, 1999, No. 521, eff. 6-1-99.

**NR 20.03 Definitions.** In this chapter:

- (1) "Angler" means any person engaged in fishing.
- (2) "Artificial fly" means a single hook dressed with fur, feathers, hair, silk, tinsel, thread or similar material to imitate the natural food of fish.
- (3) "Artificial lure" means a spoon, spinner, jig, plug or other fish bait made of hair, feathers, cork, wood, rubber, metal, plastic or other synthetic materials, or combinations of these materials. An "artificial lure" may not include natural or organic food stuffs such as corn, marshmallows, dough, cheese, meat, living or dead organisms or parts of those items, except hair, feathers, cork, wood or rubber.
- (4) "Attached", for the purpose of s. NR 20.10, means affixed to the sturgeon immediately in front of the tail.
- (5) "Barbless hooks" means hooks with no barbs, or hooks with barbs that have been compressed to be in complete contact with the shank of the hook.
- (6) "Business day" has the meaning given it in s. 421.301 (6), Stats.
- (6m) "Circle hook" means a hook that is curved in a circular or oval shape so that the tip of the point is turned and perpendicular to the shank and is designed so that the tip end of the hook is not offset or angled sideways and is in alignment with the shank.

Note: The top picture displays a J hook (left) and a circle hook (right). The bottom picture displays a non-offset hook (left) and an offset hook (right).



(7) "Current validated sturgeon carcass tag", for the purpose of s. NR 20.10, means an unused tag of the current year validated according to the requirements of s. NR 20.10 (5).

(8) "Daily bag limit" means the maximum number of fish that may be reduced to a person's possession from a specified waterbody or portion of a waterbody in one day.

(9) "Department" means the department of natural resources.

(10) "Dip net" means a piece of netting suspended from a round or square frame that does not exceed 8 feet in diameter or 8 feet square.

(11) "Fish length" means the distance from the tip of the snout in a straight line to the utmost end of the tail fin fully compressed.

(12) "Fishing" or "fish", when used as a verb, means to take, capture, kill or attempt to take, capture or kill any variety of fish in the waters of the state.

(13) "Fishing shelter" means any building, tent, vehicle, shanty or similar enclosure used for the purpose of fishing.

(14) "Game fish" has the meaning found in s. 29.001 (41), Stats.

(15) "Green Bay" means those waters of Lake Michigan located to the west of the Green Bay-Lake Michigan line. For the purposes of s. NR 20.20, Green Bay shall mean Green Bay, Sturgeon Bay, Sawyer's Harbor, the Sturgeon Bay ship canal from Sturgeon Bay to a line located in the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , section 22, T27N, R26E, Door county, commencing at a point on the southwest shore of the Sturgeon Bay ship canal directly beneath the center of the Wisconsin public service company power line and extending in a northeasterly direction beneath and parallel to the center of the power line to a point on the northeast shore of the ship canal and the Fox river from its mouth up to the dam at DePere. For purposes of this chapter, "Green Bay" does not include that portion of Green Bay bounded by the mouth of the Menominee river on the west, the "government pier" or breakwall on the south, the "lighthouse pier" or breakwall on the north, and a line connecting the eastern-most points of those breakwalls on the east.

**Disability Rights Wisconsin's Testimony in Opposition to AB 384 before the Assembly  
Committee on Regulatory Licensing Reform**

**Submitted by: Attorney Mitchell Hagopian**

**September 19, 2017**

Disability Rights Wisconsin is the protection and advocacy system for people with Disabilities in Wisconsin. In that capacity, we represent people whose lives are affected by, shaped by and protected by, administrative rules. Thank you for the opportunity to testify today. We strongly oppose Assembly Bill 384 because it threatens—for no discernable reason—the regulatory framework which has developed over decades to make society accessible to, and safer for, people with disabilities.

The administrative rules, promulgated by, among other agencies, the Departments of Health Services, Public Instruction, Workforce Development and Children and Families, do a myriad of things directly impacting people with disabilities. They articulate eligibility criteria for public benefits programs, health and safety standards for the residential and foster placements in which people with disabilities live, standards for how they will receive an education, and how they will receive vocational supports. They include rules guaranteeing people with disabilities fair treatment in employment, housing, and as patients of health care providers. For people with disabilities, the regulatory apparatus is a lifeline. These rules were carefully crafted to serve specific purposes. They flesh out the statutory skeleton upon which they are based. They were not designed to impose burdens on businesses but instead to ensure fair, safe, and healthful treatment by commercial and governmental entities that service people with disabilities. a burden.

The vast majority of rules which impact people with disabilities are rules that have been around a long time and need to continue to be around. Assembly Bill 384 threatens the continuity of this regulatory framework. AB 384's genesis is cynical—it assumes that all state administrative agencies issue only unnecessary and temporary rules, rules which require constant review and are presumed to be obsolete every seven years regardless of their type or purpose. At the least, this bill will require already overburdened and understaffed administrative agencies to devote limited staff resources to monitoring rules and assuring that deadlines for reauthorizing them are met, even when there is no legitimate reason for reviewing them or a need to reauthorize them. The four agencies mentioned above-DHS, DPI, DWD, and DCF—have 240 chapters containing thousands of rules between them. DHS, which alone has approximately 96 chapters of administrative code, states in its' fiscal estimate they require an additional \$211,399 to acquire additional agency staff. At its least harmful, this purposeless exercise will drain resources from other necessary and worthy tasks of the agency.

But this law may not be so harmless. What if no additional positions are created and an overworked DHS employee neglects to timely notify JCRAR that DHS intends to readopt DHS

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MADISON	MILWAUKEE	RICE LAKE	
131 W. Wilson St. Suite 700 Madison, WI 53703	6737 West Washington St. Suite 3230 Milwaukee, WI 53214	217 West Knapp St. Rice Lake, WI 54868	disabilityrightswi.org
608 267-0214 608 267-0368 FAX	414 773-4646 414 773-4647 FAX	715 736-1232 715 736-1252 FAX	800 928-8778 consumers & family

132—the chapter which governs all aspects of skilled nursing homes in this state? Or even more likely, what if the employee in charge of that task resigns or retires and the task does not get timely transferred in the transition (which currently takes many months) to the person's replacement? And that assumes, of course, that the position itself does not get eliminated when the former employee leaves. When this happens and DHS 132 sunsets, what are the people who rely on it supposed to do? Will DHS's Division of Quality Assurance have to cease its' regulation of health and safety issues at facilities that serve our most vulnerable and medically fragile citizens? There are 95 other, equally important chapters issued and administered by DHS. This bill will require that 13 to 14 of them be readopted each year. Any thought that this will go smoothly is unrealistic.

And what of the provision in AB 384 that permits any single member of JCRAR or a standing committee that has oversight jurisdiction of the expiring chapter the ability to object to its automatic re-adoption of the entire chapter? This gives one legislator the power to require an agency to pursue a full-blown notice and comment reauthorization for the chapter, even though there may be no substantive reason to do so. The sum total of the objection requirement is that it be "in writing." This is simply too much power to vest in a single legislator.

AB 384 serves no purpose and has the potential to cause major disruption in the smooth and efficient operation of government. Because people with disabilities rely heavily on programs managed by state government through the use of administrative rules, this law's negative effects will be felt acutely by people with disabilities. AB 384 is a bad idea and should be rejected.

TESTIMONY FOR INFORMATIONAL PURPOSES ON ASSEMBLY BILL 384 BEFORE THE ASSEMBLY COMMITTEE ON REGULATORY LICENSING REFORM FROM MARC HERSTAND, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF SOCIAL WORKERS, WISCONSIN CHAPTER

Chairperson Horlacher and members of the Assembly Committee on Regulatory Licensing Reform.

I appreciate this opportunity to testify for informational purposes on Assembly Bill 384. I am gathering information on this bill and we have not yet taken a formal position on it.

However it is not clear to me that there is a need for this bill. It is my experience, after monitoring the activities of the Examining Board for Marriage and Family Therapists, Professional Counselors and Social Workers for 25 years that rules are promulgated only after extensive study, thoughtful discussion and a public hearing. Board members frequently consult with experts in the field to determine if a rule is appropriate. It is also my experience that the professional sections and boards periodically review their rules to determine if they are still relevant and purposeful. I have seen rules modified or eliminated when they no longer serve a purpose. The Department of Safety and Professional Services attorneys and staff are very helpful in this regard. The professional boards receive feedback on the rules functioning and relevance from consumer, Department staff, professional associations, businesses, agencies and other interested parties.

This bill has the potential of raising costs for many state departments. According to the many fiscal notes, although only one department-the Department of Health Services, has specifically documented additional costs (\$200, 000), almost every other department has stated the costs were indeterminate-they did not know if they would assume increased costs. Therefore there is a reasonable possibility that this bill could raise costs for many of these departments. I know that at the Department of Safety and Professional Services there has been an effort to decrease the number of meetings of professional boards, so as to save time and money for the Department. It seems reasonable to suggest that this bill will require more meetings and travel time for the professional boards as all the professions would need to meet to review all their rules. And if even one member of JCRAR or one of the standing committees objected to the rule, the State of Wisconsin would need to pay for additional time of the DSPS staff and travel of the professional board members.

If there are real identified problems with specific rules at any of the state departments, these concerns should be addressed promptly by the agency or in the case of DSPS-with their professional boards. However the massive review of all administrative rules proposed by this bill has the potential to add significantly to state costs and potentially cause chaos or major disruption in services to vulnerable Wisconsin residents. Let's move cautiously and judiciously on review of administrative rules.

TESTIMONY FOR INFORMATIONAL PURPOSES ON ASSEMBLY BILL 384 BEFORE THE  
ASSEMBLY COMMITTEE ON REGULATORY LICENSING REFORM FROM MARC  
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Chairperson Horlacher and members of the Assembly Committee on Regulatory Licensing Reform.

I appreciate this opportunity to testify for informational purposes on Assembly Bill 384. I am gathering information on this bill and we have not yet taken a formal position on it.

However it is not clear to me that there is a need for this bill. It is my experience, after monitoring the activities of the Examining Board for Marriage and Family Therapists, Professional Counselors and Social Workers for 25 years that rules are promulgated only after extensive study, thoughtful discussion and a public hearing. Board members frequently consult with experts in the field to determine if a rule is appropriate. It is also my experience that the professional sections and boards periodically review their rules to determine if they are still relevant and purposeful. I have seen rules modified or eliminated when they no longer serve a purpose. The Department of Safety and Professional Services attorneys and staff are very helpful in this regard. The professional boards receive feedback on the rules functioning and relevance from consumer, Department staff, professional associations, businesses, agencies and other interested parties.

This bill has the potential of raising costs for many state departments. According to the many fiscal notes, although only one department-the Department of Health Services, has specifically documented additional costs (\$200, 000), almost every other department has stated the costs were indeterminate-they did not know if they would assume increased costs. Therefore there is a reasonable possibility that this bill could raise costs for many of these departments. I know that at the Department of Safety and Professional Services there has been an effort to decrease the number of meetings of professional boards, so as to save time and money for the Department. It seems reasonable to suggest that this bill will require more meetings and travel time for the professional boards as all the professions would need to meet to review all their rules. And if even one member of JCRAR or one of the standing committees objected to the rule, the State of Wisconsin would need to pay for additional time of the DSPS staff and travel of the professional board members.

If there are real identified problems with specific rules at any of the state departments, these concerns should be addressed promptly by the agency or in the case of DSPS-with their professional boards. However the massive review of all administrative rules proposed by this bill has the potential to add significantly to state costs and potentially cause chaos or major disruption in services to vulnerable Wisconsin residents. Let's move cautiously and judiciously on review of administrative rules.



**Wisconsin**

**Statement Before the  
Assembly Committee on Regulatory Licensing Reform**

**By**

**Bill G. Smith  
State Director  
National Federation of Independent Business  
Wisconsin Chapter**

**Tuesday, September 19, 2017**

**Assembly Bill 384**

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Mr. Chairman I appreciate the opportunity to submit a brief statement on behalf of NFIB's 11,000 member firms.

NFIB members consistently point to regulations – state and federal – as one of the top issues holding them back from hiring workers and taking the necessary steps toward growth.

According to a recent survey study of small business owners, 41% of the respondents said state regulations discourage hiring and prevent expansion; 29% said state regulations make it more difficult to start a business; while 70% indicate compliance with state regulations is a significant costly burden on their business.

That's why we encourage the Legislature to utilize whatever ways and means available to create a regulatory environment favorable for business creation and small business growth.

In state's all across the country, and in our nation's Capital, NFIB has led the fight for sensible regulations and a regulatory review process by elected officials that requires more transparency and accountability throughout that process.

Our state's small business community believes our elected officials should have a direct role in the regulatory process and we commend Representative Steineke, Senator Darling, and all the co-authors for introducing legislation that will help establish the authority of the Legislature over the rule-making process.



**Statement Before the Assembly Committee on Regulatory Licensing Reform**  
**Tuesday, September 19, 2017**  
**Page Two**

Assembly Bill 384 would allow each chapter of the Administrative Code to expire, after seven years, unless through a process proscribed by the legislation, the rule is readopted.

We are especially pleased the bill provides the Joint Committee for Review of Administrative Rules with the responsibility to establish a schedule for the expiration rules, and also provides the Legislature with a significant role in the readoption of rules, while also providing some flexibility throughout the process of review and scheduling by the JCRAR.

We believe this hands-on review process by the Legislature will help to eliminate obsolete rules, duplicate rules or conflicting rules.

Thank you Mr. Chairman, members of the Committee, and on behalf of our states small business community, **I urge your support for passage of AB 384.**

# WMC

WISCONSIN MANUFACTURERS & COMMERCE

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## TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON REGULATORY LICENSING REFORM IN SUPPORT OF ASSEMBLY BILL 384

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Chairman Horlacher and Committee Members:

Thank you for the opportunity to testify today. My name is Lucas Vebber and I am the General Counsel and Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. With approximately 3,800 members, we are the largest business trade association in Wisconsin. WMC represents members from all over Wisconsin of all sizes and in every sector of the state's economy. I am submitting these comments today in support of Assembly Bill 384.

This legislation is the next step in what has been a multi-session effort to greatly improve Wisconsin's regulatory process. Under current law, once a regulation is promulgated it stays on the books indefinitely. This legislation changes that, and provides for the expiration of each chapter of the administrative code every seven years, while also creating an expedited promulgation and Legislative review process.

Regulations are a necessary part of government. Agencies need to be able to implement the laws that the Legislature enacts. When they promulgate regulations, they should do so in the most efficient and effective way possible. Many code chapters have been on the books for decades. This legislation would: (1) require state agencies to constantly review their administrative code chapters, (2) establish a new process to quickly re-promulgate chapters they want to keep, and (3) empower the Legislature with oversight of this process to ensure accountability. This greatly increased oversight will ultimately lead to a more efficient code and a better regulatory climate for our state.

Technology is constantly changing, the code should keep up. Earlier this year, Wisconsin was named a top-10 best state for business. Businesses throughout the country and, as we have seen recently, throughout the world, have taken notice of the improvements our state has made. An improving regulatory environment has absolutely played a role in improving our state's business climate.

Thank you for the opportunity to testify today, I would be happy to answer any questions you may have.

# OSP

OPPORTUNITY

## Solutions Project

To: Assembly Committee on Regulatory Licensing Reform  
From: Opportunity Solutions Project  
Re: Written testimony in support of AB 384  
Date: September 19, 2017

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Thank you for providing a public opportunity to share our position on Assembly Bill 384 related to the expiration of administrative rules. Opportunity Solutions Project supports the concept of this legislation.

Opportunity Solutions Project is a nonprofit, nonpartisan advocacy organization that seeks to improve lives by advocating for public policies based on the principles of free enterprise, individual liberty and a limited, accountable government. We support Assembly Bill 384 as a public policy that will hold government accountable.

Regulations should be up to date, understandable, consistent, necessary, and not unduly burdensome and we encourage the concept that each state agency must complete a routine review of its administrative rules.

By requiring the expiration of each chapter of the Wisconsin Administrative Code after seven years, you are guaranteeing an opportunity for all regulations to be reviewed. Those that fail to meet the new standards should be repealed or reformed.

In Wisconsin, once an administrative rule is promulgated, it could remain in effect indefinitely. While we appreciate the actions of the current legislature with their continuous review of administrative rules, we prefer a statutory requirement, as we cannot assume future legislatures will continue this level of review.

We also ask you to consider one change to this legislation.

Under this bill as drafted, in the year before a code chapter is set to expire, an agency may send a readoption notice to Joint Committee on the Review of Administrative Rules (JCRAR) and the appropriate standing committees proposing to readopt the chapter. If no member of JCRAR or the standing committee objects to the notice, the chapter is considered readopted without further action.

We believe the legislature should take this policy one step further and make the review active instead of passive. We recommend that unless every member of the standing committee and JCRAR explicitly voices their approval of the rule, then the chapter goes through the chapter 227 rule promulgation process. This gives any citizen or industry the opportunity to share their opinions on the area of code impacting their lives.

While new regulations are often created to address pressing problems, it is difficult to predict if regulations will remain effective a few years later. Business environments, policy goals, and other regulations all change over time, and this can limit the effectiveness of older regulations. For these reasons, we should encourage regular reviews of regulations after a period of time

that allows their unintended effects to become clear. A comprehensive review process, such as the one outlined in AB 384, will create an effective but manageable review system that also provides the public with a greater voice in the regulatory process.

Thank you for the opportunity to share our support of and recommended change to Assembly Bill 384.



**To:** Assembly Committee on Regulatory Licensing Reform

**From:** Tom Larson, WRA Senior Vice President of Legal and Public Affairs, and  
Jim Villa, CEO, NAIOP-Wisconsin

**Date:** September 19, 2017

**RE:** AB 384 – The expiration of administrative rules

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The Wisconsin REALTORS<sup>®</sup> Association (WRA) and NAIOP-WI support AB 384, legislation that seeks to establish, among other things, a seven-year process for reviewing and updating administrative rules.

**Background** – Wisconsin has volumes of administrative rules, many of which have not been reviewed and updated for decades. These rules are often antiquated and, in some cases, are no longer applicable or enforceable due to changes in industry standards, technology, court cases, or legislative action. Without a regular review process to ensure that administrative rules are both current and consistent with controlling statutes or case law, confusion often results for both regulators and the public who may be unaware that the administrative rules are no longer valid. Moreover, the application of incorrect standards found in outdated administrative rules may result in added and unnecessary costs, delays, or even denials of permits, credentials, or economic development projects.

**Inconsistencies Between Statutes and Administrative Rules Are Common** – The following are examples of administrative rules that are inconsistent with state statutes:

- **Sprinkler rules** -- The Wisconsin Statutes explicitly require sprinklers in multifamily dwellings only if the dwelling contains more than 20 units. See Wis. Stat. § 101.14(4m)(b). However, the administrative rules require sprinklers in multifamily dwellings if the dwelling contains more than 4 units. See Wis. Admin. Code SPS § 363.0903. Despite the fact that 2011 Wis. Act 21 (Act 21) prohibits state agencies from enforcing a standard, requirement or threshold that is more restrictive than the standard contained in the statutes, the Department of Safety and Professional Services (DSPS) continues to enforce the outdated administrative rule, which adds thousands of dollars per unit to the cost of multi-family dwellings. See Wis. Stat. § 227.11(2)(a)3.
- **Definition of ASNRI** -- The Wisconsin Statutes exempt certain water-related activities from the Department of Natural Resources (DNR) Ch. 30 permit requirements unless the activity is located in an "area of special natural resource interest" (ASNRI). See Wis. Stat. § 30.01(1am). However, the definition of ASNRI is narrower in the statutes (Wis. Stat. § 30.01(1am)) than in related administrative rules (see e.g., Wis. Admin. Code § NR 103.04). Thus, the application of the ASNRI definition found in the administrative rules would require projects to obtain permits despite the fact that the statutes exempt such projects from

permitting requirements. See Wis. Stat. § 30.12(1g)<sup>1</sup>. Again, if the DNR requires a project to obtain a permit for a statutorily-exempt activity, the project would incur unnecessary delays and costs.

- Real estate brokerage -- 2015 Wis. Act 258 modernized Wis. Stat. Ch. 452 (which regulates real estate brokerage activity) by, among other things, updating terminology defining the independent contractor relationship between real estate firms and agents. In other states, the use of incorrect terminology such as “broker-employer” and “employee” when referring to the real estate company and its agents created confusion for courts and regulators as to whether agents were truly independent contractors. Recognizing the same confusion would result if the terminology in the administrative rules was different than the statutes, the DSPS immediately updated the language in the rules to be consistent with new terminology in the statutes resulting from Act 258. As demonstrated by the DSPS, it is necessary for state agencies to review their administrative rules on a regular basis to, among other things, ensure they are current and consistent with the statutes.

As highlighted by the above examples, the WRA and NAIOP-WI support AB 384 to help ensure correctness and relevancy in administrative rules by implementing a review process of each chapter of the administrative rules every seven years.

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<sup>1</sup>Exempts from permitting requirements activities such as piers, boat hoists, and deposits of sand/gravel of less than 2 cubic yards.



**THE LEADING VOICE  
FOR WISCONSIN SMALL  
AND INDEPENDENT BUSINESSES**

**September 19, 2017**

**TO: Members  
Assembly Committee on Regulatory Licensing Reform**

**FR: Brian Dake  
Legislative Director  
Wisconsin Independent Businesses**

**RE: 2017 Assembly Bill (AB) 384 relating to: the expiration of administrative rules.**

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Chairman Horlacher and committee members my name is Brian Dake, Legislative Director for Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of 2017 Assembly Bill (AB) 384.

By way of background, Wisconsin Independent Businesses (WIB) was formed in 1977 to provide small, independent business owners with a voice in the legislative and regulatory activities of state government. Today, we have more than 4,000 members – approximately 85% of which own and operate businesses that have fewer than 25 employees.

Easing the regulatory burden on small employers is an ongoing WIB public policy priority and we believe reforms to the administrative rule-making process are needed to help us achieve this important objective.

Since 2011, Wisconsin lawmakers have taken meaningful steps to improve the processes by which new administrative rules are created. There is more accountability and transparency to the rule-making process. There are additional opportunities for small businesses to provide input before new rules are put in place. Rigorous economic analysis is applied to proposed regulations to ensure that lawmakers fully understand the costs as well as the benefits.

***WIB...Helping you where you need it.***

PO Box 2135 | Madison, Wisconsin 53701 | 800-362-9644 | [www.wibiz.org](http://www.wibiz.org)

We believe these “small business-friendly” process reforms will lead to state agency regulations which are fair and reasonable. With that said, a fair and reasonable regulation put in place in 2017 may not be so in the future.

Customary business practices may change, existing technology may evolve or unforeseen innovations may occur. Small, independent businesses must adapt to these marketplace forces to remain viable and competitive. That is much harder to do when they must comply outdated, obsolete or unnecessary state government regulations.

2017 Assembly Bill (AB) 384 creates a thoughtful, deliberate and systematic process for the periodic review of all administrative rules. Under this legislation, outdated, obsolete or unnecessary administrative rules can be easily culled from the Wisconsin Administrative Code.

Moreover, under this legislation, state lawmakers can renew existing regulations or subject them to re-adoption through the standard rule-making process – a rigorous process that allows small employers to provide their input, requires the state agency to reassess the economic impact of the regulation and gives state lawmakers another opportunity to determine whether re-adoption of the administrative rule is warranted.

We respectfully ask for your support of AB 384.

Thank you in advance for your consideration of our request.