



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-4764 (For: Rep. Nygren)

has been transferred to the drafting file for

2011 LRB-0458 (For: Rep. Nygren)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 11/18/2010 (Per: MPG)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2009 DRAFTING REQUEST

Bill

Received: **07/15/2010**

Received By: **tkuczens**

Wanted: **As time permits**

Companion to LRB:

For: **John Nygren (608) 266-2343**

By/Representing: **Waylon Hurlburt**

May Contact:

Drafter: **tkuczens**

Subject: **Econ. Development - bus. dev.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Nygren@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

changes to membership and responsibilities of Small Business Regulatory Review Board, changes to Office of Regulatory Assistance

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 07/20/2010	jdyer 07/30/2010		_____			State
/P1			rschluet 08/02/2010	_____	sbasford 08/02/2010		

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 07/15/2010

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

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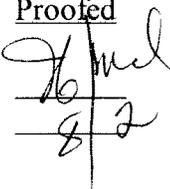
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changes to membership and responsibilities of Small Business Regulatory Review Board, changes to Office of Regulatory Assistance

Instructions:

See attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	tkuczens	PI 7/30 jcd					

FE Sent For:

<END>

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Thursday, July 01, 2010 1:07 PM
To: Hurlburt1, Waylon
Subject: RE: Bill Draft Meeting?

Okay! See you Tuesday at 10:30.

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Hurlburt1, Waylon
Sent: Thursday, July 01, 2010 12:17 PM
To: Kuczenski, Tracy
Subject: RE: Bill Draft Meeting?

Nygren's office is 127 West. First floor West wing directly opposite the governor.

Please bring AB 767 draft and I think laws were changed regarding the Small Business Ombudsman in the CORE Jobs bill that passed this session that may impact any new draft. Senate Bill 409 was the bill and it created a new "Office of Regulatory Assistance." A draft of that bill would help as well.

Thanks Tracy.

From: Kuczenski, Tracy
Sent: Thu 7/1/2010 12:01 PM
To: Hurlburt1, Waylon
Subject: RE: Bill Draft Meeting?

Sounds good. I'll come to Nygren's office, but can you please remind me where that is? Also, what materials (other than a copy of AB 799) would you like me to bring?

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Hurlburt1, Waylon
Sent: Thursday, July 01, 2010 11:39 AM
To: Kuczenski, Tracy
Subject: RE: Bill Draft Meeting?

7/20/2010

How about 10:30am on Tuesday? Nygren's office or yours?

From: Kuczenski, Tracy
Sent: Thursday, July 01, 2010 11:38 AM
To: Hurlburt1, Waylon
Subject: RE: Bill Draft Meeting?

Hi Waylon -- I am available to meet with you next week; I am coming in a bit later in the mornings (after I have dropped off my son at the camp of the week), so perhaps after 9:30 on M, Tu, Wed or Fri or after 10:30 Th. Let me know what time works for you.

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Hurlburt1, Waylon
Sent: Thursday, July 01, 2010 10:55 AM
To: Kuczenski, Tracy
Subject: Bill Draft Meeting?

Hello Tracy,

Hope all is well. Representative Nygren is looking to draft Assembly Bill 799 again next session and would like to begin working on a draft. I think with the changes to law this session and the differences between this bill and Assembly Bill 767 which is similar, I would like to sit down with you and talk the draft through.

Is there a time next week when you would be available to stop by or I could come over to work on a draft?

Thanks,

Waylon Hurlburt
Legislative Aide
Office of Representative John Nygren
89th Assembly District
(888)534-0089

7/20/2010

Mtg. w/ Waylon (Rep. Mygren) re: 2009 AB 767

July 6, 2010

Office of Regulatory Assistance (ch. 560 subch. III)

2009 AB 767/799

change membership of Regulatory Review Board as under AB 767 ✓

AB 767 p. 5 section 4: attempt to tie in with new (revised) provisions in ch. 560 (Act 265 section 43.16 re: interagency cooperation) → with respect to designated staff in each agency. One person could accomplish responsibilities of Act 265 and AB 767. ✓

AB 767 — Do not create small biz advocate (see p. 8 § 8) in s. 560.038.

- (★) Transfer responsibilities to office of regulatory assistance
- staff the board
 - do the staff in AB 767 p. 7 section 7 lines 18 - 25

^{staff} ~~staff~~ ^{coordinator} ~~staff~~ referred on line 24 should be re name in s. 227.11(4)(am) person and s. 560.43(1)(a).

• p. 9, lines 12 - 18

• p. 9 line 19 - 25 & p. 10 line 2

Wrap all small biz administration/clearinghouse responsibilities under 560.03 into the office of regulatory assistance.

S 227.30 re: role of small biz org. renewed. to review current rules.



State of Wisconsin
2009 - 2010 LEGISLATURE

4764/P1
LRB-431271
TKK(jld/ph) Keep
insert
EMNR

DUE MONDAY
please

2009 ASSEMBLY BILL 767

in 7/20/2010

February 23, 2010 - Introduced by Representatives BARCA, DEXTER, STRACHOTA, BERNARD SCHABER, CLARK, ZIGMUNT, GARTHWAITE, HILGENBERG, SHILLING, JORGENSEN, STEINBRINK, KERKMAN, SMITH, SINICKI, HUBLER, BERCEAU and TURNER, cosponsored by Senators PLALE, WIRCH, DARLING, VINEHOUT, LASSA and TAYLOR. Referred to Committee on Jobs, the Economy and Small Business.

4

Regen

1 AN ACT to renumber and amend 560.03 (9); to amend 15.155 (5), 20.143 (1)
2 (kc), 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79
3 (3) (intro.) and 560.11 (2); and to create 227.04, 560.038 (title) and (1) (intro.),
4 560.038 (1) (a), (b), (c), (d) and (e) and 560.038 (3) of the statutes; relating to:
5 changes to the membership of the Small Business Regulatory Review Board,
6 notification to the Small Business Regulatory Review Board of bills with an
7 economic impact on small businesses, and the role of the Office of the Small
8 Business Advocate in the Department of Commerce.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the structure and functions of the small business ombudsman clearinghouse in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board in Commerce consists of six representatives of small businesses, the chairpersons of the senate and assembly

Office of Regulatory Assistance
responsibilities

ASSEMBLY BILL 767

committees concerned with small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information and provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the month commencing after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to determine whether a proposed rule or emergency rule will have a significant

ASSEMBLY BILL 767

economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.✓

Administrative law: considerations for small business

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.✓
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.✓
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small businesses made a good faith effort to comply with the rule and the rule does not pose a threat to public health, safety, or welfare or to the environment or the workplace.✓

Small business regulatory coordinators and the Office of the Small Business

Advocate & **Regulatory Assistance** ← (B)

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses. ✓

This bill changes the name of the ombudsman clearinghouse to the Office of the Small Business Advocate (office). ✓ The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocate organizations, to take a proactive role in maintaining and helping small businesses to grow, and to have the goal of creating jobs and a healthy small business sector. The bill also requires Commerce to designate at least one full-time employee to serve as staff to the office. The staff of the office must, in turn, serve as staff to the board and work together with the small business regulatory coordinator of each agency. ✓

Also under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the role of the office in providing regulatory relief to and promoting regulatory compliance by small businesses. ✓

*
*

locates

Regulatory Assistance

ASSEMBLY BILL 767

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.155 (5) of the statutes is amended to read:

15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small business regulatory review board, attached to the department of commerce under s. 15.03. The board shall consist of ~~a representative of the department of administration; a representative of the department of agriculture, trade and consumer protection; a representative of the department of children and families; a representative of the department of commerce; a representative of the department of health services; a representative of the department of natural resources; a representative of the department of regulation and licensing; a representative of the department of revenue; a representative of the department of workforce development;~~ 6 ⁷ representatives of small businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms; and the chairpersons of one senate and one assembly committee concerned with small businesses, appointed as are members of standing committees. The representatives of the departments shall be selected by the secretary of that department.

SECTION 2. 20.143 (1) (kc) of the statutes is amended to read:

20.143 (1) (kc) *Clean air act compliance assistance*. From moneys transferred from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule for assisting the department of natural resources in administering the small business stationary source technical and environmental compliance assistance program under s. 285.79 and for expenses related to serving as ^{ombudsman} ^{an}

plain

ASSEMBLY BILL 767

① advocate for small business stationary sources as required under s. 560.03 (9)

② 560.038 (2) ^e 560.42(1m)(d) ✓

3 SECTION 3. 227.04 of the statutes is created to read:

4 **227.04 Considerations for small business.** ✓ (1) In this section, “small
5 business” has the meaning given in s. 227.114 (1). ✓

6 (2) Consistent with the requirements under s. 895.59 ✓ and, to the extent
7 possible, each agency shall do all of the following:

8 (a) Provide assistance to small businesses to help small businesses comply with
9 rules promulgated by the agency. ✓

10 (b) Establish, by rule, reduced fines and alternative enforcement mechanisms
11 for minor violations of administrative rules made by small businesses. The rules
12 promulgated under this subdivision ^{e paragraph} shall include a definition of “minor violation.” ✓

13 (c) In deciding whether to impose a fine against a small business found to be
14 in violation of a rule, consider the appropriateness of a written warning, reduced fine,
15 or alternative penalty if all of the following apply: ✓

16 1. The small business has made a good faith effort to comply with the rule. ✓

17 2. The rule violation does not pose a threat to public health, safety, or welfare,
18 or to the environment or the workplace. ✓

19 SECTION 4. 227.114 (7m) ✓ of the statutes is amended to read:

20 227.114 (7m) ~~The~~ Each agency shall designate ~~a~~ at least one employee to serve
21 as the small business regulatory coordinator to for the agency, and shall publicize
22 that employee's electronic mail address and telephone number. ✓ The small business
23 regulatory coordinator shall ✓ act as a contact person for small business regulatory
24 issues for the agency ✓ and shall publicize that person's electronic mail address and

ASSEMBLY BILL 767

regulatory assistance as require

1

telephone number cooperate with the staff of the office of the small business advocate

2

under s. 560.038 to accomplish the objectives of this subsection and s. 560.038

560.43 (3) 560.42 (1m) (e), (f), and (g)

3

SECTION 5. 227.14 (2g) (intro.) of the statutes is amended to read:

4

227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)

5

On the same day that an agency submits to the legislative council staff under s.

6

227.15 a proposed rule that may have a significant an economic impact on small

7

businesses, the agency shall submit the proposed rule, the analysis required under

8

sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)

9

to the small business regulatory review board. The board may use cost-benefit

10

analysis to determine the fiscal effect of the rule on small businesses and shall

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determine whether the proposed rule will have a significant impact on a substantial

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number of small businesses and whether the agency has complied with subs. (2) and

13

(2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each

14

proposed rule shall include provisions detailing how the rule will be enforced. If the

15

board determines that the rule does not include an enforcement provision or that the

16

agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall

17

notify the agency of that determination and ask the agency to comply with any of

18

those requirements. If the board determines that the proposed rule will have a

19

significant economic impact on a substantial number of small businesses, the board

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may submit to the agency suggested changes in the proposed rule to minimize the

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economic impact of the proposed rule, or may recommend the withdrawal of the

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proposed rule under sub. (6). In addition, the board may submit other suggested

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changes in the proposed rule to the agency, including proposals to reduce the use of

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cross-references in the rule. The board shall send a report of those suggestions any

25

suggested changes and of any notice of failure to include enforcement provisions or

ASSEMBLY BILL 767

1 to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff.
2 The notification to the agency may include a request that the agency do any of the
3 following:

4 **SECTION 6.** 227.19 (3m) [✓] of the statutes is amended to read:

5 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
6 specified under sub. (3) (e) is not required for any rule if the agency, ~~after complying~~
7 ~~with s. 227.114 (1) to (5),~~ board determines that the rule will not have a significant
8 economic impact on a substantial number of small businesses.

9 **SECTION 7.** 227.24 (3m) (intro.) [✓] of the statutes is amended to read:

10 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
11 On the same day that the agency files a rule under sub. (3) that may have –a
12 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the
13 agency shall submit a copy of the rule to the small business regulatory review board.
14 The board may use cost–benefit analysis to determine the fiscal effect of the
15 emergency rule on small businesses and shall determine [✓] whether the emergency
16 rule will have a significant economic impact on a substantial number of small
17 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
18 (2m). [✓] If the board determines that the emergency rule will have a significant
19 economic impact on a substantial number of small businesses, the board may submit
20 to the agency and to the legislative council staff [✓] suggested changes in the emergency
21 rule to minimize the economic impact of the emergency rule. [✓] If the board determines
22 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
23 shall notify the agency of that determination and ask the agency to comply with any
24 of those provisions. In addition, the board may submit other suggested changes in

ASSEMBLY BILL 767

Insert material from p. 10

Insert 8-9

1 the proposed rule to the agency and may include a request that the agency do any
2 of the following:

INSERT 8-8 ✓ ✓

3 SECTION 8. 285.79 (3) (intro.) of the statutes is amended to read:

4 285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation
5 with the office of the small business ombudsman-clearinghouse advocate under s. office of regulatory assistance ✓
6 560.03 (9) 560.038, develop and administer a small business stationary source
7 technical and environmental compliance assistance program. The program shall
8 include all of the following:

9 SECTION 9. 560.03 (9) of the statutes is renumbered 560.038 (2) and amended
10 to read:

11 560.038 (2) Establish The department shall establish and operate a small
12 business ombudsman-clearinghouse for business and industry the office to facilitate
13 the flow of information from between other state and federal agencies and business
14 and industry, to assist state agencies in establishing methods to encourage the
15 participation of small businesses in rule making under s. 227.114 (4), and to serve
16 as ombudsman for small business stationary sources, as defined in s. 285.79 (1), in
17 connection with the implementation of the federal clean air act, 42 USC 7401 to

18 7671q. The office shall be modeled on the best practices of both state and federal
19 small business advocate organizations, shall take a proactive role in maintaining
20 and helping small businesses grow economically, and shall have the goal of creating
21 jobs and a healthy small business sector. The office shall be staffed by at least one
22 full-time employee of the department. The staff of the office shall serve as staff to
23 the small business regulatory review board and shall cooperate with the small
24 business regulatory coordinator designated by each agency under s. 227.114 (7m) to
25 accomplish the objectives of this section, as appropriate.

plain

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plain

Insert 9-1

ASSEMBLY BILL 767

1 SECTION 10. 560.038 (title) and (1) (intro.) of the statutes are created to read:
2 560.038 (title) Office of the small business advocate. (1) (intro.) In this
3 section:

4 SECTION 11. 560.038 (1) (a), (b), (c), (d) and (e) of the statutes are created to read:

5 560.038 (1) (a) "Agency" has the meaning given in s. 227.01 (1).

6 (b) "Office" means the office of the small business advocate.

7 (c) "Small business" has the meaning given in s. 227.114 (1).

8 (d) "Small business regulatory coordinator" means the employee of an agency
9 designated by the agency as required under s. 227.114 (7m).

10 (e) "Small business stationary sources" has the meaning given in s. 285.79 (1).

11 SECTION 12. 560.038 (3) of the statutes ^{are} created to read: ✓
e 560.042 (1m) (e) (f) and (g)

12 560.038 (3) The office shall do all of the following: *e 560.042 (1m) (e) NO A*

13 *no p* (a) Upon the written request of a small business against which an agency has
14 initiated an enforcement action that may, in the opinion of the small business, cause
15 unnecessary hardship to the small business, review and investigate the
16 circumstances of the enforcement action and prepare recommendations regarding
17 alternative penalties to be imposed upon the small business that will, in the opinion
18 of the office, achieve regulatory compliance by the small business.

19 *A (F) (b)* Submit to the small business regulatory coordinator of the agency initiating
20 the enforcement action under par. *(a) (e)* all of the following: ✓

21 1. A copy of the written request submitted to the office under par. *(a) (e)*

22 2. Any recommendations prepared by the office under par. *(a) (e)*

23 3. A statement requesting that the *✓* small business regulatory coordinator
24 submit to the office within 45 days after receipt of the statement a written response
25 describing the enforcement action taken by the agency against the small business

1 and whether any considerations were made for the small business as a result of the
2 recommendations made under subd. 2. ✓

3 (g) (c) Annually do all of the following:

4 1. Compile the written requests received by the office under par. (a), the
5 submissions made by the office under par. (b), and any communications received
6 from enforcing agencies under par. (b). ✓ (e) ✓ (f)

7 2. Analyze and evaluate the information under subd. 1. and any other relevant
8 information to determine regulatory enforcement trends and the efficacy of the office
9 in providing regulatory relief to and promoting regulatory compliance by small
10 businesses.

11 3. Report the information and findings under subsd. 1. and 2. to the governor
12 and to the legislature under s. 13.172 (2). ✓

Insert 10-13

move to p. 8

13 SECTION 13. 560.11 (2) of the statutes is amended to read:

14 560.11 (2) The employees of the department of commerce who staff the office
15 of the small business ombudsman-clearinghouse advocate under s. 560.03 (9)
16 560.038 and the employees of the department of natural resources who staff the
17 small business stationary source technical and environmental compliance
18 assistance program under s. 285.79 shall provide the small business environmental
19 council with the assistance necessary to comply with sub. (1). ✓

serve as ombudsman for

stationary sources

20 SECTION 14. Initial applicability.

21 (1) The treatment of section 227.14 (2g) (intro.) of the statutes first applies to
22 a proposed administrative rule submitted by an agency to the legislative council staff
23 under section 227.15 of the statutes on the effective date of this subsection. ✓

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4764/P1ins
TKK:.....

INSERT
8-9
starts here

as affected by 2009 Wisconsin
Act 265,

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Insert 8-9

SECTION 1. 560.03 (9) of the statutes is repealed. (end ins 8-8)

SECTION 2. 560.41 (intro.) of the statutes is amended to read:

560.41 Definitions. (intro.) In this subchapter, unless the context requires otherwise:

History: 1983 a. 91; 1995 a. 27; 1997 a. 27; 2009 a. 28, 265

SECTION 3. 560.41 (3) of the statutes is created to read:

560.41 (3) "Small business" has the meaning given in s. 227.114 (1).

SECTION 4. 560.41 (4) of the statutes is created to read:

560.41 (4) "Small business regulatory coordinator" means the employee of an agency designated by the agency as required under s. 227.114 (7m).

SECTION 5. 560.415 of the statutes is created to read:

560.415 Office organization. (end ins 8-9)

Insert 9-1

SECTION 6. 560.42 (1m) (b) of the statutes is amended to read:

560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal agencies, authorities, municipalities, and local economic development organizations.

History: 1983 a. 91; 1985 a. 182 s. 57; 1987 a. 186; 1991 a. 39; 1993 a. 02; 1995 a. 27; 1997 a. 27; 2001 a. 16; 2007 a. 125; 2009 a. 265.

SECTION 7. 560.42 (1m) (c) of the statutes is created to read:

560.42 (1m) (c) Assist agencies to comply with the requirements under s. 560.43 (3).

SECTION 8. 560.42 (1m) (d) of the statutes is created to read:



1 560.42 (1m) (d) Serve as ombudsman[✓] for small business stationary sources, as
2 defined in s. 285.79 (1)[✓], in connection with the implementation of the federal clean
3 air act, 42 USC 7401 to 7671q.

4 **Insert 10-13**

5 **SECTION 9.** 560.43 (3)[✓] of the statutes is created to read:

6 560.43 (3) ENCOURAGE PARTICIPATION IN RULE MAKING.[✓] Each agency shall
7 establish methods to encourage the participation of small businesses in[✓] rule making
8 under s. 227.114 (4).[✓]



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 560.03 (9); *to amend* 15.155 (5), 20.143 (1) (kc), 227.114 (7m),
2 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79 (3) (intro.), 560.11
3 (2), 560.41 (intro.) and 560.42 (1m) (b); and *to create* 227.04, 560.41 (3), 560.41
4 (4), 560.415, 560.42 (1m) (c), 560.42 (1m) (d), 560.42 (1m) (e), (f) and (g) and
5 560.43 (3) of the statutes; **relating to:** changes to the membership of the Small
6 Business Regulatory Review Board, notification to the Small Business
7 Regulatory Review Board of bills with an economic impact on small businesses,
8 and the role of the Office of Regulatory Assistance in the Department of
9 Commerce.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board in Commerce consists of six representatives of small businesses, the chairpersons of the senate and assembly

committees concerned with small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

Rule making: considerations for small businesses

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information and provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the month commencing after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to determine whether a proposed rule or emergency rule will have a significant

economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Administrative law: considerations for small business

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small businesses made a good faith effort to comply with the rule and the rule does not pose a threat to public health, safety, or welfare or to the environment or the workplace.

Small business regulatory coordinators and the Office of Regulatory Assistance

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill locates the ombudsman clearinghouse in the Office of Regulatory Assistance (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocate organizations, to take a proactive role in maintaining and helping small businesses to grow, and to have the goal of creating jobs and a healthy small business sector. The bill also requires Commerce to designate at least one full-time employee to serve as staff to the office. The staff of the office must, in turn, serve as staff to the board and work together with the small business regulatory coordinator of each agency.

Also under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the role of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.155 (5) of the statutes is amended to read:

2 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
3 business regulatory review board, attached to the department of commerce under s.
4 15.03. The board shall consist of ~~a representative of the department of~~
5 ~~administration; a representative of the department of agriculture, trade and~~
6 ~~consumer protection; a representative of the department of children and families; a~~
7 ~~representative of the department of commerce; a representative of the department~~
8 ~~of health services; a representative of the department of natural resources; a~~
9 ~~representative of the department of regulation and licensing; a representative of the~~
10 ~~department of revenue; a representative of the department of workforce~~
11 ~~development; 6 7~~ representatives of small businesses, as defined in s. 227.114 (1),
12 who shall be appointed for 3-year terms, and the chairpersons of one senate and one
13 assembly committee concerned with small businesses, appointed as are members of
14 standing committees. ~~The representatives of the departments shall be selected by~~
15 ~~the secretary of that department.~~

16 **SECTION 2.** 20.143 (1) (kc) of the statutes is amended to read:

17 20.143 (1) (kc) *Clean air act compliance assistance.* From moneys transferred
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule
19 for assisting the department of natural resources in administering the small
20 business stationary source technical and environmental compliance assistance

1 program under s. 285.79 and for expenses related to serving as ombudsman for small
2 business stationary sources as required under s. ~~560.03 (9)~~ 560.42 (1m) (d).

3 **SECTION 3.** 227.04 of the statutes is created to read:

4 **227.04 Considerations for small business.** (1) In this section, “small
5 business” has the meaning given in s. 227.114 (1).

6 (2) Consistent with the requirements under s. 895.59 and, to the extent
7 possible, each agency shall do all of the following:

8 (a) Provide assistance to small businesses to help small businesses comply with
9 rules promulgated by the agency.

10 (b) Establish, by rule, reduced fines and alternative enforcement mechanisms
11 for minor violations of administrative rules made by small businesses. The rules
12 promulgated under this paragraph shall include a definition of “minor violation.”

13 (c) In deciding whether to impose a fine against a small business found to be
14 in violation of a rule, consider the appropriateness of a written warning, reduced fine,
15 or alternative penalty if all of the following apply:

16 1. The small business has made a good faith effort to comply with the rule.

17 2. The rule violation does not pose a threat to public health, safety, or welfare,
18 or to the environment or the workplace.

19 **SECTION 4.** 227.114 (7m) of the statutes is amended to read:

20 227.114 (7m) ~~The~~ Each agency shall designate ~~a~~ at least one employee to serve
21 as the small business regulatory coordinator to ~~for the agency, and shall publicize~~
22 that employee's electronic mail address and telephone number. The small business
23 regulatory coordinator shall act as a contact person for small business regulatory
24 issues for the agency and shall publicize ~~that person's electronic mail address and~~
25 ~~telephone number~~ cooperate with the staff of the office of regulatory assistance as

1 required under s. 560.43 (3) to accomplish the objectives of this subsection and s.
2 560.42 (1m) (e), (f), and (g).

3 **SECTION 5.** 227.14 (2g) (intro.) of the statutes is amended to read:

4 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)

5 On the same day that an agency submits to the legislative council staff under s.
6 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
7 businesses, the agency shall submit the proposed rule, the analysis required under
8 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
9 to the small business regulatory review board. The board may use cost-benefit
10 analysis to determine the fiscal effect of the rule on small businesses and shall
11 determine whether the proposed rule will have a significant impact on a substantial
12 number of small businesses and whether the agency has complied with subs. (2) and
13 (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each
14 proposed rule shall include provisions detailing how the rule will be enforced. If the
15 board determines that the rule does not include an enforcement provision or that the
16 agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall
17 notify the agency of that determination and ask the agency to comply with any of
18 those requirements. If the board determines that the proposed rule will have a
19 significant economic impact on a substantial number of small businesses, the board
20 may submit to the agency suggested changes in the proposed rule to minimize the
21 economic impact of the proposed rule, or may recommend the withdrawal of the
22 proposed rule under sub. (6). In addition, the board may submit other suggested
23 changes in the proposed rule to the agency, including proposals to reduce the use of
24 cross-references in the rule. The board shall send a report of those suggestions any
25 suggested changes and of any notice of failure to include enforcement provisions or

1 to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff.
2 The notification to the agency may include a request that the agency do any of the
3 following:

4 **SECTION 6.** 227.19 (3m) of the statutes is amended to read:

5 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
6 specified under sub. (3) (e) is not required for any rule if the agency, after complying
7 with s. 227.114 (1) to (5), board determines that the rule will not have a significant
8 economic impact on a substantial number of small businesses.

9 **SECTION 7.** 227.24 (3m) (intro.) of the statutes is amended to read:

10 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
11 On the same day that the agency files a rule under sub. (3) that may have ~~a~~
12 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the
13 agency shall submit a copy of the rule to the small business regulatory review board.
14 The board may use cost-benefit analysis to determine the fiscal effect of the
15 emergency rule on small businesses and shall determine whether the emergency
16 rule will have a significant economic impact on a substantial number of small
17 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
18 (2m). If the board determines that the emergency rule will have a significant
19 economic impact on a substantial number of small businesses, the board may submit
20 to the agency and to the legislative council staff suggested changes in the emergency
21 rule to minimize the economic impact of the emergency rule. If the board determines
22 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
23 shall notify the agency of that determination and ask the agency to comply with any
24 of those provisions. In addition, the board may submit other suggested changes in

1 the proposed rule to the agency and may include a request that the agency do any
2 of the following:

3 **SECTION 8.** 285.79 (3) (intro.) of the statutes is amended to read:

4 285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation
5 with the ~~small business ombudsman clearinghouse~~ office of regulatory assistance
6 under s. ~~560.03 (9)~~ 560.42 (1m) (d), develop and administer a small business
7 stationary source technical and environmental compliance assistance program. The
8 program shall include all of the following:

9 **SECTION 9.** 560.03 (9) of the statutes, as affected by 2009 Wisconsin Act 265,
10 is repealed.

11 **SECTION 10.** 560.11 (2) of the statutes is amended to read:

12 560.11 (2) The employees of the department of commerce who ~~staff the~~ serve
13 as ombudsman for small business ~~ombudsman clearinghouse~~ stationary sources
14 under s. ~~560.03 (9)~~ 560.42 (1m) (d) and the employees of the department of natural
15 resources who staff the small business stationary source technical and
16 environmental compliance assistance program under s. 285.79 shall provide the
17 small business environmental council with the assistance necessary to comply with
18 sub. (1).

19 **SECTION 11.** 560.41 (intro.) of the statutes is amended to read:

20 **560.41 Definitions.** (intro.) In this subchapter, unless the context requires
21 otherwise:

22 **SECTION 12.** 560.41 (3) of the statutes is created to read:

23 560.41 (3) "Small business" has the meaning given in s. 227.114 (1).

24 **SECTION 13.** 560.41 (4) of the statutes is created to read:

1 560.41 (4) "Small business regulatory coordinator" means the employee of an
2 agency designated by the agency as required under s. 227.114 (7m).

3 **SECTION 14.** 560.415 of the statutes is created to read:

4 **560.415 Office organization.** The office shall be modeled on the best
5 practices of both state and federal small business advocate organizations, shall take
6 a proactive role in maintaining and helping small businesses grow economically, and
7 shall have the goal of creating jobs and a healthy small business sector. The office
8 shall be staffed by at least one full-time employee of the department. The staff of
9 the office shall serve as staff to the small business regulatory review board and shall
10 cooperate with the small business regulatory coordinator designated by each agency
11 under s. 227.114 (7m) to accomplish the objectives of this section, as appropriate.

12 **SECTION 15.** 560.42 (1m) (b) of the statutes is amended to read:

13 560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal
14 agencies, authorities, municipalities, and local economic development
15 organizations.

16 **SECTION 16.** 560.42 (1m) (c) of the statutes is created to read:

17 560.42 (1m) (c) Assist agencies to comply with the requirements under s.
18 560.43 (3).

19 **SECTION 17.** 560.42 (1m) (d) of the statutes is created to read:

20 560.42 (1m) (d) Serve as ombudsman for small business stationary sources, as
21 defined in s. 285.79 (1), in connection with the implementation of the federal Clean
22 Air Act, 42 USC 7401 to 7671q.

23 **SECTION 18.** 560.42 (1m) (e), (f) and (g) of the statutes are created to read:

24 560.42 (1m) (e) Upon the written request of a small business against which an
25 agency has initiated an enforcement action that may, in the opinion of the small

1 business, cause unnecessary hardship to the small business, review and investigate
2 the circumstances of the enforcement action and prepare recommendations
3 regarding alternative penalties to be imposed upon the small business that will, in
4 the opinion of the office, achieve regulatory compliance by the small business.

5 (f) Submit to the small business regulatory coordinator of the agency initiating
6 the enforcement action under par. (e) all of the following:

7 1. A copy of the written request submitted to the office under par. (e).

8 2. Any recommendations prepared by the office under par. (e).

9 3. A statement requesting that the small business regulatory coordinator
10 submit to the office within 45 days after receipt of the statement a written response
11 describing the enforcement action taken by the agency against the small business
12 and whether any considerations were made for the small business as a result of the
13 recommendations made under subd. 2.

14 (g) Annually do all of the following:

15 1. Compile the written requests received by the office under par. (e), the
16 submissions made by the office under par. (f), and any communications received from
17 enforcing agencies under par. (f).

18 2. Analyze and evaluate the information under subd. 1. and any other relevant
19 information to determine regulatory enforcement trends and the efficacy of the office
20 in providing regulatory relief to and promoting regulatory compliance by small
21 businesses.

22 3. Report the information and findings under subds. 1. and 2. to the governor
23 and to the legislature under s. 13.172 (2).

24 **SECTION 19.** 560.43 (3) of the statutes is created to read:

