



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 70

Assembly Amendment 2

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CURRENT LAW

Under current law, for all proposed rules that will have an effect on small businesses,¹ a general rule requires an agency to submit a final regulatory flexibility analysis. The final regulatory flexibility analysis includes, among other things, the agency's reason for including or failing to include various methods for reducing the rule's impact on small businesses. However, 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. [s. 227.19 (3) (e) and (3m), Stats.]

In addition, an agency must submit a proposed rule that the agency determines may have a significant economic impact on small businesses to the Small Business Regulatory Review Board for review. The board is currently comprised of nine representatives of state agencies and six representatives of small businesses. [s. 15.105 (33), Stats.] The board may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the agency has complied with statutory requirements to reduce impacts on small businesses. The board then may ask the agency to comply with statutory requirements and suggest changes to the proposed rule. [s. 227.14 (2g), Stats.]

¹ In this context, "small business" is defined to mean 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 million. [s. 227.114 (1), Stats.]

2011 ASSEMBLY BILL 70

2011 Assembly Bill 70 makes numerous changes to the administrative rule-making process related to the Small Business Regulatory Review Board and the effects of the rule-making process on small businesses. In particular, the bill:

- Reconstitutes the Small Business Regulatory Review Board to eliminate the nine agency representatives and increase the number of small business representatives from six to seven.
- Modifies the standard for referral to the Small Business Regulatory Review Board by requiring proposed rules to be referred if they may have an economic impact, rather than a *significant* economic impact, on small businesses.
- Shifts the determination of whether a proposed rule is exempt from the final regulatory impact analysis requirement from an agency determination to a determination to be made by the Small Business Regulatory Review Board.
- Requires agencies to establish reduced fines and methods of alternative enforcement for minor violations of administrative rules by small businesses.
- Requires agencies, in deciding whether to impose a fine against a small business found to be in violation of a rule, to consider the appropriateness of a written warning, reduced fine, or alternative penalty, if the small business has demonstrated a good faith effort to comply with a rule and the rule violation does not pose a threat to public health, safety, or welfare.
- Requires each state agency to designate at least one employee to serve as a small business regulatory coordinator for the agency and publicize the employee's contact information.
- Provides for review of emergency rules by the Small Business Regulatory Review Board.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 makes changes to reconcile 2011 Assembly Bill 70 with changes made to the administrative rule-making procedure under 2011 Wisconsin Acts 21 and 32. Additionally, the amendment removes certain provisions of the bill relating to the small business ombudsman clearinghouse and the office of regulatory assistance, both of which were deleted under 2011 Wisconsin Act 32. Finally, the amendment moves a provision relating to agency encouragement of small business participation in the rules promulgation process from ch. 560 to ch. 227, Stats., in order to account for changes made in 2011 Wisconsin Act 32.

LEGISLATIVE HISTORY

Assembly Amendment 2 to 2011 Assembly Bill 70 was introduced by the Assembly Committee on Jobs, Economy and Small Business. On August 9, 2011, the committee adopted Assembly Amendment 2 on a vote of Ayes, 14; Noes, 0. The committee then recommended passage of Assembly Bill 70, as amended, on a vote of Ayes, 12; Noes, 2.

AH:ksm