2009 ASSEMBLY BILL 931

April 6, 2010 – Introduced by Representatives M. WILLIAMS, STRACHOTA, KNODL, LEMAHIEU, LOTHIAN, KERKMAN, HONADEL, GUNDERSON, ZIPPERER and PETROWSKI, cosponsored by Senator SCHULTZ. Referred to Committee on State Affairs and Homeland Security.

1   AN ACT *to create* 227.112 of the statutes; **relating to:** rule making that increases

2   costs or regulatory burdens.

Analysis by the Legislative Reference Bureau

Under current law, a state agency is required to promulgate as an administrative rule any standard, statement of policy, or order of general application that has the effect of law and is issued to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency. There are numerous exceptions to this requirement, including policies that establish water quality objectives for priority watersheds, relate to the construction or maintenance of highways or bridges, relate to the curriculum of, admission to, or graduation from a public educational institution, list over–the–counter drugs covered by Medical Assistance, and that concern the internal management of an agency.

This bill prohibits a state agency from promulgating any administrative rule that increases costs or regulatory burdens on any persons affected by the rule or that does not reduce the regulatory burden on those persons.

The prohibition does not apply to a rule that is promulgated to avoid a court–ordered sanction or a sanction by the federal government, to prevent an imminent threat to public health or safety, or to fulfill an obligation expressly stated in the Wisconsin Constitution. This prohibition also does not apply to a regulatory board, such as the Medical Examining Board, if the monetary benefits to the persons subject to the proposed rule substantially outweigh the costs to those persons and the proposed rule is necessary to allow the board to administer existing law.

The bill does not apply to rules that become effective two years after the effective date of the bill.

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

1 SECTION 1. 227.112 of the statutes is created to read:

2 **227.112 Rule making related to increased costs or regulatory burdens.**

3 **(1)** In this section:

4 (a) "Health care facility" has the meaning given in s. 150.84 (2).

5 (b) "Imminent threat to the public health or safety" means the existence of a

6 condition, circumstance, or practice that would cause death, serious illness, or severe

7 injury to a person or adversely affect the ability of a health care facility to provide

8 health care.

9 (c) "Regulatory board" means a board created under s. 15.405 or 15.406.

10 **(2)** (a) Except as provided in sub. (3), no agency may promulgate a rule that

11 increases costs or regulatory burdens on the persons affected by the rule or that does

12 not reduce the regulatory burden on those persons.

13 (b) Paragraph (a) does not apply if a regulatory board makes all of the following

14 findings regarding a proposed rule and provides evidence supporting those findings

15 at the public hearing under s. 227.16:

16 1. The monetary benefits to persons subject to the proposed rule substantially

17 outweigh the costs to those persons.

18 2. The proposed rule is necessary to allow the regulatory board to administer

19 existing statutory requirements or rules.

20 **(3)** Subsection (2) does not apply to a rule that is promulgated for any of the

21 following reasons:

1   (a) To avoid a violation of a court order or a federal law that would result in

2   sanctions by the court or federal government.

3   (b) To prevent an imminent threat to public health or safety.

4   (c) To fulfill an obligation related to fees, rates, penalties, or rules that are

5   expressly stated in the Wisconsin Constitution.

6   **(4)** This section does not apply to rules that are first effective on the first day

7   of the 24th month beginning after the effective date of this subsection .... [LRB

8   inserts date].

9   **(END)**