



2011 SENATE BILL 47

March 29, 2011 - Introduced by Senators MOULTON, LEIBHAM, OLSEN, SCHULTZ and HOLPERIN, cosponsored by Representatives NYGREN, T. LARSON, RIVARD, BIES, BROOKS, ENDSLEY, HONADEL, JACQUE, KAUFERT, KRUG, LEMAHIEU, MEYER, MURSAU, A. OTT, PETROWSKI, SPANBAUER, STRACHOTA, VOS and WYNN. Referred to Committee on Workforce Development, Small Business, and Tourism.

1 **AN ACT to amend** 15.155 (5), 227.114 (6), 227.114 (7m), 227.14 (2g) (intro.),
2 227.19 (3) (intro.), 227.19 (3m), 227.24 (3m) (intro.) and 560.42 (1m) (b); and **to**
3 **create** 227.04, 560.42 (1m) (c) and 560.43 (3) of the statutes; **relating to:**
4 changes to the membership of the Small Business Regulatory Review Board,
5 notification to the Small Business Regulatory Review Board of bills with an
6 economic impact on small businesses, the role of the Office of Regulatory
7 Assistance in the Department of Commerce, and requiring the exercise of
8 rule-making authority.

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 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

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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 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 first month beginning 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 then determine whether a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses. If the board

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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 business made a good faith effort to comply with the rule and the rule violation does not pose a threat to public health, safety, or welfare.

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 operates the Small Business Ombudsman Clearinghouse (clearinghouse) to, in part, assist agencies to encourage the participation of small businesses in rule making and the Office of Regulatory Assistance (office) to assist all businesses with permitting and other regulatory compliance.

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 clearinghouse and the office to facilitate communication between small businesses and state agencies with respect to administrative rules development and enforcement. Under the bill, the office must operate as a liaison between small businesses and agencies regarding small businesses’ compliance with administrative rules and agencies’ discretionary enforcement of rules violations against 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:

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

15 **SECTION 2.** 227.04 of the statutes is created to read:

16 **227.04 Considerations for small business.** (1) In this section, “small
17 business” has the meaning given in s. 227.114 (1).

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

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

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

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

- 4 1. The small business has made a good faith effort to comply with the rule.
- 5 2. The rule violation does not pose a threat to public health, safety, or welfare.

6 **SECTION 3.** 227.114 (6) of the statutes is amended to read:

7 227.114 (6) When an agency, under s. 227.20 (1), files with the legislative
8 reference bureau a rule that is subject to this section, the agency shall include with
9 the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary
10 of the comments of the legislative standing committees, if any. If, under s. 227.19
11 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall
12 include with the rule a statement of the reason for the agency's small business
13 regulatory review board's determination under s. 227.19 (3m) that the rule will not
14 have a significant economic impact on a substantial number of small businesses. The
15 legislative reference bureau shall publish the summaries or the statement in the
16 register with the rule.

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

18 227.114 (7m) The Each agency shall designate a at least one employee to serve
19 as the small business regulatory coordinator to for the agency, and shall publicize
20 that employee's electronic mail address and telephone number. The small business
21 regulatory coordinator shall act as a contact person for small business regulatory
22 issues for the agency and shall publicize ~~that person's electronic mail address and~~
23 ~~telephone number~~ cooperate with the staff of the office of regulatory assistance and
24 the small business ombudsman clearinghouse as required under s. 560.43 (3).

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

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1 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
2 On the same day that an agency submits to the legislative council staff under s.
3 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
4 businesses, the agency shall submit the proposed rule, the analysis required under
5 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
6 to the small business regulatory review board. The board may use cost-benefit
7 analysis to determine the fiscal effect of the rule on small businesses and shall
8 determine whether the proposed rule will have a significant economic impact on a
9 substantial number of small businesses and whether the agency has complied with
10 subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and
11 (1s), each proposed rule shall include provisions detailing how the rule will be
12 enforced. If the board determines that the rule does not include an enforcement
13 provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2)
14 or (3), the board shall notify the agency of that determination and ask the agency to
15 comply with any of those requirements. If the board determines that the proposed
16 rule will not have a significant economic impact on a substantial number of small
17 businesses, the board shall submit a statement to that effect to the agency that sets
18 forth the reason for the board's decision. If the board determines that the proposed
19 rule will have a significant economic impact on a substantial number of small
20 businesses, the board may submit to the agency suggested changes in the proposed
21 rule to minimize the economic impact of the proposed rule, or may recommend the
22 withdrawal of the proposed rule under sub. (6). In addition, the board may submit
23 other suggested changes in the proposed rule to the agency, including proposals to
24 reduce the use of cross-references in the rule. The board shall send a report of ~~these~~
25 suggestions any suggested changes and of any notice of failure to include

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

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

5 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
6 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);
7 the material specified in s. 227.14 (2) to (4); including any statement, suggested
8 changes, or other material submitted to the agency by the small business regulatory
9 review board; a copy of any economic impact report prepared by the agency under s.
10 227.137; a copy of any report prepared by the department of administration under
11 s. 227.138; a copy of any energy impact report received from the public service
12 commission under s. 227.117 (2); and a copy of any recommendations of the
13 legislative council staff. The report shall also include all of the following:

14 **SECTION 7.** 227.19 (3m) of the statutes is amended to read:

15 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
16 specified under sub. (3) (e) is not required for any rule if the ~~agency, after complying~~
17 ~~with s. 227.114 (1) to (5),~~ board determines that the rule will not have a significant
18 economic impact on a substantial number of small businesses.

19 **SECTION 8.** 227.24 (3m) (intro.) of the statutes is amended to read:

20 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
21 On the same day that the agency files a rule under sub. (3) that may have ~~a~~
22 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the
23 agency shall submit a copy of the rule to the small business regulatory review board.
24 The board may use cost-benefit analysis to determine the fiscal effect of the
25 emergency rule on small businesses and shall determine whether the emergency

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1 rule will have a significant economic impact on a substantial number of small
2 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
3 (2m). If the board determines that the emergency rule will not have a significant
4 economic impact on a substantial number of small businesses, the board shall submit
5 a statement to that effect to the agency that sets forth the reason for the board's
6 decision. If the board determines that the emergency rule will have a significant
7 economic impact on a substantial number of small businesses, the board may submit
8 to the agency and to the legislative council staff suggested changes in the emergency
9 rule to minimize the economic impact of the emergency rule. If the board determines
10 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
11 shall notify the agency of that determination and ask the agency to comply with any
12 of those provisions. In addition, the board may submit other suggested changes in
13 the proposed rule to the agency and may include a request that the agency do any
14 of the following:

15 **SECTION 9.** 560.42 (1m) (b) of the statutes is amended to read:

16 560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal
17 agencies, authorities, municipalities, and local economic development
18 organizations.

19 **SECTION 10.** 560.42 (1m) (c) of the statutes is created to read:

20 560.42 (1m) (c) Serve as a liaison between small businesses and agencies to
21 accomplish the objectives of s. 227.04.

22 **SECTION 11.** 560.43 (3) of the statutes is created to read:

23 560.43 (3) ENCOURAGEMENT OF PARTICIPATION OF SMALL BUSINESSES IN RULE
24 MAKING. Each agency shall establish methods to encourage the participation of small
25 businesses in rule making under s. 227.114 (4), and shall cooperate with the office

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1 and the small business ombudsman clearinghouse to accomplish the objectives of the
2 provisions of ss. 227.04, 227.114, 560.03 (9), and 560.42 as they relate to small
3 businesses.

4 **SECTION 12. Initial applicability.**

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

8 (2) The treatment of section 227.24 (3m) (intro.) of the statutes first applies to
9 an emergency rule filed with the legislative reference bureau on the effective date
10 of this subsection.

11 (END)