

**2003 DRAFTING REQUEST**

**Bill**

Received: 11/21/2002

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Welch (608) 266-0751**

By/Representing: **Chris N**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Administrative Law**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Welch@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Require the creation of a single web site where all proposed rule changes are published

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**Instructions:**

See Attached

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**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>
/?				_____			State
/P1	rnelson2 12/20/2002	kgilfoy 01/13/2003	pgreensl 01/13/2003	_____	amentkow 01/13/2003		State
/P2	rnelson2 02/12/2003	kgilfoy 02/12/2003	jfrantze 02/13/2003	_____	lemery 02/13/2003		State

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	rnelson2 02/18/2003	kgilfoy 02/21/2003		_____			
/P3			jfrantze 02/21/2003	_____	lemery 02/21/2003		State
/P4	rnelson2 03/03/2003	kgilfoy 03/03/2003	jfrantze 03/04/2003	_____	lemery 03/04/2003		State
/P5	rnelson2 03/04/2003	kgilfoy 03/04/2003	jfrantze 03/05/2003	_____	sbasford 03/05/2003		State
/1	rnelson2 03/05/2003	kgilfoy 03/05/2003	chaskett 03/05/2003	_____	amentkow 03/05/2003	amentkow 03/05/2003	

FE Sent For:

At intro

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*Jacket  
1/ for  
sen Welch*

*1-3/5/03  
kmg  
1/3/03  
cp4  
3/6*

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**Pre Topic:**

No specific pre topic given

**Topic:** Chris - 3/4 wants to remove ct in sect 4  
Have draft returned to agency with bds comments

Require the creation of a single web site where all proposed rule changes are published

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See Attached

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1/25 - 3/4/03 King  
2/3/03 Self  
3/5

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Instructions:

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 King  
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**Pre Topic:**

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**Topic:**

Require the creation of a single web site where all proposed rule changes are published

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**Instructions:**

See Attached

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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**Topic:**

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*kg*

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*rs*

<END>

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Subject: Administrative Law

Extra Copies:

Submit via email: YES

Requester's email: Sen.Welch@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require the creation of a single web site where all proposed rule changes are published & other  
*Task force on Small Business recommendations*

Instructions:

See Attached

Drafting History:

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FE Sent For:

		1/1-1/13 Kmg	1/13 pg	1/13 pg/kph			
				<END>			



## A. Inaccessibility of Information

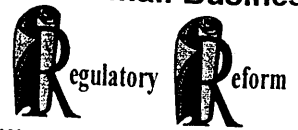
Concern: Small businesses are unaware of new rules being promulgated. Navigating through many different agency websites to find and track new rules is time-consuming and difficult. If small businesses do not know about proposed regulations, they cannot provide input during the regulatory development process nor can they be expected to comply once the regulations take effect.

**RECOMMENDATION: CREATE A CENTRALIZED WEBSITE HOUSING NEW RULES AND OTHER REGULATORY ACTIONS OCCURING IN ALL STATE AGENCIES.**

✓ Each agency should be required to post regulations under consideration, those under development and those rules going out for public comment on this site. The site should also include a contact person, public hearing calendar and the deadline for submitting comments on a rule. A key word search will enable small businesses and trade associations to track new and emerging regulations as well as provide input while a rule is being developed. A specific section of the website should be devoted to rules affecting small businesses.

While state agencies are currently using their websites to post rulemaking activities, a small business currently needs to visit ALL the different agency websites to find their rulemaking information. These pages are often not user-friendly and difficult to locate within these sites. Creating a centralized depository for this information will facilitate the education process for companies looking for regulatory information.

Businesses and trade associations will be able to take a more proactive role in the rulemaking process instead of reacting to new regulations after they have already been written.



## D. Lack of Compliance with the Regulatory Flexibility Act

= 227.114

Concern: The Regulatory Flexibility Act (1983 WI Act 90), which directs all state agencies to examine the impact of their rules on small businesses, is not being enforced.

**RECOMMENDATION: CREATE A SMALL BUSINESS REGULATORY REVIEW BOARD (SBRRB) WHICH WILL ENFORCE THE COMPONENTS OF THE REGULATORY FLEXIBILITY ACT TO IMPROVE THE WAY AGENCIES REVIEW RULES FOR THEIR IMPACT ON SMALL BUSINESSES.**

Agencies subjectively determine if their rules will have a significant economic impact on a substantial number of small businesses. The creation of this board provides a mechanism to determine if an agency conducted a proper small business regulatory analysis under this recommendation. All agency rules must be reviewed by the SBRRB for compliance with the Regulatory Flexibility Act. **If a proper regulatory flexibility analysis has not been prepared, the board may return a rule to the submitting agency for an appropriate analysis.** The SBRRB membership would consist of small businesses or their representatives, state agencies and members of the legislature.

The SBRRB would:

- Require agencies to explain why they have not incorporated comments received from small businesses on a new regulation
- Use existing cost-benefit analysis programs to determine the fiscal impact of a rule on small businesses.
- Subject emergency rules to the same SBRRB review and cost-benefit analysis as administrative rules.
- Verify that the proposed rule does not conflict, overlap or duplicate other state or federal regulatory actions.
- Require that fee information and fee schedules be included as part of a regulatory flexibility analysis: Include information on why the fees are needed and for what purpose they will be used.



## E. Unreasonable Timeframe to Achieve Compliance

Concern: New regulations require small businesses to invest considerable time, money and effort to understand and implement changes to achieve compliance.

**RECOMMENDATION: DESIGN COMPLIANCE SCHEDULES PROVIDING AN ADDITIONAL 60 DAYS FOR SMALL BUSINESSES TO COMPLY WITH NEW REGULATIONS.**

✓ Small businesses often lack the resources and the time to invest in new equipment or to conduct training necessary to comply with a new regulation. Allowing extra time for small businesses to make necessary modifications and investments will result in improved compliance with new regulations.





## F. The "Fear Factor"

Concern: Small businesses, unsure of their regulatory requirements, are afraid to ask agencies questions for help in determining their compliance status.

**RECOMMENDATION: WAIVE CIVIL PENALTIES FOR VIOLATIONS WHENEVER A BUSINESS VOLUNTARILY DISCLOSES A COMPLIANCE ISSUE AND TAKES CORRECTIVE ACTION IN A REASONABLE AMOUNT OF TIME.**

✓ Small businesses should be allowed to discover, disclose and correct violations without penalty. A reasonable amount of time to come into compliance when first time violations occur should be provided.

Encouraging small businesses to voluntarily come forward and correct existing violations will foster a more cooperative and less threatening regulatory environment between agencies and small businesses.

See 99AB 356



## G. Regulatory Review

Concern: Rules, regulations, permits and licenses that potentially no longer serve their initial purpose remain in the Administrative Code and within the state statutes.

**RECOMMENDATION: REQUIRE STATE AGENCIES TO EITHER JUSTIFY WHY REGULATIONS, PERMITS AND/OR LICENSES ARE STILL NEEDED OR SUNSET THOSE RULES/REQUIREMENTS. FAILURE TO ACT WILL RESULT IN THE RULE AUTOMATICALLY SUNSETTING.**

The sheer number of regulations, licenses and permits required to do business in this state discourages economic growth. Excessive regulations push new businesses to locate elsewhere and existing businesses choose to expand into other states.

Regulatory burdens placed on small employers contribute to the perception Wisconsin is a "non-business friendly" state. By reviewing and eliminating unnecessary, inefficient or outdated regulations, Wisconsin could take a huge step forward in improving its current regulatory environment and image. Reviewing the existing statutes and regulations would demonstrate a willingness to work with businesses and may provide the incentive needed for other employers to consider Wisconsin as a place to do business.



## H. Statutory Changes

Concern: Legislation passed in the 1980's designed to assist small businesses in the regulatory process is out of date.

**RECOMMENDATION: UPDATE THE REGULATORY FLEXIBILITY ACT, EQUAL ACCESS TO JUSTICE ACT AND SCOPE STATEMENT WITHIN THE ADMINISTRATIVE RULE PROCESS TO PRESERVE THE ORIGINAL INTENT OF THE LAWS.**

The following steps are necessary to implement this recommendation:

- ✓ 1) Change the definition of a "small business" under the Regulatory Flexibility Act to include businesses with 25 or fewer employees or \$5 million or less in annual sales. (An increase from \$2.5 million.)
- ✓ 2) Amend the Regulatory Flexibility Act to allow a small business owner to challenge the enforcement of a regulation in court on the basis of an inadequate, incomplete or nonexistent regulatory flexibility analysis.
- ✓ 3) Increase the amount of reimbursement a small business can recover in attorney fees to \$150 per hour under the Equal Access to Justice Act. The act allows a small businesses to recover attorney fees if it can prove a state agency was not substantially justified in pursuing a case against a small business. The original 1983 law stipulated a reimbursement of \$75 per hour.
- ✓ 4) Include a more thorough description of entities that will be affected by a new regulation when an agency submits a proposal to create an administrative rule (Scope Statement). In addition, include a contact person, phone number and website link within the scope so small businesses may follow up with questions or provide input on the proposed rule.

Sec. 515. (a) In General.--The Director of the Office of Management and Budget shall, by not later than September 30,

[[Page 114 STAT. 2763A-154]]

2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) Content of Guidelines.--The guidelines under subsection (a) shall--

- (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
- (2) require that each Federal agency to which the guidelines apply--

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director--

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.

Ron Sc

scope statement



## I. Lack of Quality Data

Concern: Agencies sometimes write rules using inaccurate or biased data, placing an undue hardship on Wisconsin businesses without measurable benefits.

**RECOMMENDATION: ADOPT A STATE VERSION OF THE FEDERAL DATA QUALITY ACT, REQUIRING AGENCIES TO ENSURE THE QUALITY OF THE DATA USED WHEN ISSUING NEW REGULATIONS.**

The current process forces businesses to accept agency facts, figures and information without question. The federal law requires government agencies to ensure the quality of the data they use when issuing new rules, regulations and studies. Instead of just challenging the rules themselves, businesses will be able to challenge the data used in formulating federal regulations. Implementing a state version of the Federal Data Quality Act would improve the data analysis done by agencies and would create a mechanism to challenge and correct agency information.



## J. Enforcement Inconsistencies

Concern: Businesses receive inconsistent or conflicting regulatory interpretations from agencies resulting in noncompliance, fines, fees or enforcement actions.

**RECOMMENDATION: ALLOW FOR THE JUDICIAL REVIEW OF ANY PENALTIES THAT RESULT FROM ACTIONS (OR INACTIONS) TAKEN BY SMALL BUSINESS OWNERS DUE TO INACCURATE OR INCONSISTENT INFORMATION OR ADVICE RECEIVED FROM STATE AGENCY PERSONNEL.**

Business owners would need to document and date compliance recommendations received from the agency including the names of the persons providing the information.



## K. Lack of Enforcement

Concern: Current regulations are not adequately enforced, creating a disparity between the businesses attempting to comply and those that ignore regulations, knowing they will most likely not get "caught".

**RECOMMENDATION: REQUIRE AN AGENCY TO INCLUDE ENFORCEMENT PROVISIONS IN THE REGULATIONS. IF THE AGENCY DOES NOT INDICATE HOW THE RULE WILL BE ENFORCED, THE RULE WILL NOT RECEIVE APPROVAL FROM THE SMALL BUSINESS REGULATORY REVIEW BOARD.**

✓ Rules that are not enforced do not have high compliance rates. Unreasonable rules penalize businesses that attempt to comply and provide an economic advantage to businesses that ignore the rule. If an agency is unable to enforce a rule in a fair and efficient manner, the rule should not be promulgated.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0824/P1

RPN:.....

*King*

*D-N*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

TODAY

*Gen. Cat.*

1 AN ACT *✓✓*; relating to: administrative rule making regarding small businesses,  
 2 data used by administrative agencies in preparing proposed rules, increasing  
 3 attorney fees, creating a ~~web~~ <sup>Internet</sup> site for proposed rules, and creating a small  
 4 business regulatory review board.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.  
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:***

5 SECTION 1. 15.105 (7) of the statutes is created to read:  
 6 15.105 (7) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small  
 7 business regulatory review board, attached to the department of administration  
 8 under s. 15.03. The board shall consist of a representative of the department of  
 9 administration, a representative of the department of agriculture, trade and



1 consumer protection, a representative of the department of commerce, ~~four~~ 4  
 2 representatives of small businesses, as defined in s. 227.114 (1),<sup>✓</sup> and the chairpersons  
 3 of one senate and one assembly committee concerned with small businesses.)

4 SECTION 2. 227.114 (1) (a) of the statutes is amended to read:

5 227.114 (1) (a) In this section, "small business" means a business entity,  
 6 including its affiliates, which is independently owned and operated and not  
 7 dominant in its field, and which employs fewer than 25 full-time employees or which  
 8 has gross annual sales of less than \$2,500,000 \$5,000,000. For purposes of a specific  
 9 rule, an agency may define small business to include more employees or greater gross  
 10 annual sales if necessary to adapt the rule to the needs and problems of small  
 11 businesses. A "small business" may also be defined in accordance with other  
 12 standards established by an agency by rule.

History: 1985 a. 182; 1995 a. 27 s. 9116 (5); 1999 a. 9.

13 SECTION 3. 227.114 (6m) of the statutes is created to read:

14 227.114 (6m) (a) If an agency fails to comply with the requirements of this  
 15 section or s. 227.19 (3) (e),<sup>✓</sup> a small business may commence an action in <sup>the</sup> circuit court  
 16 <sup>for</sup> in Dane County for injunctive relief. The circuit court may issue an order enjoining  
 17 the promulgation of a rule if the court determines that the agency failed to comply  
 18 with the requirements of this section or s. 227.19 (3) (e).<sup>✓</sup>

19 (b) If a small business is subject to a penalty from an administrative agency as  
 20 the result of an action or omission by the small business in response to inaccurate  
 21 or inconsistent advice given to the small business by an employee, officer,<sup>✓</sup> or agent  
 22 of the agency, the small business may commence an action in <sup>the</sup> circuit court <sup>for</sup> in Dane  
 23 County for injunctive relief. The circuit court may issue an order enjoining the  
 24 imposition of the penalty if the court determines that the action or omission of the

1 small business that resulted in the penalty was in response to the agency's  
2 inaccurate or inconsistent advice.

3 SECTION 4. 227.135 (1) (e) of the statutes is created to read:

4 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

5 SECTION 5. 227.135 (1) (f) of the statutes is created to read:

6 227.135 (1) (f) The <sup>electronic</sup> email address and telephone number of an agency contact  
7 person for the rule, ~~and~~ <sup>and</sup> a link to ~~an~~ <sup>an Internet</sup> site that allows a person to review the rule  
8 and make comments regarding the rule.

9 SECTION 6. 227.14 (2m) of the statutes is created to read:

10 227.14 (2m) QUALITY OF AGENCY DATA <sup>; report</sup>. Each agency shall, in cooperation with  
11 the department of administration, ensure the accuracy, integrity, and objectivity of  
12 the data that is used when preparing a proposed rule and when completing an  
13 analysis of the proposed rule under sub. (2). A person affected by the proposed rule  
14 may submit comments to the agency regarding the accuracy, integrity, or objectivity  
15 of that data. The agency shall annually submit a report to the legislature under s.  
16 13.172 (2) regarding any comments <sup>that</sup> the agency receives regarding its data and what  
17 response the agency made to the comments. The agency shall send a copy of that  
18 report to the small business regulatory review board.

19 SECTION 7. 227.14 (2t) of the statutes is created to read:

20 227.14 (2t) ENFORCEMENT PROVISIONS. Except as provided in sub. (1m), each  
21 proposed rule shall include provisions detailing how the rule will be enforced. If a  
22 proposed rule does not include enforcement provisions, the small business  
23 regulatory review board may commence an action in the circuit court for Dane  
24 County for injunctive relief. If the circuit court determines that the proposed rule

1 does not include enforcement provisions, the court may enjoin the promulgation of  
2 the proposed rule.

3 SECTION 8. 227.15 (1m) of the statutes is created to read:

4 227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. The joint legislative council  
5 shall create and maintain an internet ~~web~~ site that includes a copy of each proposed  
6 rule received under sub. (1) in a format that allows the site to be searched using  
7 keywords. Each agency shall provide the joint legislative council with the proposed  
8 rules and other information needed to comply with this subsection in the format

9 required by the joint legislative council. The ~~web~~ <sup>Internet</sup> site shall include a section devoted  
10 to proposed rules <sup>to</sup> affecting small businesses, as defined in s. 227.114 (1). The ~~web~~ <sup>Internet</sup>  
11 site shall also include all of the following:

12 (a) The <sup>g</sup> ~~web~~ <sup>electronic</sup> mail address and telephone number of an agency contact person for  
13 each proposed rule.

14 (b) The material required under s. 227.14 (2) <sup>(3), and</sup> ~~(4)~~ (4).

15 (c) The written report of the legislative council staff review of the proposed rule  
16 prepared under ~~s. 227.15~~ <sup>sub.</sup> (2) and any agency comments regarding that report.

17 (d) The time, date, and place of any public hearing specified in the notice in s.  
18 227.17 <sup>of statutes</sup> as soon as that notice is submitted to the revisor <sup>under s. 227.17 (1) (a).</sup>

19 (e) The place where comments on the proposed rule should be submitted and  
20 the deadline for submitting those comments.

21 SECTION 9. 227.19 (3r) of the statutes is created to read:

22 227.19 (3r) <sup>(5) Fiscal effect of emergency rule.</sup> (a) On the same day that an agency submits a notice under sub. (2) ✓  
23 regarding a proposed rule that may have a significant economic impact on a  
24 substantial number of small businesses, the agency shall submit the proposed rule  
25 and the report required under sub. (3) <sup>✓</sup> to the small business regulatory review board.

*sub. (3)(e) or*

*shall*

*whether has*

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The board may use cost-benefit analysis to determine the fiscal effect of the emergency rule on small businesses and ~~determine~~ *whether* the agency ~~complied~~ *has* with s. 227.114 ~~or sub. (3)(e)~~ *sub. (3)(e) or*. If the board determines that the agency failed to comply with s. 227.114 ~~or sub. (3)(e)~~ *sub. (3)(e) or*, the board shall notify the agency of that determination and ask the agency to comply with those ~~subsections~~ *provisions*. The board shall send a copy of that notice to each committee to which the proposed rule was referred under sub. (2). The notification may include a request that the agency do any ~~or all~~ of the following:

- (a) Explain why the agency has not incorporated comments received from small businesses regarding the proposed rule.
- (b) Verify that the proposed rule does not conflict, overlap, or duplicate other ~~state~~ *with* rules or federal regulations.
- (c) Require the inclusion of fee information and fee schedules in the regulatory flexibility analysis, including why fees are necessary and for what purpose the fees will be used.

**SECTION 10.** 227.22 (2) (e) of the statutes is created to read:

227.22 (2) (e) The rule has a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) ~~in~~ *in*, in which case the rule applies to small businesses on the first day of the ~~1st~~ *3rd* month commencing after the date of publication.

**SECTION 11.** 227.24 (3m) of the statutes is created to read:

227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the same day that the agency files a rule under sub. (3) *that* that may have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) ~~the~~ *the*, the agency shall submit a copy of the rule to the small business regulatory review board. The board may use cost-benefit analysis to determine the

X

X

*shall*  
*whether*

1 fiscal effect of the emergency rule on small businesses and determine ~~if~~ the agency  
2 complied with s. 227.114 or ~~s.~~ 227.19 (3) (e). If the board determines that the agency  
3 failed to comply with s. 227.114 or ~~s.~~ 227.19 (3) (e), the board shall notify the agency  
4 of that determination and ask the agency to comply with those ~~subsections~~ <sup>provisions</sup>. The  
5 notification may include a request that the agency do any ~~one~~ <sup>or all</sup> of the following:

6 ~~(a)~~ Explain why the agency has not incorporated comments received from small  
7 businesses regarding the emergency rule.

8 ~~(b)~~ Verify that the emergency rule does not conflict, <sup>with</sup> overlap, or duplicate other  
9 ~~state~~ rules or federal regulations.

10 SECTION 12. 227.30 of the statutes is created to read:

11 **227.30 Review of administrative rules.** Each ~~state~~ agency shall, during the  
12 5-year period beginning on the effective date of this section... [revisor inserts date],  
13 review the ~~current~~ <sup>small</sup> rules of the agency to determine ~~if~~ <sup>whether</sup> any of those rules place an  
14 unnecessary burden on the ability of ~~businesses~~ <sup>small</sup> to conduct their affairs. If ~~the~~ <sup>an</sup>  
15 agency determines that a rule ~~does~~ <sup>places</sup> place an unnecessary burden on the ability of  
16 ~~businesses~~ <sup>its</sup> to conduct ~~their~~ <sup>its</sup> affairs, the agency shall repeal the rule or amend the rule  
17 to remove the unnecessary burden. The agency shall annually, on the first day of the  
18 12th month beginning after the effective date of this section... [revisor inserts date],  
19 for the 5-year period, submit a report to the legislature under s. 13.172 (2) describing  
20 the agency's review of its rules and any actions taken regarding those rules during  
21 the previous year. The agency shall send a copy of that report to the small business  
22 regulatory review board.

23 SECTION 13. 227.40 (2) (f) of the statutes is created to read:

24 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

25 SECTION 14. 227.485 (2) (c) of the statutes is amended to read:

1           227.485 (2) (c) "Small business" means a business entity, including its  
2 affiliates, which is independently owned and operated, and which employs fewer  
3 than 25 full-time employees or which has gross annual sales of less than \$2,500,000  
4 \$5,000,000.

History: 1985 a. 52; Stats. 1985 s. 227.115; 1985 a. 182 ss. 33s, 57; 1985 a. 332 s. 253; Stats. 1985 s. 227.485; 1987 a. 186; 1997 a. 27, 79.

5           **SECTION 15.** 814.245 (5) (a) 2. of the statutes is amended to read:

6           814.245 (5) (a) 2. Attorney or agent fees may not be awarded in excess of \$75  
7 \$150 per hour unless the court determines that an increase in the cost of living or a  
8 special factor, such as the limited availability of qualified attorneys or agents,  
9 justifies a higher fee.

History: 1985 a. 52; 1985 a. 182 s. 57; 1985 a. 332 s. 253; 1995 a. 27; 1997 a. 79, 133.

10          **SECTION 16.** 895.59 of the statutes is created to read:

11          **895.59 Liability exemption; disclosure of rule violations.** (1) In this  
12 section, *"agency" has the meaning given in s. 227.01 (1).* *"small business" has the meaning given in s. 227.114 (1).* ✓

13          (2) A small business that voluntarily discloses information to the appropriate  
14 agency, about an actual or potential violation of an administrative rule shall be  
15 immune from the imposition of a civil or criminal penalty that could be imposed for  
16 the violation if all of the following apply.

17          (a) The voluntary disclosure is made within 45 days after the small business  
18 knew that an actual or potential violation occurred.

19          (b) The small business making the disclosure initiates an appropriate and good  
20 faith effort to achieve compliance with the administrative rule, pursues compliance  
21 with due diligence, and promptly corrects the noncompliance after discovery of the  
22 violation.

23          (c) The small business cooperates with any reasonable request by the  
24 administrative agency in any investigation that results from the disclosure.

1 (3) A penalty may be imposed for the violation of ~~the~~ <sup>an</sup> administrative rule  
2 notwithstanding sub. (2) if any of the following applies:

3 (a) The violation resulted in serious harm or in imminent and substantial  
4 endangerment to public health, safety, or welfare.

5 (b) The violation resulted in a substantial economic benefit that gave the  
6 violator a clear advantage over its business competitors.

7 (c) The small business that committed the violation has ~~had~~ <sup>had</sup> a pattern of  
8 continuous or repeated violations of administrative rules.

9 **SECTION 17. Initial applicability.**

10 (1) This act first applies to rules submitted to the joint legislative council staff  
11 on the effective date of this subsection.

12 **SECTION 18. Effective date.**

13 (1) This act takes effect on <sup>the</sup> first day of the 4th month beginning after  
14 publication.

15 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

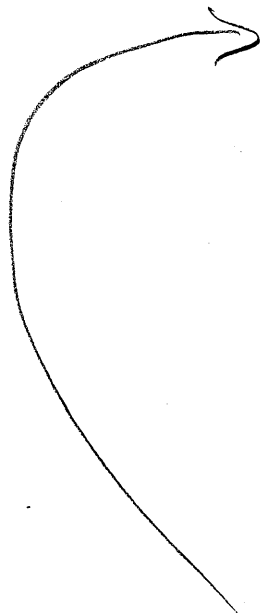
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Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson  
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(See <sup>section 5.</sup> 15.105(7) of the bill.)

I did not specify a length of terms for ~~the~~ the small business representatives on the board. Please let me know how long you want their terms to be and whether the terms should be staggered. I will add that to the next draft, along with a nonstatutory section about the terms of the initial appointees.



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**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0824/P1dn  
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January 13, 2003

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