



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0824/P1
RPN:kmg:pg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2/12 Chris.
See changes made
by Sen. W's office.
Also make board public
members staggered 3-4 year
Terms

1 AN ACT to amend 227.114 (1) (a), 227.485 (2) (c) and 814.245 (5) (a) 2.; and to
2 create 15.105 (7), 227.114 (6m), 227.135 (1) (e), 227.135 (1) (f), 227.14 (2m),
3 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40
4 (2) (f) and 895.59 of the statutes; relating to: administrative rule making
5 regarding small businesses, data used by administrative agencies in preparing
6 proposed rules, increasing attorney fees, creating an Internet site for proposed
7 rules, and creating a Small 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:

8 SECTION 1. 15.105 (7) of the statutes is created to read:
9 15.105 (7) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
10 business regulatory review board, attached to the department of administration

1 under s. 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce, 4
5 representatives of small businesses as defined in s. 227.114 (1), and the chairpersons
6 of one senate and one assembly committee concerned with small businesses. **A**

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

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

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

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

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

stagger
of the terms
of small
bus. reps.

1 imposition of the penalty if the court determines that the action or omission of the
2 small business that resulted in the penalty was in response to the agency's
3 inaccurate or inconsistent advice.

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

5 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

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

7 227.135 (1) (f) The electronic mail address and telephone number of an agency
8 contact person for the rule, and a link to an Internet site that allows a person to
9 review the rule and make comments regarding the rule.

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

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

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

21 227.14 (2t) **ENFORCEMENT PROVISIONS.** Except as provided in sub. (1m), each
22 proposed rule shall include provisions detailing how the rule will be enforced. If a
23 proposed rule does not include enforcement provisions, the small business
24 regulatory review board may commence an action in the circuit court for Dane
25 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 site that includes a copy of each proposed rule
6 received under sub. (1) in a format that allows the site to be searched using keywords.
7 Each agency shall provide the joint legislative council with the proposed rules and
8 other information needed to comply with this subsection in the format required by
9 the joint legislative council. The Internet site shall include a section devoted to
10 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
11 site shall also include all of the following:

12 (a) The electronic mail address and telephone number of an agency contact
13 person for each proposed rule.

14 (b) The material required under s. 227.14 (2), (3), and (4).

15 (c) The written report of the legislative council staff review of the proposed rule
16 prepared under sub. (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 as soon as that notice is submitted to the revisor of statutes under s. 227.17
19 (1) (a).

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

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

23 **227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE.** On the same day that an agency
24 submits a notice under sub. (2) regarding a proposed rule that may have a significant
25 economic impact on ~~a substantial number of small businesses,~~ ^{business,} the agency shall

1 submit the proposed rule and the report required under sub. (3) to the small business
2 regulatory review board. The board may use cost-benefit analysis to determine the
3 fiscal effect of the emergency rule on small businesses and shall determine whether
4 the agency has complied with sub. (3) (e) or s. 227.114. If the board determines that
5 the agency failed to comply with sub. (3) (e) or s. 227.114, the board shall notify the
6 agency of that determination and ask the agency to comply with those provisions.
7 The board shall send a copy of that notice to each committee to which the proposed
8 rule was referred under sub. (2). The notification may include a request that the
9 agency do any of the following:

10 (a) Explain why the agency has not incorporated comments received from small
11 businesses regarding the proposed rule.

12 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
13 other rules or federal regulations.

14 (c) Require the inclusion of fee information and fee schedules in the regulatory
15 flexibility analysis, including why fees are necessary and for what purpose the fees
16 will be used.

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

18 227.22 (2) (e) The rule has a significant economic impact on a substantial
19 number of small businesses, as defined in s. 227.114 (1), in which case the rule
20 applies to small businesses on the first day of the 3rd month commencing after the
21 date of publication.

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

23 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the
24 same day that the agency files a rule under sub. (3) that may have a significant
25 economic impact on ~~a substantial number of small businesses~~ ^{business}, as defined in s.

1 227.114 (1), the agency shall submit a copy of the rule to the small business
2 regulatory review board. The board may use cost-benefit analysis to determine the
3 fiscal effect of the emergency rule on small businesses and shall determine whether
4 the agency complied with s. 227.114 or 227.19 (3) (e). If the board determines that
5 the agency failed to comply with s. 227.114 or 227.19 (3) (e), the board shall notify
6 the agency of that determination and ask the agency to comply with those provisions.
7 The notification may include a request that the agency do any of the following:

8 (a) Explain why the agency has not incorporated comments received from small
9 businesses regarding the emergency rule.

10 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
11 other rules or federal regulations.

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

13 **227.30 Review of administrative rules.** Each agency shall, during the
14 5-year period beginning on the effective date of this section [revisor inserts date],
15 review the rules of the agency to determine whether any of those rules place an
16 unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
17 to conduct their affairs. If an agency determines that a rule places an unnecessary
18 burden on the ability of a small business to conduct its affairs, the agency shall repeal
19 the rule or amend the rule to remove the unnecessary burden. [^]The agency shall
20 annually, on the first day of the 12th month beginning after the effective date of this
21 section [revisor inserts date], for the 5-year period, submit a report to the
22 legislature under s. 13.172 (2) describing the agency's review of its rules and any
23 actions taken regarding those rules during the previous year. The agency shall send
24 a copy of that report to the small business regulatory review board.

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

1 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

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

3 227.485 (2) (c) “Small business” means a business entity, including its
4 affiliates, which is independently owned and operated, and which employs fewer
5 than 25 full-time employees or which has gross annual sales of less than ~~\$2,500,000~~
6 \$5,000,000.

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

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

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

13 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
14 section:

15 (a) “Agency” has the meaning given in s. 227.01 (1).

16 (b) “Small business” has the meaning given in s. 227.114 (1).

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

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

23 (b) The small business making the disclosure initiates an appropriate and good
24 faith effort to achieve compliance with the administrative rule, pursues compliance

1 with due diligence and promptly corrects the noncompliance after discovery of the
2 violation.

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

5 (3) A penalty may be imposed for the violation of an administrative rule
6 notwithstanding sub. (2) if any of the following applies:

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

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

11 (c) The small business that committed the violation has a pattern of continuous
12 or repeated violations of administrative rules.

13 **SECTION 17. Initial applicability.**

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

16 **SECTION 18. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19

(END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 227.114 (1) (a), 227.485 (2) (c) and 814.245 (5) (a) 2.; and *to*
2 *create* 15.105 (7), 227.114 (6m), 227.135 (1) (e), 227.135 (1) (f), 227.14 (2m),
3 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40
4 (2) (f) and 895.59 of the statutes; **relating to:** administrative rule making
5 regarding small businesses, data used by administrative agencies in preparing
6 proposed rules, increasing attorney fees, creating an Internet site for proposed
7 rules, and creating a Small 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:

8 SECTION 1. 15.105 (7) of the statutes is created to read:
9 15.105 (7) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
10 business regulatory review board, attached to the department of administration

1 under s. 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce, 4
4 representatives of small businesses, as defined in s. 227.114 (1), *who shall be appointed for 3-year terms* and the chairpersons
5 of one senate and one assembly committee concerned with small businesses.

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

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

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

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

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

1 imposition of the penalty if the court determines that the action or omission of the
2 small business that resulted in the penalty was in response to the agency's
3 inaccurate or inconsistent advice.

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

5 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

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

7 227.135 (1) (f) The electronic mail address and telephone number of an agency
8 contact person for the rule, and a link to an Internet site that allows a person to
9 review the rule and make comments regarding the rule.

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

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

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

21 227.14 (2t) **ENFORCEMENT PROVISIONS.** Except as provided in sub. (1m), each
22 proposed rule shall include provisions detailing how the rule will be enforced. If a
23 proposed rule does not include enforcement provisions, the small business
24 regulatory review board may commence an action in the circuit court for Dane
25 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 site that includes a copy of each proposed rule
6 received under sub. (1) in a format that allows the site to be searched using keywords.
7 Each agency shall provide the joint legislative council with the proposed rules and
8 other information needed to comply with this subsection in the format required by
9 the joint legislative council. The Internet site shall include a section devoted to
10 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
11 site shall also include all of the following:

12 (a) The electronic mail address and telephone number of an agency contact
13 person for each proposed rule.

14 (b) The material required under s. 227.14 (2), (3), and (4).

15 (c) The written report of the legislative council staff review of the proposed rule
16 prepared under sub. (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 as soon as that notice is submitted to the revisor of statutes under s. 227.17
19 (1) (a).

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

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

23 **227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE.** On the same day that an agency
24 submits a notice under sub. (2) regarding a proposed rule that may have a significant
25 economic impact on ~~a substantial number of~~ small businesses, the agency shall

1 submit the proposed rule and the report required under sub. (3) to the small business
2 regulatory review board. The board may use cost-benefit analysis to determine the
3 fiscal effect of the emergency rule on small businesses and shall determine whether
4 the agency has complied with sub. (3) (e) or s. 227.114. If the board determines that
5 the agency failed to comply with sub. (3) (e) or s. 227.114, the board shall notify the
6 agency of that determination and ask the agency to comply with those provisions.
7 The board shall send a copy of that notice to each committee to which the proposed
8 rule was referred under sub. (2). The notification may include a request that the
9 agency do any of the following:

10 (a) Explain why the agency has not incorporated comments received from small
11 businesses regarding the proposed rule.

12 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
13 other rules or federal regulations.

14 (c) Require the inclusion of fee information and fee schedules in the regulatory
15 flexibility analysis, including why fees are necessary and for what purpose the fees
16 will be used.

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

18 227.22 (2) (e) The rule has a significant economic impact on a ~~substantial~~
19 ~~number of~~ small businesses, as defined in s. 227.114 (1), in which case the rule
20 applies to small businesses on the first day of the 3rd month commencing after the
21 date of publication.

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

23 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the
24 same day that the agency files a rule under sub. (3) that may have a significant
25 economic impact on ~~a substantial number of~~ small businesses, as defined in s.

1 227.114 (1), the agency shall submit a copy of the rule to the small business
2 regulatory review board. The board may use cost-benefit analysis to determine the
3 fiscal effect of the emergency rule on small businesses and shall determine whether
4 the agency complied with s. 227.114 or 227.19 (3) (e). If the board determines that
5 the agency failed to comply with s. 227.114 or 227.19 (3) (e), the board shall notify
6 the agency of that determination and ask the agency to comply with those provisions.
7 The notification may include a request that the agency do any of the following:

8 (a) Explain why the agency has not incorporated comments received from small
9 businesses regarding the emergency rule.

10 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
11 other rules or federal regulations.

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

13 **227.30 Review of administrative rules.** Each agency shall, during the
14 5-year period beginning on the effective date of this section [revisor inserts date],
15 review the rules of the agency to determine whether any of those rules place an
16 unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
17 to conduct their affairs. If an agency determines that a rule places an unnecessary
18 burden on the ability of a small business to conduct its affairs, the agency shall repeal
19 the rule or amend the rule to remove the unnecessary burden. The agency shall
20 annually, on the first day of the 12th month beginning after the effective date of this
21 section [revisor inserts date], for the 5-year period, submit a report to the
22 legislature under s. 13.172 (2) describing the agency's review of its rules and any
23 actions taken regarding those rules during the previous year. The agency shall send
24 a copy of that report to the small business regulatory review board.

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

1 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

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

3 227.485 (2) (c) “Small business” means a business entity, including its
4 affiliates, which is independently owned and operated, and which employs fewer
5 than 25 full-time employees or which has gross annual sales of less than ~~\$2,500,000~~
6 \$5,000,000.

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

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

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

13 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
14 section:

15 (a) “Agency” has the meaning given in s. 227.01 (1).

16 (b) “Small business” has the meaning given in s. 227.114 (1).

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

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

23 (b) The small business making the disclosure initiates an appropriate and good
24 faith effort to achieve compliance with the administrative rule, pursues compliance

1 with due diligence and promptly corrects the noncompliance after discovery of the
2 violation.

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

5 (3) A penalty may be imposed for the violation of an administrative rule
6 notwithstanding sub. (2) if any of the following applies:

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

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

11 (c) The small business that committed the violation has a pattern of continuous
12 or repeated violations of administrative rules.

insert
8-13

SECTION 17. Initial applicability.

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

SECTION 18. Effective date.

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19 (END)

1
2
3
4
5
6
7
8

insert 8-12: ✓

SECTION 1. Nonstatutory provisions.

(1) Notwithstanding the length of terms specified for the representatives of
small businesses of the small business regulatory review board under ~~§~~ 15.105 (7) ✓
of the statutes, as created by this act, 2 of the initial representatives of small
businesses shall be appointed for terms expiring on May 1, 2005, and the other 2
initial representatives of small businesses shall be appointed for terms expiring on
May 1, 2006.

section

From Chris, Sen - W.

EACH member SELECTED BY SECRETARY OF DEPARTMENT

DNR
§ 5

1 under s. 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce,
4 representatives of small businesses ^{SELECTED BY GOVERNOR} as defined in s. 227.114 (1), who shall be
5 appointed for 3-year terms, and the chairpersons of one senate and one assembly
6 committee concerned with small businesses.

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

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

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

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

22 (b) If a small business is subject to a penalty from an administrative agency as
23 the result of an action or omission by the small business in response to inaccurate
24 or inconsistent advice given to the small business by an employee, officer, or agent
25 of the agency, the small business may commence an action in the circuit court for

1 Dane County for injunctive relief. The circuit court may issue an order enjoining the
2 imposition of the penalty if the court determines that the action or omission of the
3 small business that resulted in the penalty was in response to the agency's
4 inaccurate or inconsistent advice.

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

6 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

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

8 227.135 (1) (f) The electronic mail address and telephone number of an agency
9 contact person for the rule, and a link to an Internet site that allows a person to
10 review the rule and make comments regarding the rule.

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

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

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

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

RETURN A RULE TO THE SUBMITTING
AGENCY FOR AN APPROPRIATE
ANALYSIS

1 ~~County for injunctive relief. If the circuit court determines that the proposed rule~~
2 ~~does not include enforcement provisions, the court may enjoin the promulgation of~~
3 ~~the proposed rule.~~

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

5 227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. The joint legislative council
6 shall create and maintain an Internet site that includes a copy of each proposed rule
7 received under sub. (1) in a format that allows the site to be searched using keywords.
8 Each agency shall provide the joint legislative council with the proposed rules and
9 other information needed to comply with this subsection in the format required by
10 the joint legislative council. The Internet site shall include a section devoted to
11 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
12 site shall also include all of the following:

13 (a) The electronic mail address and telephone number of an agency contact
14 person for each proposed rule.

15 (b) The material required under s. 227.14 (2), (3), and (4).

16 (c) The written report of the legislative council staff review of the proposed rule
17 prepared under sub. (2) and any agency comments regarding that report.

18 (d) The time, date, and place of any public hearing specified in the notice in s.
19 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17
20 (1) (a).

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

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

24 227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE. On the same day that an agency
25 submits a notice under sub. (2) regarding a proposed rule that may have a significant

1 economic impact on small businesses, the agency shall submit the proposed rule and
 2 the report required under sub. (3) to the small business regulatory review board. The
 3 board may use cost-benefit analysis to determine the fiscal effect of the emergency
 4 rule on small businesses and shall determine whether the agency has complied with
 5 sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with
 6 sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and
 7 ask the agency to comply with those provisions. The board shall send a copy of that
 8 notice to each committee to which the proposed rule was referred under sub. (2). The
 9 notification may include a request that the agency do any of the following:

10 (a) Explain why the agency has not incorporated comments received from small
 11 businesses regarding the proposed rule.

12 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
 13 other rules or federal regulations.

14 (c) Require the inclusion of fee information and fee schedules in the regulatory
 15 flexibility analysis, including why fees are necessary and for what purpose the fees
 16 will be used.

17 (d) *MAKE SUGGESTIONS FOR CHANGES AND REDUCE*
 SECTION 10. 227.22 (2) (e) of the statutes is created to read:
 18 227.22 (2) (e) The rule has a significant economic impact on small businesses,
 19 as defined in s. 227.114 (1), in which case the rule applies to small businesses on the *CROSS REFERENCES*
 20 first day of the 3rd month commencing after the date of publication. *IN RULE-MAKING*

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

22 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the
 23 same day that the agency files a rule under sub. (3) that may have a significant
 24 economic impact on small businesses, as defined in s. 227.114 (1), the agency shall
 25 submit a copy of the rule to the small business regulatory review board. The board



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2/12
changes requested by Sen. W's
Chris, in office
2/20
additional changes

Reger

1 AN ACT to amend 227.114 (1) (a), 227.485 (2) (c) and 814.245 (5) (a) 2.; and to
2 create 15.105 (7), 227.114 (6m), 227.135 (1) (e), 227.135 (1) (f), 227.14 (2m),
3 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40
4 (2) (f) and 895.59 of the statutes; relating to: administrative rule making
5 regarding small businesses, data used by administrative agencies in preparing
6 proposed rules, increasing attorney fees, creating an Internet site for proposed
7 rules, and creating a Small 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:

8 SECTION 1. 15.105⁵ (~~7~~)⁵ of the statutes is created to read:
9 15.105⁵ (~~7~~)⁵ SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
10 business regulatory review board, attached to the department of ^{commerce} ~~administration~~.

a representative of ^{the} department of natural resources,

1 under s. 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce, ^{4 5}
4 representatives of small businesses, as defined in s. 227.114 (1), who shall be
5 appointed for 3-year terms, and the chairpersons of one senate and one assembly
6 committee concerned with small businesses. *The Department representatives shall be selected by the secretary of that department.*

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

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

of the departments

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

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

22 (b) If a small business is subject to a penalty from an administrative agency as
23 the result of an action or omission by the small business in response to inaccurate
24 or inconsistent advice given to the small business by an employee, officer, or agent
25 of the agency, the small business may commence an action in the circuit court for

1 Dane County for injunctive relief. The circuit court may issue an order enjoining the
2 imposition of the penalty if the court determines that the action or omission of the
3 small business that resulted in the penalty was in response to the agency's
4 inaccurate or inconsistent advice.

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

6 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

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

8 227.135 (1) (f) The electronic mail address and telephone number of an agency
9 contact person for the rule, and a link to an Internet site that allows a person to
10 review the rule and make comments regarding the rule.

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

12 227.14 (2m) QUALITY OF AGENCY DATA; REPORT. Each agency shall, in cooperation
13 with the department of administration, ensure the accuracy, integrity, and
14 ^{consistency} objectivity of the data that is used when preparing a proposed rule and when
15 completing an analysis of the proposed rule under sub. (2). A person affected by the
16 proposed rule may submit comments to the agency regarding the accuracy, integrity,
17 or objectivity of that data.

The agency shall annually submit a report to the legislature under s. 13.172 (2) regarding any comments that the agency receives regarding its data and what response the agency made to the comments. The agency shall send a copy of that report to the small business regulatory review board.

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

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

return the rule to the submitting agency for an appropriate enforcement provision.

1 County for injunctive relief. If the circuit court determines that the proposed rule
2 does not include enforcement provisions, the court may enjoin the promulgation of
3 the proposed rule.

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

5 **227.15 (1m) INTERNET ACCESS TO PROPOSED RULE.** The joint legislative council
6 shall create and maintain an Internet site that includes a copy of each proposed rule
7 received under sub. (1) in a format that allows the site to be searched using keywords.
8 Each agency shall provide the joint legislative council with the proposed rules and
9 other information needed to comply with this subsection in the format required by
10 the joint legislative council. The Internet site shall include a section devoted to
11 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
12 site shall also include all of the following:

13 (a) The electronic mail address and telephone number of an agency contact
14 person for each proposed rule.

15 (b) The material required under s. 227.14 (2), (3), and (4).

16 (c) The written report of the legislative council staff review of the proposed rule
17 prepared under sub. (2) and any agency comments regarding that report.

18 (d) The time, date, and place of any public hearing specified in the notice in s.
19 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17
20 (1) (a).

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

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

24 **227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE.** On the same day that an agency
25 submits a notice under sub. (2) regarding a proposed rule that may have a significant

In addition, the board may submit suggested changes in the proposed rule to the agency including proposals to reduce the use of cross-references in the rule.

economic impact on small businesses, the agency shall submit the proposed rule and the report required under sub. (3) to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the emergency rule on small businesses and shall determine whether the agency has complied with sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and ask the agency to comply with those provisions. The board shall send a copy of ~~the~~ and of any of failure to comply with sub. (3)(e) or s. 227.114 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 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 with, overlap, or duplicate other 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 small businesses, as defined in s. 227.114 (1), in which case the rule applies to small businesses on the first day of the 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 may have a significant economic impact on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of the rule to the small business regulatory review board. The board

In addition, the board may submit suggested changes in the proposed rule to the agency.

1 may use cost-benefit analysis to determine the fiscal effect of the emergency rule on
2 small businesses and shall determine whether the agency complied with s. 227.114
3 or 227.19 (3) (e). If the board determines that the agency failed to comply with s.
4 227.114 or 227.19 (3) (e), the board shall notify the agency of that determination and
5 ask the agency to comply with those provisions. *of noncompliance* The notification may include a
6 request that the agency do any of the following:

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

9 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
10 other rules or federal regulations.

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

12 **227.30 Review of administrative rules.** Each agency shall, during the
13 5-year period beginning on the effective date of this section [revisor inserts date],
14 review the rules of the agency to determine whether any of those rules place an
15 unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
16 to conduct their affairs. If an agency determines that a rule places an unnecessary
17 burden on the ability of a small business to conduct its affairs, the agency shall repeal
18 the rule or amend the rule to remove the unnecessary burden. The agency shall
19 annually, on the first day of the 12th month beginning after the effective date of this
20 section [revisor inserts date], for the 5-year period, submit a report to the
21 legislature under s. 13.172 (2) describing the agency's review of its rules and any
22 actions taken regarding those rules during the previous year. The agency shall send
23 a copy of that report to the small business regulatory review board.

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

25 **227.40 (2) (f)** Proceedings under s. 227.114 (6m) or 227.14 (2t).

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

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

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

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

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

12 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
13 section:

14 (a) “Agency” has the meaning given in s. 227.01 (1).

15 (b) “Small business” has the meaning given in s. 227.114 (1).

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

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

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

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

3 (3) A penalty may be imposed for the violation of an administrative rule
4 notwithstanding sub. (2) if any of the following applies:

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

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

9 (c) The small business that committed the violation has a pattern of continuous
10 or repeated violations of administrative rules.

11 **SECTION 17. Nonstatutory provisions.**

12 (1) Notwithstanding the length of terms specified for the representatives of
13 small businesses of the small business regulatory review board under section 15.1⁵~~05~~
14 ⁵~~3~~ of the statutes, as created by this act, ³~~2~~ of the initial representatives of small
15 businesses shall be appointed for terms expiring on May 1, 2005, and the other 2
16 initial representatives of small businesses shall be appointed for terms expiring on
17 May 1, 2006.

18 **SECTION 18. Initial applicability.**

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

21 **SECTION 19. Effective date.**

22 (1) This act takes effect on the first day of the 4th month beginning after
23 publication.

24

(END)

RE: Small Business Regulatory Fairness Proposal

Chris, our proposal is more comprehensive and creative and also provides much greater procedural detail than the ALEC proposal, however, there are a couple provisions I suggest we incorporate from the ALEC bill.

Amend the current Regulatory Flexibility Act (227.016 (2)):

Current Law: When an agency proposes a rule that may have any effect on small business, the agency shall consider each of the following methods for reducing the impact of the rule on small business:

C ~~Recommend: When an agency proposes, revises, or repeals a rule that may have an effect on small business, the agency shall consider each of the following methods for reducing the impact of the rule on small business:~~ ✓

Note: From ALEC model bill

Section 1, page 2:

Line 4: Following "businesses" insert "who shall serve at the pleasure of the governor" *sent e-mail*

Line 5: Following "businesses." insert "Each member of the Board shall serve a three year term." *have 3-yr terms ?*

Section 2, page 2:

227.114 (1)(a) Lines 10-14: Delete: "For purposes of a specific rule, an agency may define small business to include more employees or greater gross annual sales if necessary to adapt the rule to the needs and problems of small business. A small business may also be defined in accordance with other standards established by an agency by rule." ✓

Section 9, page 4:

Line 25: Delete: "a substantial number of "businesses," add: "business," following "small"

Cannot find

Section 11, page 5:

Line 25: Delete "a substantial number of "businesses" Add "business" following "small"

ll

Section 12, page 6:

227.30 Line 19: following "burden." Add:

✓

X
In reviewing rules under this section, the agency shall consider the following factors:

1. The continued need for the rule.
2. The nature of complaints or comments received concerning the rule from the public.
3. The complexity of the rule.
4. The extent to which the rule overlaps, duplicates or conflicts with other federal, state, or local government rules, and
5. The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

Note: from ALEC Model bill.

Please call for discussion or questions.

Page 2: Line 8, Line 10:

OK

Delete: "fewer than 25 full-time employees"
Insert: 25 or fewer full-time employees

Page 3: Line 8-10:

This one is important

Delete: "The electronic mail address and telephone number of an agency contact person for the rule, and a link to an Internet site that allows a person to review the rule and make comments regarding the rule."

Insert: Each regulatory agency shall designate a small business regulatory coordinator to act as a contact person for small business regulatory issues.

The electronic mail address and telephone number of an agency contact person for the rule, and a link to an Internet site that allows a person to review the rule and make comments regarding the rule.

Page 3, Line 13:

OK

Retain "department of administration"

Page 3: Line 14:

OK

Following "objectivity"
Insert: consistency

Page 3: Line 17-20:

OK

Delete: "The agency shall annually submit a report to the Legislature under S. 13.172(2) regarding any comments that the agency receives regarding it's data and what response the agency made to the comments. The agency shall send a copy of that report to the Small Business Regulatory Review Board."

Page 3: Line 25:

OK

Following "may"

Delete: "Commence an action in the Circuit Court for Dane County for injunctive relief. If the Circuit Court determines that the proposed rule does not include enforcement provisions, the Court may enjoin the promulgation of the proposed rule."

Following "may"

Insert: return a rule to the submitting agency for an appropriate analysis.

Add language that directs agencies to reduce the use of cross-referencing in rule-making to other statutes.

Page 1: Line 10: After "board":

OK Delete: "department of administration"
Insert: department of commerce.

Page 2: Line 3: After "commerce":

OK Insert: department of natural resources
Delete: "4"
Insert: 5

Page 2: Line 2:

OK Following: "administration"
Insert: appointed by the department secretary

Page 2: Line 3:

OK Following: "protection"
Insert: appointed by the department secretary

Page 2: Line 3:

OK Following: "commerce"
Insert: appointed by the department secretary

Page 2: Line 4:

Following (1)
Insert: ~~appointed by the governor~~

2



D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen. Conf.

1 AN ACT to amend 227.114 (1) (a), 227.485 (2) (c) and 814.245 (5) (a) 2.; and to
 2 create 15.155 (5), 227.114 (6m), 227.135 (1) (e), 227.135 (1) (f), 227.14 (2m),
 3 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m), 227.30, 227.40
 4 (2) (f) and 895.59 of the statutes; relating to: administrative rule making
 5 regarding small businesses, data used by administrative agencies in preparing
 6 proposed rules, increasing attorney fees, creating an Internet site for proposed
 7 rules, and creating a Small 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:

8 SECTION 1. 15.155 (5) of the statutes is created to read:
 9 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
 10 business regulatory review board, attached to the department of commerce under s.

1 15.03. The board shall consist of a representative of the department of
 2 administration, a representative of the department of agriculture, trade and
 3 consumer protection, a representative of the department of commerce, a
 4 representative of the department of natural resources, 5 representatives of small
 5 businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms, and
 6 the chairpersons of one senate and one assembly committee concerned with small
 7 businesses. The representatives of the departments shall be selected by the
 8 secretary of that department.

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

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

17f
 insert
 2-18
 → ~~(Am. 227.114(2))~~ ←
 SECTION 3. 227.114 (6m) of the statutes is created to read:

19 227.114 (6m) (a) If an agency fails to comply with the requirements of this
 20 section or s. 227.19 (3) (e), a small business may commence an action in the circuit
 21 court for Dane County for injunctive relief. The circuit court may issue an order
 22 enjoining the promulgation of a rule if the court determines that the agency failed
 23 to comply with the requirements of this section or s. 227.19 (3) (e).

24 (b) If a small business is subject to a penalty from an administrative agency as
 25 the result of an action or omission by the small business in response to inaccurate

SECTION 3

→ The agency shall designate a small business regulatory coordinator to act as a contact person for small business regulatory issues. The agency shall or inconsistent advice given to the small business by an employee, officer, or agent include in the notice under 5.229.13 the

1 of the agency, the small business may commence an action in the circuit court for
 2 Dane County for injunctive relief. The circuit court may issue an order enjoining the
 3 imposition of the penalty if the court determines that the action or omission of the
 4 small business that resulted in the penalty was in response to the agency's
 5 inaccurate or inconsistent advice.
 6

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

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

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

114 (9m)
 227.135 (1) (f) The electronic mail address and telephone number of an agency
 the small business regulatory coordinator
 contact person for the rule and a link to an Internet site that allows a person to
 review the rule and make comments regarding the rule.

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

227.14 (2m) QUALITY OF AGENCY DATA REPORT. Each agency shall, in cooperation
 with the department of administration, ensure the accuracy, integrity, and
 consistency of the data that is used when preparing a proposed rule and when
 completing an analysis of the proposed rule under sub. (2). A person affected by the
 proposed rule may submit comments to the agency regarding the accuracy, integrity,
 or consistency of that data. Each agency shall reduce the amount of
 cross-references to the statutes in proposed and final rules.

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

227.14 (2t) ENFORCEMENT PROVISIONS. Except as provided in sub. (1m), each
 proposed rule shall include provisions detailing how the rule will be enforced. If a
 proposed rule does not include enforcement provisions, the small business
 regulatory review board may return the rule to the submitting agency for an
 appropriate enforcement provision.

(1m)

9

B

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

2 **227.15 (1m) INTERNET ACCESS TO PROPOSED RULE.** The joint legislative council
3 shall create and maintain an Internet site that includes a copy of each proposed rule
4 received under sub. (1) in a format that allows the site to be searched using keywords.
5 Each agency shall provide the joint legislative council with the proposed rules and
6 other information needed to comply with this subsection in the format required by
7 the joint legislative council. The Internet site shall include a section devoted to
8 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
9 site shall also include all of the following:

10 (a) The electronic mail address and telephone number of an agency contact
11 person for each proposed rule.

12 (b) The material required under s. 227.14 (2), (3), and (4).

13 (c) The written report of the legislative council staff review of the proposed rule
14 prepared under sub. (2) and any agency comments regarding that report.

15 (d) The time, date, and place of any public hearing specified in the notice in s.
16 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17
17 (1) (a).

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

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

21 **227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE.** On the same day that an agency
22 submits a notice under sub. (2) regarding a proposed rule that may have a significant
23 economic impact on small businesses, the agency shall submit the proposed rule and
24 the report required under sub. (3) to the small business regulatory review board. The
25 board may use cost-benefit analysis to determine the fiscal effect of the emergency

1 rule on small businesses and shall determine whether the agency has complied with
2 sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with
3 sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and
4 ask the agency to comply with those provisions. In addition, the board may submit
5 suggested changes in the proposed rule to the agency, including proposals to reduce
6 the use of cross-references in the rule. The board shall send a copy of any suggestions
7 and of any notice of failure to comply with sub. (3) (e) or s. 227.114 to each committee
8 to which the proposed rule was referred under sub. (2). The notification of
9 noncompliance may include a request that the agency do any of the following:

10 (a) Explain why the agency has not incorporated comments received from small
11 businesses regarding the proposed rule.

12 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
13 other rules or federal regulations.

14 (c) Require the inclusion of fee information and fee schedules in the regulatory
15 flexibility analysis, including why fees are necessary and for what purpose the fees
16 will be used.

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

18 227.22 (2) (e) The rule has a significant economic impact on small businesses,
19 as defined in s. 227.114 (1), in which case the rule applies to small businesses on the
20 first day of the 3rd month commencing after the date of publication.

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

22 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the
23 same day that the agency files a rule under sub. (3) that may have a significant
24 economic impact on small businesses, as defined in s. 227.114 (1), the agency shall
25 submit a copy of the rule to the small business regulatory review board. The board

1 may use cost-benefit analysis to determine the fiscal effect of the emergency rule on
2 small businesses and shall determine whether the agency complied with s. 227.114
3 or 227.19 (3) (e). If the board determines that the agency failed to comply with s.
4 227.114 or 227.19 (3) (e), the board shall notify the agency of that determination and
5 ask the agency to comply with those provisions. In addition, the board may submit
6 suggested changes in the proposed rule to the agency. The notification of
7 noncompliance may include a request that the agency do any of the following:

8 (a) Explain why the agency has not incorporated comments received from small
9 businesses regarding the emergency rule.

10 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
11 other rules or federal regulations.

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

13 **227.30 Review of administrative rules.** ^{(B)(1)} Each agency shall, during the
14 5-year period beginning on the effective date of this ~~section~~ ^{subsection} [revisor inserts date],
15 review the rules of the agency to determine whether any of those rules place an
16 unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
17 to conduct their affairs. If an agency determines that a rule places an unnecessary
18 burden on the ability of a small business to conduct its affairs, the agency shall repeal
19 the rule or amend the rule to remove the unnecessary burden. ^(insert 6-18) ^{(B)(3)} The agency shall
20 annually, on the first day of the 12th month beginning after the effective date of this
21 ~~section~~ ^{subsection} [revisor inserts date], for the 5-year period, submit a report to the
22 legislature under s. 13.172 (2) describing the agency's review of its rules and any
23 actions taken regarding those rules during the previous year. The agency shall send
24 a copy of that report to the small business regulatory review board.

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

1 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

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

3 227.485 (2) (c) “Small business” means a business entity, including its
4 affiliates, which is independently owned and operated, and which employs fewer
5 than 25 full-time employees or which has gross annual sales of less than \$2,500,000
6 \$5,000,000.

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

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

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

13 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
14 section:

15 (a) “Agency” has the meaning given in s. 227.01 (1).

16 (b) “Small business” has the meaning given in s. 227.114 (1).

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

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

23 (b) The small business making the disclosure initiates an appropriate and good
24 faith effort to achieve compliance with the administrative rule, pursues compliance

1 with due diligence and promptly corrects the noncompliance after discovery of the
2 violation.

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

5 (3) A penalty may be imposed for the violation of an administrative rule
6 notwithstanding sub. (2) if any of the following applies:

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

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

11 (c) The small business that committed the violation has a pattern of continuous
12 or repeated violations of administrative rules.

13 **SECTION 17. Nonstatutory provisions.**

14 (1) Notwithstanding the length of terms specified for the representatives of
15 small businesses of the small business regulatory review board under section 15.155
16 (5) of the statutes, as created by this act, 3 of the initial representatives of small
17 businesses shall be appointed for terms expiring on May 1, 2005, and the other 2
18 initial representatives of small businesses shall be appointed for terms expiring on
19 May 1, 2006.

20 **SECTION 18. Initial applicability.**

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

23 **SECTION 19. Effective date.**

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0824/P4ins
RPN:kmg:jf

1 insert 2-17:

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

3 227.114 (2) (intro.) When an agency proposes or revises a rule that may have
4 an effect on small businesses, the agency shall consider each of the following methods
5 for reducing the impact of the rule on small businesses:

****NOTE: I did not add "repealed" to this amendment because it does not fit with
the rest of the subsection.

History: 1985 a. 182; 1995 a. 37; ~~9116 (5)~~; 1999 a. 9.

6 insert 6-18:

7 (2) In reviewing a rule under this section, the agency shall consider all of the
8 following:

- 9 (a) The continued need for the rule.
- 10 (b) The nature of the complaints and comments received from the public
11 regarding the rule.
- 12 (c) The complexity of the rule.
- 13 (d) The extent to which the rule overlaps, duplicates, or conflicts with federal
14 regulations, other state rules, or local ordinances.
- 15 (e) The length of time since the rule has been evaluated.
- 16 (f) The degree to which technology, economic conditions, or other factors have
17 changed in the subject area affected by the rule since the rule was promulgated.

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

LRB-0824/P4dn

RPN:kmg:jf



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

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

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

LRB-0824/P4dn
RPN:kmg:jf

March 4, 2003

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

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0824/P4

RPN:kmg:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 *Gen. Cat.*
AN ACT *to amend* 227.114 (1) (a), 227.114 (2) (intro.), 227.485 (2) (c) and 814.245
2 (5) (a) 2.; and *to create* 15.155 (5), 227.114 (6m), 227.114 (7m), 227.135 (1) (e),
3 227.14 (2m), 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m),
4 227.30, 227.40 (2) (f) and 895.59 of the statutes; **relating to:** administrative
5 rule making regarding small businesses, data used by administrative agencies
6 in preparing proposed rules, increasing attorney fees, creating an Internet site
7 for proposed rules, and creating a Small 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:

8 SECTION 1. 15.155 (5) of the statutes is created to read:
9 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
10 business regulatory review board, attached to the department of commerce under s.

1 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce, a
4 representative of the department of natural resources, 5 representatives of small
5 businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms, and
6 the chairpersons of one senate and one assembly committee concerned with small
7 businesses. The representatives of the departments shall be selected by the
8 secretary of that department.

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

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

18 **SECTION 3.** 227.114 (2) (intro.) of the statutes is amended to read:

19 227.114 (2) (intro.) When an agency proposes or revises a rule that may have
20 an effect on small businesses, the agency shall consider each of the following methods
21 for reducing the impact of the rule on small businesses:

****NOTE: I did not add “repealed” to this amendment because it does not fit with
the rest of the subsection.

22 **SECTION 4.** 227.114 (6m) of the statutes is created to read:

1 227.114 (6m) (a) ~~If an agency fails to comply with the requirements of this~~
2 ~~section or s. 227.19 (3) (e), a small business may commence an action in the circuit~~
3 ~~court for Dane County for injunctive relief. The circuit court may issue an order~~
4 ~~enjoining the promulgation of a rule if the court determines that the agency failed~~
5 ~~to comply with the requirements of this section or s. 227.19 (3) (e).~~

6 ~~^~~ If a small business is subject to a penalty from an administrative agency as
7 the result of an action or omission by the small business in response to inaccurate
8 or inconsistent advice given to the small business by an employee, officer, or agent
9 of the agency, the small business may commence an action in the circuit court for
10 Dane County for injunctive relief. The circuit court may issue an order enjoining the
11 imposition of the penalty if the court determines that the action or omission of the
12 small business that resulted in the penalty was in response to the agency's
13 inaccurate or inconsistent advice.

14 SECTION 5. 227.114 (7m) of the statutes is created to read:

15 227.114 (7m) The agency shall designate a small business regulatory
16 coordinator to act as a contact person for small business regulatory issues. The
17 agency shall include in the notice under s. 227.17 the electronic mail address and
18 telephone number of the small business regulatory coordinator and a link to an
19 Internet site that allows a person to review the rule and make comments regarding
20 the rule.

21 SECTION 6. 227.135 (1) (e) of the statutes is created to read:

22 227.135 (1) (e) A description of all of the entities that will be affected by the rule.

23 SECTION 7. 227.14 (2m) of the statutes is created to read:

24 227.14 (2m) QUALITY OF AGENCY DATA. Each agency shall, in cooperation with
25 the department of administration, ensure the accuracy, integrity, and consistency of

1 the data that is used when preparing a proposed rule and when completing an
2 analysis of the proposed rule under sub. (2). Each agency shall reduce the amount
3 of cross-references to the statutes in proposed and final rules. A person affected by
4 the proposed rule may submit comments to the agency regarding the accuracy,
5 integrity, or consistency of that data.

6 **SECTION 8.** 227.14 (2t) of the statutes is created to read:

7 227.14 (2t) ENFORCEMENT PROVISIONS. Except as provided in sub. (1m) ^s each
8 proposed rule shall include provisions detailing how the rule will be enforced. If a
9 proposed rule does not include enforcement provisions, the small business
10 regulatory review board may return the rule to the submitting agency for an
11 appropriate enforcement provision.

12 **SECTION 9.** 227.15 (1m) of the statutes is created to read:

13 227.15 (1m) INTERNET ACCESS TO PROPOSED RULE. The joint legislative council
14 shall create and maintain an Internet site that includes a copy of each proposed rule
15 received under sub. (1) in a format that allows the site to be searched using keywords.
16 Each agency shall provide the joint legislative council with the proposed rules and
17 other information needed to comply with this subsection in the format required by
18 the joint legislative council. The Internet site shall include a section devoted to
19 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
20 site shall also include all of the following:

21 (a) The electronic mail address and telephone number of an agency contact
22 person for each proposed rule.

23 (b) The material required under s. 227.14 (2), (3), and (4).

24 (c) The written report of the legislative council staff review of the proposed rule
25 prepared under sub. (2) and any agency comments regarding that report.

1 (d) The time, date, and place of any public hearing specified in the notice in s.
2 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17
3 (1) (a).

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

6 **SECTION 10.** 227.19 (3r) of the statutes is created to read:

7 227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE. On the same day that an agency
8 submits a notice under sub. (2) regarding a proposed rule that may have a significant
9 economic impact on small businesses, the agency shall submit the proposed rule and
10 the report required under sub. (3) to the small business regulatory review board. The
11 board may use cost-benefit analysis to determine the fiscal effect of the emergency
12 rule on small businesses and shall determine whether the agency has complied with
13 sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with
14 sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and
15 ask the agency to comply with those provisions. In addition, the board may submit
16 suggested changes in the proposed rule to the agency, including proposals to reduce
17 the use of cross-references in the rule. The board shall send a copy of any suggestions
18 and of any notice of failure to comply with sub. (3) (e) or s. 227.114 to each committee
19 to which the proposed rule was referred under sub. (2). The notification of
20 noncompliance may include a request that the agency do any of the following:

21 (a) Explain why the agency has not incorporated comments received from small
22 businesses regarding the proposed rule.

23 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
24 other rules or federal regulations.

1 (c) Require the inclusion of fee information and fee schedules in the regulatory
2 flexibility analysis, including why fees are necessary and for what purpose the fees
3 will be used.

4 **SECTION 11.** 227.22 (2) (e) of the statutes is created to read:

5 227.22 (2) (e) The rule has a significant economic impact on small businesses,
6 as defined in s. 227.114 (1), in which case the rule applies to small businesses on the
7 first day of the 3rd month commencing after the date of publication.

8 **SECTION 12.** 227.24 (3m) of the statutes is created to read:

9 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. On the
10 same day that the agency files a rule under sub. (3) that may have a significant
11 economic impact on small businesses, as defined in s. 227.114 (1), the agency shall
12 submit a copy of the rule to the small business regulatory review board. The board
13 may use cost-benefit analysis to determine the fiscal effect of the emergency rule on
14 small businesses and shall determine whether the agency complied with s. 227.114
15 or 227.19 (3) (e). If the board determines that the agency failed to comply with s.
16 227.114 or 227.19 (3) (e), the board shall notify the agency of that determination and
17 ask the agency to comply with those provisions. In addition, the board may submit
18 suggested changes in the proposed rule to the agency. The notification of
19 noncompliance may include a request that the agency do any of the following:

20 (a) Explain why the agency has not incorporated comments received from small
21 businesses regarding the emergency rule.

22 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
23 other rules or federal regulations.

24 **SECTION 13.** 227.30 of the statutes is created to read:

1 **227.30 Review of administrative rules.** (1) Each agency shall, during the
2 5-year period beginning on the effective date of this subsection [revisor inserts
3 date], review the rules of the agency to determine whether any of those rules place
4 an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
5 to conduct their affairs. If an agency determines that a rule places an unnecessary
6 burden on the ability of a small business to conduct its affairs, the agency shall repeal
7 the rule or amend the rule to remove the unnecessary burden.

8 (2) In reviewing a rule under this section, the agency shall consider all of the
9 following:

10 (a) The continued need for the rule.

11 (b) The nature of the complaints and comments received from the public
12 regarding the rule.

13 (c) The complexity of the rule.

14 (d) The extent to which the rule overlaps, duplicates, or conflicts with federal
15 regulations, other state rules, or local ordinances.

16 (e) The length of time since the rule has been evaluated.

17 (f) The degree to which technology, economic conditions, or other factors have
18 changed in the subject area affected by the rule since the rule was promulgated.

19 (3) The agency shall annually, on the first day of the 12th month beginning
20 after the effective date of this subsection [revisor inserts date], for the 5-year
21 period, submit a report to the legislature under s. 13.172 (2) describing the agency's
22 review of its rules and any actions taken regarding those rules during the previous
23 year. The agency shall send a copy of that report to the small business regulatory
24 review board.

25 **SECTION 14.** 227.40 (2) (f) of the statutes is created to read:

1 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

2 **SECTION 15.** 227.485 (2) (c) of the statutes is amended to read:

3 227.485 (2) (c) “Small business” means a business entity, including its
4 affiliates, which is independently owned and operated, and which employs fewer
5 than 25 full-time employees or which has gross annual sales of less than ~~\$2,500,000~~
6 \$5,000,000.

7 **SECTION 16.** 814.245 (5) (a) 2. of the statutes is amended to read:

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

12 **SECTION 17.** 895.59 of the statutes is created to read:

13 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
14 section:

15 (a) “Agency” has the meaning given in s. 227.01 (1).

16 (b) “Small business” has the meaning given in s. 227.114 (1).

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

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

23 (b) The small business making the disclosure initiates an appropriate and good
24 faith effort to achieve compliance with the administrative rule, pursues compliance

1 with due diligence and promptly corrects the noncompliance after discovery of the
2 violation.

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

5 (3) A penalty may be imposed for the violation of an administrative rule
6 notwithstanding sub. (2) if any of the following applies:

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

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

11 (c) The small business that committed the violation has a pattern of continuous
12 or repeated violations of administrative rules.

13 **SECTION 18. Nonstatutory provisions.**

14 (1) Notwithstanding the length of terms specified for the representatives of
15 small businesses of the small business regulatory review board under section 15.155
16 (5) of the statutes, as created by this act, 3 of the initial representatives of small
17 businesses shall be appointed for terms expiring on May 1, 2005, and the other 2
18 initial representatives of small businesses shall be appointed for terms expiring on
19 May 1, 2006.

20 **SECTION 19. Initial applicability.**

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

23 **SECTION 20. Effective date.**



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0824/P5

RPN:kmg:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 227.114 (1) (a), 227.114 (2) (intro.), 227.485 (2) (c) and 814.245
2 (5) (a) 2.; and *to create* 15.155 (5), 227.114 (6m), 227.114 (7m), 227.135 (1) (e),
3 227.14 (2m), 227.14 (2t), 227.15 (1m), 227.19 (3r), 227.22 (2) (e), 227.24 (3m),
4 227.30, 227.40 (2) (f) and 895.59 of the statutes; **relating to:** administrative
5 rule making regarding small businesses, data used by administrative agencies
6 in preparing proposed rules, increasing attorney fees, creating an Internet site
7 for proposed rules, and creating a Small 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:

8 SECTION 1. 15.155 (5) of the statutes is created to read:
9 15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
10 business regulatory review board, attached to the department of commerce under s.

1 15.03. The board shall consist of a representative of the department of
2 administration, a representative of the department of agriculture, trade and
3 consumer protection, a representative of the department of commerce, a
4 representative of the department of natural resources, 5 representatives of small
5 businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year terms, and
6 the chairpersons of one senate and one assembly committee concerned with small
7 businesses. The representatives of the departments shall be selected by the
8 secretary of that department.

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

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

18 SECTION 3. 227.114 (2) (intro.) of the statutes is amended to read:

19 227.114 (2) (intro.) When an agency proposes or revises a rule that may have
20 an effect on small businesses, the agency shall consider each of the following methods
21 for reducing the impact of the rule on small businesses:

****NOTE: I did not add "repealed" to this amendment because it does not fit with
the rest of the subsection

22 SECTION 4. 227.114 (6m) of the statutes is created to read:

1 **227.114 (6m)** If a small business is subject to a penalty from an administrative
2 agency as the result of an action or omission by the small business in response to
3 inaccurate or inconsistent advice given to the small business by an employee, officer,
4 or agent of the agency, the small business may commence an action in the circuit
5 court for Dane County for injunctive relief. The circuit court may issue an order
6 enjoining the imposition of the penalty if the court determines that the action or
7 omission of the small business that resulted in the penalty was in response to the
8 agency's inaccurate or inconsistent advice.

9 **SECTION 5.** 227.114 (7m) of the statutes is created to read:

10 **227.114 (7m)** The agency shall designate a small business regulatory
11 coordinator to act as a contact person for small business regulatory issues. The
12 agency shall include in the notice under s. 227.17 the electronic mail address and
13 telephone number of the small business regulatory coordinator and a link to an
14 Internet site that allows a person to review the rule and make comments regarding
15 the rule.

16 **SECTION 6.** 227.135 (1) (e) of the statutes is created to read:

17 **227.135 (1) (e)** A description of all of the entities that will be affected by the rule.

18 **SECTION 7.** 227.14 (2m) of the statutes is created to read:

19 **227.14 (2m) QUALITY OF AGENCY DATA.** Each agency shall, in cooperation with
20 the department of administration, ensure the accuracy, integrity, and consistency of
21 the data that is used when preparing a proposed rule and when completing an
22 analysis of the proposed rule under sub. (2). Each agency shall reduce the amount
23 of cross-references to the statutes in proposed and final rules. A person affected by
24 the proposed rule may submit comments to the agency regarding the accuracy,
25 integrity, or consistency of that data.

1 **SECTION 8.** 227.14 (2t) of the statutes is created to read:

2 **227.14 (2t) ENFORCEMENT PROVISIONS.** Except as provided in subs. (1m) and (1s),
3 each proposed rule shall include provisions detailing how the rule will be enforced.
4 If a proposed rule does not include enforcement provisions, the small business
5 regulatory review board may return the rule to the submitting agency for an
6 appropriate enforcement provision.

7 **SECTION 9.** 227.15 (1m) of the statutes is created to read:

8 **227.15 (1m) INTERNET ACCESS TO PROPOSED RULE.** The joint legislative council
9 shall create and maintain an Internet site that includes a copy of each proposed rule
10 received under sub. (1) in a format that allows the site to be searched using keywords.
11 Each agency shall provide the joint legislative council with the proposed rules and
12 other information needed to comply with this subsection in the format required by
13 the joint legislative council. The Internet site shall include a section devoted to
14 proposed rules affecting small businesses, as defined in s. 227.114 (1). The Internet
15 site shall also include all of the following:

16 (a) The electronic mail address and telephone number of an agency contact
17 person for each proposed rule.

18 (b) The material required under s. 227.14 (2), (3), and (4).

19 (c) The written report of the legislative council staff review of the proposed rule
20 prepared under sub. (2) and any agency comments regarding that report.

21 (d) The time, date, and place of any public hearing specified in the notice in s.
22 227.17 as soon as that notice is submitted to the revisor of statutes under s. 227.17
23 (1) (a).

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

1 **SECTION 10.** 227.19 (3r) of the statutes is created to read:

2 **227.19 (3r) FISCAL EFFECT OF EMERGENCY RULE.** On the same day that an agency
3 submits a notice under sub. (2) regarding a proposed rule that may have a significant
4 economic impact on small businesses, the agency shall submit the proposed rule and
5 the report required under sub. (3) to the small business regulatory review board. The
6 board may use cost-benefit analysis to determine the fiscal effect of the emergency
7 rule on small businesses and shall determine whether the agency has complied with
8 sub. (3) (e) or s. 227.114. If the board determines that the agency failed to comply with
9 sub. (3) (e) or s. 227.114, the board shall notify the agency of that determination and
10 ask the agency to comply with those provisions. In addition, the board may submit
11 suggested changes in the proposed rule to the agency, including proposals to reduce
12 the use of cross-references in the rule. The board shall send a copy of any suggestions
13 and of any notice of failure to comply with sub. (3) (e) or s. 227.114 to each committee
14 to which the proposed rule was referred under sub. (2). The notification of
15 noncompliance may include a request that the agency do any of the following:

16 (a) Explain why the agency has not incorporated comments received from small
17 businesses regarding the proposed rule.

18 (b) Verify that the proposed rule does not conflict with, overlap, or duplicate
19 other rules or federal regulations.

20 (c) Require the inclusion of fee information and fee schedules in the regulatory
21 flexibility analysis, including why fees are necessary and for what purpose the fees
22 will be used.

23 **SECTION 11.** 227.22 (2) (e) of the statutes is created to read:

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

4 **SECTION 12.** 227.24 (3m) of the statutes is created to read:

5 **227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD.** On the
6 same day that the agency files a rule under sub. (3) that may have a significant
7 economic impact on small businesses, as defined in s. 227.114 (1), the agency shall
8 submit a copy of the rule to the small business regulatory review board. The board
9 may use cost-benefit analysis to determine the fiscal effect of the emergency rule on
10 small businesses and shall determine whether the agency complied with s. 227.114
11 or 227.19 (3) (e). If the board determines that the agency failed to comply with s.
12 227.114 or 227.19 (3) (e), the board shall notify the agency of that determination and
13 ask the agency to comply with those provisions. In addition, the board may submit
14 suggested changes in the proposed rule to the agency. The notification of
15 noncompliance may include a request that the agency do any of the following:

16 (a) Explain why the agency has not incorporated comments received from small
17 businesses regarding the emergency rule.

18 (b) Verify that the emergency rule does not conflict with, overlap, or duplicate
19 other rules or federal regulations.

20 **SECTION 13.** 227.30 of the statutes is created to read:

21 **227.30 Review of administrative rules. (1)** Each agency shall, during the
22 5-year period beginning on the effective date of this subsection [revisor inserts
23 date], review the rules of the agency to determine whether any of those rules place
24 an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1),
25 to conduct their affairs. If an agency determines that a rule places an unnecessary

1 burden on the ability of a small business to conduct its affairs, the agency shall repeal
2 the rule or amend the rule to remove the unnecessary burden.

3 (2) In reviewing a rule under this section, the agency shall consider all of the
4 following:

5 (a) The continued need for the rule.

6 (b) The nature of the complaints and comments received from the public
7 regarding the rule.

8 (c) The complexity of the rule.

9 (d) The extent to which the rule overlaps, duplicates, or conflicts with federal
10 regulations, other state rules, or local ordinances.

11 (e) The length of time since the rule has been evaluated.

12 (f) The degree to which technology, economic conditions, or other factors have
13 changed in the subject area affected by the rule since the rule was promulgated.

14 (3) The agency shall annually, on the first day of the 12th month beginning
15 after the effective date of this subsection [revisor inserts date], for the 5-year
16 period, submit a report to the legislature under s. 13.172 (2) describing the agency's
17 review of its rules and any actions taken regarding those rules during the previous
18 year. The agency shall send a copy of that report to the small business regulatory
19 review board.

20 **SECTION 14.** 227.40 (2) (f) of the statutes is created to read:

21 227.40 (2) (f) Proceedings under s. 227.114 (6m) or 227.14 (2t).

22 **SECTION 15.** 227.485 (2) (c) of the statutes is amended to read:

23 227.485 (2) (c) "Small business" means a business entity, including its
24 affiliates, which is independently owned and operated, and which employs fewer

1 than 25 full-time employees or which has gross annual sales of less than \$2,500,000
2 \$5,000,000.

3 **SECTION 16.** 814.245 (5) (a) 2. of the statutes is amended to read:

4 814.245 (5) (a) 2. Attorney or agent fees may not be awarded in excess of \$75
5 \$150 per hour unless the court determines that an increase in the cost of living or a
6 special factor, such as the limited availability of qualified attorneys or agents,
7 justifies a higher fee.

8 **SECTION 17.** 895.59 of the statutes is created to read:

9 **895.59 Liability exemption; disclosure of rule violations.** (1) In this
10 section:

11 (a) “Agency” has the meaning given in s. 227.01 (1).

12 (b) “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 agency
24 in any investigation that results from the disclosure.

1 (3) A penalty may be imposed for the violation of an 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 a pattern of continuous
8 or repeated violations of administrative rules.

9 **SECTION 18. Nonstatutory provisions.**

10 (1) Notwithstanding the length of terms specified for the representatives of
11 small businesses of the small business regulatory review board under section 15.155
12 (5) of the statutes, as created by this act, 3 of the initial representatives of small
13 businesses shall be appointed for terms expiring on May 1, 2005, and the other 2
14 initial representatives of small businesses shall be appointed for terms expiring on
15 May 1, 2006.

16 **SECTION 19. Initial applicability.**

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

19 **SECTION 20. Effective date.**

20 (1) This act takes effect on the first day of the 4th month beginning after
21 publication.

22 **(END)**

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0824/lins
RPN:kmg:jf

insert anl:

Under current law, an agency that proposes an administrative rule that affects small businesses (a business that employs fewer than 25 full-time employees or has gross annual sales of less than \$2,500,000), is required to consider ways to reduce the impact of the rule on small businesses, including creating less stringent compliance requirements for small businesses or exempting small businesses from the rule. Currently, the agency proposing the rule must give small businesses the opportunity to participate in the rule-making process. Agencies are also currently required to prepare a regulatory flexibility analysis of any rule that affects a small business, including a summary of changes made in the rule as a result of suggestions by small businesses and the estimated costs small businesses may incur to comply with the proposed rule.

This bill creates a ^{that} small business regulatory review board and requires an agency to submit to ~~that~~ board any proposed rule ^{that} may have a significant economic impact on small businesses. The board is authorized to analyze the rule and notify the proposing agency if the board determines that the agency failed to consider ways to reduce the proposed rule's impact on small businesses or failed to properly prepare the regulatory flexibility analysis. The board may suggest ways that the agency can modify the rule and may return the rule to the agency if the rule does not detail how the rule will be enforced.

The bill redefines "small business" to include any business with 25 or fewer employees or with gross annual sales of less than \$5,000,000. The bill requires every agency, in cooperation with the ^{that} department of administration, to ensure the accuracy, integrity, and consistency of the data ^{that} the agency uses when preparing a proposed rule. The bill gives small businesses the right to seek an injunction against the imposition of a penalty from an agency resulting from the small business's action that was in response to inaccurate information provided by the agency.

The bill requires the joint legislative council to create an Internet site that includes a copy of each proposed rule that is submitted to the council. The site must be searchable and include a section devoted to proposed rules affecting small businesses, an electronic address and telephone number of an agency contact for a rule, the council's report on the proposed rule, the time and place of any public hearing on the proposed rule, and the place where comments may be submitted regarding a proposed rule.

The bill requires every state agency to review all of its rules during the next five years to determine if any of the rules place an unnecessary burden on small businesses, and to repeal ^{or} amend any rules that do so.

The bill also gives immunity from imposition of a penalty to any small business that voluntarily discloses information to the appropriate agency about a possible violation of an administrative rule if a number of conditions are met, including the business making the disclosure within 45 days after learning of the violation, making a good faith effort to comply with the rule, and cooperating with the agency in any resulting investigation. The immunity does not apply if the violation resulted

in serious harm or in a substantial economic benefit to the violator which gave the violator an advantage over its business competitors.

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, March 11, 2003 9:23 AM
To: Newhouse, Chris
Subject: LRB-0824/1 (attached as requested)

LRB-0824 is a /1 not a /5. If this ends up not being the one you wanted just give us a call.



03-0824/1

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us