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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

<b>2003 Senate Bill 100</b>	<b>Senate Amendments 1 and 2</b>
<i>Memo published:</i> May 29, 2003	<i>Contact:</i> Mary Offerdahl, Staff Attorney (266-2230)

**2003 Senate Bill 100** relates to administrative rule making that affects small businesses. Among other provisions, the bill redefines “small business” and creates a Small Business Regulatory Review Board (the Board) consisting of four representatives of specified government departments, five representatives of small businesses, and the chairpersons of one Senate and one Assembly committee concerned with small businesses.

**Senate Amendment 1** adds two representatives to the Board created by the bill:

- A representative of the Department of Health and Family Services, thus increasing to five the number of representatives of specified government departments on the Board.
- An additional representative of small business, thus increasing to six the number of representatives of small businesses on the Board.

**Senate Amendment 2** removes the word “emergency” before the word “rule” on page 5, line 24 and page 6, line 3 of the bill, so that the amended bill requires an agency to submit *any* proposed rule (not just an emergency rule) that may have a significant economic impact on small businesses to the Board created by the bill. In addition, the amendment makes consistent throughout the bill the redefinition of “small business” to include a business which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

**Legislative History**

On May 23, 2003, the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform introduced and recommended for adoption Senate Amendments 1 and 2, both by votes of Ayes, 5; Noes, 0, and recommended passage of the bill, as amended, by a vote of Ayes, 4; Noes, 1.

MO:rv



WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

<b>2003 Senate Bill 100</b>	<b>Assembly Substitute Amendment 1</b>
<i>Memo published:</i> March 1, 2004	<i>Contact:</i> Richard Sweet, Senior Staff Attorney (266-2982)

*Senate Bill 100* relates to administrative rule making regarding small businesses, data used by administrative agencies in preparing proposed rules, increasing attorney fees, creating an Internet site for proposed rules, and creating a Small Business Regulatory Review Board.

*Assembly Substitute Amendment 1* contains the following provisions:

**Small Business Regulatory Review Board**

The substitute amendment creates a Small Business Regulatory Review Board, which is attached for administrative purposes to the Department of Commerce. The board consists of representatives of eight state agencies, six representatives of small business, and the chairpersons of one Senate and one Assembly committee concerned with small businesses. The eight agencies represented on the board are the Departments of Administration; Agriculture, Trade and Consumer Protection; Commerce; Health and Family Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development.

Under the substitute amendment, when an agency publishes a proposed rule that may have a significant impact on small businesses, after its submission to the Legislative Council Rules Clearinghouse, the agency must also submit the rule to the Small Business Regulatory Review Board. The board is permitted to use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and must determine whether the agency has complied with specified statutory requirements. If the board determines that the rule does not include an enforcement provision or that the agency has failed to comply with the specified statutory requirements, the board is required to notify the agency of that determination and ask the agency to comply. The board may also submit suggested changes in the proposed rule to the agency, including proposals to reduce the use cross-references in the rule. A report of these suggestions and of any notice of failure to include enforcement provisions or comply with the statutory provisions is to be sent to the Legislative Council staff. The notification may include a request that the agency do any of the following: (1) verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations; or (2) require the inclusion of fee information and fee schedules in the rule's analysis, including why fees are necessary and for what purpose the fees will be used.

The substitute amendment includes similar provisions for review by the Small Business Regulatory Review Board of emergency rules that may have a significant economic impact on small businesses. With respect to emergency rules, if the board determines that an agency has failed to comply with specified statutes, the board must notify the agency of that determination and ask that agency to comply. In addition, the board may submit suggested changes in the proposed rule to the agency and may include a request that an agency do any of the following: (1) explain how the agency has responded to comments received from small businesses regarding emergency rules; or (2) verify that the emergency rule does not conflict with, overlap, or duplicate other rules or federal regulations.

#### **Definition of "Small Business"**

The substitute amendment modifies various statutory definitions of "small business," which is defined in current law as a business entity that employs fewer than 25 full-time employees or that has gross annual sales of less than \$2.5 million. The definition is modified to mean a business entity that employs 25 or fewer full-time employees or which has gross annual sales of less than \$5 million.

#### **Agency Advice**

The substitute amendment provides that a small business may commence an action against an agency for injunctive relief to prevent the imposition of a penalty if the small business is subject to the penalty as a result of any of the following:

- The small business acted or failed to act due to the failure by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time.
- The small business acted or failed to act in response to inaccurate advice given to the small business by the agency's employee, officer, or agent with regulatory responsibility for legal requirement.

The small business may commence the action in the circuit court in the county where the property affected is located or, if no property is affected, in the circuit court in the county where the dispute arose. The court may issue an order enjoining imposition of the penalty if it determines that either of the above items applies.

For purposes of this provision, "small business" does not include an entity that is subject to the caregiver background check law that is administered by the Department of Health and Family Services (DHFS).

#### **Rule Revisions**

The substitute amendment modifies the current law that requires that when an agency proposes a rule that may have an effect on small businesses, the agency must consider specified methods for reducing the impact of the rule on small businesses. This is modified to apply also when an agency revises a rule.

#### **Agency Coordinator**

The substitute amendment requires an agency to designate a small business regulatory coordinator to act as a contact person for small business regulatory issues and to publicize that person's electronic mail address and telephone number. In addition, a hearing notice regarding a proposed rule

must include the electronic mail address and telephone number of the small business regulatory coordinator and a link to an Internet site that allows a person to review the rule and make comments regarding the rule.

#### **Statement of Scope**

The substitute amendment requires agencies to include in their statement of scope on proposed rules a description of all of the entities that will be affected by the rule.

#### **Quality of Agency Data**

The substitute amendment requires each agency, in cooperation with the Department of Administration, to ensure the accuracy, integrity, objectivity, and consistency of the data that is used when preparing a proposed rule and when completing an analysis of a proposed rule. Agencies are required to reduce the amount of cross-references to the statutes in rules. In addition, a person affected by a proposed rule may submit comments to the agency regarding the accuracy, integrity, or consistency of that data.

#### **Legislative Council Internet Site**

The substitute amendment requires the Joint Legislative Council to create and maintain an Internet site that includes a copy of each proposed rule in a format that allows searching by key words. Agencies are required to provide the Joint Legislative Council with the proposed rules and any other information needed to comply with this requirement in a format required by the Joint Legislative Council. The Internet site must include a section devoted to proposed rules affecting small business. In addition, it must include all of the following:

- The electronic mail address and telephone number of an agency contact person for each proposed rule.
- The analysis, reference to applicable forms, and fiscal estimates for proposed rules.
- Any report submitted to the Legislative Council staff by the Small Business Regulatory Review Board.
- The written report of the Legislative Council Rules Clearinghouse on a proposed rule and any agency comments regarding that report.
- The time, date, and place of any public hearing.
- The place where comments on the proposed rule should be submitted and the deadline for submitting those comments.

#### **Effective Dates of Rules**

The substitute amendment provides that if a rule has a significant economic impact on small businesses, the rule applies to small businesses on the first day of the third month commencing after the date of publication of the rule.

#### **Review of Existing Rules and Guidelines**

The substitute amendment states that the Small Business Regulatory Review Board may review the rules and guidelines of any state agency to determine whether they place an unnecessary burden on

the ability of small businesses to conduct their affairs. If the board determines that a rule or guideline does so, it is required to submit a report and recommendations regarding the rule or guideline to the Joint Committee for Review of Administrative Rules (JCRAR).

When reviewing the report, JCRAR must consider all of the following:

- The continued need for the rule or guideline.
- The nature of the complaints and comments received from the public regarding the rule or guideline.
- The complexity of the rule or guideline.
- The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
- The length of time since the rule or guideline has been evaluated.
- The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since it was promulgated.

JCRAR may refer the report regarding the rule or guideline to the presiding officers of each house of the Legislature for referral to a standing committee or may review the rule or guideline itself.

#### **Validity of Rules**

The substitute amendment modifies the statute that lists judicial proceedings in which the validity of a rule may be determined to include the new provision regarding small businesses obtaining an injunction to prevent the imposition of a penalty in specified circumstances (described above) and to include determinations by the Small Business Regulatory Review Board with respect to an agency's compliance with statutory provisions and inclusion of enforcement provisions.

#### **Attorney Fees**

The substitute amendment modifies the statute that provides that if an individual, a small nonprofit corporation, or a small business is the prevailing party in an action by a state agency or proceeding for judicial review, and submits a motion for costs, the court must award costs to the prevailing party, unless the court finds that the state agency was substantially justified in taking its position or that special circumstances exist that make the award unjust. Current law states that attorney or agent fees may not be awarded in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents, justifies a higher fee. The substitute amendment increases the amount to \$150 per hour.

#### **Rules Regarding Agency Discretion in Enforcement**

The substitute amendment requires each agency to promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in enforcement of rules and guidelines against a small business. The rule must include the reduction or waiver of penalties for voluntary disclosure, by a small business, of actual or potential violations of rules or guidelines. The rule may include consideration of a violator's ability to pay when determining the amount of any monetary penalty, assessment, or surcharge.

The rule must specify when the agency will not allow discretion in the enforcement of a rule or guideline against small businesses and must include all of the following situations in which discretion is not allowed:

- The agency discovers the violation before the small business discloses the violation.
- The violation is disclosed after an agency audit or inspection of the small business has been scheduled.
- The violation was identified as part of the monitoring or sampling requirements that are consistent with the requirements of an existing permit.
- The violation results in a substantial economic advantage for the small business.
- The small business has repeatedly violated the same rule or guideline.
- The violation may result in an imminent endangerment to the environment, or to public health or safety.

For purposes of this provision, “small business” does not include an entity that is subject to the caregiver background check law that is administered by DHFS.

**Legislative History**

Assembly Substitute Amendment 1 was introduced by Representative Terri McCormick. On February 24, 2004, the substitute amendment was adopted by the Assembly, and the Assembly concurred in the bill as amended, both by voice votes.

RNS:tlu:ksm



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**WISCONSIN LEGISLATIVE COUNCIL  
ACT MEMO**

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<b>2003 Wisconsin Act 145</b> [2003 Senate Bill 100]	<b>Small Business Regulatory Review</b>
2003 Acts: <a href="http://www.legis.state.wi.us/2003/data/acts/">www.legis.state.wi.us/2003/data/acts/</a>	Act Memos: <a href="http://www.legis.state.wi.us/lc/act_memo/act_memo.htm">www.legis.state.wi.us/lc/act_memo/act_memo.htm</a>

*2003 Wisconsin Act 145* relates to administrative rule-making regarding small businesses.

**Small Business Regulatory Review Board**

The Act creates a Small Business Regulatory Review Board, consisting of representatives of eight state agencies, six representatives of small business, and the chairpersons of one Senate and one Assembly committee concerned with small businesses.

Under the Act, when an agency publishes a proposed rule that may have a significant impact on small businesses, the agency must also submit the rule to the Small Business Regulatory Review Board. If the board determines that the rule does not include an enforcement provision or that the agency has failed to comply with specified statutory requirements, the board is required to notify the agency of that determination and ask the agency to comply. The board may submit suggested changes in the proposed rule to the agency, including proposals to reduce the use cross-references. A report must also be sent to the Legislative Council staff. The notification to the agency may include a request that the agency: (1) verify that the proposed rule does not conflict with, overlap, or duplicate other rules or federal regulations; or (2) require the inclusion of fee information and fee schedules in the rule's analysis, including why fees are necessary and for what purpose the fees will be used.

The Act also includes similar provisions for review by the Small Business Regulatory Review Board of emergency rules that may have a significant economic impact on small businesses.

In addition, the Small Business Regulatory Review Board may review the rules and guidelines of any state agency to determine whether they place an unnecessary burden on the ability of small businesses to conduct their affairs. If the board determines that a rule or guideline does so, it is required to submit a report and recommendations to the Joint Committee for Review of Administrative Rules (JCRAR). When reviewing the report, JCRAR must consider several statutorily specified criteria.

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This memo provides a brief description of the Act. For more detailed information,  
consult the text of the law and related legislative documents.

### Agency Advice

The Act provides that a small business may commence an action in circuit court against an agency for injunctive relief to prevent the imposition of a penalty if the business acted or failed to act: (1) due to the failure by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time; or (2) in response to inaccurate advice given to the business by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement. For purposes of this provision, "small business" does not include an entity that is subject to the caregiver background check law that is administered by the Department of Health and Family Services (DHFS).

The Act also modifies the statute that lists judicial proceedings in which the validity of a rule may be determined to include the court actions for injunctions described above and to include determinations by the Small Business Regulatory Review Board with respect to an agency's compliance with statutory provisions and inclusion of enforcement provisions regarding proposed rules.

### Rules Regarding Agency Discretion in Enforcement

The Act requires each agency to promulgate a rule that requires the agency to disclose the discretion that the agency will follow in enforcement of rules and guidelines against a small business. The rule must include the reduction or waiver of penalties for voluntary disclosure, by a small business, of actual or potential violations of rules or guidelines. The rule may include consideration of ability to pay when determining the amount of any monetary penalty, assessment, or surcharge. The rule must specify when the agency will not allow discretion in the enforcement of a rule or guideline against small businesses and must include statutorily specified situations in which discretion is not allowed. For purposes of this provision, "small business" does not include an entity that is subject to the caregiver background check law that is administered by DHFS.

### Other Provisions

The Act also: (1) modifies various statutory definitions of "small business" to mean a business entity that employs 25 or fewer full-time employees or that has gross annual sales of less than \$5 million (previously fewer than 25 full-time employees or gross annual sales of less than \$2.5 million); (2) requires agencies to consider specified methods for reducing the impact of a rule on small businesses when modifying a rule; (3) requires agencies to designate a small business regulatory coordinator; (4) requires agencies to include in their statement of scope on proposed rules a description of all entities that will be affected; (5) requires agencies to ensure the accuracy, integrity, objectivity, and consistency of the data that is used in preparing a proposed rule; (6) requires the Joint Legislative Council to create and maintain an Internet site that includes proposed rules and other specified information; (7) provides that if a rule has a significant economic impact on small businesses, the rule applies to small businesses on the first day of the third month after the rule's publication; and (8) increases from \$75 per hour to \$150 per hour the maximum attorney fees that generally are to be paid to an individual, small nonprofit corporation, or small business that is the prevailing party in an action brought by a state agency (unless the court finds that the agency was substantially justified in taking its position or that special circumstances make the award of costs unjust).

**Effective Date:** The Act takes effect on July 1, 2004.

**Prepared by:** Richard Sweet, Senior Staff Attorney

March 19, 2004

RNS:tlu:wu:ksm

To: State Senate Public Hearing on 2003 SB-100  
From: Michael Riley, a corporate founder  
Subject: **Strongly support 2003 SB-100 related to regulatory reform for small business**  
Date: May 12<sup>th</sup>, 2003

Dear Senators,

I wish to speak strongly in support of 2003 Senate Bill 100 related to regulatory reform for small business.

**I support all five of the bills basic provisions:**

- 1- minimize the economic impact of rulemaking on small businesses.
- 2- give small business the right to seek an injunction against penalty caused by inaccurate information from government agency.
- 3- create a searchable internet website that includes a copy of each proposed rule, and other information.
- 4- state agencies to review all rules that place an unnecessary burden on small business, and take corrective action.
- 5- immunity from penalty for any small business that voluntary discloses violation, under most circumstances.

I think that it is critical for small business in Wisconsin to create jobs, maintain jobs, and expand the number of jobs in a dynamic competitive economy. Regardless if we wish the economy to be competitive or not, it is a fact of life. Our Wisconsin businesses must compete with business in other states, and other nations. Wisconsin businesses should have every advantage that we can make happen !

By this letter, I am asking every State Senator and every State Representative to support and pass this bill.

Very Sincerely,

***Michael Riley***

Michael P. Riley  
W55 N774 Cedar Ridge Drive  
Cedarburg, WI 53012  
Phone #262-375-4953



Memo

To: Senate Committee on Homeland Security, Veterans and Military Affairs, and Government Reform

From: Nick George, Executive Director, Public Affairs

Date: May 14, 2003

Re: Senate Bill 100, relating to regulatory rule process-- Support

The Wisconsin Manufacturers & Commerce (WMC) supports the provisions contained in Senate Bill 100, relating to changes to the rule making process and the creation of a Small Business Regulatory Review Board.

Knowing and complying with the growing list of rules and regulations promulgated by state agencies, has become costly, time consuming and burdensome for all of Wisconsin businesses--in particular small businesses. SB 100 is intended to make the rule making process less complex, more responsive and clearer for small businesses.

SB 100 is the result of hundreds of hours of meetings, research and ultimately compromise by members of the Governor's Task Force on Small Business Regulatory Reform. As a member of the task force I believe we put forth a responsible bill that accurately portrays the concerns of a diverse mix of small businesses.

Critics may complain that SB 100 lowers the rule making standards for small businesses. Nothing can be farther from the truth. Under SB 100, no rule is repealed, no business is exempt from any rule, and no agency is subjected to undue rule making procedures. This bill is simply intended to insure that the unique concerns of small business are considered as a rule is being developed, and that small businesses have some defense against the vagaries of interagency interpretations.

Like most bills crafted by committee, there is room for improvement. We would recommend more closely tracking the "quality of agency data" provisions to that of the Federal Data Quality Act. In addition, The Small Business Regulatory Review Board provisions should not be limited to emergency rules only, but to all rules. We of course are willing to work with interested parties to make changes.

Despite any weakness, SB 100 will help Wisconsin's small businesses comply with regulations and remain competitive. We urge you to support SB 100.



Date: May 14, 2003

To: Members of the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform – Senator Ronald Brown, Chairman

From: Paul W. Merline, Government Relations Specialist  
Wisconsin Restaurant Association

Re: Testimony in Support of SB 100 – Small Business Regulatory Review Act

Chairman Brown and all distinguished committee members; my name is Paul Merline and I am here today on behalf of the Wisconsin Restaurant Association to speak **in support of Senate Bill 100**, the Small Business Regulatory Review Act.

The Wisconsin Restaurant Association (WRA) is made up of approximately 3,000 diverse food service businesses ranging from fast service to fine dining representing over 7,000 locations throughout Wisconsin. A strong membership gives WRA a more powerful voice in pursuing its mission to protect, promote and improve the restaurant industry.

Wisconsin's small business community makes up the heart of our state's economy. It creates jobs and provides opportunities for both employees and employers across a broad range of skill and experience levels. Restaurants make up a significant portion of the small businesses in our state and provide meaningful service to all levels of consumers. Unfortunately, small business faces an unequal share of regulatory costs and burdens.

The Task Force on Small Business Regulatory Reform which was created to help identify and address some of the regulatory burdens facing small business in Wisconsin and propose potential solutions, included WRA Board Member Steve Davis from Ardy and Ed's Drive-In in Oshkosh. The recommendations developed and proposed by the Task Force and found in Senate Bill 100 seek to ease the negative impacts of regulation on small business, while at the same time improving regulatory compliance. They also go farther to include small business in the rule making process.

Most small businesses that we represent do not have the staff to analyze the affect of proposed regulations in detail, or at all. Many of the consequences of well-intentioned regulations are unanticipated. Thought needs to be given to the affect these regulations may have on the individual entrepreneurs that provide the job growth, the innovation and the spirit necessary to drive our healthy economy. Care must be taken to ensure we do not inadvertently stifle that spirit. Senate Bill 100 goes a long way toward helping ensure that small business is protected and allowed to survive.

Thank you for your consideration.



## Small Business Regulatory Review Act

This Wisconsin Restaurant Association (WRA) represents over 7,000 member locations across Wisconsin. A strong membership gives WRA a more powerful voice in pursuing its mission to protect, promote and improve the restaurant industry.

Wisconsin depends on its strong small business community to create jobs and support a vibrant economy. Restaurants make up a significant number of the small businesses in our state. Unfortunately, small business must shoulder a disproportionate share of regulatory costs and burdens.

In 2002, a Governor's Task Force on Small Business Regulatory Reform was created to help identify and address some of the regulatory burdens facing small business in Wisconsin and propose potential solutions. The task force of small business owners and trade associations developed a series of recommendations to ease the negative impacts of regulation on small business, while at the same time improving regulatory compliance.

Governor Doyle recognizes the importance of small business to Wisconsin's economy and the need for regulatory reform. Proposed bills on regulatory reform have been drafted based on the task force's recommendations. The bills will promote a climate in which small businesses can not only grow and prosper, but also one that will help them to continue their much needed contributions to Wisconsin's economic recovery. **The following provisions are included in both Senate Bill 100 (Sen. Welch) and companion Assembly Bill 267 (Rep. McCormick).**

- Creation of a Small Business Regulatory Review Board to require state agencies to examine the impact their rules have on small business and include small business in the rule making process.
- A redefinition of "small business" to include any business with 25 or fewer employees or with gross annual sales of less than \$5 million.
- Creation of a searchable Internet site that includes a copy of each proposed rule affecting small business, as well as public hearing, comment and contact information.
- A requirement for 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 business, and to justify or sunset any rules that do so.
- Immunity from penalty for any small business that voluntarily discloses information about a possible violation of an administrative rule if a number of conditions are met and the business makes a good faith effort to comply with the rule and cooperate with the agency in any resulting investigation.

The Wisconsin Restaurant Association enthusiastically endorses the Small Business Regulatory Review Act as a positive step toward improving the climate for small business in Wisconsin.

SB100 Small Business Regulatory Reform  
Testimony by State Representative Terri McCormick  
Senate Committee on Homeland Security, Veterans and Military  
Affairs and Government Reform  
May 14, 2003

Good morning Chairman Brown and Committee members. Thank you for allowing me the opportunity to speak to you today.

I am here today to urge your support for SB100, regulation reform for small business in Wisconsin. I am pleased to be the author of the Assembly companion bill, AB267.

According to the National Federation of Independent Business, one in five small business owners believes the cost of state regulations has caused them to eliminate jobs or forced them to postpone the growth or expansion of their business. I am pleased to be working with small businesses to lead the efforts to reform the rules and regulations that are forcing small businesses in the state of Wisconsin to close their doors or move out of state. Now more than ever, Wisconsin needs to focus on keeping businesses here and creating jobs for the people of this state.

The ideas in SB100 grew out of a Task Force on Small Business Regulatory Reform in the Department of Commerce this past summer. Small businesses from across the state, and various industry sectors, met to discuss regulations that were affecting their ability to do business in the state of Wisconsin. Together the members of the Task Force represented more than 40,000 small Wisconsin businesses.

One of the members of the Task Force on Small Business Regulatory Reform was Steven Davis with Ardy and Ed's Drive Inn Restaurant in Oshkosh, Wisconsin. I would like to share a few of his comments with you, as I believe his

insight from the Task Force speaks not only to the impact on businesses in the Fox Valley, including my 56<sup>th</sup> Assembly District, but to the problem the entire state faces as well.

*" All through the process, our focus was kept on what could be done to help small businesses succeed in this state. We focused on ways to help businesses comply with regulations in a fair manner, and have the opportunity to have legitimate input in the rules and regulations that we face on a daily basis. The examples discussed by the members made it clear that over burdensome rules and regulations made it difficult, and often unreasonably expensive, to comply. This often would leave businesses to face penalties that made it nearly impossible to succeed in this state. Everyone agreed that we were not looking for ways to get out of following the rules and regulations, but helping change the regulatory environment to help us succeed in a responsible manner.*

*I believe the bill, if enacted, will allow me to do a better job of running my restaurant. In any small business, the owners need to spend the majority of their time dealing with customers, employees and vendors; not dealing with burdensome rules and regulations. The amount of time that is needed to take care of the numerous reports, returns and filings has resulted in my having to hire professional help to do those tasks for me. While I have been fortunate to be able to afford the help, many small businesses can not, especially start up companies or struggling businesses. These are the types of businesses that will really benefit by the proposed legislation.*

*I feel strongly that helping small business to succeed is one of the most important steps that can be taken to help Wisconsin recover from it's current economic crisis. Help us succeed and we will all succeed in Wisconsin!"*

Throughout their discussions, Mr. Davis and other Task Force members agreed that government regulations are often redundant and unnecessary. Many of

these regulations are unduly burdensome upon SMALL businesses. The National Federation of Independent Business states that cost per employee to SMALL firms is approximately 50 percent more than the cost to LARGE firms. In addition, NFIB stated that while small businesses employ 53 percent of the workforce, they bear approximately 63 percent of the total business regulatory cost.

The statistics speak for themselves. Something must be done to ensure that small businesses continue to have the opportunities and success that will promote job growth for the state of Wisconsin.

SB100 includes several provisions that I believe will help to ensure long-term victories for Wisconsin companies.

First, the bill creates a Small Business Regulatory Review Board. The bill requires agencies to submit to that Board any proposed rule that may have a significant economic impact on small businesses. This will allow greater compatibility with the Regulatory Flexibility Act that requires businesses examine the impact of agency rules on small businesses and include small businesses in the rule making process.

Second, the bill requires the Joint Legislative Council to create an Internet site that includes a copy of each proposed rule that is submitted to Leg Council. This will allow small businesses to be aware of new rules being promulgated, and ease small businesses in following the rule making procedure.

Third, the bill requires every state agency to review all of its rules during the next five years. At this time, the agency must determine if any of the rules place an unnecessary burden on small businesses and then must repeal or amend any rules that do so.

In this time of national and international uncertainty, there is no greater role of government than to secure domestic tranquility through economic stability and posterity at home.

As Chair of the Assembly Economic Development Committee, I believe job growth through the expansion of existing business and industry as well as job creation is of critical importance.

We must explore the forces that both attract and dissuade job growth in our state, while clarifying the impact of government agencies, taxes, and regulation on Wisconsin jobs.

SB100 allows the freedom small businesses need to operate in our state. This legislation is exactly the kind of catalyst we need to improve the economic development climate in Wisconsin. In this time of economic challenges, I urge you to support this legislation and give small businesses the opportunity to have long and prosperous tenures in Wisconsin.

Thank you again for the opportunity to speak with you today. I would be happy to entertain any questions you may have at this time.



Serving the  
Lodging Industry  
for Over 100 Years

May 14, 2003

To : Senate Committee on Homeland Security, Veterans and Military  
Affairs and Government Reform  
Senator Ronald Brown, Chairman

From : Trisha Pugal, CAE  
President, CEO

Kathi Kilgore  
Lobbyist

RE : SB 100 Small Business Regulatory Review

The Wisconsin Innkeepers Association, representing over 1,150 hotels, motels, resorts, inns, and bed & breakfasts throughout Wisconsin, respectfully asks you to **support SB 100**. This bill provides protection and information helpful to small businesses that do not have the specialized resources and capabilities that large businesses have access to in complying with state regulations.

By establishing a "Small Business Regulatory Review Board" that would review any proposed rule that may have a significant impact on small businesses, potential unfair challenges with compliance can be discovered and alternate compliance rules can be suggested... all before the requirement takes effect.

By requiring each state agency to review their existing rules for unnecessary regulatory burdens on small businesses within 5 years, some of the roadblocks that unfairly restrain small businesses from progression can be evaluated and refined to still meet the needs of the state.

This bill also provides some protection from penalties for small businesses who honestly are unaware of an administrative rule and who, upon learning that they may not be in compliance voluntarily disclose this to the appropriate agency and then make a good faith effort to comply. Without affordable access to the resources available to larger companies, small businesses may not be aware of every regulation that impacts their particular business, and honest omissions can occur that do not damage other businesses, the public, or the state. This purely allows them to acknowledge their omission and come into compliance, which is a reasonable and supportive method to achieving the end goal of regulatory compliance.

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Small businesses are the backbone of Wisconsin's economy and are located in every community. The majority of the businesses in the tourism industry, one of the top three industries in Wisconsin, are considered small businesses and would be positively impacted by the provisions of this bill.

**Please support SB 100.**

Cc: WIA Executive Committee

TAP/051303SB100



WISCONSIN

**Statement Before The  
Senate Committee on Homeland Security, Veterans and  
Military Affairs and Government Reform**

**By**

**Bill G. Smith  
State Director  
National Federation of Independent Business  
Wisconsin Chapter**

**Wednesday, May 14, 2003  
Senate Bill 100**

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My name is Bill G. Smith and I am State Director for the Wisconsin Chapter of the National Federation of Independent Business, an organization of nearly 13,000 member firms, and celebrating our 60<sup>th</sup> year of advocacy on behalf of small and independent business.

I'd like to begin my testimony today by thanking the Chairman and members of the Committee for holding the hearing today on a very important issue to our state's small businesses.

In 1980, President Jimmy Carter signed into law the then historic Regulatory Flexibility Act.

Since 74 percent of all Wisconsin firms are small business with fewer than 10 employees, we quickly learned the need for more effective regulation of small business did not stop at the federal level.

In 1983, Governor Tony Earl signed into law a State version of the Regulatory Flexibility Act as part of the 1983 Special Session on Economic Development.

These new laws call on government to be more sensitive to how the regulations proposed by state and federal agencies impact small business. The goal of regulatory flexibility is to help government understand and address the inequity and basic unfairness of regulating Al's Garage in Mondovi the same as Briggs and Stratton in Milwaukee.

Simply stated, the Regulatory Flexibility laws requires agencies to assess and consider the impact of regulations on small business, and whenever possible, to lessen the burden or reduce the impact without altering the public policy goal.

U.S. Senator Russ Feingold put the intent in perspective when he said, "I believe we need to take some remedial steps to build flexibility into the encounters that small businesses have with regulatory agencies and to help small businesses that are making honest efforts to comply with regulations."

In 1996 and again in 2002, the federal Regulatory Flexibility Act was amended to improve its effectiveness and efficiency in meeting the goals of the federal Regulatory Flexibility Act.

In March of 2002, members of the Small Business Task Force on Regulatory Reform held the first of a dozen meetings to examine Wisconsin's regulatory environment and the effectiveness of Wisconsin's Regulatory Flexibility Act. The Task Force members included ten small business owners and organizations that represented nearly 30,000 firms with staff assistance for the task force provided by the Department of Commerce.

David Storey, Deputy Secretary at the Department of Commerce and myself co-chaired the work of the Task Force.

The group examined the existing regulatory process for opportunities to reduce the negative impact of state rules and regulations on small businesses and to increase the level of regulatory compliance. The Task Force also discussed necessary changes needed to ensure that Wisconsin's regulatory environment is both efficient and cost-effective.

The task force met nine times over a seven-month period at various locations around the state including three listening sessions to get input from the broader small business community, and we also provided state agencies a briefing on the task force recommendations. Businesses, agencies and interested individuals also had the opportunity to comment on the work of the task force and provide suggestions for the final report through the Build Wisconsin and NFIB websites.

Senate Bill 100, which is before you for your consideration incorporates the recommendations of the 2002 Task Force on Small Business Regulatory Reform:

- Create a centralized, searchable website that will post new rules under development and other regulatory actions underway in all state agencies.
- Write clear-cut rules that will not be open to interpretation. Use simple plain language and reduce cross-referencing to other statutes.
- Restructure current positions to appoint a Small Business Regulatory Coordinator within each agency to act as a contact person on small business regulatory issues and rulemaking activities.

- Create a Small Business Regulatory Review Board to enforce components of the Regulatory Flexibility Act.
- Design compliance schedules that provide additional time for small businesses to understand and comply with new regulations.
- Waive civil penalties for violations whenever a business voluntarily discloses a compliance issue and takes corrective action in a reasonable amount of time.
- Require state agencies to either justify why their regulations, permits and/or licenses are still needed or sunset those rules/requirements.
- Update the Regulatory Flexibility Act, Equal Access to Justice Act and Scope Statement within the administrative rule process to clarify and promote the original intent of the laws.
- Adopt a state version of the Federal Data Quality Act which requires agencies to ensure the quality of the data used when issuing new regulations.
- Allow for the judicial review of any penalties that result from actions or inactions taken by small business owners due to inaccurate or inconsistent information or advice received from state agency personnel.
- Require an agency to include enforcement provisions in the regulations. If the agency does not indicate how the rule will be enforced, the rule will not receive approval from the Small Business Regulatory Review Board.

The regulation of small business is not just a parochial problem; it is also a public problem. The public interest lies in at least two areas: 1) the disproportionate impact of government regulations on small business reduces the competitive capacity of small business, thereby placing government in the position of encouraging economic competition; 2) consumers are forced to a large extent to bear the costs of regulation in the form of higher prices. Therefore, the immediate visible impact is felt by the small entrepreneur, but the public shares the burden. In 1998, the median two-earner family's after-tax income of \$41,846 contained \$7,410 in hidden regulatory costs. Thus, regulatory costs consume about 18 percent of the after-tax family budget.

The cost of regulations for small business is sometimes referred to as a hidden tax amounting to thousands of dollars. One study (Crain-Hopkins Report) concludes, "firms employing fewer than 20 employees face an annual burden of \$6,975 per employee, a burden nearly 60 percent above facing a firm employing over 500 employees."

A study by the SBA's Office of Advocacy found smaller firms spend up to 80 percent more per employee complying with state/federal regulations than big business. Firms with 20-49 employees spend on average 19 cents out of every revenue dollar on regulatory-related costs.

Senate Bill 100 does not eliminate regulation. Nor does this legislation disqualify, exempt or forgive small business from regulation.

To the contrary, the goal of SB 100 is to improve compliance by small business owners by providing them the information they need to know about the regulations that affect them.

The second goal of SB 100 is to make enforcement of regulations simply more efficient, consistent and effective.

Government regulations, many of them unnecessary and needlessly complex, are an enormous and costly burden for our state's small businesses.

The disproportionate burden of regulation on small firms stems from economies of scale inherent in the regulatory process and impacts small business in three ways: discovering regulation, understanding regulation, and paying for regulation.

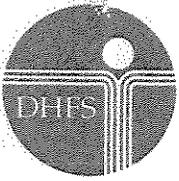
Small business owners find themselves unsure of their compliance status, unaware of new rules under development, uninvolved with the rule-making process, and uncertain of who to call for help within a state agency.

NFIB studies show a majority of our members report it is impossible to have knowledge and be in compliance with all state regulations that affect their business. Almost 40 percent say only the most important regulations are known and understood, and over 40 percent say the negative effects of state regulations have forced them to postpone the expansions of their business.

The goal of Senate Bill 100 is to reduce the negative impact of regulations on small business, to increase regulatory compliance, and to promote more cost-effective regulatory enforcement.

The Small Business Regulatory Fairness proposal, SB 100, has broad support from all across the small business community, and we are grateful for the bi-partisan support it has received in the legislature, and we hope the Committee will take prompt action and recommend SB 100 for passage.

Thank you.



State of Wisconsin  
**Department of Health and Family Services**

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Jim Doyle, Governor  
Helene Nelson, Secretary

June 2, 2003

Senator Ron Brown  
31<sup>st</sup> Senate District  
P.O. Box 7882  
Madison, WI 53707

Dear Senator Brown:

I thank you for the opportunity to address the Senate Homeland Security, Veterans and Military Affairs and Government Reform Committee regarding Senate Bill 100. I have attached a written version of my testimony.

I also thank you for amending the bill to add the Department of Health and Family Services to the Review Board. This will be critical given the complicated nature of our rules on nursing home, CBRF and assisted living facilities. These are largely driven by federal law and are necessary for the health, safety and protection of vulnerable older adults.

Sincerely,

Gary Radloff  
Legislative Liaison  
Department of Health and Family Services  
266-3262

*Sub  
6/2/03  
File*

Senate Homeland Security, Veterans and Military Affairs and Government Reform Committee

Good Morning Senator Brown and members of the Senate Committee. I am Gary Radloff, Legislative Liaison with the Department of Health and Family Services

Senate Bill 100 is well-intended legislation to monitor the impact of agency rule making for adverse impact on small business. I would like to state that DHFS is opposed to portions of Senate Bill 100 for the following reasons:

Foremost Senate Bill adversely impact DHFS responsibility as an agent of the Federal Government and requirements of state law relative to nursing home, CBRF and assisted living regulations. Protection of older adults is one of our most important missions carried out by the Bureau of Quality Assurance.

- Section 1, 15.155 (5) of the statutes would create a Small Business Regulatory Review Board. DHFS could not support this proposal in its present form without having a DHFS representative on the Review Board.
- The Department can impose fines and penalties through the authority of the statutes in Chapter 50. This is an effective means of ensuring that health care facilities comply with the Bureau's regulatory requirements. However, Section 17, s. 895.59 on page 10 of the bill creates liability exemption for those facilities that are defined as "small business." The notion of having an increase in additional businesses immune from "civil or criminal penalty" for rule violations will have a disturbing effect on our forfeiture tool, taking much of the compliance bite out of BQA's work. More facilities would continually challenge our findings by taking advantage of their small business status and that in turn may compromise the health, safety and welfare of Wisconsin residents. This bill diminishes regulatory compliance from a BQA perspective.

- There would be a significant increase in healthcare facilities defined as “small business” with the passing of this bill. Section 2, 227.114 (1) (a) amends the definition of a “small business” to change the amount of the business entity’s gross annual sales from \$2,500,000 to \$5,000,000. That means several more nursing facilities in Wisconsin would now be categorized as a “small business,” so this condition impacts nursing home operations in this state. According to the 2001 nursing home cost reports in the Division of Health Care Financing Nursing Home Unit, there are a total of 250 homes with 110 beds or less. A total of 236 of the 250 homes showed gross annual revenue of less than \$5,000,000.
- Almost the entire assisted living industry would also fall within the term "small business" unless the facility owns multiple locations or owns other interests. Example: A 150 bed Community Based Residential Facility (CBRF) at full census, charging an average of \$2,750 per month, would have gross annual income of \$4,950,000 and be considered a "small business".
- **Revenues calculated as the product of Maximum Monthly Rate X Capacity X 12:**  
Twenty-nine Corporations owning 430 CBRF’s exceed \$5,000,000 in revenues; 613 owners with 929 CBRF’s do not exceed gross annual income of \$5,000,000. Seven corporations owning 181 Adult Family Homes (AFH’s) exceed \$5,000,000 in revenues and 325 owners with 551 AFH’s do not exceed \$5,000,000.
- **Revenues calculated as the product of Average Monthly Rate X Capacity X 12:**  
Twenty-three Corporations owning 375 CBRF’s exceed \$5,000,000 in revenues; 621 owners with 984 CBRF’s do not exceed gross annual income of \$5,000,000. 7 corporations owning 158 AFH’s exceed \$5,000,000 in revenues and 325 owners with 574 AFH’s do not exceed \$5,000,000.
- BQA is also concerned about getting into the dispute of whether forfeitures are in effect an overpayment or a penalty.

- Under the bill, if a small business prevails in litigation, the state agency would pay the costs of litigation. This will have a disturbing effect on surveyors and supervisors, who may hesitate to take action if there are any doubts about our ability to sustain BQA federal and state citations. It will also have a negative cost impact to the Department and BQA. Litigation costs are reimbursed and impact the Bureau's operating budget.
- Many Home Health Agencies (HHAs) and Hospices would indeed meet the definition of a "small business" as defined in the proposed rule and statute. Some hospitals might meet the definition as well (less than \$5 million annual gross receipts). As such, HHAs have already expressed concern that licensure fees place undue burden on them. The fees were raised to provide additional funds to support state-only licensure activities. Even so, BQA will still run a deficit in the HHA license fee appropriation, and are able to do few, if any, state-only investigations. The same would also hold true for hospices if/when BQA raises the licensure fees to be consistent with those charged to HHAs.
- Without a DHFS representative and input about what is undue burden to small businesses, the proposed small business regulatory board may determine that administrative rules for HHAs, hospices and possibly small hospitals are unnecessary, especially when Medicare certification is also available (but not always elected) for these provider types. This could result in BQA having no regulatory oversight of WI HHAs and hospice locations certified through another state or state licensed only.
- The proposed rule and statute would also impact many of the mental health and AODA programs certified by the program certification unit. Currently there are 1136 such providers certified in WI.

**Gilbert, Melissa**

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**From:** Caryl [cterrell@execpc.com]  
**Sent:** Tuesday, March 02, 2004 10:15 AM  
**To:** ALLASM@legis. state. wi. us; ALLSEN@legis. state. wi. us  
**Subject:** Sierra Club supports adoption of ASA1 to SB 100, Small Business Council rules review

March 2, 2004

MEMO TO: Members of the State Senate  
Cc: Members of the State Assembly

FROM: Caryl Terrell, Sierra Club - John Muir Chapter

RE: Withdraw Opposition to SB 100 Small Business Regulatory Reform

The Sierra Club appreciates the substantial changes proposed by Rep. McCormick on Feb. 24, 2004, as Assembly Substitute Amendment 1 to SB 100. The changes were adopted by the Assembly on Feb. 24, 2004.

The changes address most of the objections about which the Sierra Club testified last year.

The Sierra Club withdraws its objections to adoption of SB 100 with this amendment.

\*\*\*\*\*

Caryl Terrell, Chapter Director  
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\*\*\*Make your voice heard! Find out how to get Take Action Alerts and other important Sierra Club messages by email at: <http://www.sierraclub.org/email>