

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/12/2010**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

For: **Peter Barca (608) 266-5504**

By/Representing: **Matt Egerer**

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

Drafter: **tkuczens**

May Contact:

Addl. Drafters:

Subject: **Econ. Development - bus. dev.  
Administrative Law**

Extra Copies: **rpn, pjh**

Submit via email: **YES**

Requester's email: **Rep.Barca@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Small business advocate and regulatory review

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**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 02/15/2010	jdye 02/17/2010		_____			State
/P1	tkuczens 02/17/2010	jdye 02/17/2010	jfrantze 02/17/2010	_____	sbasford 02/17/2010		State
/1			phenry 02/17/2010	_____	sbasford 02/17/2010	mbarman 02/23/2010	

FE Sent For:

act  
intro

<END>

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/?	tkuczens 02/15/2010	jdyer 02/17/2010	<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>			State
/P1		<i>1/3/17 jld</i>	jfrantze 02/17/2010	<i>[Handwritten initials]</i>	sbasford 02/17/2010		

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**Topic:**

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**Instructions:**

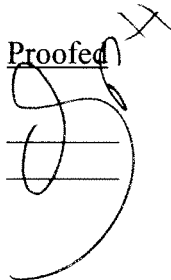
See attached

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/?	tkuczens	PI 3/17 jld					
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FE Sent For:

<END>

## Kuczenski, Tracy

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**From:** Egerer, Matt  
**Sent:** Thursday, February 04, 2010 12:37 PM  
**To:** Kuczenski, Tracy  
**Subject:** Barca - Small Business Advocate/Small Business Regulatory Review Bill.

**Follow Up Flag:** Follow up  
**Flag Status:** Red

**Attachments:** 09-31225.pdf

Tracy,

We had been working with the NFIB on this draft, however it had initially been drafted by another office. At any rate, we would like the bill re-drafted as a whole new bill including the below points. We believe these would augment and be integrated into what is already on the books regarding this area of the law such as 895.59, and other changes made by 2003 Act 145.

I also hate to make rush requests, but we would really appreciate this as soon as possible. As soon as we get it back it goes on to the agenda for our Partnership for a Stronger Economy. An effort you can make to move this toward the top of the list would be appreciated.



09-31225.pdf (43  
KB)

- Require that agencies make an effort to educate and work with small businesses to help them to comply with state regulations and mitigate penalties for minor administrative rule or other regulatory violations in order to achieve rule compliance and avoid unnecessarily penalization.
- Agencies are encouraged to utilize written warnings, reduced fines, and other options to avoid unnecessarily penalizing small businesses that are in violation of minor regulations generally of an administrative manner that do not endanger the health and safety of people or the environment or the workplace, and are acting in good-faith to comply with the regulation.
- Upon the request of a small business, require that the Small Business Advocate will investigate regulatory enforcement actions taken by an agency against that small business for minor violations to determine if less severe enforcement mechanisms could achieve compliance without causing an unnecessary adverse effect on the small business. The Small Business Advocate will forward the complaint to the agency to request a response and ask for actions taken to provide relief to the complaint in a written response.
- Require that the agency must respond to the Small Business Advocate within 45 days of this contact regarding the administrative rule enforcement action taken by the agency in regard to the inquiring small business.
- Require that the Small Business Advocate compile data regarding these investigations, analyze the data for trends, and annually report findings and recommendations to the Governor and Legislature.

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504



State of Wisconsin  
2009 - 2010 LEGISLATURE

4312/P1  
LRB-3122/5  
TKK/jld:rs stays  
insert  
RMNR

TODAY, if possible  
**2009 BILL**

in 2/15/10

soon (by 2/17?)

X

regen

1 AN ACT *to amend* ~~15.155 (5), 20.143 (1) (kc), 227.114 (7m), 227.14 (2g) (intro.),~~  
2 ~~227.19 (3m), 227.24 (3m) (intro.), 285.79 (3) (intro.), 560.03 (9) and 560.11 (2)~~  
3 of the statutes; **relating to:** changes to the membership of the Small Business  
4 Regulatory Review Board, notification to the Small Business Regulatory  
5 Review Board of bills with an economic impact on small businesses, and the role  
6 of the Office of the Small Business Advocate in the Department of Commerce.

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

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the structure and functions of the small business ombudsman clearinghouse in the Department of Commerce (Commerce):

***Small Business Regulatory Review Board***

Currently, the membership of the board in Commerce consists of six representatives of small businesses, the chairpersons of the senate and assembly committees concerned with small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation



**BILL**

and Licensing; Revenue; and Workforce Development. Current law defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

***Rule making: considerations for small businesses***

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information and provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the month commencing after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to determine whether a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit

**BILL**

suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

Insert analysis A

***Small business regulatory coordinators and the Office of the Small Business Advocate***

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

(office)

This bill changes the name of the ombudsman clearinghouse to the Office of the Small Business Advocate. The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the Office of the Small Business Advocate to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the Office of the Small Business Advocate on the best practices of state and federal small business advocate organizations, to take a proactive role in maintaining and helping small businesses to grow, and to have the goal of creating jobs and a healthy small business sector. The bill also requires Commerce to designate at least one full-time employee to serve as staff to the Office of the Small Business Advocate. The staff of the Office of the Small Business Advocate must, in turn, serve as staff to the board and work together with the small business regulatory coordinator of each agency.

Insert analysis B

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           SECTION 1. 15.155 (5) of the statutes is amended to read:
- 2           15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small
- 3 business regulatory review board, attached to the department of commerce under s.
- 4 15.03. The board shall consist of ~~a representative of the department of~~
- 5 ~~administration; a representative of the department of agriculture, trade and~~
- 6 ~~consumer protection; a representative of the department of children and families; a~~

**BILL**

**SECTION 1**

1 representative of the department of commerce; a representative of the department  
 2 of health services; a representative of the department of natural resources; a  
 3 representative of the department of regulation and licensing; a representative of the  
 4 department of revenue; a representative of the department of workforce  
 5 development; 6 7 representatives of small businesses, as defined in s. 227.114 (1),  
 6 who shall be appointed for 3-year terms; and the chairpersons of one senate and one  
 7 assembly committee concerned with small businesses, appointed as are members of  
 8 standing committees. The representatives of the departments shall be selected by  
 9 the secretary of that department.

10 SECTION 2. 20.143 (1) (kc) of the statutes is amended to read:

11 20.143 (1) (kc) *Clean air act compliance assistance*. From moneys transferred  
 12 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule  
 13 for assisting the department of natural resources in administering the small  
 14 business stationary source technical and environmental compliance assistance  
 15 program under s. 285.79 and for expenses related to serving as ombudsman an  
 16 advocate for small business stationary sources as required under s. ~~560.03 (9)~~ 560.038 (2)

Insert 4-17

17 SECTION 3. 227.114 (7m) of the statutes is amended to read:

18 227.114 (7m) The Each agency shall designate ~~a~~ at least one employee to serve  
 19 as the small business regulatory coordinator to for the agency, and shall publicize  
 20 that employee's electronic mail address and telephone number. The small business  
 21 regulatory coordinator shall act as a contact person for small business regulatory  
 22 issues for the agency and shall ~~publicize that person's electronic mail address and~~  
 23 ~~telephone number~~ cooperate with the staff of the office of the small business advocate  
 24 under s. ~~560.03 (9)~~ <sup>560.038</sup> to accomplish the objectives of this subsection and s. ~~560.03 (9)~~.

25 SECTION 4. 227.14 (2g) (intro.) of the statutes is amended to read:

560.038 ✓

**BILL**

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

**BILL****SECTION 5**

1           **SECTION 5.** 227.19 (3m) of the statutes is amended to read:

2           227.19 **(3m)** ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis  
3 specified under sub. (3) (e) is not required for any rule if the ~~agency, after complying~~  
4 ~~with s. 227.114 (1) to (5),~~ board determines that the rule will not have a significant  
5 economic impact on a substantial number of small businesses.

6           **SECTION 6.** 227.24 (3m) (intro.) of the statutes is amended to read:

7           227.24 **(3m)** REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)  
8 On the same day that the agency files a rule under sub. (3) that may have ~~a~~  
9 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the  
10 agency shall submit a copy of the rule to the small business regulatory review board.  
11 The board may use cost-benefit analysis to determine the fiscal effect of the  
12 emergency rule on small businesses and shall determine whether the emergency  
13 rule will have a significant economic impact on a substantial number of small  
14 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14  
15 (2m). If the board determines that the emergency rule will have a significant  
16 economic impact on a substantial number of small businesses, the board may submit  
17 to the agency and to the legislative council staff suggested changes in the emergency  
18 rule to minimize the economic impact of the emergency rule. If the board determines  
19 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board  
20 shall notify the agency of that determination and ask the agency to comply with any  
21 of those provisions. In addition, the board may submit other suggested changes in  
22 the proposed rule to the agency and may include a request that the agency do any  
23 of the following:

24           **SECTION 7.** 285.79 (3) (intro.) of the statutes is amended to read:

BILL

1 285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation  
 2 with the office of the small business ~~ombudsman clearinghouse~~ advocate under s.  
 3 ~~560.03 (9)~~ <sup>560.038 ✓</sup> develop and administer a small business stationary source technical and  
 4 environmental compliance assistance program. The program shall include all of the  
 5 following:

Insert 7-6

6 SECTION 8. 560.03 (9) of the statutes is amended to read:

7 560.03 (9) Establish and operate ~~a~~ an office of the small business ~~ombudsman~~  
 8 clearinghouse advocate for business and industry to facilitate the flow of information  
 9 from other state and federal agencies, to assist state agencies in establishing  
 10 methods to encourage the participation of small businesses in rule making under s.  
 11 227.114 (4), and to serve as ~~ombudsman~~ an advocate for small business stationary  
 12 sources, as defined in s. 285.79 (1), in connection with the implementation of the  
 13 federal clean air act, 42 USC 7401 to 7671g. The office of the small business advocate

14 under this subsection shall be modeled on the best practices of both state and federal  
 15 small business advocate organizations, shall take a proactive role in maintaining  
 16 and helping small businesses grow economically, and shall have the goal of creating  
 17 jobs and a healthy small business sector. ✓ The office of the small business advocate  
 18 shall be staffed by at least one full-time employee of the department. The staff of  
 19 the office of the small business advocate shall serve as staff to the small business  
 20 regulatory review board and shall cooperate with the small business regulatory  
 21 coordinator designated by each agency under s. 227.114 (7m) to accomplish the  
 22 objectives of this ~~subsection~~ <sup>section</sup>, as appropriate. ✓

Insert 7-23

23 SECTION 9. 560.11 (2) of the statutes is amended to read:

24 560.11 (2) The employees of the department of commerce who staff the office  
 25 of the small business ~~ombudsman clearinghouse~~ advocate under s. ~~560.03 (9)~~ ✓ and the

560.038 ✓

**BILL****SECTION 9**

1 employees of the department of natural resources who staff the small business  
2 stationary source technical and environmental compliance assistance program  
3 under s. 285.79 shall provide the small business environmental council with the  
4 assistance necessary to comply with sub. (1).

5 **SECTION 10. Initial applicability.**

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

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

12

(END)

1           **Insert analysis A**

***Administrative law: considerations for small business*** ✓

This bill requires each agency, to the extent possible, to do all of the following:  
1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency. ✓

2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses. ✓

3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small businesses made a good faith effort to comply with the rule and the rule does not pose a threat to public health, safety, or welfare or to the environment or the workplace. ✓

2           **Insert analysis B**

Also under the bill, the office ✓ must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. ✓ The office ✓ must annually report to the governor and to the legislature the role of the office ✓ in providing regulatory relief to and promoting regulatory compliance by small businesses. ✓

3           **Insert 4-17**

4           **SECTION 1.** 227.04 ✓ of the statutes is created to read:

5           **227.04** ✓ **Considerations for small business.** (1) In this ✓ section, "small  
6           business" has the meaning given in s. 227.114 (1). ✓

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

9           ⓐ ① <sup>e (a)</sup> Provide assistance to small businesses to help small businesses comply with  
10           rules promulgated by the agency. ✓

11           ⓐ ② <sup>e (b)</sup> Establish, by rule, reduced fines and alternative enforcement mechanisms  
12           for minor violations ✓ of administrative rules made by small businesses. The rules  
13           promulgated under this subdivision shall include a definition of "minor violation." ✓





MNS 4-17  
CONT

1 ④ ③. In deciding whether to impose a fine against a small business found to be in  
2 violation of a rule, consider the appropriateness of a written warning, reduced fine,  
3 or alternative penalty if all of the following apply: ✓

4 ④ a. The small business has made a good faith effort to comply with the rule.

5 ④ b. The rule violation does not pose a threat to public health, safety, or welfare,  
6 or to the environment or the workplace. ✓

7 **Insert 7-6**

8 **SECTION 2.** 560.03 (9) of the statutes is renumbered 560.038 (1) and amended  
9 to read:

10 560.038 (1) Establish In this section:

11 ② The department shall establish and operate a small business ombudsman  
12 clearinghouse for business and industry the office to facilitate the flow of information  
13 from between other state and federal agencies and business and industry, to assist  
14 state agencies in establishing methods to encourage the participation of small  
15 businesses in rule making under s. 227.114 (4), and to serve as ombudsman for small  
16 business stationary sources, as defined in s. 285.79 (1), in connection with the  
17 implementation of the federal clean air act, 42 USC 7401 to 7671q.

History: 1971 c. 211 s. 126; 1971 c. 321 ss. 10, 16; Stats. 1971 s. 560.03; 1979 c. 34; 1979 c. 361 ss. 45, 87 to 96; 1979 c. 362; 1983 a. 27, 83, 86, 90, 91, 192; 1985 a. 182 s. 57; 1985 a. 299; 1987 a. 27, 186; 1987 a. 399 s. 433; 1989 a. 317; 1991 a. 39, 302; 1993 a. 399; 1995 a. 27, 227; 1997 a. 27; 1999 a. 150 s. 672; 2001 a. 104; 2003 a. 255; 2007 a. 125; 2009 a. 28.

18 **Insert 7-23**

19 **SECTION 3.** 560.038 (title) of the statutes is created to read:

20 **560.038 (title) Office of the small business advocate.** In  
21 this section:

22 **SECTION 4.** 560.038 (1) (a), (b), (c), (d) and (e) of the statutes are created to read:

23 560.038 (1) (a) "Agency" has the meaning given in s. 227.01 (1).

24 (b) "Office" means the office of the small business advocate.

(c) "Small business" has the meaning given in s. 227.114 (1).



INSERT

7-23  
CONT

1 (d) "Small business regulatory coordinator" means the employee of an agency  
2 designated by the agency as required under s. 227.114 (7m).

3 (e) "Small business stationary sources" has the meaning given in s. 285.79 (1).

4 **SECTION 5.** 560.038 (3) of the statutes is created to read:

5 560.03 (3) The office shall do all of the following:

6 (a) Upon the written request of a small business against which an agency has  
7 initiated an enforcement action that may, in the opinion of the small business, cause  
8 unnecessary hardship to the small business, review and investigate the  
9 circumstances of the enforcement action and prepare recommendations regarding  
10 alternative penalties to be imposed upon the small business that will, in the opinion  
11 of the office, achieve regulatory compliance by the small business.

12 (b) Submit to the small business regulatory coordinator of the agency initiating  
13 the enforcement action under par. (a) all of the following:

14 1. A copy of the written request submitted to the office under par. (a).

15 2. Any recommendations prepared by the office under par. (a).

16 3. A statement requesting that the small business regulatory coordinator  
17 submit to the office within 45 days after receipt of the statement a written response  
18 describing the enforcement action taken by the agency against the small business  
19 and whether any considerations were made for the small business as a result of the  
20 recommendations made under subd. 2.

\*\*\*\*NOTE: Is it your intent that an office in the Department of Commerce will have  
power to require an agency to modify its regulatory enforcement mechanisms, whether  
mandatory (statutory) or discretionary?

21 (c) Annually do all of the following:



INS 7-23  
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1. Compile the written requests received by the office under par. (a), the submissions made by the office under par. (b), and any communications received from enforcing agencies under par. (b).

2. Analyze and evaluate the information under subd. 1. and any other relevant information to determine regulatory enforcement trends and the efficacy of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

3. Report the information and findings under subds. 1. and 2. to the governor and to the legislature under s. 13.172 (2).

(end ins)



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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1 **AN ACT to renumber and amend** 560.03 (9); **to amend** 15.155 (5), 20.143 (1)

2 (kc), 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3m), 227.24 (3m) (intro.), 285.79

3 (3) (intro.) and 560.11 (2); and **to create** 227.04, 560.038 (title) and (1) (intro.),

4 560.038 (1) (a), (b), (c), (d) and (e) and 560.038 (3) of the statutes; **relating to:**

5 changes to the membership of the Small Business Regulatory Review Board,

6 notification to the Small Business Regulatory Review Board of bills with an

7 economic impact on small businesses, and the role of the Office of the Small

8 Business Advocate in the Department of Commerce.

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

This bill makes the following changes to the membership of the Small Business Regulatory Review Board (board), the considerations to be made for small businesses by agencies engaging in administrative rule making, the responsibilities of small business regulatory coordinators in each agency, and the structure and functions of the small business ombudsman clearinghouse in the Department of Commerce (Commerce):

***Small Business Regulatory Review Board***

Currently, the membership of the board in Commerce consists of six representatives of small businesses, the chairpersons of the senate and assembly

committees concerned with small businesses, and one representative each from the departments of Administration; Agriculture, Trade and Consumer Protection; Children and Families; Commerce; Health Services; Natural Resources; Regulation and Licensing; Revenue; and Workforce Development. Current law defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

The board serves small businesses by reviewing administrative rules proposed by and emergency rules promulgated by agencies to determine the fiscal effect of the rules on small businesses. The board also reviews whether an agency has prepared an analysis for each proposed rule and emergency rule, sufficiently considered the effect of a proposed rule on small businesses, and complied with certain other procedural and substantive requirements as it prepared the proposed rule or emergency rule.

This bill eliminates from the board the representatives of all departments and increases the number of representatives of small businesses on the board to seven.

***Rule making: considerations for small businesses***

Under current law, each state agency must submit proposed administrative rules to the Legislative Council for review, prepare an analysis of the proposed rule, and, with certain exceptions, provide notice of and a public hearing regarding the proposed rule. If an agency determines that a proposed administrative rule may have a significant economic impact on small businesses, the agency must forward a copy of the proposed rule to the board.

Under current law, for each proposed rule that will have an effect on small businesses, an agency must prepare a final regulatory flexibility analysis that includes certain information, including a summary of issues raised by small businesses and any changes made to the proposed rule as a result of information and provided by small businesses. A final regulatory flexibility analysis is not required if the agency determines that the rule will not have a significant economic impact on a substantial number of small businesses.

Under certain circumstances, an agency may promulgate an emergency rule without complying with the notice and public hearing requirements. An agency must file a promulgated emergency rule with the Legislative Reference Bureau (LRB). If the emergency rule may have a significant economic impact on small businesses, the agency must submit a copy of the rule to the board on the same day it files the rule with the LRB.

With certain exceptions, a rule promulgated by an agency takes effect on the first day of the month commencing after the day on which the rule is promulgated. Generally, an emergency rule takes effect upon publication. A rule that has a significant economic impact on small businesses applies to small businesses no earlier than the first day of the third month beginning after the date of publication.

This bill requires an agency to forward a copy of a proposed administrative rule or an emergency rule to the board if the rule may have an economic impact on small businesses, and not just a significant economic impact. The bill directs the board to determine whether a proposed rule or emergency rule will have a significant

economic impact on a substantial number of small businesses. If the board determines that a proposed rule or emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit suggested changes in the proposed rule to minimize the economic impact of the proposed rule or emergency rule, or may recommend that the proposed rule, but not the emergency rule, be withdrawn. A final regulatory flexibility analysis is not required under the bill if the board, and not the agency, determines that the rule will not have a significant economic impact on small businesses.

***Administrative law: considerations for small business***

This bill requires each agency, to the extent possible, to do all of the following:

1. Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
2. Establish reduced fines and alternative enforcement mechanisms for minor violations of administrative rules by small businesses.
3. Consider the use of a written warning or alternative penalty against a small business found to be in violation of a rule if the small businesses made a good faith effort to comply with the rule and the rule does not pose a threat to public health, safety, or welfare or to the environment or the workplace.

***Small business regulatory coordinators and the Office of the Small Business Advocate***

Under current law, each agency must designate a small business regulatory coordinator to act as a point of contact within the agency for regulatory issues involving small businesses. Current law defines "agency" to mean a board, commission, committee, department, or officer in the state government, except the governor, a district attorney, or a military or judicial officer. Also under current law, Commerce must establish and operate a small business ombudsman clearinghouse to facilitate communication between state agencies and small businesses.

This bill changes the name of the ombudsman clearinghouse to the Office of the Small Business Advocate (office). The bill requires each agency to designate one employee to serve as the agency's small business regulatory coordinator and clarifies that the small business regulatory coordinator of each agency must work with the office to facilitate communication between small businesses and state agencies.

The bill requires Commerce to model the office on the best practices of state and federal small business advocate organizations, to take a proactive role in maintaining and helping small businesses to grow, and to have the goal of creating jobs and a healthy small business sector. The bill also requires Commerce to designate at least one full-time employee to serve as staff to the office. The staff of the office must, in turn, serve as staff to the board and work together with the small business regulatory coordinator of each agency.

Also under the bill, the office must, upon the written request of a small business against which an agency has initiated an enforcement action, review and investigate the circumstances of the enforcement action and make recommendations regarding alternative enforcement to the enforcing agency. The office must annually report to the governor and to the legislature the role of the office in providing regulatory relief to and promoting regulatory compliance by small businesses.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 15.155 (5) of the statutes is amended to read:

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

16           **SECTION 2.** 20.143 (1) (kc) of the statutes is amended to read:

17           20.143 (1) (kc) *Clean air act compliance assistance.* From moneys transferred  
18 from the appropriation account under s. 20.370 (2) (bg), the amounts in the schedule  
19 for assisting the department of natural resources in administering the small  
20 business stationary source technical and environmental compliance assistance  
21 program under s. 285.79 and for expenses related to serving as ombudsman an

1 advocate for small business stationary sources as required under s. 560.03 (9)  
2 560.038 (2).

3 **SECTION 3.** 227.04 of the statutes is created to read:

4 **227.04 Considerations for small business.** (1) In this section, “small  
5 business” has the meaning given in s. 227.114 (1).

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

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

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

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

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

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

20 227.114 (7m) The Each agency shall designate a at least one employee to serve  
21 as the small business regulatory coordinator to for the agency, and shall publicize  
22 that employee’s electronic mail address and telephone number. The small business  
23 regulatory coordinator shall act as a contact person for small business regulatory  
24 issues for the agency and shall publicize that person’s electronic mail address and



1 ~~telephone number~~ cooperate with the staff of the office of the small business advocate  
2 under s. 560.038 to accomplish the objectives of this subsection and s. 560.038.

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

4 227.14 (2g) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)

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

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

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

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

9 **SECTION 7.** 227.24 (3m) (intro.) of the statutes is amended to read:

10 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)  
11 On the same day that the agency files a rule under sub. (3) that may have ~~a~~  
12 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the  
13 agency shall submit a copy of the rule to the small business regulatory review board.  
14 The board may use cost-benefit analysis to determine the fiscal effect of the  
15 emergency rule on small businesses and shall determine whether the emergency  
16 rule will have a significant economic impact on a substantial number of small  
17 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14  
18 (2m). If the board determines that the emergency rule will have a significant  
19 economic impact on a substantial number of small businesses, the board may submit  
20 to the agency and to the legislative council staff suggested changes in the emergency  
21 rule to minimize the economic impact of the emergency rule. If the board determines  
22 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board  
23 shall notify the agency of that determination and ask the agency to comply with any  
24 of those provisions. In addition, the board may submit other suggested changes in

1 the proposed rule to the agency and may include a request that the agency do any  
2 of the following:

3 **SECTION 8.** 285.79 (3) (intro.) of the statutes is amended to read:

4 285.79 (3) ASSISTANCE PROGRAM. (intro.) The department shall, in cooperation  
5 with the office of the small business ombudsman-clearinghouse advocate under s.  
6 ~~560.03 (9)~~ 560.038, develop and administer a small business stationary source  
7 technical and environmental compliance assistance program. The program shall  
8 include all of the following:

9 **SECTION 9.** 560.03 (9) of the statutes is renumbered 560.038 (2) and amended  
10 to read:

11 560.038 (2) Establish The department shall establish and operate ~~a small~~  
12 ~~business ombudsman-clearinghouse for business and industry~~ the office to facilitate  
13 the flow of information ~~from~~ between other state and federal agencies and business  
14 and industry, to assist state agencies in establishing methods to encourage the  
15 participation of small businesses in rule making under s. 227.114 (4), and to serve  
16 as ombudsman for small business stationary sources, ~~as defined in s. 285.79 (1)~~, in  
17 connection with the implementation of the federal clean air act, 42 USC 7401 to  
18 7671q. The office shall be modeled on the best practices of both state and federal  
19 small business advocate organizations, shall take a proactive role in maintaining  
20 and helping small businesses grow economically, and shall have the goal of creating  
21 jobs and a healthy small business sector. The office shall be staffed by at least one  
22 full-time employee of the department. The staff of the office shall serve as staff to  
23 the small business regulatory review board and shall cooperate with the small  
24 business regulatory coordinator designated by each agency under s. 227.114 (7m) to  
25 accomplish the objectives of this section, as appropriate.

1           **SECTION 10.** 560.038 (title) and (1) (intro.) of the statutes are created to read:

2           **560.038 (title) Office of the small business advocate. (1)** (intro.) In this  
3 section:

4           **SECTION 11.** 560.038 (1) (a), (b), (c), (d) and (e) of the statutes are created to read:

5           560.038 (1) (a) "Agency" has the meaning given in s. 227.01 (1).

6           (b) "Office" means the office of the small business advocate.

7           (c) "Small business" has the meaning given in s. 227.114 (1).

8           (d) "Small business regulatory coordinator" means the employee of an agency  
9 designated by the agency as required under s. 227.114 (7m).

10          (e) "Small business stationary sources" has the meaning given in s. 285.79 (1).

11          **SECTION 12.** 560.038 (3) of the statutes is created to read:

12          **560.038 (3)** The office shall do all of the following:

13          (a) Upon the written request of a small business against which an agency has  
14 initiated an enforcement action that may, in the opinion of the small business, cause  
15 unnecessary hardship to the small business, review and investigate the  
16 circumstances of the enforcement action and prepare recommendations regarding  
17 alternative penalties to be imposed upon the small business that will, in the opinion  
18 of the office, achieve regulatory compliance by the small business.

19          (b) Submit to the small business regulatory coordinator of the agency initiating  
20 the enforcement action under par. (a) all of the following:

21           1. A copy of the written request submitted to the office under par. (a).

22           2. Any recommendations prepared by the office under par. (a).

23           3. A statement requesting that the small business regulatory coordinator  
24 submit to the office within 45 days after receipt of the statement a written response  
25 describing the enforcement action taken by the agency against the small business

1 and whether any considerations were made for the small business as a result of the  
2 recommendations made under subd. 2. ✓

3 **NOTE:** Is it your intent that an office in the Department of Commerce will have  
power to require an agency to modify its regulatory enforcement mechanisms, whether  
4 mandatory (statutory) or discretionary?

5 (c) Annually do all of the following:

6 1. Compile the written requests received by the office under par. (a), the  
7 submissions made by the office under par. (b), and any communications received  
8 from enforcing agencies under par. (b).

9 2. Analyze and evaluate the information under subd. 1. and any other relevant  
10 information to determine regulatory enforcement trends and the efficacy of the office  
11 in providing regulatory relief to and promoting regulatory compliance by small  
12 businesses.

13 3. Report the information and findings under subds. 1. and 2. to the governor  
14 and to the legislature under s. 13.172 (2).

15 **SECTION 13.** 560.11 (2) of the statutes is amended to read:

16 560.11 (2) The employees of the department of commerce who staff the office  
17 of the small business ombudsman-clearinghouse advocate under s. 560.03 ~~(9)~~  
18 560.038 and the employees of the department of natural resources who staff the  
19 small business stationary source technical and environmental compliance  
20 assistance program under s. 285.79 shall provide the small business environmental  
21 council with the assistance necessary to comply with sub. (1).

22 **SECTION 14. Initial applicability.**

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

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

4

(END)

## Barman, Mike

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**From:** Egerer, Matt  
**Sent:** Tuesday, February 23, 2010 12:06 PM  
**To:** Barman, Mike  
**Subject:** RE: Draft Review: LRB 09-4312/1 Topic: Small business advocate and regulatory review

You're the best!

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

---

**From:** Barman, Mike  
**Sent:** Tuesday, February 23, 2010 12:06 PM  
**To:** Egerer, Matt  
**Subject:** RE: Draft Review: LRB 09-4312/1 Topic: Small business advocate and regulatory review

We'll put a rush on it ... it will be on it's way in a few minutes.

**Mike Barman (Lead Program Assistant)**  
State of Wisconsin - Legislative Reference Bureau  
Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

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**From:** Egerer, Matt  
**Sent:** Tuesday, February 23, 2010 12:02 PM  
**To:** LRB.Legal  
**Subject:** RE: Draft Review: LRB 09-4312/1 Topic: Small business advocate and regulatory review

If there is any way to put a rush on this it would be appreciated as well.

Thanks,

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

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**From:** Egerer, Matt  
**Sent:** Tuesday, February 23, 2010 11:35 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4312/1 Topic: Small business advocate and regulatory review

Please Jacket LRB 09-4312/1 for the ASSEMBLY.