



2009 ASSEMBLY BILL 799

March 4, 2010 – Introduced by Representatives NYGREN, DAVIS, VOS, BIES, HONADEL, MURTHA, PETERSEN, SUDER, TAUCHEN, TOWNSEND, NEWCOMER, BROOKS and STRACHOTA, cosponsored by Senator LEIBHAM. Referred to Committee on Jobs, the Economy and Small Business.

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

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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

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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.

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. 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.

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~~

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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).

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) 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:

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1 227.14 **(2g)** REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
2 On the same day that an agency submits to the legislative council staff under s.
3 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small
4 businesses, the agency shall submit the proposed rule, the analysis required under
5 sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3)
6 to the small business regulatory review board. The board may use cost-benefit
7 analysis to determine the fiscal effect of the rule on small businesses and shall
8 determine whether the proposed rule will have a significant 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:

ASSEMBLY BILL 799**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:

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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), develop and administer a small business stationary source technical and
4 environmental compliance assistance program. The program shall include all of the
5 following:

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 7671q. 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, as appropriate.

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

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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)