



2011 SENATE BILL 47

1 **AN ACT** *to amend* 15.155 (5), 227.114 (6), 227.114 (7m), 227.14 (2g) (intro.),
2 227.19 (3) (intro.), 227.19 (3m) and 227.24 (3m) (intro.); and *to create* 227.04
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, the role of
6 the Office of Regulatory Assistance in the Department of Commerce, and
7 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

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

8 **SECTION 1.** 15.155 (5) of the statutes, as affected by 2011 Wisconsin Act 32, is
9 amended to read:

10 15.155 (5) **SMALL BUSINESS REGULATORY REVIEW BOARD.** There is created a small
11 business regulatory review board, attached to the department of administration

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1 under s. 15.03. The board shall consist of ~~a representative of the department of~~
2 ~~administration; a representative of the department of agriculture, trade and~~
3 ~~consumer protection; a representative of the department of children and families; a~~
4 ~~representative of the department of health services; a representative of the~~
5 ~~department of natural resources; a representative of the department of safety and~~
6 ~~professional services; a representative of the department of revenue; a~~
7 ~~representative of the department of workforce development; 6 7~~ representatives of
8 small businesses, as defined in s. 227.114 (1), who shall be appointed for 3-year
9 terms; and the chairpersons of one senate and one assembly committee concerned
10 with small businesses, appointed as are members of standing committees. The
11 ~~representatives of the departments shall be selected by the secretary of that~~
12 ~~department.~~

13 **SECTION 2.** 227.04 of the statutes is created to read:

14 **227.04 Considerations for small business. (1)** In this section, “small
15 business” has the meaning given in s. 227.114 (1).

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

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

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

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

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- 1 1. The small business has made a good faith effort to comply with the rule.
- 2 2. The rule violation does not pose a threat to public health, safety, or welfare.
- 3 (d) Establish methods to encourage the participation of small businesses in rule
- 4 making under s. 227.114 (4).

5 **SECTION 3.** 227.114 (6) of the statutes is amended to read:

6 227.114 **(6)** When an agency, under s. 227.20 (1), files with the legislative

7 reference bureau a rule that is subject to this section, the agency shall include with

8 the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary

9 of the comments of the legislative standing committees, if any. If, under s. 227.19

10 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall

11 include with the rule a statement of the reason for the agency's small business

12 regulatory review board's determination under s. 227.19 (3m) that the rule will not

13 have a significant economic impact on a substantial number of small businesses. The

14 legislative reference bureau shall publish the summaries or the statement in the

15 register with the rule.

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

17 227.114 **(7m)** The Each agency shall designate ~~a~~ at least one employee to serve

18 as the small business regulatory coordinator to for the agency, and shall publicize

19 that employee's electronic mail address and telephone number. The small business

20 regulatory coordinator shall act as a contact person for small business regulatory

21 issues and shall publicize that person's electronic mail address and telephone

22 number for the agency.

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

24 227.14 **(2g)** REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)

25 On the same day that an agency submits to the legislative council staff under s.

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

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1 the legislative council staff. The notification to the agency may include a request that
2 the agency do any of the following:

3 **SECTION 6.** 227.19 (3) (intro.) of the statutes, as affected by 2011 Wisconsin Act
4 21, is amended to read:

5 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
6 in writing and shall include the proposed rule in the form specified in s. 227.14 (1);
7 the material specified in s. 227.14 (2), (3), and (4); including any statement,
8 suggested changes, or other material submitted to the agency by the small business
9 regulatory review board; a copy of any economic impact analysis prepared by the
10 agency under s. 227.137 (2); a copy of any revised economic impact analysis
11 prepared by the agency under 227.137 (4); a copy of any report prepared by the
12 department of administration under s. 227.137 (6); a copy of any energy impact
13 report received from the public service commission under s. 227.117 (2); and a copy
14 of any recommendations of the legislative council staff. The report shall also include
15 all of the following:

16 **SECTION 7.** 227.19 (3m) of the statutes is amended to read:

17 227.19 (3m) ANALYSIS NOT REQUIRED. The final regulatory flexibility analysis
18 specified under sub. (3) (e) is not required for any rule if the agency, ~~after complying~~
19 ~~with s. 227.114 (1) to (5),~~ small business regulatory review board determines that the
20 rule will not have a significant-economic impact on a substantial number of small
21 businesses.

22 **SECTION 8.** 227.24 (3m) (intro.) of the statutes is amended to read:

23 227.24 (3m) REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD. (intro.)
24 On the same day that the agency files a rule under sub. (3) that may have ~~a~~
25 ~~significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the

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1 agency shall submit a copy of the rule to the small business regulatory review board.
2 The board may use cost-benefit analysis to determine the fiscal effect of the
3 emergency rule on small businesses and shall determine whether the emergency
4 rule will have a significant economic impact on a substantial number of small
5 businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14
6 (2m). If the board determines that the emergency rule will not have a significant
7 economic impact on a substantial number of small businesses, the board shall submit
8 a statement to that effect to the agency that sets forth the reason for the board's
9 decision. If the board determines that the emergency rule will have a significant
10 economic impact on a substantial number of small businesses, the board may submit
11 to the agency and to the legislative council staff suggested changes in the emergency
12 rule to minimize the economic impact of the emergency rule. If the board determines
13 that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board
14 shall notify the agency of that determination and ask the agency to comply with any
15 of those provisions. In addition, the board may submit other suggested changes in
16 the proposed rule to the agency and may include a request that the agency do any
17 of the following:

18 **SECTION 12. Initial applicability.**

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

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

25

(END)