

State of Wisconsin



2011 Senate Bill 47

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2011 WISCONSIN ACT 46

AN ACT *to amend* 15.155 (5), 227.114 (6), 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3) (intro.), 227.19 (3m) and 227.24 (3m) (intro.); and *to create* 227.04 of the statutes; **relating to:** changes to the membership of the Small Business Regulatory Review Board, notification to the Small Business Regulatory Review Board of bills with an economic impact on small businesses, the role of the Office of Regulatory Assistance in the Department of Commerce, and requiring the exercise of rule-making authority.

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

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

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

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

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

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

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

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

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

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

2. The rule violation does not pose a threat to public health, safety, or welfare.

(d) Establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4).

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

227.114 (6) When an agency, under s. 227.20 (1), files with the legislative reference bureau a rule that is subject to this section, the agency shall include with the rule a summary of the analysis prepared under s. 227.19 (3) (e) and a summary of the comments of the legislative standing committees, if any. ~~If, under s. 227.19 (3m), the rule does not require the analysis under s. 227.19 (3) (e), the agency shall include with the rule a statement of the reason for the agency's small business regulatory review board's determination under s. 227.19 (3m) that the rule will not have a significant economic impact on a substantial number of small businesses.~~ The legislative reference bureau shall publish the summaries or the statement in the register with the rule.

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

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

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

227.14 (2g) **REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD.** (intro.) On the same day that an agency submits to the legislative council staff under s. 227.15 a proposed rule that may have ~~a significant~~ an economic impact on small businesses, the agency shall submit the proposed rule, the analysis required under sub. (2), and a description of its actions taken to comply with s. 227.114 (2) and (3) to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and shall determine whether the proposed rule will have a significant economic impact on a substantial number of small businesses and whether the agency has complied with subs. (2) and (2m) and s. 227.114 (2) and (3). Except as provided in subs. (1m) and (1s), each proposed rule shall include provisions detailing how the rule will be enforced. If the board determines that the rule does not include an enforcement provision or that the agency failed to comply with sub. (2) or (2m) or s. 227.114 (2) or (3), the board shall notify the agency of that determination and ask the agency to comply with any of those requirements. If the board determines that the proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small busi-

nesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule under sub. (6). In addition, the board may submit other suggested changes in the proposed rule to the agency, including proposals to reduce the use of cross-references in the rule. The board shall send a report of ~~those suggestions~~ any suggested changes and of any notice of failure to include enforcement provisions or to comply with sub. (2) or (2m) or s. 227.114 (2) or (3) to the legislative council staff. The notification to the agency may include a request that the agency do any of the following:

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

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

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

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

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

227.24 (3m) **REVIEW BY THE SMALL BUSINESS REGULATORY REVIEW BOARD.** (intro.) On the same day that the agency files a rule under sub. (3) that may have ~~a significant~~ an economic impact on small businesses, as defined in s. 227.114 (1), the agency shall submit a copy of the rule to the small business regulatory review board. The board may use cost-benefit analysis to determine the fiscal effect of the emergency rule on small businesses and shall determine whether the emergency rule will have a significant economic impact on a substantial number of small businesses and whether the agency complied with ss. 227.114 (2) and (3) and 227.14 (2m). If the board determines that the emergency rule will not have a significant economic impact on a substantial number of small

businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the emergency rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency and to the legislative council staff suggested changes in the emergency rule to minimize the economic impact of the emergency rule. If the board determines that the agency failed to comply with s. 227.114 (2) or (3) or 227.14 (2m), the board shall notify the agency of that determination and ask the agency to comply with any of those provisions. In addition, the board may submit other suggested changes in the pro-

posed rule to the agency and may include a request that the agency do any of the following:

SECTION 12. Initial applicability.

(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.

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

