



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2011 Wisconsin Act 46
[2011 Senate Bill 47]

**Administrative Rules:
Considerations for Small Business**

2011 Wisconsin Act 46 makes several changes to the administrative rule making process as that process relates to small business and requires the involvement of the Small Business Regulatory Review Board (SBRRB).

Composition of the Small Business Regulatory Review Board

Act 46 modifies the composition of the SBRRB by deleting state agency representation on the board and increasing the number of representatives of small businesses from six to seven. Following Act 46, the SBRRB is composed of seven representatives of small businesses, one Senate member, and one Assembly member.

Considerations for Small Business

Under Act 46, and agency must, consistent with the requirements of s. 895.59, Stats., and to the extent possible, do all of the following:

- Provide assistance to small businesses to help small businesses comply with rules promulgated by the agency.
- Establish, by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses. These rules must include a definition of “minor violation.”
- In deciding whether to impose a fine against a small business for a violation of a rule, consider the appropriateness of a written warning, reduced fine, or alternative penalty if all of the following apply:
 - The small business has made a good faith effort to comply with the rule.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

- The rule violation does not pose a threat to public health, safety, or welfare.
- Establish methods to encourage the participation of small businesses in rule making.

Small Business Regulatory Coordinator

2011 Wisconsin Act 46 modifies current law regarding an agency's designation of a small business regulatory coordinator. Under the Act, each agency must designate at least one employee to serve as the small business regulatory coordinator, and the agency shall publicize that employee's e-mail address and telephone number. The small business regulatory coordinator shall act as a contact person for small business regulatory issues for the agency.

Role of SBRRB in Agency Rule Making

Under Act 46, if an agency determines that a proposed rule has *any* economic impact on small businesses, the agency must submit the rule to the SBRRB on the same day it submits the rule to the Legislative Council staff for review. Previously, submission to the SBRRB was required only if the agency determined that the rule had a *significant* economic impact on small businesses.

Under the Act, following submission to the SBRRB, the SBRRB may use cost-benefit analysis to determine the fiscal effect of the rule on small businesses and must determine whether the rule has a significant economic impact on a substantial number of small businesses. 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.

Alternatively, if the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, 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. Additionally, the board must submit a report of any suggested changes to the Legislative Council staff.

Under Act 46, when an agency submits a rule to the Legislature, the report that accompanies the rule must include any statement, suggested changes, or other material submitted to the agency by the SBRRB. When the SBRRB determines that a proposed rule will have a significant economic impact on a substantial number of small businesses, the agency must also prepare a final regulatory flexibility analysis.

At the end of the rule-making process, when the agency files a rule for publication with the Legislative Reference Bureau (LRB), the agency must include with the rule a summary of the final regulatory flexibility analysis and a summary of the comments of the legislative standing committees, if any. If the rule does not require the analysis, the agency shall include with the rule a statement of the reason for the SBRRB's determination that the rule will not have a significant economic impact on a substantial number of small businesses.

Emergency Rules

Under 2011 Wisconsin Act 46, emergency rules that have *any* economic impact on small businesses must be referred to the SBRRB. 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. 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.

Effective Date and Initial Applicability

2011 Wisconsin Act 46 takes effect on November 15, 2011. Generally, the provisions of the Act that require referral of rules to the SBRRB first apply to proposed administrative rules submitted by an agency to the Legislative Council staff, or, for emergency rules, to the LRB, on November 15, 2011.

Effective date: November 15, 2011.

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