AN ACT to amend 15.155 (5), 227.114 (6), 227.114 (7m), 227.14 (2g) (intro.), 227.19 (3) (intro.), 227.19 (3m), 227.24 (3m) (intro.) and 560.42 (1m) (b); and to create 227.04, 560.42 (1m) (c) and 560.43 (3) 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.

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 responsibilities of the Office of Regulatory Assistance in the Department of Commerce (Commerce):

Small Business Regulatory Review Board

Currently, the membership of the board 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
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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 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 first month beginning 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 then 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 business made a good faith effort to comply with the rule and the rule violation does not pose a threat to public health, safety, or welfare.

Small business regulatory coordinators and the Office of Regulatory Assistance

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 operates the Small Business Ombudsman Clearinghouse (clearinghouse) to, in part, assist agencies to encourage the participation of small businesses in rule making and the Office of Regulatory Assistance (office) to assist all businesses with permitting and other regulatory compliance.

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 clearinghouse and the office to facilitate communication between small businesses and state agencies with respect to administrative rules development and enforcement. Under the bill, the office must operate as a liaison between small businesses and agencies regarding small businesses’ compliance with administrative rules and agencies’ discretionary enforcement of rules violations against small businesses.

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:
15.155 (5) SMALL BUSINESS REGULATORY REVIEW BOARD. There is created a small business regulatory review board, attached to the department of commerce 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 commerce; a representative of the department of health services; a representative of the department of natural resources; a representative of the department of regulation and licensing; a representative of the department of revenue; a representative of the department of workforce development; 6 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.

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 at least one employee to serve as the small business regulatory coordinator to 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 for the agency and shall publicize that person's electronic mail address and telephone number cooperate with the staff of the office of regulatory assistance and the small business ombudsman clearinghouse as required under s. 560.43 (3).

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 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 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 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 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) to (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 report prepared by the agency under s.
227.137; a copy of any report prepared by the department of administration under
s. 227.138; 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), 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 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 proposed rule to the agency and may include a request that the agency do any of the following:

**SECTION 9.** 560.42 (1m) (b) of the statutes is amended to read:

560.42 (1m) (b) Serve as a liaison between businesses and agencies, federal agencies, authorities, municipalities, and local economic development organizations.

**SECTION 10.** 560.42 (1m) (c) of the statutes is created to read:

560.42 (1m) (c) Serve as a liaison between small businesses and agencies to accomplish the objectives of s. 227.04.

**SECTION 11.** 560.43 (3) of the statutes is created to read:

560.43 (3) **Encouragement of Participation of Small Businesses in Rule Making.** Each agency shall establish methods to encourage the participation of small businesses in rule making under s. 227.114 (4), and shall cooperate with the office
and the small business ombudsman clearinghouse to accomplish the objectives of the
provisions of ss. 227.04, 227.114, 560.03 (9), and 560.42 as they relate to small
businesses.

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.

(END)