2013 SENATE BILL 497

January 15, 2014 – Introduced by Senators GUDEX, PETROWSKI, L. TAYLOR, GROTHMAN and OLSEN, cosponsored by Representatives KAPENGA, BORN, CRAIG, HUTTON, KULP, LEMAHIEU, MURPHY, MURTHA, SCHRAA and TITTL. Referred to Committee on Agriculture, Small Business, and Tourism.

AN ACT to repeal 227.04 (2) (b), 895.59 (1) and 895.59 (2) (a) to (c); to renumber 227.04 (2) (a), (c) and (d), 895.59 (2) (d), 895.59 (2) (e) and 895.59 (2) (f); to renumber and amend 227.04 (2) (intro.) and 895.59 (2) (intro.); to amend 227.04 (1); and to create 227.04 (1) (a), 227.04 (2m) (b) and 227.04 (2m) (d) of the statutes; relating to: agency discretion in imposing penalties for minor violations of rules by small businesses and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, public agencies are required to provide assistance to small businesses to help those small businesses comply with the rules promulgated by those agencies. Public agencies are required under current law to establish a rule that creates reduced fines and enforcement mechanisms for minor violations of agency rules by small businesses. Current law requires public agencies to consider the appropriateness of a written warning, a reduced fine, or an alternative penalty if the small business violates a rule, that small business has made a good faith effort to comply with the rule, and the minor violation does not pose a threat to public health, safety, or welfare.

In addition, under current law, each public agency is required to promulgate a rule that discloses in advance the discretion that the agency will follow in the enforcement of rules against a small business. The rule promulgated shall include a reduction or waiver of a penalty if the small business voluntarily discloses a rule.
violation, and may include consideration of the small business’s ability to pay when
determining the penalty. Current law prohibits any discretion in the enforcement
of a rule if certain conditions apply, including if the agency discovers the violation
first, the violation resulted in a substantial economic advantage to the small
business, the small business has repeatedly violated the rule, or the violation may
result in an imminent endangerment to public health or safety.

This bill continues to require public agencies to promulgate a rule that discloses
in advance the discretion that the public agency will follow in the enforcement of
rules against a small business that commits a minor violation of a rule, but limits the
conditions when such discretion is not allowed to minor violations involving a small
business that has repeatedly violated the rule, to minor violations that result in a
substantial economic advantage for the small business, and to minor violations that
may result in an imminent endangerment to public health or safety.

The bill also specifies that the public agency shall consider a number of criteria
for allowing discretion in the enforcement of a rule or assessment of a penalty for a
minor violation, including the following:

1. The difficulty and cost to a small business of complying with a rule.
2. The financial capacity of the small business, including the ability of the small
business to pay the amount of the possible penalty.
3. The compliance options available.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply
with a rule.
6. Fairness to the small business and to others, including competitors and the
public.

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

1 **SECTION 1.** 227.04 (1) of the statutes is amended to read:

2 227.04 (1) In this section, “small:

3 (b) “Small business” has the meaning given in s. 227.114 (1).

**SECTION 2.** 227.04 (1) (a) of the statutes is created to read:

5 227.04 (1) (a) “Minor violation” means a rule violation that does not cause
6 serious harm to the public, is committed by a small business, and the violation is not
7 willful, the violation is not likely to be repeated, there is a history of compliance by
8 the violator, or the small business has voluntarily disclosed the violation.
SECTION 3. 227.04 (2) (intro.) of the statutes is renumbered 227.04 (3) (intro.) and amended to read:

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

SECTION 4. 227.04 (2) (a), (c) and (d) of the statutes are renumbered 227.04 (3) (a), (c) and (d).

SECTION 5. 227.04 (2) (b) of the statutes is repealed.

SECTION 6. 227.04 (2m) (b) of the statutes is created to read:

227.04 (2m) (b) The rule promulgated under this subsection shall specify the situations in which the agency will allow discretion in the enforcement of a rule against a small business that has committed a minor violation. The rule shall consider the following criteria for allowing discretion in the enforcement of the rule and the assessment of a penalty, including a forfeiture, fine, or interest:

1. The difficulty and cost of compliance with the rule by the small business.
2. The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.
3. The compliance options available, including options for achieving voluntary compliance with the rule.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply with the rule.
6. Fairness to the small business and to other persons, including competitors and the public.

SECTION 7. 227.04 (2m) (d) of the statutes is created to read:
227.04 (2m) (d) A rule promulgated under this subsection applies to minor violations committed after the effective date of the rule.

SECTION 8. 895.59 (1) of the statutes is repealed.

SECTION 9. 895.59 (2) (intro.) of the statutes is renumbered 227.04 (2m) (a) and amended to read:

227.04 (2m) (a) Each agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business that has committed a minor violation. The rule promulgated under this subsection shall may include the reduction or waiver of penalties for a voluntary disclosure, by a small business, of actual or potential violations of rules or guidelines. The rule promulgated under this subsection may include the consideration of the violator’s ability to pay when determining the amount of any monetary penalty, or assessment, or surcharge.

(c) The rule promulgated under this subsection shall specify when the situations in which the agency will not allow discretion in the enforcement of a rule or guideline against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

SECTION 10. 895.59 (2) (a) to (c) of the statutes are repealed.

SECTION 11. 895.59 (2) (d) of the statutes is renumbered 227.04 (2m) (c) 1.

SECTION 12. 895.59 (2) (e) of the statutes is renumbered 227.04 (2m) (c) 2.

SECTION 13. 895.59 (2) (f) of the statutes is renumbered 227.04 (2m) (c) 3.

(END)