



DEVIN LEMAHIEU

STATE SENATOR

DATE: March 30, 2017
RE: Testimony on Senate Bill 15 (REINS Act)
TO: Chairman Stroebel & Members, Senate Committee on Government Operations, Technology, and Consumer Protection
FROM: Senator Devin LeMahieu

Thank you for hearing my testimony today on Senate Bill 15, otherwise known as the REINS – Regulations from the Executive in Need of Scrutiny – Act. This legislation makes simple but important reforms that strengthen the Legislature and improve transparency and accountability in the rule-making process.

Along with other reforms, this bill makes three fundamental changes to the rule-making process:

1. Requires the Department of Administration to make a determination as to an agency's authority to promulgate a rule.
2. Strengthens JCRAR by allowing it to request an independent economic impact analysis of a proposed rule.
3. Requires a rule with a fiscal impact exceeding \$10 million over 2 years to receive a vote by the full Legislature before taking effect.

The most important reform is the \$10 million cap. This will ensure very expensive rules are subject to additional scrutiny by the Legislature. It will also allow the public to hold individual legislators accountable for expensive rules.

Perhaps the best example of when the \$10 million cap could have been valuable is when the so-called "Phosphorus Rule" was first enacted in 2010. We know today that the rule has a projected cost of \$7 billion (including interest) on businesses and local governments. Despite this cost, in 2010, not even a committee of the Legislature had to vote on the rule.

Finally, the bill is simplified substantially from last session's version. Under this proposal, there are no changes to the Office of Business Development or the Small Business Regulatory Review Board. Importantly, SB 15 enjoys broad support from the small business community – including the National Federation of Independent Business, Wisconsin Independent Businesses, and the Small Business Committee of Wisconsin Manufacturers & Commerce.

Thank you for your consideration. I am happy to answer any questions.



DATE: March 30, 2017

FROM: State Representative Adam Neylon

TO: Senate Committee on Government Operations, Technology, and Consumer Protection

RE: Supporting Senate Bill 15

Good morning Chairman Strobel and Members of the Senate Committee Government Operations, Technology, and Consumer Protection.

I am State Representative Adam Neylon from Pewaukee, and I am here to support legislation I worked on with Senator LeMahieu, Senate Bill 15. As it stands now, Wisconsin state agencies have the power to pass regulations that can cost Wisconsin taxpayers, both citizens and businesses, millions in compliance costs. This legislation will put agency rule-making oversight back in the hands of the legislature.

We in the legislature are held accountable by Wisconsin citizens every election cycle. Bureaucrats in state agencies are accountable only to their agency heads. This bill will ensure officials elected by Wisconsin citizens are able to hold state agencies accountable, and have the necessary oversight over rules that impact Wisconsin citizens and businesses.

This legislation makes three basic changes to current law:

1. SB 15 gives JCRAR the ability to request a public hearing early on in the administrative rulemaking process, specifically after a scope statement has been approved by the Governor. This common sense measure gives Wisconsin citizens a chance to voice their opinions earlier on in the process.
2. SB 15 gives the JCRAR the ability to request an independent economic impact analysis, so committee members can get a second opinion on what the cost of compliance will be for those impacted by the proposed rule.
3. SB 15 requires that any rule or regulation that would impose a compliance cost on a Wisconsin business or industry, of \$10 million dollars or more over two years, be approved by the legislature.

With that, Senator LeMahieu and I would be happy to answer any questions from Committee Members at this time.



Wisconsin
Statement Before the
Senate Committee on Government Operations, Technology and
Consumer Protection

By

Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter

Thursday, March 30, 2017

Senate Bill 15

Mr. Chairman, and members of the Committee, thank you for allowing me to share some comments with you this morning on behalf of our state's small business community.

NFIB, founded in 1943 as a non-profit, non-partisan organization, is the state's leading small business advocacy organization representing over 11,000 Wisconsin member firms, and over 325,000 member firms located throughout the United States.

The regulation of small business is an on-going serious public policy problem, and a costly, often confusing challenge for business owners large and small.

When it comes to regulations, small businesses bear a disproportionate amount of the regulatory burden. Federal regulations cost nearly \$12,000 per employee per year, which is 30 percent higher than the regulatory cost burden larger businesses face.

It should be no surprise that NFIB members have consistently ranked the costly hidden tax of regulations a significant barrier to their ability to grow, to hire and to succeed.

Therefore, small business owners have unique issues and concerns over the regulations that impact their ability to grow and prosper.

For over 30 years, NFIB has been a leader – at the state and federal level – for regulatory reforms that are workable, successful and meaningful:

- The Small Business Regulatory Flexibility Act (1983, Act 90)
- The Small Business Regulatory Fairness Act (2003, Act 145)
- The Small Business Review Board Revision Act (2011, Act 46)
- The Small Business Improvement Act (2013, Act 296)

Each of these important laws have made revisions to the regulatory process to ensure the special needs and problems of small businesses were identified in that process, and that small businesses were provided the opportunity to participate in the rulemaking process (1983 Act 90).

Also among the provisions of 1983 Act 90 is a requirement that agencies prepare an estimate of the cost to comply with regulations that impact small business.

The 2003 Act 145 created a Small Business Regulatory Review Board to help facilitate the participation of small business owners in the rulemaking process, and it gave the board the authority to order cost benefit analysis to determine the cost impact as well as agency compliance with the Act.

The 2011 Act 46 strengthened the role of the review board by increasing small business representation on the board, and providing an even larger role for small business owners directly in the rulemaking process.

Finally, 2013 Act 46 gives agencies some discretion and flexibility in the enforcement and assessment fines for minor violations.

Senate Bill 15 builds on many of the provisions of these earlier laws which were enacted by the Legislature specifically for small businesses, and recognizes the importance of bringing outside expertise into the rulemaking process – either through economic impact analysis or through action by the Legislature, whenever regulations have an impact of \$10 million or more implementation or compliance costs.

In fairness to the agencies and to the bureaucrats responsible for drafting and enforcing compliance with regulations, they often simply lack the expertise or resources to know the impact of regulations on the regulated.

Senate Bill 15 requires public hearings before the formal drafting of a new regulation – a key step to helping public officials understand the actual cost and challenges with complying with regulations before they move through the process.

Senate Bill 15, in our view, builds on the principles of open and deliberative rulemaking that should apply to any rule that imposes new liabilities for individuals and small business owners. Without question, the imperative for citizen involvement is all the greater when the rule promises to impose heavier economic burden. No individual should be burdened by new regulations on which they have not had an opportunity to comment.

In conclusion, we offer a key principle: the regulatory public – whether large or small business owner or individual – should have the right and opportunity to voice concerns over any new regulation, policy, or administrative action that may impose affirmative regulatory burdens on individuals or businesses.

If government exists to serve the people, then it has a moral responsibility to ensure transparency and to ensure citizens have an opportunity to be heard – if not, then government serves its institutional interests, or may be captured by the interests of politically powerful factions.

Senate Bill 15 creates some new opportunities for comment and analysis by the public, the Legislature, and the regulated which we believe will bring greater certainty, transparency and cost sensitivity to Wisconsin's regulatory environment.

Therefore, we respectfully **urge your support for passage of Senate Bill 15.**

Thank you.

The Cost of Compliance

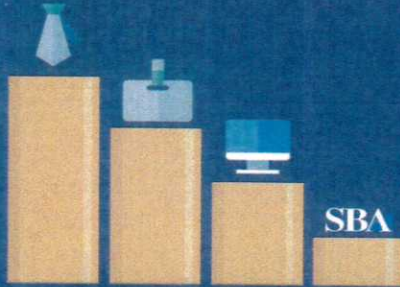
Small businesses struggle to keep up with government regulations.

Nearly 60%

of small business owners say it's difficult for them to understand and manage government regulations at all levels.



How do they learn about regulations?



66%

rely on professional advisers or consultants.

50%

rely on trade associations, like NFIB.

33%

use the internet.

15%

use a local Chamber of Commerce or SBA program.

Who is responsible?

Most small businesses manage regulatory compliance in-house. The owner almost always takes the lead.

10%

of businesses use an office manager.

Less than 10%

use outside resources.



How much time do they spend managing and complying with regulations?

200 hours per year

That's **4 hours per week** on average.



What does it cost?

\$1.75 trillion:

The economy wide cost of regulations

That's **\$60,000 per small business** if you were to divide it up evenly among all U.S. small businesses.



THE LEADING VOICE
FOR WISCONSIN SMALL
AND INDEPENDENT BUSINESSES

March 30, 2017

TO: Members
Senate Government Operations, Technology and Consumer Protection Committee

FR: Brian Dake
Legislative Director
Wisconsin Independent Businesses

RE: 2017 Senate Bill (SB) 15 relating to various changes regarding administrative rules and rule-making procedures and making an appropriation.

Chairman Stroebel and committee members my name is Brian Dake, Legislative Director for Wisconsin Independent Businesses. Thank you for the opportunity to come before you to testify in support of 2017 Senate Bill (SB) 15.

By way of background, Wisconsin Independent Businesses (WIB) was formed in 1977 to provide small, independent business owners with a voice in the legislative and regulatory activities of state government. Today, we have more than 4,000 members – approximately 85% of them own and operate businesses with fewer than 25 employees.

While small, independent business owners do not know the details of the state's administrative rule-making process, they are quite familiar with the regulations produced by this process. They know administrative rules carry the force of law and compliance can be costly and time-consuming.

For these reasons, WIB advocates for common sense reforms to the processes by which state government agencies promulgate administrative rules. We believe that a process which is accountable, transparent and responsive to the marketplace will result in administrative rules which are fair and reasonable. Senate Bill 15 furthers these objectives.

WIB...Helping you where you need it.

PO Box 2135 | Madison, Wisconsin 53701 | 800-362-9644 | www.wibiz.org

Senate Bill 15 adds more accountability to the administrative rule-making process by requiring passage of separate legislation for an agency to promulgate a rule that would result in implementation and compliance costs of \$10 million or more over any two-year period. The full compliance costs of a proposed rule often become known only after the rule-making process has begun. If those costs exceed this threshold, it is appropriate for state lawmakers to determine whether the state agency can proceed with promulgation of the proposed rule.

Senate Bill 15 adds more transparency to the administrative rule-making process by requiring agencies to hold preliminary public hearings and comment periods on scope statements for rules if directed to do so by the Joint Committee for Review of Administrative Rules (JCRAR). The administrative rule-making process is lengthy and there are steps along the way for public input, but the value of that input is enhanced when it is provided at the beginning of the rule-making process. This legislation creates a new opportunity for small, independent business owners to advise state agencies of their concerns at the start of the rule-making process.

Finally, Senate Bill 15 makes Wisconsin's administrative rule-making process more responsive to the marketplace by allowing either a co-chairperson of JCRAR or JCRAR as a whole, to request the preparation of an independent economic impact analysis for a proposed rule. State agencies often lack the technical expertise and private sector experience to discern the true compliance costs of a proposed regulation. Independent analysis from trained economists is a valuable new tool that state legislators can utilize when there is uncertainty regarding the financial impact of a proposed rule on small, independent businesses.

Again, thank you for the opportunity to testify in favor of Senate Bill 15. We respectfully ask for your support of this legislation.



**TESTIMONY BEFORE THE SENATE COMMITTEE ON GOVERNMENT
OPERATIONS, TECHNOLOGY AND CONSUMER PROTECTION IN SUPPORT OF
SENATE BILL 15**

Chairman Stroebel and Committee Members:

Thank you for the opportunity to testify today. My name is Lucas Vebber and I am the General Counsel and Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. With approximately 3,800 members, we are the largest business trade association in Wisconsin. WMC represents members from all over Wisconsin of all sizes and in every sector of the state's economy. I am here today to testify in support of Senate Bill 15.

This legislation is a simple regulatory reform proposal that will go a long way toward providing greater transparency and oversight of the administrative rules process in our state. This bill ensures agencies act within their authority, provides greater opportunities for public involvement in the rulemaking process, ensures accurate cost estimates and provides greater oversight of the costliest of rules. This bill will ultimately result in better, more efficient regulations for our state. Specifically, this legislation will:

1) **Ensure Agencies Act Within Their Authority**

State agencies are created by the legislature, and have only those powers granted to them by the state law. When an agency begins to develop a new regulation, they must first get an approved scope statement. This legislation would require DOA to review those scope statements and make an initial determination as to whether the agency has proper authority to undertake the proposed rulemaking.

2) **Provide Greater Opportunities for Public Involvement in the Rulemaking Process**

Under current law, no matter how lengthy a regulation is or how long it takes the agency to write, an agency is only required to hold a single public hearing on a proposed regulation – and only at the end of the drafting process. This makes it difficult for the public to weigh in, or seek changes to proposed regulations. This legislation would empower the JCRAR co-chairs to require agencies to hold an additional public hearing at the front end of the rulemaking process, giving the public an important opportunity to weigh in on proposed regulations before the agency begins to write them.

3) **Ensure Accurate Cost Estimates & Provide Greater Oversight of the Costliest of Rules**

Since 2011 Act 21, agencies have been required to prepare an Economic Impact Analysis (EIA) document, in which they are required to analyze the projected cost a regulation may have on the

public. Under current law, the legislature has no involvement in that process. This legislation would empower the legislature to request an independently conducted EIA, an important oversight tool to ensure that agency-prepared EIAs are accurate.

Further, under this legislation, should an EIA show that a regulation is expected to cost more than \$10 million over a two-year period, this legislation would require the legislature to affirmatively approve that regulation before it could continue through the promulgation process. This change would provide the highest level of oversight to the costliest of regulations.

Such costly regulations are few and far between, but when they happen they are economy-changing. As an example, look at the most recent rule that would have hit this trigger: DNR's changes to the phosphorous effluent standards back in 2010. DNR made the decision that our state's water quality standards needed to be updated. They lowered the phosphorous standard by 90%, resulting in the most stringent standard in the nation. Subsequent studies on the rule by the state found it would create widespread social and economic harm, and projected costs of up to \$7 billion statewide. The impacts of this rule are just now being felt as permits are only now being renewed and dischargers are beginning to deal with the stricter limitations. Not a single legislator voted to approve this regulation, and yet it has caused significant regulatory uncertainty and added costs for our state.

Regulations have the force of law and are written by unelected bureaucrats. When those rules are going to have a significant economic impact, they deserve a heightened level of scrutiny. This legislation provides that additional scrutiny, while ensuring greater involvement for the public in the rulemaking process and empowering the legislature to exercise some significant new oversight powers.

Thank you for your time, I would be happy to answer any questions that you may have.



Memorandum

TO: Honorable Members of the Senate Committee on Government Operations, Technology, and Consumer Protection

**FROM: Eric Bott, State Director
Americans for Prosperity-Wisconsin**

DATE: March 30th, 2017

RE: Support Senate Bill 15, The Wisconsin REINS Act

Chairman Stroebel and members of the committee, please accept our most sincere thanks for holding a hearing today on an issue of critical importance to our state's system of governance and our economy.

The ceaseless growth of the regulatory state at the federal level and here in Wisconsin poses a significant threat to the health of our economy and democracy. Rules and regulations penned by faceless, nameless bureaucrats are increasingly having a more substantial impact on our lives than laws enacted by our elected representatives.

Thanks to the efforts of Senator Devin LeMahieu and Representative Adam Neylon, Wisconsin now has an opportunity to reverse this trend at the state level and provide citizens with more transparency and greater input in the development and implementation of regulations generally. Senate Bill 15 would do much to improve the administrative rule making process and to protect small businesses from overzealous regulation.

Americans for Prosperity-Wisconsin strongly supports a key concept of this legislation – that citizens deserve to have a voice through their elected officials on regulations that threaten to significantly impact their lives or that could put their jobs or businesses in jeopardy. By requiring the legislative approval of the most expensive rules, those costing more than \$10 million over a two-year period, SB 15 would restore democracy to our regulatory process, add accountability, and improve the responsiveness of state agencies to the needs of citizens and employers.

The job creation potential of this reform is sizeable. It will provide long-term regulatory certainty to small businesses and large employers alike. Freeing job creators from the often costly whims of unelected and unaccountable bureaucrats makes it easier for them to make investment decisions that lead to job growth and greater prosperity in our state.

Additionally, SB 15 will allow for greater public input in the rule making process, including new opportunities for public hearings. We support the authors' efforts to improve public participation in the rule writing process and to create more open government generally.

Americans for Prosperity-Wisconsin and our 130,000 plus Wisconsin activists strongly encourage you to support the efforts of Senator LeMahieu and Representative Neylon to bring greater transparency and oversight to the regulatory process by recommending passage of Senate Bill 15.

For more information, please contact Eric Bott at ebott@afphq.org.