

October 1983 Spec. Sess.
Assembly Bill 4

Date of enactment: November 10, 1983
Date of publication: November 16, 1983

1983 Wisconsin Act 90

AN ACT to renumber 227.021 (3) (g) and 227.05 (4); to amend 227.018 (3) (a) to (d), 227.021 (3) (f) and 560.03 (9); and to create 227.016, 227.018 (3) (f) and (3m), 227.021 (3) (g) and 227.05 (4) (b) and (c) of the statutes, relating to consideration for small businesses in state agency rule making.

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

SECTION 1. Purpose. The purpose of this act is to provide methods to enable state agencies to adapt administrative rules to the special needs and problems of small businesses and to ensure that these methods are considered by each state agency in the adoption of its rules.

SECTION 2. 227.016 of the statutes is created to read:

227.016 Rule making; considerations for small business. (1) (a) In this section, "small business" means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than 25 full-time employees or which has gross annual sales of less than \$2,500,000. For purposes of a specific rule, an agency may define small business to include more employees or greater gross annual sales if necessary to adapt the rule to the needs and problems of small businesses. A "small business" may also be defined in accordance with other standards established by an agency by rule.

(b) Whenever an agency establishes different standards for the definition of "small business" as authorized in par. (a), the standards may apply to either a single rule, a set of rules or every rule issued by the agency. In any rule adopted by an agency establishing different standards for the definition of "small business", the size or segment standards established by the rule shall be objective and, to the maximum extent feasible, uniform with size or segment standards previously established by rules of the agency.

(2) When an agency proposes a rule that may have an effect on small businesses, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule.

(e) The exemption of small businesses from any or all requirements of the rule.

(3) The agency shall incorporate into the proposed rule any of the methods specified under sub. (2) which it finds to be feasible, unless doing so would be contrary to the statutory objectives which are the basis of the proposed rule making.

(4) In addition to the requirements under s. 227.021, the agency shall provide an opportunity for small businesses to participate in the rule-making process, using one or more of the following methods:

(a) The inclusion in any advance notice of proposed rule making of a statement that the rule may have an impact on small businesses.

(b) The direct notification of any small business that may be affected by the rule.

(c) The conduct of public hearings concerning the impact of the rule on small businesses.

(d) The use of special hearing procedures to reduce the cost or complexity of participation in the rule making by small businesses.

(5) Prior to the notice required under s. 227.021 (1) (a), the agency shall notify the secretary of development and the small business ombudsman clearinghouse that it proposes to adopt a rule that will have an effect on small businesses.

(6) When an agency, under s. 227.023, files with the revisor of statutes a rule that is subject to this section, the agency shall include with the rule a summary of the analysis prepared under s. 227.018 (3) (f) and a summary of the comments of the legislative standing committees, if any. If the rule does not require the analysis under s. 227.018 (3) (f), the agency shall include with the rule a statement of the determination made under s. 227.018 (3m). The revisor of statutes shall publish the summaries or the statement in the administrative register with the rule.

(7) Each agency shall, during the 5-year period beginning with the effective date of this section (1983), review the current rules of the agency that were in effect prior to that date and shall consider methods of reducing their impact on small businesses as provided under sub. (2). If any method appears feasible, the agency shall propose an amendment to the rule. No review is necessary for any rule that is repealed during the 5-year period.

(8) This section does not apply to:

(a) Emergency rules adopted under s. 227.027.

(b) Agency rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs.

SECTION 3. 227.018 (3) (a) to (d) of the statutes are amended to read:

227.018 (3) (a) Findings of fact;

(b) A statement explaining the need for the proposed rule;

(c) Explanations of modifications made in the proposed rules as a result of testimony received at public hearings;

(d) A list of persons who appeared or registered for or against the proposed rule at any public hearing held by the agency; and.

SECTION 4. 227.018 (3) (f) and (3m) of the statutes are created to read:

227.018 (3) (f) Except as provided under sub. (3m), for all proposed rules that will have an effect on small businesses, as defined under s. 227.016 (1), a final regulatory flexibility analysis, which shall contain as much information about the following as the agency can feasibly obtain and analyze with its existing staff and resources:

1. The agency's reason for including or failing to include in the rule any of the methods specified under s. 227.016 (2) for reducing its impact on small businesses.

2. A summary of issues raised by small businesses during the hearings on the rule, any changes in the proposed rule as a result of alternatives suggested by small businesses and the reasons for rejecting any alternatives suggested by small businesses.

3. The nature of any reports and the estimated cost of their preparation by small businesses that must comply with the rule.

4. The nature and estimated cost of other measures and investments that will be required of small businesses in complying with the rule.

5. The additional cost, if any, to the agency of administering or enforcing a rule which includes any of the methods specified under s. 227.016 (2).

6. The impact on public health, safety and welfare, if any, caused by including in the rule any of the methods specified under s. 227.016 (2).

(3m) The final regulatory flexibility analysis specified under sub. (3) (f) is not required for any rule if the agency, after complying with s. 227.016 (1) to (5), determines that the rule will not have a significant economic impact on a substantial number of small businesses.

SECTION 5. 227.021 (3) (f) of the statutes is amended to read:

227.021 (3) (f) If the text of the proposed rule is not published under par. (b), a description of how copies of the text may be obtained from the agency at no charge; ~~and~~

SECTION 6. 227.021 (3) (g) of the statutes is renumbered 227.021 (3) (h).

SECTION 7. 227.021 (3) (g) of the statutes is created to read:

227.021 (3) (g) If the proposed rule will have an effect on small businesses, as defined under s. 227.016 (1), an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses that will be affected by the rule, a brief description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule and a description of the types of professional skills necessary for compliance with the rule; and

SECTION 7m. 227.05 (4) of the statutes is renumbered 227.05 (4) (a).

SECTION 7s. 227.05 (4) (b) and (c) of the statutes are created to read:

227.05 (4) (b) Notwithstanding s. 227.17, in any proceeding under this section for judicial review of a rule, a court may not restrain, enjoin or suspend enforcement of the rule during the course of the proceeding on the basis of the alleged failure of the agency promulgating the rule to comply with s. 227.016.

(c) Notwithstanding par. (a), if a court finds that an agency did not adequately comply with s. 227.016, the court may not declare the rule invalid on that basis but shall order the agency to comply with those sections and to propose any amendments to the rule that are necessary within a time specified by the court. Unless the legislature acts under s. 13.56 (2) to suspend the rule, the rule remains in effect while the agency complies with the order.

SECTION 8. 560.03 (9) of the statutes is amended to read:

560.03 (9) Establish and operate a small business ombudsman clearinghouse for business and industry to facilitate the flow of information from other state and federal agencies and to assist state agencies in establishing methods to encourage the participation of small businesses in rule making under s. 227.016 (4).

SECTION 8m. **Effective date.** This act takes effect on January 1, 1984.