



Stephen L. Nass
Wisconsin State Senator

AB 317/SB 322 Administrative Code Regulatory Reform Process
Testimony of Senator Steve Nass
Senate Committee on Labor & Regulatory Reform
August 29, 2017 • 330 Southwest, State Capitol

Thank you committee members for the opportunity to testify in support of Assembly Bill 317 and Senate Bill 322. These companion bills create a more streamlined and efficient process to review and clean up the state's administrative code by eliminating old rules that are no longer enforceable because their statutory backing has been changed or repealed. It also provides a method for the Joint Committee for Review of Administrative Rules (JCRAR) to order a retrospective economic impact analysis (EIA).

Currently, in order for an agency to repeal an old rule that is no longer in effect because it's statutory authority has been revoked or changed, they must follow the same process for promulgating a new rule, which is very time consuming.

This bill provides an alternative, expedited procedure an agency can use to repeal a rule that it no longer has the authority to promulgate because of the repeal or amendment of the law that had authorized its creation.

Under the bill, an agency could petition the Joint Committee for Review of Administrative Rules (JCRAR) to repeal an unauthorized rule through the following expedited procedure:

- 1) The agency submits a petition to repeal the unauthorized or outdated rule to Legislative Council for review.
- 2) Legislative Council staff will review the petition and provide a written report to the JCRAR committee with their determination of whether the proposed repeal is an unauthorized rule.
- 3) JCRAR could approve the agency's petition to repeal the outdated or unauthorized rule; deny the petition; or request the agency make changes and resubmit the request.

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AB 317/SB 322 also requires agencies to report to JCRAR at the beginning of each biennium any rules that are outdated, unnecessary, in conflict with another rule, or that they no longer have statutory authority to enforce. The report must include a description of the agency's actions to address each rule listed in the report, the status of each rule listed in the previous year's report, or a statement that the agency has determined there are no such rules to list under their department's jurisdiction.

It requires agencies to review newly enacted laws for conflicts or provisions that make an existing rule obsolete or unnecessary. If an agency determines that any such consequence results from a new act, they must begin action to alter or repeal the rule in question within 6 months after the act's effective date.

The bill also creates a process for JCRAR to order a retrospective economic impact analysis (EIA) on existing rules. Currently, agencies create an EIA on proposed rules when they go through the promulgation process. However, an original EIA may not be accurate once a rule has been implemented. Providing JCRAR the ability to request an EIA on an existing rule will give the committee the ability to gather information to assess the cost and effectiveness to the public.

Finally, the bill requires the Legislative Reference Bureau (LRB) to submit a biennial report to JCRAR on administrative rules that LRB determines are in need of revision. Currently, there is no process that requires service agencies to proactively review rules. This requires LRB to do a regular review of existing rules and notify JCRAR of potential rules that are outdated.

This legislation will help simplify Wisconsin's administrative code by keeping it up-to-date, making it easier to understand and navigate for Wisconsin citizens and businesses. It also gives JCRAR new tools to be able to assess the cost and effectiveness of a rule after it has been implemented.

Thank you again for the opportunity to testify in support of AB 317 and SB 322. If any committee members have further questions, I am happy to answer them at this time.



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41ST ASSEMBLY DISTRICT

Assembly Bill 317/Senate Bill 322
Testimony of State Representative Joan Ballweg
Senate Committee on Labor and Regulatory Reform
August 29, 2017

Thank you, Chair Nass, and members of the Committee on Labor and Regulatory Reform for holding this public hearing on AB 317.

AB 317 builds off of the Assembly Red Tape Review initiative. The Red Tape Review is a multi-session initiative aimed at reviewing current administrative code to ensure the rules we have are not obstructive to businesses or the citizens of Wisconsin. This project is now in its third term, but we believe the review needs to be operationalized to keep our code up-to-date.

This legislation will create a standard, continuous review of Wisconsin's Administrative Code and give the legislature additional oversight over rules. We accomplish this in five ways:

1) Create an expedited procedure for repealing unauthorized rules

In the Governor's 2013 Wisconsin Regulatory Review Report, one of the recommendations was to create an expedited process to repeal unauthorized rules since the current process is onerous and can take a year or more. A process to do this was put in the Governor's 2017-2019 budget proposal, but it was removed as a policy item. AB 317 provides agencies with an expedited "off-ramp" to repeal a rule that the agency determines it no longer has authority to enforce. Under this process, the agency shall petition the Joint Committee for Review of Administrative Rules (JCRAR) to repeal the rule. JCRAR may approve the petition to repeal, deny it, or request that the agency make changes to the rule. The two rules in AB 276 could have been repealed through this procedure instead of being done through a separate bill.

2) Create a process for agencies to regularly review rules

This process requires agencies to biennially submit a report to JCRAR listing all rules that are: unauthorized, obsolete or unnecessary, economically burdensome, rules for which the agency's authority to promulgate has been restricted, and rules that are duplicative of, superseded by, or in conflict with another rule, statute, federal law/regulation, or court ruling. As Co-Chair of JCRAR, I have sent a letter to all agencies requesting that they report this very information. Rep. LeMahieu, as my predecessor, did the same. With this information, JCRAR will be able to work with agencies to introduce legislation or ask for a revised rule.

3) Create a process for agencies to review new acts to determine how they affect current rules

This process requires agencies to review current rules to determine if a new law does any of the following: eliminates or restricts the agency's authority to promulgate a rule, renders any rules obsolete or unnecessary, renders any rules not in conformity with or superseded by a state statute, or requires rule making by the agency. If an agency determines that a new law caused any of the consequences above, then the agency must address the rule within six months and notify JCRAR of their action.



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4) Create a process for LRB to biennially report to the legislature on rules in need of revision

To ensure a robust review process for unauthorized rules, this provision requires LRB to biennially report to JCRAR any administrative rules that LRB determines are in need of revision.

Currently, LRB reviews rules when they go through the promulgation process and will notify the agency of their opinion, but there is no follow-up with the agency or notice to the legislature. This requires LRB when doing any review of rules to notify the legislature of opinions provided to an agency in this report.

5) Create a process for JCRAR to request a retrospective economic impact analysis on existing rules

This gives JCRAR a new ability to request that an agency complete a retrospective economic impact analysis (EIA) on any existing rule. Currently, agencies create an EIA on proposed rules going through the promulgation process, but once a rule has been implemented the actual effect may be different than the analysis. This is intended to give JCRAR more ability to gather information on how an administrative rule is affecting the public.

AB 317 is an enhanced version of 2015 AB 80 from last session, and includes recommendations from Senators Fitzgerald and Darling. AB 317 has already passed the Assembly this session. It's prudent and good practice to operationalize the rules review process, relieving the need for any future "clean-up" projects like our current Red Tape Review. This proposal engages agencies in the review of rules and increases the involvement of the legislature in the rules process. No changes can be made, or should be made, to the administrative code without legislative review and action.

The regulated community supports this bill to streamline and expedite the current process, as well as add additional points at which both the agencies and the legislature can identify rules that need to be addressed.

Thank you for considering AB 317, and I am happy to answer any questions.

Alberta Darling
Wisconsin State Senator
Co-Chair, Joint Committee on Finance

Review and Repeal of Administrative Rules and Enactments

Testimony on Senate Bill 322

Senate Committee on Labor and Regulatory Reform

August 29, 2017

Thank you, Chair Nass and members of the Senate Committee on Labor and Regulatory Reform, for hearing this bill. Senate Bill 322 (SB 322) provides clarity to taxpayers and the regulated community by eliminating clutter in our state's administrative rules. This will ensure our administrative code is fair, accurate, and understandable.

This bill creates a procedure which allows agencies to remove unauthorized rules, i.e. rules an agency is no longer authorized to promulgate or enforce. Unauthorized rules currently clutter up the administrative code creating confusion and uncertainty over what rules businesses and individuals must follow. Currently, in order to eliminate a rule, even one an agency does not have authority to enforce, an agency would have to go through the time-consuming rulemaking process. SB 322 allows for an expedited repeal process where an agency simply has to petition the Joint Committee for the Review of Administrative Rules (JCRAR) to remove a rule. Legislative Council would then submit a report to JCRAR stating whether Legislative Council believes the rule is unauthorized. JCRAR can then either approve the petition, deny the petition, or request the agency amend the petition. If JCRAR approves the petition, the rule is repealed. This process helps agencies efficiently fulfill their duty to eliminate unauthorized rules.

SB 322 allows JCRAR to require an agency to perform an economic impact analysis of administrative code sections already in effect. Agencies are currently required to model the economic impact of rules before they are promulgated. However, once the rule is promulgated and they have real data there is no such requirement for an agency to update its analysis. To help identify potentially economically burdensome rules, agencies must periodically submit reports of economically burdensome regulations. This new tool in JCRAR's toolbox will increase the awareness of the true economic costs of administrative rules and allow legislators and stakeholders to respond accordingly.

Finally, this bill requires agencies to review new legislative acts and rules. The purpose of these reviews are to determine if new laws passed by the legislature eliminate an agency's authority to promulgate or enforce certain rules. This will ensure that agencies continue to build on a culture of transparency as time moves forward.

I would like to thank my colleagues, Senator Nass and Representative Ballweg, for their leadership on this issue. Again, thank you to the committee for taking the time to hear this bill, and I urge your support.



Wisconsin

**Statement Before the
Senate Committee on Labor and Regulatory Reform**

By

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

Tuesday, August 29, 2017

Senate Bill 322/Assembly Bill 317

Mr. Chairman thank you for allowing me to make a brief statement on behalf of NFIB's 11,000 member firms.

NFIB members consistently point to regulations – state and federal – as one of the top issues holding them back from hiring workers and taking the necessary steps toward growth.

According to a recent survey study of small business owners, 41% of the respondents said state regulations discourage hiring and prevent expansion; 29% said state regulations make it more difficult to start a business; while 70% indicate compliance with state regulations is a significant costly burden on their business.

That's why we encourage the Legislature to utilize whatever ways and means available to create a regulatory environment favorable for business creation and small business growth.

Last session, NFIB was pleased to support legislation, also introduced by Representative Ballweg, that included many of the provisions of Assembly Bill 317. We commend Senators Nass, Darling, Kapenga, Representative Ballweg and all the co-authors for once again bringing legislation forward that defines a process for regulatory review. We also thank Senator Darling for introducing Senate Bill 295, which small business strongly supports.

In state's all across the country, and in our nation's Capital, NFIB has led the fight for sensible regulations and a regulatory review process by elected officials that requires more transparency and accountability throughout that process.

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Tuesday, August 29, 2017
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Senate Bill 322 and Assembly Bill 317 includes language that requires greater involvement by the Joint Committee for Review of Administrative Rules throughout the process to repeal unauthorized rules, and the review of new and existing regulations. Our state's small business community believes our elected officials should have a direct, meaningful role in the regulatory process and again we commend the authors for introducing legislation that will help establish the authority of the Legislature over the rule-making process.

Senate Bill 322 and Assembly Bill 317 will create procedures for repealing rules under certain conditions, and will also create a review process to eliminate obsolete rules, duplicate rules, or conflicting rules. We believe this examination of existing rules and reviewing rule proposals following legislative enactments is critically important, and we respectfully **urge your support for passage of these important reforms of the regulatory process.**

On behalf of our state's small business community, thank you for supporting our state's job creators.



WISCONSIN MANUFACTURERS & COMMERCE

**TESTIMONY BEFORE THE SENATE COMMITTEE ON LABOR AND
REGULATORY REFORM IN SUPPORT OF ASSEMBLY BILL 317 AND
SENATE BILL 322**

Chairman Nass 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 Assembly Bill 317 and Senate Bill 322.

This legislation furthers efforts that have been made in recent sessions to review every chapter of Wisconsin's administrative code.

Specifically, this legislation requires agencies to biennially report to the Joint Committee for Review of Administrative Rules on the rules that the agency promulgated or otherwise administered. Agencies will be required to identify, among other things, unauthorized rules, obsolete rules, duplicative or unnecessary rules and economically burdensome rules. The legislation then creates an expedited process whereby the agency can repeal rules for which it no longer has the authority to promulgate because of the repeal or amendment of the law that previously authorized its promulgation.

This is important because laws change, and the code often lags behind. While an agency may no longer have authority for a specific rule, the rule will stay on the books until the agency goes through a full promulgation process to repeal it. Having unenforceable rules on the books creates confusion and uncertainty for the regulated community.

Finally, this legislation also authorizes retrospective economic impact analyses for existing rules. Under current law, once a regulation is in place, the state does not track the economic impact of that specific regulation. Allowing for a retrospective analysis will help policy makers identify costly regulations, help determine why those costs differed from the original estimates, provide an idea as to how costs can be reduced, and lead to more accurate cost estimates going forward.

Thank you for the opportunity to testify today, I would be happy to answer any questions you may have.

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Founded in 1911, WMC is Wisconsin's chamber of commerce and largest business trade association.



**THE LEADING VOICE
FOR WISCONSIN SMALL
AND INDEPENDENT BUSINESSES**

August 29, 2017

**TO: Members
Senate Committee on Labor and Regulatory Reform**

**FR: Brian Dake
Legislative Director
Wisconsin Independent Businesses**

RE: 2017 Senate Bill (SB) 322\Assembly Bill (AB) 317 relating to: review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision.

Chairman Nass and committee members my name is Brian Dake, Legislative Director for Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of 2017 Senate Bill (SB) 322 and its companion bill Assembly Bill (AB) 317.

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 that have fewer than 25 employees.

While our members do not know all 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 with them can be costly and time-consuming.

Easing the regulatory burden on small employers is an ongoing WIB public policy priority and we believe reforms to the administrative rule-making process are needed to help us achieve this important objective.

WIB...Helping you where you need it.

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

From our perspective, one of the most significant flaws in Wisconsin's administrative rule-making process is the absence of formalized procedures to continuously review and/or revise existing administrative rules to ensure they reflect changes in the marketplace, current business practices, technology and innovation. This institutional shortcoming can force small employers to spend time and money complying with state government regulations that are outdated, obsolete, unnecessary or overly burdensome.

This legislation addresses this deficiency in a thoughtful, deliberate and systematic manner. Of particular importance to WIB and its members are the provisions which:

- require state agencies to submit a report to the Joint Committee for Review of Administrative Rules (JCRAR) every two years that identifies administrative rules which are obsolete, unnecessary, duplicative or economically burdensome. In that same report, the state agency must present a "plan of action" to address administrative rules that fit within these aforementioned categories; and
- grant broad authority to the JCRAR to direct a state agency to prepare a retrospective economic impact analysis of an existing administrative rule. This analysis must include a comparison of the actual economic effect of the rules to any economic impact analysis that analyzed the economic effect of the rules when they were proposed.

With this critical information from state agencies, state lawmakers can continually work to eliminate obsolete, duplicative and unnecessary administrative rules that impose undue burdens on small, independent businesses.

We respectfully ask for your support of SB 322/AB 317.

Thank you in advance for your consideration of our request.



AMERICANS FOR PROSPERITY®

WISCONSIN

TO: Honorable Members of the Senate Committee on Labor and Regulatory Reform

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

DATE: August 29, 2017

RE: Support Senate Bill 322/Assembly Bill 317, Administrative Rule Review

On behalf of more than 130,000 Americans for Prosperity activists in Wisconsin, I would like to thank Chairman Nass and members of the committee for taking testimony on Senate Bill 322/Assembly Bill 317. We would also like to thank Senator Nass, Senator Darling and Representative Ballweg for their commitment to administrative rule reform, eliminating red tape, and authoring the legislation before you today.

Americans for Prosperity exists to recruit, educate, and mobilize citizens in support of the policies and goals of a free society at the local, state, and federal level, helping every American live their dream – especially the least fortunate. Sadly, the ceaseless growth of the regulatory state has made that dream increasingly unobtainable for many Americans. Burdensome regulations, sometimes without basis in statute can and do inhibit the formation and success of small businesses.

Additionally, the financial cost of the regulatory state on working families is large and growing. Compliance costs of national regulations currently equate to \$14,842 per year. That cost is greater than what a typical family spends on food, healthcare, and clothing combined.

Thankfully, efforts like the Wisconsin REINS Act and Senate Bill 322/Assembly Bill 317 will help reduce regulatory costs over time and limit future government imposed barriers to opportunity. Americans for Prosperity supports several provisions of SB322/AB317 including the following:

- The creation of an expedited process to repeal unauthorized rules
- Improving information sharing by state agencies with the legislature
- Creating a standard for agencies to review regulations after new laws are enacted
- Allowing the Legislative Reference Bureau to proactively review rules
- Creating a process for retrospective economic impact analysis

This final point may prove to be particularly helpful in assessing the public harm or benefit created by a given regulation.

Again, thank you for hearing SB322/AB 317 today. We ask that you please consider supporting this legislation to review and eliminate burdensome, unauthorized, and unnecessary red tape in Wisconsin.

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