



DEVIN LEMAHIEU

STATE SENATOR

DATE: April 19, 2017
RE: Testimony on Assembly Bill 42 (REINS Act)
TO: Chairman Swearingen & Members of the Assembly Committee on State Affairs
FROM: Senator Devin LeMahieu

Thank you for hearing my testimony today on Assembly Bill 42, 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 rule-making:

1. Allows the Joint Committee for the Review of Administrative Rules (JCRAR) to require an agency to hold a preliminary public hearing on a rule's scope statement.
2. Allows JCRAR 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, AB 42 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.



WISCONSIN MANUFACTURERS & COMMERCE

**TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON STATE AFFAIRS IN SUPPORT
OF ASSEMBLY BILL 42**

Chairman Swearingen and Committee Members:

Thank you for the opportunity to testify today. My name is Brittany Rockwell and I am the Director of Small Business Advocacy at Wisconsin Manufacturers and Commerce (WMC) with me today is Lucas Vebber, WMC's General Counsel and Director of Environmental and Energy Policy, and Mr. Aaron Powell who serves as the Chairman of WMC's Small Business Committee.

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. We are here today to testify in support of Assembly Bill 42 including as amended by Assembly Amendment 1.

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, we would be happy to answer any questions that you may have.



John Muir Chapter

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Statement of the Sierra Club's John Muir Chapter in opposition to Assembly Bill 42 April 19, 2017

Chairman Swearingen and members of the committee, my name is James Kerler. I am a volunteer leader with the John Muir Chapter of the Sierra Club. I would like to thank you for the opportunity to provide comments in opposition to Assembly Bill 42. The John Muir Chapter represents over 15,000 members and supporters living throughout the state. We work to provide opportunities for Wisconsinites to enjoy nature and advocate for the fair and rational management of our common resources. We do this so that all Wisconsin residents have access to the clean air, water and land they need for their health, safety and well-being as well as to move our economy forward.

The Sierra Club is opposed to AB 42 because it is unnecessary given the review authority the legislature already has over administrative rules, and because it retards Wisconsin's ability to carry out its duty to protect the health and well-being of Wisconsinites and the environment.

What it will do

The bill is neither targeted nor limited. If enacted it would delay or prevent implementation of a large number of rules. This is chiefly for two reasons. First, it only considers cost not benefits. By only addressing the compliance costs of a rule, the law will drag down rules that have a positive cost/benefit ratio and hence are clearly in the public interest.

Second, the threshold of \$10 million over *any* two-year period is not a very high bar from a state-wide perspective; it is less than 1/1,000th of the proposed state budget let alone the total economic activity of the state which in 2015 was over \$300 billion. Also, it ignores the fact that a rule may have initial costs (for example to install technology) but then have significantly reduced costs or even economic gains into the future.

Why it is not good policy

First and foremost, this bill would be bad policy because it is not needed. The legislature already has the authority to suspend rules through the Joint Committee for Review of Administrative Rules. This bill would add nothing meaningful to that authority.

In addition, it ignores the subject matter of a proposed rule. This bill could prevent rules necessary to protect public health and safety from being adopted in a timely fashion as in the example I'll mention shortly. The proposed amendment to exempt rules needed to stay in

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compliance with the federal Clean Air Act points out another flaw. Many rules are adopted to comply with federal laws such as the Clean Water Act, Hazardous waste law (Resource Conservation and Recovery Act), Superfund and others. Failure to do so can result in individuals being needlessly exposed to contamination or harm to the environment. In addition, it could cost the state more than \$10 million dollars in lost federal grants and other forms of aid.

Delay hurts

Due to recent changes in Wisconsin law it already takes two and a half years to promulgate a rule. This bill would add to that. Time is of the essences for those faced with serious problems. For example this provision could weaken or kill a forthcoming rule the Department of Natural Resources is working on to protect the people of Kewaunee County from groundwater contamination caused by manure spreading. One proposed solution for the area is to build a series of manure digesters. This would exceed the cost threshold of AB 42 and hence could require the DNR to stop work on the rule until separate legislation was passed, **but there are many citizens in that area that already can't drink the water from their wells. They need help now.** AB 42 would at best prolong their problem and at worst prevent a solution at all.

It is for these reasons we urge the committee to oppose AB 42.

Thank you again for the opportunity to testify.



Wisconsin

**Statement Before the
Assembly Committee on State Affairs**

By

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

Wednesday, April 19, 2017

Assembly Bill 42

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.

Assembly Bill 42 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.

Assembly Bill 42 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.

Assembly Bill 42, 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.

Assembly Bill 42 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 Assembly Bill 42.**

Thank you.



**AMERICANS FOR
PROSPERITY**
WISCONSIN

Memorandum

TO: Honorable Members of the Assembly Committee on State Affairs

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

DATE: April 19th, 2017

RE: Support Assembly Bill 42, The Wisconsin REINS Act

Chairman Swearingen 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 Representative Adam Neylon and Senator Devin LeMahieu, 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. Assembly Bill 42 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, AB 42 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, AB 42 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 Representative Neylon and Senator LeMahieu to bring greater transparency and oversight to the regulatory process by recommending passage of Assembly Bill 42.

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

April 19th, 2017

Keith Schedler, Don's Plumbing Service Inc.

Tomah, WI

To: Assembly Committee on State Affairs

Re: Supporting AB 42

Good morning Chairman Swearingen and Members of the Assembly Committee on State Affairs,

I am here as a private citizen and business operator, to support Assembly Bill 42, commonly referred to as the Wisconsin REINS Act. This legislation simply makes state agencies more accountable to the people and business operating in Wisconsin.

My over 35 years as a provider in the heating and plumbing industry has provided me with multiple opportunities to witness overreach and burdensome regulations from all levels of government.

At the federal level over the past recent years, the EPA and DOE have enacted rules that affect all Americans adversely. The rules directly affect plumbing and HVAC industries, but the rules were written without input from the industry and without approval of any elected legislators and without regard to supply and demand.

Furnaces and AC

A rule was enacted that no furnace can be manufactured that is less than 82% efficient. That's great logic for the northern half of the country where 90% efficient furnaces were already being installed due to cost effectiveness. But why does the southern half of the country need a high efficiency furnace. The same is true for the required high efficiency air conditioner in the north. Now the consumer has no choice.

Water heaters

Over the last ten years, gas water heaters have been required to meet new efficiency and safety standards, so it now costs a consumer almost three times the amount of the original installation to replace a water heater. One of the safety features is a vapor sensor, which is intended to shut down the flame in a water heater when it senses gasoline vapor. This is now a rule, because the southern half of the country installs water heaters in their garage where gasoline is stored. So we all pay for the new regulation water heater even though our water heaters are in the basement.

Two years ago, the DOE changed the rules on electric water heaters to make them more energy efficient. When the rule went into effect, manufacturers didn't even make water heaters that met the standard. When they did retool and make the new heaters, they added insulation to meet the standard. The new heaters are bigger in diameter and now many won't fit into the same space of the existing heater.

The agency decided that no residence needed an 80 gallon water heater. So now if the consumer needs 80 gallons of hot water, they have to go to the expense of an 80 gallon light commercial heater or install two smaller water heaters. I refer to this as the New York Slurpy bypass. Since you can no longer buy a 32 oz. soft drink in New York City, you have to buy two 16 oz. drinks or get a free refill.

Lastly, as a consumer, I drive a Chevy Avalanche. I drive it because I like it. It is my third one in fifteen years. I would buy another one, but unfortunately I can't. When I asked the dealer why they quit making them, he replied that in order for General Motors to meet the gas efficiency standards, they could only make so many vehicles that are below the standard, so they discontinued the Avalanche. This is not because they didn't sell well, it is because the government decided we shouldn't drive them.

If house resolution 26, referred to as the federal REINS Act, which passed the US House in January of this year would have been signed into law before these agencies had enacted the previously mentioned costly regulations, it would have afforded congress, manufacturers and businesses the opportunity to have input and hold the line on such overreaching and burdensome regulations.

The same type of overreach can happen at the state level and that is why I am here supporting this legislation today. It puts citizens and business owners in a stronger position to hold state agencies accountable and in check when they are considering enacting rules that impact us all. Thank you.