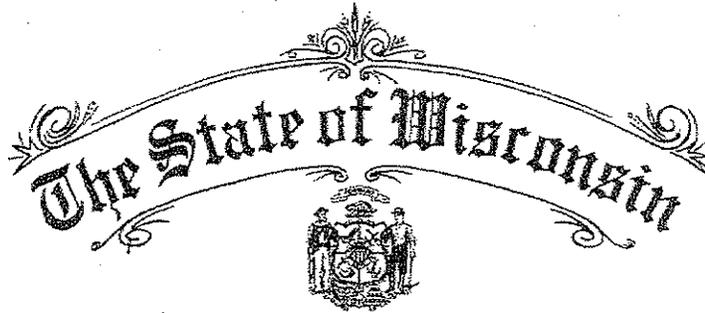


**State of Wisconsin
 Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Office of the Governor		2) Date When Request Submitted:	
		Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections: Physical Therapy Examining Board			
4) Meeting Date: March 7, 2013	5) Attachments: x Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Executive Order #61	
7) Place Item in: x Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: To comply with Executive Order #61, the Board is being asked to review its rules to identify rules that unnecessarily burden small businesses to conduct their affairs and expand. The following options are suggested for undertaking this assignment, with a report back to the Board at its next meeting: <ol style="list-style-type: none"> 1. Appoint a member of the Board to review the rules; 2. Divide the rules among Board members for review; 3. All Board members could review the rules individually. If the Board decides at the next meeting that there is a need to write rules, the next step would be to draft a scope statement.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER # 61

Relating to Job Creation and Small Business Expansion

WHEREAS, creating jobs and growing our state's economy is dependent on a vibrant small business sector; and

WHEREAS, small businesses have generated 64% of net new jobs over the past fifteen years and employ over half of all private sector employees; and

WHEREAS, according to recent U.S. Census data, 86% of Wisconsin business employ fewer than 20 workers, and 74% have ten workers or less; and

WHEREAS, small businesses spend 80% more per worker than large employers to comply with government regulations and, according to a recent National Federation of Independent Business survey of Wisconsin employers, 91% said it was impossible to know about, comply with, and understand all of government's regulations; and

WHEREAS, according to the U.S. Small Business Administration, complying with government regulations costs small businesses \$10,585 per worker, which discourages investment and hiring by small businesses; and

WHEREAS, government regulations are regularly cited as one of the top three concerns for small business growth, according to NFIB's Small Business Optimism Index; and

WHEREAS, 2011 Wisconsin Act 46 strengthened Wisconsin's Small Business Regulatory Review Board (Board) empowering small business owners and giving them the ability to judge the economic impact of government regulation; and

WHEREAS, 2011 Wisconsin Act 46 requires state agencies to submit any rule with an economic impact to the Board for review and allows the Board to suggest changes to the agency that will improve compliance and reduce the rule's burden on small businesses; and

WHEREAS, pursuant to Wis. Stat. § 227.30, the Board has the authority to review rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses to conduct their affairs; and

WHEREAS, state agencies and the Board should not only be reviewing new rules but collaborating to reform existing rules that hinder job creation and small business expansion and that this effort would help further the state's goal of creating 250,000 jobs by 2015.

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and laws of this State, specifically Wis. Stat. § 227.10(2m), do hereby:

1. Require all state agencies to review 2011 Wisconsin Act 46 to ensure they are in compliance, ready to assist small business owners, and properly submitting any proposed rules with an economic impact to the Board;
2. Require all state agencies to cooperate with the Board to identify existing rules hindering job creation and small business growth;

3. Require all state agencies to work with the Board to recommend changes to these rules that will both reduce their burden on job creators while continuing to comply with the intent of the statutes that created them;
4. Require all state agencies to work with the Board to identify strategies that will increase compliance with existing rules;
5. Request that the Board engage small business owners and their representative organizations to gather input on any rules hindering job growth;
6. Request that the Board provide a report and analysis of these rules, in a manner similar to Wis. Stat. § 227.30(1), to the Governor's Office of Regulatory Compliance and the agency with the authority to amend the rules, which details the rules they have identified for modification.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done in the City of Eau Claire this twenty-second day of February, in the year two thousand twelve.


SCOTT WALKER
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

notice, under ch. 985, of the hearing in the official state newspaper and give any other notice which the committee directs. The hearing shall be conducted in accordance with s. 227.18 and shall be held not more than 60 days after receipt of notice of the requirement.

History: 1985 a. 182 ss. 1, 3, 50; 1987 a. 186; 2005 a. 249.

Rule suspension under sub. (2) (d) does not violate the separation of powers doctrine. *Martinez v. DILHR*, 165 Wis. 2d 687, 478 N.W.2d 582 (1992).

A collective bargaining agreement between the regents and the teaching assistants association is not subject to review by the committee. 59 Atty. Gen. 200.

In giving notice of public hearings held under sub. (2), the committee should concurrently employ the various forms of notice available that best fit the particular circumstances. 62 Atty. Gen. 299.

If an administrative rule is properly adopted and is within the power of the legislature to delegate there is no material difference between it and a law. No law, including a valid rule can be revoked by a joint resolution of the legislature as such a resolution deprives the executive its power to veto an act of the legislature. 63 Atty. Gen. 159.

Legislative committee review of administrative rules in Wisconsin. Bunn and Gallagher. 1977 WLR 935.

227.27 Construction of administrative rules.

- (1) In construing rules, ss. 990.001, 990.01, 990.03 (1), (2) and (4), 990.04 and 990.06 apply in the same manner in which they apply to statutes, except that ss. 990.001 and 990.01 do not apply if the construction would produce a result that is inconsistent with the manifest intent of the agency.
- (2) The code shall be prima facie evidence in all courts and proceedings as provided by s. 889.01, but this does not preclude reference to or, in case of a discrepancy, control over a rule filed with the legislative reference bureau or the secretary of state, and the certified copy of a rule shall also and in the same degree be prima facie evidence in all courts and proceedings.

History: 1983 a. 544; 1985 a. 182 ss. 22, 55 (2), (3); Stats. 1985 s. 227.27; 2005 a. 249; 2007 a. 20.

227.30 Review of administrative rules or guidelines.

- (1) The small business regulatory review board may review the rules and guidelines of any agency to determine whether any of those rules or guidelines place an unnecessary burden on the ability of small businesses, as defined in s. 227.114 (1), to conduct their affairs. If the board determines that a rule or guideline places an unnecessary burden on the ability of a small business to conduct its affairs, the board shall submit a report and recommendations regarding the rule or guideline to the joint committee for review of administrative rules and to the agency.
- (2) When reviewing the report, the joint committee for review of administrative rules shall consider all of the following:
 - (a) The continued need for the rule or guideline.
 - (b) The nature of the complaints and comments received from the public regarding the rule or guideline.
 - (c) The complexity of the rule or guideline.

- (d) The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
 - (e) The length of time since the rule or guideline has been evaluated.
 - (f) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.
- (3) The joint committee for review of administrative rules may refer the report regarding the rule or guideline to the presiding officer of each house of the legislature for referral to a committee under s. 227.19 (2) or may review the rule or guideline as provided under s. 227.26.

History: 2003 a. 145; 2005 a. 249.

SUBCHAPTER III

ADMINISTRATIVE ACTIONS AND JUDICIAL REVIEW

Cross-reference: See also ch. NR 2, Wis. adm. code.

227.40 Declaratory judgment proceedings.

- (1) Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for the county where the dispute arose. The officer or other agency whose rule is involved shall be the party defendant. The summons in the action shall be served as provided in s. 801.11 (3) and by delivering a copy to that officer or, if the agency is composed of more than one person, to the secretary or clerk of the agency or to any member of the agency. The court shall render a declaratory judgment in the action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the agency to pass upon the validity of the rule in question.
- (2) The validity of a rule may be determined in any of the following judicial proceedings when material therein:
- (a) Any civil proceeding by the state or any officer or agency thereof to enforce a statute or to recover thereunder, provided such proceeding is not based upon a matter as to which the opposing party is accorded an administrative review or a judicial review by other provisions of the statutes and such opposing party has failed to exercise such right to review so accorded;
 - (b) Criminal prosecutions;
 - (c) Proceedings or prosecutions for violations of county or municipal ordinances;
 - (d) Habeas corpus proceedings relating to criminal prosecution;

**227.10 Statements of policy and interpretations of law;
discrimination prohibited.**

- (1)** Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule.
- (2)** No agency may promulgate a rule which conflicts with state law.
- (2m)** No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter. The governor, by executive order, may prescribe guidelines to ensure that rules are promulgated in compliance with this subchapter.

227.114 Rule making; considerations for small business.

227.114(2)

- (1) 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 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- (2) When an agency proposes or revises 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.