
Governor's Small Business Regulatory Review Board

May 29, 2007

Secretary Roberta Gassman
Department of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison WI 53702

Re: DWD – 56 Child Care Subsidy Rates
CR 07-030 – Wisconsin Administrative Register No. 616

Dear Secretary Gassman:

Wisconsin 2004 Act 145 created the Small Business Regulatory Review Board (SBRRB) to serve as a voice for small businesses as defined in Wis. Stats. 227.114(1). The SBRRB's statutory authority for review of new rules is contained in 227.14(2g) and for emergency rules in 227.24(3m). The SBRRB respectfully submits this letter to the Wisconsin Department of Workforce Development (DWD) following the SBRRB's review of DWD – 56 Child Care Subsidy Rates. The SBRRB's comment on this rule are based on the testimony heard by both representatives of DWD and the child care industry at the board's May 14, 2007 meeting.

Rules come before the SBRRB in a number of ways. Often the department or agency promulgating a rule determines that the rule will have a significant economic impact on a substantial number of small businesses and seeks SBRRB's comment on its analysis. In this case, DWD did not believe that such an economic impact existed. Representatives of affected industries may also bring rules before the SBRRB where they believe that a department's analysis of economic impact is lacking in some regard. As noted above, that is the situation with DWD – 56, Child Care Subsidy Rates.

The function of the SBRRB is to assure each regulatory agency's compliance with the statutory administrative rulemaking requirements relating to small businesses economic impacts contained in Chapter 227. DWD published the emergency rule on January 22, 2007 as a result of the substantial deficit projected in the child care subsidy program for fiscal year ending 2006-2007.

The SBRRB understands that the rule was promulgated to address the budget shortfall. The need to address the shortfall and the mechanism for doing so, are policy matters beyond the purview of the SBRRB. The SBRRB is only concerned with determining whether DWD considered the impact of the rule on small businesses.

The SBRRB provides the following submission to DWD based on a majority vote of the members:

1. The analytical approach and methodologies used by the DWD in making its determination that the rule would not have a significant impact on a substantial number of small businesses was lacking.

The SBRRB heard testimony from child care providers and other representatives of the industry questioning whether DWD had performed a thorough analysis of the rule's economic impact on small business. Additionally, the SBRRB also heard from representatives of DWD explaining DWD's position that the rule would not have a significant economic impact on a substantial number of small businesses. The SBRRB concurs with the child care industry that the shortcoming of DWD's analysis was its focus on statewide figures and averages rather than a focus of the child care subsidy rate freeze for each of the four rate zones. In DWD's analysis of the rule's economic impact, DWD divided the total estimated cost savings from implementation of the rule by the total number of statewide small businesses in order to estimate the average loss of revenue to each small business. This form of analysis ignores the fact that small businesses in different rate zones would lose revenue at different rates, and thus would be impacted at varying levels.

2. The DWD should re-evaluate the methodology and data sources it used in its initial analysis.

The SBRRB understands that additional resources (including other child care market surveys) are available which may have provided additional information to DWD to permit it to more thoroughly analyze the impact of the rule on small business. The SBRRB is not predetermining the outcome of this re-evaluation. If alternative sources of data are less reliable than those used by DWD, the SBRRB can accept that conclusion as long as it is based on a thoughtful and an objective analysis. If the DWD determines that these alternative sources provide for a more thorough analysis than that originally was done by DWD. The DWD should conduct the analysis and provide a response to the SBRRB's comments by June 30, 2007. A copy of this report should also be provided to the legislature with the final rule draft as required in Wis. Stats. 227.19(3)(g).

In conclusion, it is the intention of the SBRRB not to delay any agency's rulemaking process but to ensure the impact of this rule, or any rule, is thoroughly and accurately analyzed by the Department. The SBRRB looks forward to the receipt of the DWD's response by June 30, 2007.

As Chairman of the SBRRB, I appreciate DWD's willingness to study the effects of this rule on small business so that DWD, the SBRRB and the legislature can have an accurate picture of how small businesses will be affected by this rule.

Sincerely,



Richard E. Petershack, Chairman
Governor's Small Business Regulatory Review Board

Cc: Ron Sklansky, Joint Legislative Council
Nicholas Alexander, Strategic Analyst, AFSCME
Janel Hines, Executive Assistant, DWD
Laura Saterfield, Section Chief, Child Care Section
Jennifer Jirschele, Small Business Regulatory Coordinator, DWD
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