

## **JOBS DEAL REACHED**

### **Job Creation Act Compromise to Head to Floor in January**

**FOR IMMEDIATE RELEASE**  
**DECEMBER 19, 2003**

**CONTACT: SEN. PANZER**  
**608-266-7513**  
**SPEAKER GARD**  
**608-266-2402**

**MADISON...**Legislative leaders announced today that agreement had been reached with the Doyle administration on the Job Creation Act of 2003. Senate Majority Leader Mary Panzer (R-West Bend) and Assembly Speaker John Gard (R-Peshtigo) said that the jobs compromise would be sent to the Legislative Reference Bureau for drafting and taken up by extraordinary session of the Legislature in early January.

“This package represents the most comprehensive regulatory reforms in Wisconsin in a generation. I am pleased that the Doyle administration was willing to work with us to make Wisconsin’s economy more competitive,” said Panzer. “We hope the Administration will continue to work with us to make progress on all the issues that concern the working people of Wisconsin.”

The Job Creation Act of 2003 is based on regulatory reforms adopted by Minnesota and was developed in cooperation with job creators from around the state. The bill was introduced by the Legislature in late November and negotiations began shortly thereafter with the Doyle administration in an attempt to refine the package into a document supported by both the Governor and the Legislature. Panzer and Gard said that the compromise bill would be taken up by committee in the first week of January and acted upon by the full Legislature in the second week of January.

“At the Wisconsin Economic Summit in October, Governor Doyle laid out a personal goal of creating the ‘most aggressive regulatory reform policy in the Midwest,’“ said Gard. “I am pleased to announce that working together we helped the Governor keep his promise. This is a great day for the working families of Wisconsin.”

The Job Creation Act of 2003 includes sweeping reforms of regulations regarding Rulemaking Procedures (Chapter 227), Air Management (Chapter 285), and Navigable Waters (Chapter 30). A summary of the reforms is attached.

###

## NAVIGABLE WATERS (CHAPTER 30)

- \* Permits will be prioritized into three categories
  - \* Exemptions where appropriate
  - \* General permits for routine activities with minimal environmental impact
  - \* A streamlined individual permit process.
  
- \* General permits will save DNR and the applicant time and resources
  - \* Conditions of the permit will be specified by DNR rule
  - \* An applicant informs the department of a project, and describes how the project conforms to the general permit conditions
  - \* The applicant may proceed after a 30-day waiting period, unless the department indicates that the project does not meet the conditions.
  
- \* Individual permits will be more timely and predictable
  - \* The DNR will issue a decision within 30 days of holding a public hearing (There is no “presumptive approval” requirement.)
  - \* Public hearings will take the place of more expensive and time-consuming contested case hearings at the beginning of the process.
  - \* Contested case hearings, where needed, will occur on a defined timetable
  
- \* The two most critical permits for economic development: grading and ponds, will be processed as general permits. Currently these permits take an average of 4 months to process.
  
- \* The bank of a navigable waterway (which is the area subject to grading permits) will be clearly defined in a temporary statute, followed by a rulemaking process.
  
- \* Replacing small culverts will be exempt, while placing new culverts will be the subject of a general permit.
  - \* The public rights in navigable waters will be protected
    - \* Contentious permits will continue to receive individual review
      - \* Stream relocations
      - \* New dredging activity
      - \* Large piers
    - \* The DNR may require greater scrutiny of all newly-exempt projects and general permits if a site investigation determines there is potential for significant adverse impact to public rights or the environment.
  - \* Projects that go to a contested case hearing will automatically be stayed, and may be put on hold until the hearing is complete

## AIR MANAGEMENT (CHAPTER 285)

### Air Permit Streamlining

Obtaining necessary air permits in a timely manner is the single biggest regulatory impediment for manufacturers looking to expand or build in Wisconsin. This bill modifies Chapter 285 to help assure timely permits, and otherwise streamline and consolidate administrative hurdles impeding business expansion. None of these components lower environmental standards – business must still meet all applicable emission standards – but they do reduce unnecessary red tape and related delay and costs companies face when trying to expand or locate in Wisconsin. These provisions would include:

- Direct DNR to promulgate new permit exemptions for sources that do not present any meaningful air quality threat.
- Create a registration permit program for small sources to avoid needless permit negotiations on simple processes.
- Expand the use of general permits for similar activities conducted by multiple companies.
- Allow persons to petition for exemptions, and registration and general permits, and require DNR to act on the petition within 30 days.
- Require DNR to make permit streamlining a priority; to continually assess its permit program for opportunities to consolidate permits, expand exemptions and make available registration/general permits and construction permit waivers; and, to submit a report to the Legislature within 6 months on its permit streamlining efforts, including related draft rules.
- Allow for the construction or installation of equipment prior to obtaining a construction permit in situations where the requirement presents an undue hardship or as otherwise deemed appropriate by DNR. (Permits would still be required for the operation of the equipment.)
- Provide a process that allows businesses to appeal proposed monitoring requirements that they deem unreasonable.
- Require DNR to issue a "completeness determination" within 20 days of permit application submittal that triggers deadlines for permit action. Once an applicant responds, the DNR has 15 days to review the submittal and may not ask for additional information before making the final determination.
- Reduce the length of construction permit deadlines and provide for agency accountability for missed deadlines.

### Clarifying when DNR can Exceed Federal Requirements

Provisions in the Jobs Creation Act provide additional clarification of when DNR may exceed federal requirements. These provisions maintain all of DNR's existing authorities to develop Wisconsin-specific programs, but make clear that such programs should be consistent with federal programs and to the extent possible not put Wisconsin businesses at a competitive disadvantage. The bill would:

- In the absence of federal standards, require DNR prospectively to base its finding of need for

state-only hazardous air standards or ambient air quality standards on a public health risk assessment. DNR is also to evaluate and select cost-effective compliance alternatives and compare its proposals to programs in neighboring states.

- When federal hazardous air standards exist, expand current requirement that DNR adopt similar, no more restrictive standards, to require related administrative requirements also be consistent.
- Clarify that if federal hazardous air standards address state-only pollutants, those state pollutants are not also to be regulated by DNR.

### **Review of State Implementation Plans & Nonattainment Recommendations**

Under existing rule-making procedures (Chap. 227), State Implementation Plans (SIPs) and nonattainment designation recommendations are not considered rules despite the fact they create federal mandates to produce dozens of rules and related regulatory programs. Thus, under current law, there is no opportunity for meaningful public or legislative review on these critical policy determinations required by the Clean Air Act.

This bill requires a streamlined process to allow for public and legislative review of proposed SIP revisions and nonattainment designation recommendations, including:

- Require submittal of draft SIPs and related documentation to the Legislature 60 days before they are due EPA, and require DNR to respond to legislative comments. Require a public notice of the availability of these documents.
- Require DNR provide the Legislature with a description of existing Wisconsin SIPs with recommendations on priorities to remove components not required by the federal Clean Air Act. (Generally, these measures would remain as state rules.)
- Require that “Control measures or strategies” for SIPs be promulgated as rules prior to the SIP’s submittal to EPA.
- Provide that existing SIP measures for Total Suspended Particulates (TSP) be removed and enforced only as state requirements.
- Require submittal of DNR recommendations and related documents for nonattainment designations to the Legislature 60 days before they are due EPA, and require DNR to respond to legislative comments. Require a public notice of the availability of these documents.
- Clarify that Wisconsin may not recommend ozone nonattainment designation of any county unless that county violates the federal standard, unless otherwise required by the Clean Air Act.

## **RULEMAKING PROCEDURES (CHAPTER 227)**

### **Agency Records**

The Job Creation Act requires all agencies to more thoroughly document their justification for rules by expanding analysis and related record requirements. Existing law merely requires the agency "reference" its authority, and provide a "brief" summary of the rule that goes out to hearing. Requiring agencies to provide more comprehensive analysis and justification will help assure thoughtful deliberation by agencies and provide affected parties with a more meaningful opportunity to assess and comment on regulatory proposals. Under the Act, the agency's record would be expanded to include:

- An explanation of the agency's authority to promulgate the rule.
- A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
- A summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.
- A summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how the related findings support the regulatory approach chosen for the rule.
- A comparison of similar rules in adjacent states.
- The analysis and supporting documentation used in preparation of its Small Business Analysis and Economic Impact Reports.
- A summary of public comments to the proposed rule and the agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.

### **Economic Impact Reports**

Creates the right for affected parties to petition for the preparation of an Economic Impact Report on their regulatory proposals. The report would include:

- An analysis and quantification of the problem, including any risks to public health or the environment that the rule is intending to address.
- An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals.
- An analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

In addition, the Act would require certain agencies to prepare fiscal estimates of the anticipated costs that will be incurred by the private sector in complying with the rule, but only if the agency first determines the rule may have a significant fiscal effect on the private sector.

### **Miscellaneous Administrative Procedures**

Clarifies other Chapter 227 procedures to assure the regulated community has a fair opportunity to challenge agency actions that adversely affect their businesses. These provisions include:

- Authorize the award of certain costs against parties who bring legally or factually frivolous claims.
- Establish a system for assigning hearing examiners to ensure, to the extent practicable, that hearing examiners are assigned to different subjects on a rotating basis. The system may include the establishment of pools of examiner responsible for certain subjects.
- Prohibit ALJ's from deciding certain constitutional issues.