

HCS HB 978 -- SMALL BUSINESS

SPONSOR: St. Onge (Baker)

COMMITTEE ACTION: Voted "do pass" by the Committee on Small Business by a vote of 15 to 0.

This substitute establishes the Small Business Regulatory Fairness Board, which will work with agencies and small businesses on issues concerning the impact of agency rules and regulations on small businesses. The substitute outlines the membership of the board. All members of the board, except for the chair of the minority business advocacy committee, must be current or former small business owners.

The board is specifically prohibited from interfering with, modifying, preventing, or delaying an agency's enforcement action; intervening in legal actions; and subpoenaing witnesses to testify or produce documents at hearings held by the board.

The substitute defines "small business" as a for-profit enterprise with fewer than 50 full- or part-time employees. The substitute requires state agencies to determine whether proposed rules affect small businesses prior to submitting or filing proposed rules with the Secretary of State's office. For proposed rules that affect small businesses, the agency must consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement which will be submitted with the proposed rules to the board on the day the proposed order of rulemaking is filed with the Secretary of State's office. The substitute outlines the requirements of the impact statement. Rules that are required to have a small business impact statement but do not are invalid, and the Secretary of State cannot publish the rule.

For any proposed rules that affect small business, the agency will also submit a small business participation statement to the board 30 days after a public hearing is held or at least 30 days before the issuance of a final order of rulemaking if no public hearing is held. The substitute outlines the requirements of the statement.

The board is allowed to file a written petition with the agency that has adopted rules, objecting to or requesting the adoption, amendment, or repeal of all or part of any rule affecting small business. Any small business may ask the board to file a petition for the adoption, amendment, or repeal of a rule; and the board may hold a hearing or solicit testimony to assist in making its determination of whether to file a petition. Within 60 days of receipt of the petition, the agency will determine

whether the rule should be adopted, amended, or repealed based on specific factors.

The substitute requires the board to provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns. Forty-five days after being notified by the board of these rules, the agency is required to submit a written report to the board in response to the complaints or concerns. The substitute requires the board to submit an evaluation report to the Governor and the General Assembly regarding these issues.

The substitute outlines occasions when an agency will waive or reduce any administrative penalty or fine for violation of any statute, ordinance, or rule by a small business.

Small businesses claiming a material violation of the small business impact statement requirement are allowed to bring a declaratory judgment action after the filing of the final order of rulemaking, without exhausting their administrative remedies.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$22,413 to Unknown in FY 2005, \$22,413 to Unknown in FY 2006, and Unknown in FY 2007. Could exceed \$100,000 per year. Estimated Net Cost on Other State Funds of Unknown in FY 2005, \$63,968 to Unknown in FY 2006, and \$57,132 to Unknown in FY 2007. Could exceed \$100,000 per year.

PROPOSERS: Supporters say that the goal of the bill is to facilitate communication between small businesses and state agencies during the rulemaking process. Small business owners say that agency rules sometimes create a burden and that the bill will allow them to have a voice in the process. The procedure outlined in the bill will assist the process between the administrative branch, the legislative branch, and the Joint Committee on Administrative Rules. The bill works within the rulemaking process and allows the board to act as an advisory committee to provide input to the agencies.

Testifying for the bill were Representatives Baker and Byrd; National Federation of Independent Businesses; Jim Baumgartner; Bill Crull; Scott George; Missouri Merchants and Manufacturers Association; Missouri Chamber of Commerce and Industry; and Associated Industries of Missouri.

OPPOSERS: Those who oppose the bill say that they don't believe small businesses need additional protections from being assessed violations and fines. Businesses are more likely to pay attention to rules and regulations if there is a risk that they will have to pay a fine for violations.

Testifying against the bill was Sierra Club.

Amy Woods, Legislative Analyst