

HB 978 -- Small Business

Sponsor: Baker

This bill 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 bill 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 bill 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 Small Business Regulatory Fairness Board on the day the proposed order of rulemaking is filed with the Secretary of State's office. The bill 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 bill 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 Within 60 days of receipt of the petition, the agency will determine whether the rule should be adopted, amended, or repealed based on specific factors.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 bill 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 bill requires the board to submit an evaluation report to the Governor and the General Assembly regarding these issues.

The bill 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 without exhausting their administrative remedies.