

HCS HB 576 -- SMALL BUSINESS

SPONSOR: Ervin (Flook)

COMMITTEE ACTION: Voted "do pass" by the Committee on Small Business by a vote of 10 to 0.

This substitute changes the laws regarding the Small Business Regulatory Fairness Board and the procedures necessary for obtaining judicial review of administrative decisions.

Currently, the board is allowed to conduct hearings and solicit input from business owners regarding government agencies' rules or proposed rules, after which the board provides input to the agencies creating the rules. The substitute requires, rather than allows, the board to carry out these functions.

Currently, any person can petition an agency for the adoption, amendment, or repeal of a rule. The substitute requires the agency to submit a written response to these petitions to the board within 60 days of the receipt of the petition. If the agency determines that no change in a rule is needed, any small business affected by the rule may seek a review by the board.

Each agency promulgating a rule that affects small business must submit, every two years, a list of these rules to the General Assembly and the board. The agency must also submit reports explaining why any rule should be continued.

Within 45 days of being notified by the board of a rule that has generated complaints from small businesses, the agency must submit a written response to the board.

The substitute grants any small business that is adversely affected by a final agency action the right to sue in circuit court for compliance with the procedures specified in the substitute. These suits must be commenced within one year of a rule becoming final.

The substitute also specifies that if an agency fails to issue a final decision on a contested case within either 60 days after the conclusion of a hearing or within 180 days after the receipt by the agency of a written request for the issuance of a final decision, whichever time is earlier, the person is considered to have exhausted all administrative remedies and is entitled to judicial review in circuit court. The court is allowed to conduct a de novo review of the agency's decision upon application of any party when the action of the agency under review involves only the application of the law to the facts by the agency.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown in FY 2006, FY 2007, and FY 2008. Could exceed \$100,000 per year. Estimated Cost on Other State Funds of Unknown in FY 2006, FY 2007, and FY 2008. Could exceed \$100,000 per year.

PROPOSERS: Supporters say that the bill gives small business an opportunity to establish a dialogue with agencies that regulate them, especially during the early stages of agency rulemaking. The bill sets firm time frames for responding to small businesses' concerns and allows judicial review of the process itself, rather than delaying access to the courts until all administrative remedies have been exhausted. When there is a material violation of the required procedures, the small business can go to court to force the agency to follow the proper procedure. This is patterned after a federal law enacted in 1996 which led to better communication between business and regulatory agencies. Eventually, complaints about regulatory agencies decreased substantially.

Testifying for the bill were Representative Flook; Scott George; and National Federation of Independent Businesses.

OPPOSERS: There was no opposition voiced to the committee.

Richard Smreker, Senior Legislative Analyst