



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 311 of the 128th G.A.](#)

Date: August 11, 2010

Status: As Introduced

Sponsor: Reps. R. McGregor and Balderson

Local Impact Statement Procedure Required: No — No local cost

Contents: Creates new processes and procedures for state agencies making rules that could affect small businesses

State Fiscal Highlights

- State agencies could incur new administrative costs to follow the bill's procedures for promulgating administrative rules that may have an adverse effect on small businesses, including the costs of conducting cost-benefit analyses and regulatory flexibility analyses. These costs will vary by agency and depend on the number and complexity of proposed rules.
- The Entrepreneurship and Small Business Division within the Department of Development could incur additional costs to comply with the requirements in the bill, including conducting regulatory compliance audits, performing adverse impact assessments, and providing support for the Small Business Regulatory Review Board.
- In FY 2011, the Entrepreneurship and Small Business Division received total appropriations of \$6.6 million. Of this total, \$1.6 million is appropriated from the GRF and \$5.0 million is federal funding to support the state's Small Business Development Centers.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

State agency rule-making processes

The bill requires all rule-making state agencies, as defined in Chapter 119. of the Revised Code, to follow a new set of procedures in developing and evaluating administrative rules that may have an adverse effect on small businesses, which the bill defines as any independently owned and operated business that has fewer than 500 employees. According to the U.S. Census Bureau, there were 204,035 Ohio firms with fewer than 500 employees, or 98.2% of all firms in the state, in calendar year (CY) 2006, the most recent year for which data are available. Under the bill, each rule-making agency is required to (1) conduct a cost-benefit analysis and prepare a cost-benefit report on each proposed rule, and (2) conduct a regulatory flexibility analysis and prepare a regulatory flexibility report on each proposed rule.

In general, most proposed rules affecting small businesses are filed by a few agencies. In CY 2009, 36 state agencies, boards, and commissions filed 1,625 rules with the Small Business Register, a web site maintained by the Department of Development's Entrepreneurship and Small Business Division to publicly track and post such rules. During that period, approximately 65% (1,054) of these rules were filed by just five agencies: the Department of Job and Family Services, the Bureau of Workers' Compensation, the Department of Commerce, the Environmental Protection Agency, and the Department of Health. Among the professional licensing boards and commissions, the Accountancy Board and the Counselor, Social Worker, and Marriage and Family Therapist Board were the most active filers over the CY 2009 period.

The new requirements established by the bill could lead to an increase in administrative costs for agencies that promulgate rules potentially affecting small businesses. These expenses would vary from agency to agency depending on the number, nature, and complexity of the proposed rules. Depending on the extent to which these factors affect different agencies, some agencies may need to hire new staff or reallocate existing staff to rule-making duties. These new costs would be spread across the GRF and other operating funds used by the agencies.

Department of Development

Small Business Ombudsperson

Under the bill, rule-making agencies are required to file proposed rules and these associated reports with the Small Business Ombudsperson, which is the new title the bill grants to the manager of the Department of Development's Entrepreneurship and Small Business Division, currently known as the Small Business Advocate. The bill then requires the Ombudsperson to publish proposed rules and cost-benefit and flexibility reports in the *Register of Ohio* for 30 days, during which public comments would be received. The Ombudsperson would then file a report on the rule and any public

comments received with (1) the *Register of Ohio*, (2) the agency that filed the rule, and (3) the Small Business Regulatory Review Board (see below).

Small Business Regulatory Review Board

The bill creates the Small Business Regulatory Review Board, consisting of nine members representing small businesses, five of whom would be appointed by the Governor, and two of whom would each be appointed by the Speaker of the House of Representatives and the President of the Senate. These members would serve without compensation, but would be reimbursed for expenses incurred in the performance of their duties. The bill authorizes the Small Business Panel to meet within 30 days of receiving a report from the Ombudsperson to review the rule, its public comments and its cost-benefit and flexibility reports, and conduct public hearings on the rule. The bill permits the Board to make determinations of compliance or noncompliance with the bill's rule-making requirements and file such determinations with the Joint Committee on Agency Rule Review (JCARR) along with the rule, the Ombudsperson's report, and the cost-benefit and flexibility reports.

New responsibilities of the Entrepreneurship and Small Business Division

The bill requires the Entrepreneurship and Small Business Division to undertake several new responsibilities in overseeing state regulation of small businesses. These responsibilities include: (1) maintaining a toll-free telephone comment line to be operated by the Ohio Small Business Ombudsperson, (2) coordinating with other agencies to facilitate the resolution of small business regulatory issues, (3) providing all necessary staff and support to the Small Business Regulatory Review Board, (4) interfacing with small businesses in order to create and retain jobs in Ohio, (5) conducting an annual regulatory compliance audit of duplicative rules, (6) performing an annual assessment of rules having an adverse impact on small businesses, (7) conducting an annual assessment identifying rules with an adverse impact on small businesses, (8) preparing an annual report to the Governor and General Assembly on the results of the compliance audit and adverse impact assessment, and (9) training state agency personnel in conducting cost-benefit and adverse impact analyses of proposed rules.

Current funding for the Division

The bulk of the Division's funding comes from the U.S. Small Business Administration (SBA). This funding largely supports operations related to Small Business Development Centers (SBDCs) around the state. H.B. 1, the main operating budget for FY 2010 and FY 2011, provided the Division with annual appropriations of just over \$5.0 million in federal SBA funds in line item 195609, Small Business Administration. A partial match for these funds is provided through GRF line item 195404, Small Business Development, which received appropriations of approximately \$1.6 million in each fiscal year under H.B. 1. Line item 195639, State Special Projects, also includes some limited funding for certain Division activities from assessments on

public utilities. In FY 2010, the Division incurred total payroll expenses of approximately \$1,007,000, of which \$467,500 was from federal sources and \$539,500 was from state sources.

New costs resulting from the bill

The Department suggests that a number of new staff may be needed to carry out the small business rule review functions specified in the bill, including additional employees for rule review, information technology support, compliance audits, annual rule assessments, and to support the Small Business Regulatory Review Board. While the Department could incur new staffing expenses in order to fulfill these responsibilities, it may be that employees could be cross-trained to handle more than one of these functions, which could mitigate some of the expense related to additional staffing needs.

There are also restrictions on the Division's budget that would have to be considered, particularly related to federal funding. Currently, approximately three-quarters of the Division's budget is derived from federal funds from the SBA for the purposes of supporting the state's SBDCs. Restrictions attached to these funds generally limit their use to activities directly related to SBDCs. The remainder of the Division's funding is from the GRF and is used for administrative costs and as a match for the federal funds. Under the Division's current budget structure, GRF funding alone would likely not be sufficient to cover the additional responsibilities as laid out in the bill.

Finally, the Division could incur some new expense to accommodate an electronic system for the public to provide feedback on proposed rules affecting small businesses. The Division already uses a toll-free telephone number (1-800-848-1300, extension 6-7218) and an online e-mail form to allow the public to contact the Small Business Advocate. However, the Division does not currently possess the ability for individuals to provide direct electronic comments on proposed rules. Implementing such a system would be another likely new cost of the bill.