

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1217-02  
Bill No.: HB 322  
Subject: Administrative Rules; Boards, Commissions, Committees, Councils; Business and Commerce; Courts.  
Type: Original  
Date: February 4, 2003

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(\$94,400 to Unknown)	(\$100,006 to Unknown)	(\$79,656 to Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$94,400 to UNKNOWN)</b>	<b>(\$100,006 to UNKNOWN)</b>	<b>(\$79,656 to UNKNOWN)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Various	(Unknown)	(\$63,968 to Unknown)	(\$57,132 to Unknown)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(UNKNOWN)</b>	<b>(\$63,968 to UNKNOWN)</b>	<b>(\$57,132 to UNKNOWN)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
None			
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

ASSUMPTION

In response to similar legislation from this year, officials from the **Department of Economic Development (DED)** stated this legislation creates a Small Business Regulatory Fairness Board and defines small business as a for-profit entity consisting of fewer than 100 full or part-time employees. DED's Business Development Group would provide staffing to support the activities of the Small Business Regulatory Fairness Board (SBRFB). DED assumed the SBRFB would be assigned to DED. DED would have to provide meeting space for the 9 SBRFB members plus expenses. Four meetings were projected even though 2 are required per year. Costs include overnight lodging (\$70), mileage (\$.335 x 240 Round Trip = \$80.40), and one day's meals (\$45.00 for 3) plus miscellaneous for printing, meeting room, etc. for each meeting (\$250). Total cost for 9 members = 9 X 195.40 each plus \$250 or \$2,008.60 each meeting. DED anticipated the board would need the assistance of an attorney 1/4 time each year. DED would be required to provide support to the SBRFB. This would require one Business Information Specialist II.

DED assumed the support for the SBRFB would include computer equipment, office space and expense and equipment funding to cover expenses for the Board. DED assumed the fiscal impact of this proposal would be about \$105,000 per year.

ASSUMPTION (continued)

In response to similar legislation from this year, officials from the **Department of Economic**

**Development - Division of Professional Registration (DPR)** stated they currently process and prepare hundreds of rules annually (including rule fiscal notes) for all 37 boards and the division. It was assumed that the preparation of this additional information (small business impact statement) will require a significant additional amount of time for research and preparation. DPR assumed the need for an additional Budget Analyst II (at \$37,488) to assist DPR's Director of Budget and Legislation with the research and preparation that will be required to prepare a small business impact statement. DPR stated the expenses resulting from this proposal (estimated to be roughly \$60,000 per year starting in FY 2005) will be billed back to the various board funds in accordance with the Division's Cost Allocation Plan.

In response to similar legislation from this year, officials from the **Department of Social Services - Division of Medical Services (DMS)** stated under this proposal, they may have to hold a public hearing on every proposed rule. DMS stated they currently use Missouri Regulations as a notice for public hearings, which is held within 30 days. If Missouri Regulations are no longer used as the notice, DMS would have to use the newspaper for such notices. This would cost DMS several thousand dollars per hearing.

DMS also stated the provision of the proposal regarding retroactive review of current existing rules would create additional expense for their agency. In all, DMS assumed this proposal would have a fiscal impact on their agency of an unknown amount, greater than \$100,000 for advertising costs, holding additional hearings and staff costs for retroactive review.

In response to similar legislation from this year, officials from the **Office of Administration - Design and Construction (COA - DC)** stated the reporting and record keeping required by this proposal would require the addition of 2 FTE's. One Contract Specialist I (at \$29,592 annually) and one Clerk I (at \$16,452 annually). COA - DC estimated a cost of roughly \$68,000 per year.

**Oversight** assumes the COA - DC would not need additional FTE as a result of this proposal.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Small Business Regulatory Fairness Board's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 36 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 54 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated

ASSUMPTION (continued)

to be \$2,214, however, the actual fiscal impact would be dependent upon the actual rule-making

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authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Based on SOS' response to a similar proposal (SB 873) from 2000, SOS stated the proposal also requires agencies to file proposed rules and a small business impact statement with the small business regulatory review board. The impact statement is not currently filed with proposals of rulemaking submitted to the Secretary of State. If the impact statements must be published then the Secretary would publish 1,405 additional pages in the *Missouri Register* each year, assuming 1,125 proposed rules with 1.25 page impact statements, at a cost of \$31,635 per year. It is assumed that the impact statements would not have to be published.

The proposal requires agency rules be reviewed by the new Board every other year. Rules could be amended or rescinded. If seven percent (7%) of rules would be changed during initial reviews, 350 *Code* pages would be published. Approximately 175 *Register* pages would be published. Costs for publication in future years would depend upon the number of rules changed due to reviews. Costs for the first two fiscal years are estimated at \$22,413.

Officials from the **Department of Conservation (MDC)** state this proposal could have fiscal impact on MDC funds because of the potential effect of MDC regulations on small business such as commercial fishermen, wildlife breeders, licensed shooting areas and permit vendors. The amount of fiscal impact is unknown.

Officials from the **Office of the Attorney General (AGO)** state this proposal would require additional steps in the rulemaking process, requiring additional staff time in counseling agencies and commissions. AGO assumes these costs could be absorbed with existing resources. AGO also states that additional steps in the rulemaking process will also provide specific additional bases for litigation on the validity of rules, which will require additional staffing. Because the volume of additional litigation is unknown,

ASSUMPTION (continued)

AGO assumes the cost of this portion of the proposal is significant but unknown. In addition, the

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proposal creates an adversarial hearing process before the newly created board. Agencies may desire legal representation at these hearings, resulting in additional unknown costs.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state the cost of the legislation will depend on how many petitions are filed by small business owners and how many hearings DOLIR will have to attend before DED. DOLIR assumes the cost to be unknown, but under \$100,000 in any given fiscal year.

Officials from the **House of Representatives** assume the cost of resulting from this proposal would be minimal. But if similar proposed legislation is passed, the House could face a need for an increase in travel money to reimburse House Members.

In response to similar legislation from this year, officials from the **Missouri Public Service Commission (PSC)** stated they currently provide a small business economic impact statement in accordance with Executive Order 96-18. However, the proposed bill not only would require this agency to state whether the rule will affect small business, but if small business is affected it must also give the availability and practicability of less restrictive alternatives. This would, in effect, require the drafting of several rule proposals. These multiple proposals would entail additional time and expense for the various departments as well as for senior supervisory personnel who must review the rules.

The proposal may also cost the PSC the additional time and expense of defending current rules before the Board. This defense would likely involve the efforts of higher-salaried personnel, such as engineers, accountants, financial analysts and legal staff in addition to senior supervisory personnel. The level of cost could vary widely dependant upon the content of each new rule and the number of current rules that are subject to complaint. Because of a number of unknown variables, the increased costs of proposing alternatives to new rules and reviewing and defending current rules cannot be determined at this time, but it was clear that there will be additional costs incurred due to this proposed legislation.

In response to similar legislation from this year, officials from the **Department of Transportation (MoDOT)** stated this legislation could require significant time to fulfill the legislation's requirements that would result in monetary costs to their agency.

MoDOT assumed that this legislation could have a potentially significant fiscal impact due to several variables, such as the number of rules issued that may affect small businesses; the amount of staff time

ASSUMPTION (continued)

devoted to holding and recording public hearings, preparing fiscal impacts analyses, and presenting those to a "Small Business Regulatory Fairness Board." MoDOT stated that it is difficult to estimate the fiscal impact of this legislation.

Officials from the **Department of Natural Resources (DNR)** state that due to the number of instances in which a state rule may be appealed by a small business, DNR is unable to determine the fiscal impact of this legislation.

Officials from the **Office of the State Treasurer** defer to the Office of the Secretary of State for the fiscal impact estimate of this proposal.

Officials from the **State Tax Commission, Office of the State Courts Administrator, Department of Elementary and Secondary Education, Lt. Governor's Office, Office of Administration - Director's Office, State Auditor's Office,** and the **Department of Public Safety - Divisions of Director's Office, Missouri Highway Patrol, Missouri Veterans' Commission, Capitol Police, Liquor Control and Highway Safety** each assume this proposal would not fiscally impact their respective agencies.

In response to similar legislation from this year, officials from the **Department of Social Services - Divisions of Child Support Enforcement and Family Services, Missouri Gaming Commission, Department of Agriculture, Department of Health and Senior Services, Department of Mental Health, Department of Higher Education, Department of Insurance, University of Missouri, Southwest Missouri State University, Department of Public Safety - Divisions of Fire Safety, Office of the Adjutant General, Missouri State Water Patrol** and the **State Emergency Management Agency** each assumed this proposal would not fiscally impact their respective agencies.

**Oversight** has listed an unknown cost to "various state agencies" for costs associated with holding public hearings on proposed rules and rule changes, review of the agency's rules to determine if they may impact small business, and other administrative issues that may arise as a result of this proposal.

FISCAL IMPACT - State Government

FY 2004  
(10 Mo.)

FY 2005

FY 2006

**GENERAL REVENUE FUND**

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Costs - Department of Economic  
 Development (DED)

Personal Service (1 FTE)	(\$30,760)	(\$37,835)	(\$38,781)
Fringe Benefits	(\$12,449)	(\$15,312)	(\$15,695)
Expense and Equipment	(\$28,778)	(\$24,446)	(\$25,180)
<u>Total Costs - DED</u>	<u>(\$71,987)</u>	<u>(\$77,593)</u>	<u>(\$79,656)</u>

Costs - various state agencies  
 that estimated an unknown fiscal impact  
 for administrative costs including  
 additional hearings, review of all rules,  
 small business impact statements, appeals  
 and reports

(Unknown)	(Unknown)	(Unknown)
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Costs - Secretary of State

Publication of Rules	(\$22,413)	(\$22,413)	(Unknown)
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<b>ESTIMATED NET EFFECT TO THE    GENERAL REVENUE FUND</b>	<b><u>(\$94,400 to    Unknown)</u></b>	<b><u>(\$100,006 to    Unknown)</u></b>	<b><u>(\$79,656 to    Unknown)</u></b>
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**VARIOUS OTHER STATE FUNDS**

Costs - Professional Registration

Personal Service (1 FTE)	\$0	(\$39,386)	(\$40,370)
Fringe Benefits	\$0	(\$15,940)	(\$16,338)
Expense and Equipment	\$0	(\$8,642)	(\$424)
<u>Total Costs - Professional Registration</u>	<u>\$0</u>	<u>(\$63,968)</u>	<u>(\$57,132)</u>

Costs - various state agencies  
 that estimated an unknown fiscal impact  
 for administrative costs including  
 additional hearings, review of all rules,  
 small business impact statements, appeals  
 and biannual reports

(Unknown)	(Unknown)	(Unknown)
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<b>ESTIMATED NET EFFECT TO    VARIOUS OTHER STATE FUNDS</b>	<b><u>(UNKNOWN)</u></b>	<b><u>(\$63,968 TO    UNKNOWN)</u></b>	<b><u>(\$57,132 TO    UNKNOWN)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses would benefit from reductions in administrative rules governing their operations, less administrative sanctions, and more flexible enforcement of existing rules.

DESCRIPTION

This proposal requires state agencies to determine whether proposed rules affect small businesses prior to submitting the proposed rules for adoption, amendment, revision, or repeal. If they do, the agency must consider the practicality of less restrictive alternatives that could be implemented to achieve the same results as the proposed rule. The agency must also 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 prior to providing notice of a public hearing. The proposal outlines the requirements of the impact statement.

These requirements will not apply to federally mandated regulations that afford the agency no discretion to consider less restrictive alternatives.

DESCRIPTION (continued)

For any proposed rules that affect small business, the agency will also submit a small business statement to the board after a public hearing is held. The proposal outlines the requirements of the statement.

The proposal establishes the Small Business Regulatory Fairness Board within the Department of Economic Development. The board will work with agencies and small businesses on issues concerning the impact of agency rules and regulations on small businesses. The proposal outlines the membership of the board.

The proposal allows any effected small business to file a written petition with the agency that has

adopted rules, including rules adopted prior to the proposal's effective date. The proposal explains on what grounds a rule can be objected to. Upon submission of a written petition, the agency must forward a copy of the petition to the board and to the Joint Committee on Administrative Rules.

Within 60 days of the receipt of the petition, the agency will determine whether the impact statement or public hearing addressed the actual and significant impact on small business and will submit a written response of the agency's determination to the board. Any small business may appeal the agency's determination to the board. The proposal outlines the reasons on which the board may base its decision regarding a small business appeal of the agency's determination.

The proposal requires each agency to submit to the General Assembly and the board, by June 13 of each odd-numbered year, a list of all rules which affect small business, a report describing the specific public purpose or interest for adopting each rule, and any other reasons that justify its continued existence. The General Assembly may take action in response to the report as it finds appropriate.

The proposal 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 board may solicit testimony at public meetings regarding any report submitted by an agency. The proposal requires the board to submit an evaluation report to the Governor and the General Assembly regarding these issues.

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

#### DESCRIPTION (continued)

Small businesses that are adversely affected or aggrieved by the final decision of an agency are entitled to judicial review of the agency's compliance with the provisions of the proposal. The small business can seek judicial review for a period of one year, beginning on the date when the proposed rule becomes final.

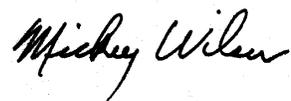
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Mental Health  
Gaming Commission  
Department of Labor and Industrial Relations  
State Tax Commission  
Department of Social Services  
Department of Public Safety  
Missouri House of Representatives  
Department of Insurance  
Department of Conservation  
Office of Administration  
Lieutenant Governor's Office  
State Auditors Office  
Attorney General's Office  
Department of Agriculture  
Department of Health and Senior Services  
Department of Higher Education  
Southwest Missouri State University  
Department of Transportation  
Office of the Secretary of State  
Office of the State Treasurer

SOURCES OF INFORMATION

University of Missouri  
Department of Natural Resources  
Public Service Commission



Mickey Wilson, CPA

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