

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1303-02
Bill No.: Truly Agreed to and Finally Passed HCS for HB 576
Subject: Boards, Commissions, Committees, Councils; Business and Commerce; State
 Departments
Type: Original
Date: May 6, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue *	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on General Revenue Fund *	(Unknown)	(Unknown)	(Unknown)

* could exceed \$100,000 per year.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Various *	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds *	(Unknown)	(Unknown)	(Unknown)

* could exceed \$100,000 per year.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor**, the **Office of the Missouri Lieutenant Governor**, the **Missouri House of Representatives**, the **Joint Committee on Administrative Rules**, and the **Missouri Senate** assume this proposal would have no fiscal impact on their organizations.

Officials from the **Office of the Secretary of State (SOS)** assume the proposal would amend the statutes regarding the Small Business Regulatory Fairness Board. This proposal could result in various state agencies promulgating rules to implement this legislation. Those rules would be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the various state agencies could require as many as 24 pages in the Code of State Regulations. The estimated cost of a page in the Code of State Regulations is \$27. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules, filed, amended, rescinded, or withdrawn. $((\$27 \times 24) + (\$23 \times 36) = \$1,476)$

ASSUMPTIONS (continued)

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.

In response to a previous version of this proposal, officials from the **Office of Administration, Division of Budget and Planning** assumed the proposal would have no fiscal impact to their organizations.

Officials from the **Department of Transportation (MODOT)** assume the proposal could have a significant impact on MODOT. Due to several variables, such as the number of rules issued by MODOT that may affect small businesses, the amount of staff time devoted to holding and recording public hearings, preparing fiscal impact analyses, and presenting those to a “Small Business Regulatory Fairness Board” it is difficult to estimate the fiscal impact of the legislation. This fiscal impact is unknown, however it is expected to exceed \$100,000.

Officials from the **Department of Revenue (DOR)** assume the proposal would create additional requirements for DOR. However, DOR does not anticipate the need for additional FTE and will not request one at this time. If DOR is wrong in this assumption, one Management Analyst would be needed, and would be requested during the normal budget process.

Officials from the **Office of Administration, Division of Facilities Management/Design and Construction**, and the **Department of Economic Development - Division of Professional Registration** assume the proposal would have no direct impact on their organization.

Officials from the **Department of Economic Development, Division of Community Development (DED)** assume the proposal would expand the Small Business Regulatory Fairness Board (Board) duties and authority. The proposal would provide greater protection for small businesses by raising the subject business size to 100 or fewer employees, from the current size of 50 or fewer. That change would add about 5,000 more companies to the potential population of clients.

ASSUMPTIONS (continued)

Other changes could also create more work for the Board; additional duties and additional filings by state agencies during rule making (would file both before and after a public hearing is held). The board could adopt rules and "take any action necessary to effectuate the purposes of sections 536.300 to 536.328". The Board would be required to provide agencies with input on rules that negatively impact small businesses -- this would make the board proactive.

DED had projected a need for .5 fte when the Board was created. These and some other changes add to the work and potential paper volume for the Board. DED projects these changes would create a need for an additional full-time position professional position and a need for at least .5 fte for clerical support.

HB 978 from the Second Regular Session of the 92nd General Assembly required that DED provide support functions for the Board. This proposal would expand the duties of the Board and would create additional support work. DED assumes the additional duties created for the Board would create a need for DED to provide additional support staff of .5 an Economic Development Incentive Coordinator plus one Account Clerk II. DED would have to provide meeting space for additional meetings of the 9 Board members plus expenses. Four additional meetings are projected per year over original projections. Cost include over night lodging(\$70), mileage (\$.345 x 240 RT = \$82.80), and one days meals (\$45.00 for 3) plus misc. for print, meeting room, etc. for each meeting (\$250). Total cost is 9 members = 10 X 197.80 each plus \$250 or \$2,030 each meeting.

DED included a cost estimate for 0.5 FTE Economic Development Incentive Coordinator and 1.0 FTE Account Clerk II, with fringe benefits and related expense and equipment, of \$97,256 for FY 2006, \$117,351 for FY 2007, and \$120,518 for FY 2008.

Oversight assumes the additional work resulting from this proposal could be assumed with existing resources.

ASSUMPTIONS (continued)

Officials from the **Department of Economic Development, Public Service Commission (PSC)** assume the proposal would require reviews of all PSC rules in odd-numbered years for small business impact, and would require the PSC to respond within 60 days to any challenge of an existing rule based on small business impact. Further, the new language added to section 536.100 mandating agency decisions within the earlier of 60 days after a hearing or 180 days after a request for a written decision, may apply to the Commission. This requirement, if enacted, would greatly reduce the interval available to parties for briefing, Commission deliberation, and order drafting in cases before the Commission. Noncompliance with the requirement would result in a retrial before the circuit court, and require expenditure of Commission staff resources, at an unknown cost, in relitigating the matters in that forum. To avoid that result, the Commission would seek two (2) additional regulatory law judges to ensure that the mandated time frames are met.

The total cost for two new Administrative Law Judges plus fringe benefits and related expense and equipment as estimated by the PSC was \$139,062 for FY 2006, \$181,845 for FY 2007, and \$175,322 for FY 2008.

Regarding the small business fairness board provisions, these are new requirements that would have an unknown fiscal impact on the agency. However, an estimate has been made as to the fiscal impact of the first odd-year rule review of the entire body of agency rules that would occur in FY 2007, as required under the terms of the legislation.

The PSC has 27 chapters of rules contained in 4 CSR 240 of the Code of State Regulations, comprising several hundred pages and sections. The first odd-numbered year review of these pre-August 2005 adopted rules, required by SB 456, would require an average of two hours for each rule chapter, or 54 hours. Using contract legal counsel for this one-time review of the entire body of rules, at a cost of \$200/hour rate for experienced utility counsel (based on rates obtained from a FY2005 RFP), produces the state fiscal impact.

Oversight assumes that 54 hours of administrative rule review could be absorbed withg existing resources.

Oversight has shown an unknown cost to “various state agencies” for costs associated with holding additional public hearings on proposed rules and rule changes, review of agency rules to determine if they may impact small business, additional reports, and other administrative issues that may arise as a result of this proposal. This unknown cost is intended to include costs for organizations which reported unknown cost and costs for organizations which were unable to estimate the costs to their organizations. This cost could exceed \$100,000 per year.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Cost - administrative *</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
* could exceed \$100,000 per year.			
VARIOUS STATE FUNDS			
<u>Cost - administrative *</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
* could exceed \$100,000 per year.			
<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could directly impact small businesses by providing regulatory relief and reductions in the cost of regulatory compliance.

DESCRIPTION

This proposal would amend the small business regulatory fairness board sections to provide greater protections for small businesses.

- If an agency plans to promulgate rules that affect small business, the agency would be required to submit a small business statement to the board after a public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide a description of how the opinions or comments from affected small businesses were solicited; a summary of the public and small business comments; a summary of the agency's response to those comments; and the number of persons who attended the public hearing, testified at the hearing, and submitted written comments.
- If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change would be required in the small business statement.
- The board may adopt any rules and take any action necessary to effectuate its purposes.
- Any affected small business may file a written petition with an agency that has adopted rules, objecting to all or part of any rule affecting small business on any of the following grounds: the actual effect on small business was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules; the small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or the impacts were not previously considered at the public hearing on the rules.
- For any rule adopted prior to August 28, 2005, an affected small business may file a written petition with the agency that adopted the rule objecting to all or part of any rule affecting small business on any of the following grounds: the rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefit to the public; the rule duplicates, overlaps, or conflicts with rules adopted by the agency or any other agency or violates the substantive authority under which the rule was adopted; or the technology, economic conditions, or other relevant factors justifying the purpose for the rule have changed or no longer exist.

DESCRIPTION (continued)

- Upon receipt of the petition, the agency would forward a copy of the petition to the board and the joint committee on administrative rules. The agency would promptly consider the petition and could seek advice and counsel regarding the petition.
- Within sixty days after the receipt of the petition, the agency would determine whether the impact statement or public hearing addressed the actual and significant impact on small business. The agency would submit a written response to the board within sixty days of the receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of this chapter.
- If the agency determines that the petition does not merit the adoption, amendment, or repeal of a rule, any affected small business may seek a review of the decision by the board. The board may convene a hearing or by other means solicit testimony that will assist in its determination of whether to recommend that the agency initiate proceedings in accordance with this chapter.
- The board would report to the governor and the general assembly on rulemaking proceedings, comments from small business, and agency response as provided in this section. The governor or general assembly may subsequently take such action in response to the evaluation report and agency response as they find appropriate.
- Each agency with rules that affect small business would submit by June thirteenth of each odd-numbered year a list of such rules to the general assembly and the board. The agency would also report the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence. The general assembly may subsequently take such action in response to the report as it finds appropriate.
- The board would 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. Within forty-five days after being notified by the board, the agency would report in writing to the board in response to the complaints or concerns.

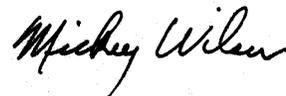
DESCRIPTION (continued)

- The board may solicit testimony from the public at a public meeting regarding any report submitted by the agency under this section. The board shall report annually to the governor and the general assembly regarding small business comments, agency response, and public testimony on rules in this section. The governor and the general assembly may take such action in response to the report as they find appropriate.
- For any regulation subject to sections 536.300 to 536.328, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 536.300 to 536.320. Judicial review shall be commenced in the circuit court of the county in which the small business has its primary place of business, or in Cole County. If the small business does not have a primary place of business in the state, proper venue shall be in Cole County. An affected small business could seek such judicial review during the period beginning on the date the proposed rule becomes final and ending one year later.

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 Governor
Missouri Senate
Missouri House of Representatives
Missouri Lieutenant Governor
Office of the Secretary of State
Office of Administration
 Division of Budget and Planning
 Division of Facilities Management/Design and Construction
Department of Economic Development
 Division of Community Development
 Division of Professional Registration
 Public Service Commission
Department of Revenue
Department of Transportation
Joint Committee on Administrative Rules



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