

HCS HB 322 -- SMALL BUSINESSES (Baker)

This substitute 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 substitute 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.

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 substitute outlines the requirements of the statement.

The substitute 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 substitute outlines the membership of the board. A term is three years, and no board member may serve more than three consecutive terms.

Any affected small business may file a written petition with the agency that has adopted rules, including rules adopted prior to the substitute's effective date. The substitute 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 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 substitute outlines the reasons on which the board may base its decision regarding a small business appeal of the agency's determination.

Each agency is required 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 substitute 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 substitute requires the board to submit an evaluation report to the Governor and the General Assembly regarding these issues.

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

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 substitute. The small business can seek judicial review for a period of one year, beginning on the date when the proposed rule becomes final.

FISCAL NOTE: Estimated Net Cost to the General Revenue Fund of \$94,400 to Unknown in FY 2004, \$100,006 to Unknown in FY 2005, and \$79,656 to Unknown in FY 2006. Estimated Net Cost to Various Other State Funds of Unknown in FY 2004, \$63,968 to Unknown in FY 2005, and \$57,132 to Unknown in FY 2006.