

HOUSE BILL NO. 2033

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROWDEN.

5641H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 536.305, 536.310, and 536.323, RSMo, and to enact in lieu thereof four new sections relating to the small business regulatory fairness board.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 536.305, 536.310, and 536.323, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 135.1905, 536.305, 536.310, and 536.323, to read as follows:

135.1905. 1. As used in this section, the following terms shall mean:

(1) “Board”, the small business regulatory fairness board organized under section 536.305;

(2) “Qualified small business”, a small business that has sought review with the board of an agency’s decision regarding a petition under the provisions of section 536.323;

(3) “Tax credit”, a credit against the tax otherwise due under chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265.

2. In accordance with section 536.323, the board may issue to a qualified small business a one-time tax credit per regulation review against the qualified small business’s state tax liability in an amount equal to the demonstrated cost of regulatory compliance, but not to exceed two hundred fifty dollars per employee of the qualified small business and twenty-five thousand dollars per qualified small business.

3. The amount of the tax credit claimed shall not exceed the amount of the qualified small business’s state tax liability for the taxable year that the credit is claimed.

4. Tax credits issued under this section shall not be transferred, sold, or assigned and shall not be carried over or back.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **5. The total amount of tax credits authorized under this section shall not exceed one**
18 **million dollars and shall be issued on a first-come, first-served basis.**

 536.305. 1. There is hereby established the "Small Business Regulatory Fairness Board".

2 The department of economic development shall provide staff support for the board.

3 2. The board shall be composed of nine members appointed in the following manner:

4 (1) [One member who is the chair of the minority business advocacy commission] **Three**
5 **members appointed by the speaker of the house of representatives;**

6 (2) [One member] **Three members** appointed by the president pro tempore of the senate;
7 **and**

8 (3) [One member appointed by the minority leader of the senate;

9 (4) One member appointed by the speaker of the house of representatives;

10 (5) One member appointed by the minority leader of the house of representatives; and

11 (6) Four] **Three** members appointed by the governor.

12 3. Each member of the board[, except for the public members and the chair of the
13 minority business advocacy commission,] shall be a current or former owner or officer of a small
14 business. All members of the board shall represent a variety of small businesses, both rural and
15 urban, and be from a variety of geographical areas of this state, provided that no more than two
16 members shall represent the same type of small business.

17 4. Members of the board shall serve a term of three years and may be reappointed at the
18 conclusion of the term. No member shall serve more than three consecutive terms.
19 Appointments shall be made so that one-third of the membership of the board shall terminate
20 each year. The governor shall appoint the initial chairperson of the board and a majority of the
21 board shall elect subsequent chairpersons. The chairperson shall serve as chair for a term of not
22 more than two years.

23 5. Members of the board shall serve without compensation, but may be reimbursed for
24 reasonable and necessary expenses relating to their performance of duties, according to the rules
25 and regulations of travel issued by the office of administration. Members will be required to
26 submit an expense account form in order to obtain reimbursement for expenses incurred.

27 6. The board shall meet as often as necessary, as determined by the chairperson of the
28 board. All meetings of the board will be conducted in accordance with the governmental bodies
29 and records act, chapter 610, including closed sessions. Notice will be posted and will be
30 provided to the joint committee on administrative rules. Minutes of the meetings shall be
31 provided to all members, the office of the governor, and the joint committee on administrative
32 rules.

33 7. In addition to any other powers provided by sections 536.300 to 536.328, the board
34 may adopt any rules necessary to implement sections 536.300 to 536.328 and take any action

35 necessary to effectuate the purposes of sections 536.300 to 536.328. Any rule or portion of a
36 rule, as that term is defined in section 536.010, that is created under the authority delegated in
37 this section shall become effective only if it complies with and is subject to all of the provisions
38 of this chapter and, if applicable, section 536.028. This section and this chapter are nonseverable
39 and if any of the powers vested with the general assembly pursuant to this chapter to review, to
40 delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
41 then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005,
42 shall be invalid and void.

536.310. 1. The board shall:

2 (1) Provide state agencies with input regarding rules that adversely affect small
3 businesses;

4 (2) Solicit input and conduct hearings from small business owners and state agencies
5 regarding any rules proposed by a state agency; [and]

6 (3) [Provide an evaluation report to the governor and the general assembly, including any
7 recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's
8 small businesses. The report shall include comments from small businesses, state agency
9 responses, and a summary of any public testimony on rules brought before the board for
10 consideration.] **Review petitions filed by small businesses;**

11 **(4) Authorize and issue the tax credit established under section 135.1905; and**

12 **(5) Submit an annual report to the governor and the general assembly detailing the**
13 **number of tax credits issued, the number of petitions received, the total amount of tax**
14 **credits issued, comments from small businesses, state agency responses, a summary of**
15 **public testimony on rules brought before the board for consideration, and any additional**
16 **information the board sees fit to include.**

17 2. In any inquiry conducted by the board because of a request from a small business
18 owner, the board may make recommendations to the state agency. If the board makes
19 recommendations, such recommendations shall be based on any of the following grounds:

20 (1) The rule creates an undue barrier to the formation, operation, and expansion of small
21 businesses in a manner that significantly outweighs the rule's benefits to the public; or

22 (2) New or significant economic information indicates the proposed rule would create
23 an undue impact on small businesses; or

24 (3) Technology, economic conditions, or other relevant factors justifying the purpose for
25 the rule has changed or no longer exists; or

26 (4) If the rule was adopted after August 28, 2004, whether the actual effect on small
27 businesses was not reflected in or significantly exceeded the small business impact statement
28 submitted prior to the adoption of the rules.

29 3. Subject to appropriations, by a majority vote of the board, the board may hire a
30 one-half full-time equivalent employee for clerical support and a full-time equivalent employee
31 with total salaries funded from the department of economic development appropriations up to
32 one hundred fifty thousand dollars adjusted annually for inflation for professional positions to:

- 33 (1) Conduct internet website additions, corrections, and deletions;
- 34 (2) Develop training programs for agencies;
- 35 (3) Send regulatory alerts to interested small business subscribers;
- 36 (4) Track small business comments regarding agencies and review and respond to the
37 agency and small business accordingly;
- 38 (5) Prepare for board meetings and hearings, including outreach, travel, agendas, and
39 minutes;
- 40 (6) Prepare member maintenance expense reports and appointments;
- 41 (7) Analyze small business impact statements. After such analysis, the employee shall
42 review such statements, offer suggestions, and work with agencies to meet the [statute] **statutory**
43 requirements;
- 44 (8) Analyze biannual report reviews;
- 45 (9) Conduct agency correspondence and training;
- 46 (10) Conduct small business outreach by speaking at chamber and association events;
- 47 (11) Review the Missouri Register and other sources to look for proposed rules that may
48 affect small business.

49 4. Subject to appropriations, the board may receive additional funds for:

- 50 (1) Upkeep of its internet website;
- 51 (2) Information technology;
- 52 (3) Mileage for board members;
- 53 (4) Publication, printing, and distribution of annual reports;
- 54 (5) Outreach costs; and
- 55 (6) Expenses and equipment for the one and one-half full-time equivalent employee of
56 the board.

57 5. A majority vote of the board members shall be required for the hiring, retention, and
58 termination of board employees. All duties of board employees shall be dedicated solely to the
59 support of and for the furtherance of the purpose and mission of the board.

536.323. 1. In addition to the basis for filing a petition provided in section 536.041, any
2 affected small business may file a written petition with the agency that has adopted rules
3 objecting to all or part of any rule affecting small business on any of the following grounds:

- 4 (1) The actual effect on small business was not reflected in or significantly exceeded the
5 small business impact statement submitted prior to the adoption of the rules;

6 (2) The small business impact statement did not consider new or significant economic
7 information that reveals an undue impact on small business; or

8 (3) The impacts were not previously considered at the public hearing on the rules.

9 2. For any rule adopted prior to August 28, 2005, an affected small business may file a
10 written petition with the agency that adopted the rule objecting to all or part of any rule affecting
11 small business on any of the following grounds:

12 (1) The rule creates an undue barrier to the formation, operation, and expansion of small
13 businesses in a manner that significantly outweighs the rule's benefit to the public;

14 (2) The rule duplicates, overlaps, or conflicts with rules adopted by the agency or any
15 other agency or violates the substantive authority under which the rule was adopted; or

16 (3) The technology, economic conditions, or other relevant factors justifying the purpose
17 for the rule has changed or no longer exist.

18 3. Upon submission of the petition, the agency shall forward a copy of the petition to the
19 board and the joint committee on administrative rules, as required by section 536.041, as
20 notification of a petition filed under sections 536.300 to 536.328. The agency shall promptly
21 consider the petition and may seek advice and counsel regarding the petition. Within sixty days
22 after the receipt of the petition, the agency shall determine whether the impact statement or
23 public hearing addressed the actual and significant impact on small business. The agency shall
24 submit a written response of the agency's determination to the board within sixty days of the
25 receipt of the petition. If the agency determines that the petition merits the adoption,
26 amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable
27 requirements of this chapter.

28 4. If the agency determines that the petition does not merit the adoption, amendment, or
29 repeal of a rule, any affected small business may seek a review of the decision by the board. The
30 board may convene a hearing or by other means solicit testimony that will assist in its
31 determination of whether to recommend that the agency initiate proceedings in accordance with
32 this chapter. For rules adopted after August 28, 2005, the board shall base its recommendations
33 on any of the following reasons:

34 (1) The actual effect on small business was not reflected in or significantly exceeded the
35 impact statement submitted prior to the adoption of the rule;

36 (2) The impact statement did not consider new or significant economic information that
37 reveals an undue impact on small business;

38 (3) Such impacts were not previously considered by the agency; or

39 (4) Such impacts were not previously considered at the public hearing on the rules.

40 5. For rules adopted prior to August 28, 2005, the board shall base its recommendations
41 on any of the following reasons:

42 (1) The rules created an undue barrier to the formation, operation, and expansion of
43 small businesses in a manner that significantly outweighs its benefit to the public;

44 (2) The rules duplicate, overlap, or conflict with rules adopted by the agency or any other
45 agency or violate the substantive authority under which the rules were adopted; or

46 (3) The technology, economic conditions, or other relevant factors justifying the purpose
47 for the rules have changed or no longer exist.

48 6. The board shall make an evaluation report to the governor and the general assembly
49 on rulemaking proceedings, comments from small business, and agency response as provided
50 in this section. The governor or general assembly may subsequently take such action in response
51 to the evaluation report and agency response as they find appropriate.

52 **7. If the board determines that the petitioning small business has been unfairly**
53 **burdened, the board may award a one-time tax credit per petition in accordance with**
54 **section 135.1905 to help offset the regulatory burden.**

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