



Ohio Legislative Service Commission

Revised

Brian Hoffmeister and other LSC staff

Fiscal Note & Local Impact Statement

Bill: [Am. S.B. 3 of the 128th G.A.](#)

Date: April 14, 2010

Status: As Passed by the Senate

Sponsor: Sen. Faber

Local Impact Statement Procedure Required: No — No local cost

Contents: Requires state agencies to follow new procedures for rules affecting small businesses and requires the development of new customer service standards

State Fiscal Highlights

- The Department of Development could incur additional GRF costs to carry out the requirements the bill places on the Entrepreneurship and Small Business Division.
- State agencies that issue rules affecting small businesses could incur additional costs for fulfilling the additional rule-making requirements under the bill. The rule review procedures included in the bill would apply for all rules that affect businesses with 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 2006, the most recent year for which data are available.
- The Division of Human Resources within the Department of Administrative Services will incur additional costs for developing new customer service standards for state employees. The Division's operating expenses are paid from the Human Resources Services Fund (Fund 1250). The fund is supported by payroll assessments charged to state agencies. State agencies could also incur new costs to implement these standards.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Department of Development

Small Business Ombudsperson

Under current law, the Ohio Department of Development (ODOD) is required to house an office of small business, led by a statutorily created manager appointed by the Director of Development. ODOD's Entrepreneurship and Small Business Division and its Director perform these functions under the Department's current operating structure. The bill specifies that the statutorily created manager of the office is, upon the bill's effective date, to be known as the Ohio Small Business Ombudsperson.

The bill would require the Small Business Ombudsperson to implement and oversee a number of new duties for the Division that relate to the rule-making procedure changes in the bill, the Small Business Regulatory Review Board, and other activities to promote and regulate small businesses in Ohio, defined in the bill as business entities that have fewer than 500 employees. Duties of the Ombudsperson defined in the bill include ensuring compliance with the revised rule-making requirements under the bill, including an annual regulatory compliance audit, maintaining a toll-free telephone line for small businesses to use in seeking assistance regarding regulatory requirements, providing staff support for the Small Business Regulatory Review Board, and other duties. The specific effects of these provisions are further described below.

Small Business Regulatory Review Board

The bill creates the Small Business Regulatory Review Board, consisting of nine members representing small business. Five members would be appointed by the Governor, two members would be appointed by the Speaker of the House, and two members would be appointed by the President of the Senate. The bill requires board members to serve without compensation, but allows for reimbursement of any necessary and actual expenses incurred in the performance of their board duties.

The bill requires the Board to review reports from the Ombudsperson on the proposed rules that affect small businesses and the public comments pertaining to them and determine whether the agency proposing the rule has complied with the cost-benefit reporting, analysis, and filing requirements established in the bill. The Board is required to hold public hearings on proposed rules and issue, in applicable cases, determinations of noncompliance that include suggestions for changes. Such determinations must be filed, along with other specified materials, with the Joint Committee on Agency Review (JCARR) and the rule-making agency.

Fiscal impact on the Entrepreneurship and Small Business Division

The creation of the Small Business Ombudsperson and the Small Business Regulatory Review Board would create additional administrative costs to ODOD's Entrepreneurship and Small Business Division. ODOD may require additional staffing depending on the ultimate scope of work required to implement the provisions of the bill. According to ODOD, while some of the bill's requirements, such as maintaining a toll-free telephone number could be implemented at little cost, other requirements such as reviewing proposed rules, conducting annual compliance audits, and providing staff support for the Small Business Regulatory Review Board would place additional demands on the Division. It is likely that these costs would be borne by GRF line item 195404, Small Business Development, which is supported by appropriations of \$1.6 million in each fiscal year under H.B. 1, the main operating budget act for the FY 2010-FY 2011 biennium.

Joint Committee on Agency Rule Review

The bill allows JCARR to recommend the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof if it finds that the rule-making agency has failed to conduct a cost-benefit analysis to determine the effects of the proposed rule on small businesses, prepare a report regarding the results of that analysis, and incorporate feasible alternatives that may reduce any adverse impact on small businesses without infringing upon the statutory objectives that are the basis for the proposed rule. According to JCARR, this provision would not require any additional funding to cover the costs associated with reviewing the additional documents required for rule review.

Rule-making agencies

The bill requires rule-making agencies that intend to adopt a rule to conduct a cost-benefit analysis to determine whether the effect of the proposed rule on small businesses outweighs the benefits of the proposed rule and to prepare a report regarding the results of that analysis. Rule-making agencies would also be required to prepare an analysis of specific alternatives for small businesses that may reduce the adverse impact of the proposed rule. These alternatives include establishment of less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance reporting, consolidation or simplification of compliance reporting, substitution of performance standards for operational standards required in the proposed rule, and the exemption of small businesses from any or all of the proposed rule's requirements. The bill requires rule-making agencies to incorporate the above alternatives if they are within the agency's capacity and do not oppose the statutory objectives behind the proposed rule.

When a rule-making agency files a proposed rule that may affect small business, the bill requires the rule-making agency to submit to the Small Business Ombudsperson an electronic copy of the full text of the proposed rule, the cost-benefit report, the

analysis and any documentation used in the determination of adverse impact, and a description of actions taken to analyze alternatives that might reduce any such effects. Rule-making agencies with a proposed rule that could adversely affect small businesses could incur minimal costs associated with the electronic submission of the required documents.

Overall, there would likely be an increase in costs for rule-making agencies to fulfill these requirements if their proposed rules could adversely affect small businesses. In some cases, agencies might require additional staff or hire outside consultants to conduct cost-benefit and adverse impact analyses. Overall, any new costs that agencies incur would also depend on the number of rules filed by each agency. Based on the number of rules filed with the Small Business Register in calendar year 2009, the agencies most likely to incur higher costs are 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.

Customer service performance standards

The bill requires state agencies to emphasize customer service in providing state services and specifically requires the Department of Administrative Services (DAS) to oversee the implementation of customer service performance standards in state agencies, with the exception of elected officials and employees of the judicial and legislative branches, including the Controlling Board. The bill also requires that these performance standards become part of the employee evaluation process.

These responsibilities would presumably fall to the Classification and Compensation and Performance Management Units within the Human Resources Division. The Division's operating expenses are paid from the Human Resources Services Fund (Fund 1250). The fund is supported by payroll assessments charged to state agencies. The current charge is \$15.80 per paycheck. Because the language in the bill appears to give DAS some flexibility in determining how customer service standards would be incorporated within job classification series and how employee customer service performance would be measured, it is difficult to assess the new costs associated with this mandate. There are approximately 2,400 classifications among state agencies in the current Classification and Compensation Plan.