



# Ohio Legislative Service Commission

Brian Hoffmeister and other LSC staff

## Fiscal Note & Local Impact Statement

**Bill:** Am. S.B. 3 of the 128th G.A.      **Date:** March 11, 2009

**Status:** As Reported by Senate State & Local Government & Veterans Affairs      **Sponsor:** Sen. Faber

**Local Impact Statement Procedure Required:** No — No local cost

**Contents:** Requires new procedures for rulemaking that affects small businesses and requires customer service performance standards for state agencies

### State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
<b>General Revenue Fund and Other State Funds</b>			
Revenues		- 0 -	
Expenditures	Department of Development – Potential increase in expenses related to the Small Business Division		
	Joint Committee on Agency Rule Review – Potential increase for rule review costs		
	Department of Administrative Services and other state agencies – Potential increase to fulfill new customer service and rule-making requirements		

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The Department of Development may incur additional costs from the GRF for administrative costs associated with new requirements for the Entrepreneurship and Small Business Division, including the Small Business Ombudsperson and the Small Business Regulatory Review Board.
- The Joint Committee on Agency Rule Review (JCARR) would likely incur increased expenses from the GRF to review the additional requirements required for proposed rules.
- State agencies may incur additional costs to the GRF and other funds, depending on agency operations, for fulfilling rule-making requirements under the bill if their proposed rules affect small businesses.
- State agencies may incur additional costs to the GRF and other funds, depending on agency operations, to implement customer service standards under the bill. The Department of Administrative Services would be responsible for developing administrative rules related to these standards.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.
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## **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, some of the bill's requirements may be possible to implement using current resources, such as the implementation of a toll-free telephone number; however, other requirements such as the auditing requirement and the need for staff support for the Small Business Regulatory Review Board may 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 at a level of approximately \$1.6 million under FY 2009 adjusted appropriations.

## **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, as a result of this provision, there will be some costs associated with reviewing the additional documents required for rule review. JCARR is currently assessing the magnitude of those costs, which would be borne by the GRF.

## **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 will likely be an increase in costs for rule-making agencies to fulfill these requirements if their proposed rules could adversely affect small businesses. These costs may be borne by the GRF or other funds, depending on each agency's operating structure.

### **Customer Service Performance Standards**

The bill requires state agencies to emphasize customer service in the operation and provision of state services. As such, the Department of Administrative Services (DAS) would be required to develop rules that establish customer service performance standards for employees of the state, with the exception of elected officials. Adherence to these performance standards and rules would be used in conducting each employee's annual performance review.

As DAS does not currently have such performance rules or standards in place, there would be administrative costs associated with creating them. The bill requires that such standards are required to be specific to the various positions in each state agency. If this provision is interpreted to mean that specific customer service standards had to be developed for each state job classification, the associated administrative costs could be substantial, as there are roughly 2,000 such classifications.