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FISCAL IMPACT REPORT

SPONSOR Marquadt DATE TYPED 03/02/05 HB 970

SHORT TITLE Small Business Regulatory Relief Act SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$150.0-450.0 See Narrative	Recurring	General Fund
			\$75.0-\$300.0 See Narrative	Recurring	Various Other Funds

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 869, SB 842

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AGO)
 Department of Corrections (NMCD)
 Economic Development Department (EDD)
 Energy, Minerals and Natural Resources Department (EMNRD)
 Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 970 enacts the Small Business Regulatory Relief Act, makes related findings and definitions, creates the small business regulatory advisory committee (the committee), requires agencies to complete economic impact statements and regulatory flexibility analyses prior to adopting rules that would adversely impact small businesses, requires all state agencies to review existing rules for their impact on small business, and requires all agencies to review new rules every 5 years.

Findings and Definitions: House Bill 970 makes a number of findings related to the unique na-

ture of small businesses and the potentially damaging impact of state rules on the success of small businesses.

The bill establishes several definitions, including defining “small business” as a business entity, including its affiliates, that is independently owned and operated and employs 50 or fewer full-time employees. The bill defines “agency” as every department, agency, board, commission, committee, or institution of the executive branch of state government.

Economic impact statements: The bill requires agencies, prior to the adoption of a proposed rule that may have an adverse effect on small businesses, to prepare an economic impact statement that includes the following:

- Identification and estimate of the number of small businesses that will be subject to the rule,
- The projected reporting, recordkeeping and other administrative costs for compliance, including the type of professional skills necessary to prepare the reports or records,
- A statement of probable effect on affected small businesses,
- A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule

Regulatory flexibility analysis: Prior to adoption of a proposed rule that may adversely affect a small business, each agency that promulgates rules that may affect small businesses shall prepare a regulatory flexibility analysis. The analysis shall consider using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impacts to small businesses. The agency shall consider each of the following methods of reducing the effect of the proposed rule:

- Establishment of less stringent compliance or reporting requirements for small businesses,
- Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses,
- Consolidation or simplification of compliance or reporting requirements for small businesses,
- Establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule, and
- Exemption of small businesses from all or part of the proposed rule.

Small business regulatory advisory committee: The bill creates the committee to consist of nine members to be appointed by the governor. The committee is administratively attached to the EDD, which shall provide staff for the committee.

The committee may direct an agency to prepare a regulatory flexibility analysis on a proposed rule and may request the agency to prepare a final assessment in cases where the committee determines that the information is critical to the committee’s determination that a proposed rule will have a significant adverse impact on small businesses.

The committee is specifically barred from interfering with, modifying, preventing or delaying an agency or administrative enforcement action, intervening in legal actions, or issuing subpoenas to witnesses to testify or produce documents.

Agency review of rules: By July 1, 2010, each agency shall have reviewed all of its existing rules to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses. Rules adopted after the effective date of the Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses.

Significant Issues

The basis of the bill, as established in the findings, is that small businesses may be disproportionately impacted by state regulations and thus, the state should be more acutely aware of the impact its rules may have on small businesses.

The bill requires all agencies to complete an economic impact statement before final adoption of a rule that would adversely impact small businesses. The determination of when this requirement applies is presumably made by the agency itself. The bill also requires agencies that promulgate rules that affect small businesses to complete a regulatory flexibility analysis before final adoption of a rule that may adversely affect a small business. The committee has the authority to direct any agency to develop a regulatory flexibility analysis during the rule making process.

This bill adds these two significant steps to an already-lengthy rule-making process. Agencies would be required to prepare two documents containing detailed information. The bill does not create a definition or threshold for adverse economic impact to small business. Presumably, even an insignificant adverse impact to a single small business would trigger the reporting requirement.

The bill does not specify what the committee is to do with the information it collects. The language implies that the committee will make a determination as to whether the rule adversely affects small businesses. However, it does not indicate what the consequence of such a determination would be. Is the committee meant to make recommendations to agencies, or issue reports to the governor and/or legislature? As written, the bill requires agencies to prepare and submit extensive information but does not provide any use for that information.

NMED notes that it does not have the expertise to complete the economic impact analyses as required. It also points out that many rules are dictated by the federal government and the state is unable to change the rules without putting the programs at risk of reverting to the federal government. NMED also notes that the bill is silent on whether the proceedings of the committee are open to the public.

NMED and EMNRD both note that their rule making processes already provide for extensive public participation. Some boards have industry representative and many rules already provide less stringent requirements for small businesses.

FISCAL IMPLICATIONS

House Bill 970 will result in recurring costs to the general fund, as well as to any special funds supporting specific boards, commissions or agency activities.

There are hundreds of agencies subject to this bill, some of which would be more significantly impacted than others. The bill requires agencies to prepare two new significantly detailed re-

ports during the rule-making process. This will increase the amount of staff resources needed to adopt new rules. The bill requires every state agency to review existing rules by July 1, 2010 and to review new rules every five years. It is likely that at least some agencies will require additional staff resources to implement this bill. For example, EMNRD writes that it cannot absorb the new requirements with its current resources. NMED writes that it would need additional personnel to implement the bill.

It is difficult to determine exactly what the fiscal impact would be to the state, but if even a small percentage of agencies required one additional FTE to prepare economic impact statements and regulatory flexibility analyses and review the existing and new rules, the total impact could be quite significant, reaching several hundred thousand dollars per year or more.

In addition, the EDD will also incur costs to provide staff support to the committee, the total impact of which would depend on how active the committee is. Since the bill does not define what the committee is to do with the information it gathers, it is difficult to predict whether EDD can provide the necessary support with existing resources.

ADMINISTRATIVE IMPLICATIONS

Every state agency would be required to review its existing rules and its new rules. Certain agencies would have to prepare economic impact statements and regulatory flexibility analyses.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 869 and Senate Bill 842 are similar to House Bill 870. Both propose to enact the Small Business Regulatory Relief Act.

TECHNICAL ISSUES

It is unclear what the committee will do with the information generated by the agencies. Further clarification is warranted. The bill is unclear as to the regulatory flexibility analyses. Is a separate analysis to be prepared for each new rule? This should be clarified. The bill provides that the committee may “direct” an agency to prepare a regulatory flexibility analysis but provides that the committee may “request” an agency to prepare a final assessment report. Thus, it is unclear what authority the committee has over agencies.

OTHER SUBSTANTIVE ISSUES

This bill seeks to reduce regulatory burden on small businesses by creating a bureaucratic process that could prove costly to state agencies. This could be counter-productive since small business tax dollars help fund the activities of these agencies. For agencies or programs that are self-funded through industry fees, the impact could be even more direct to small businesses. A possible alternative would be to craft a more narrowly targeted bill that would focus on those regulations and/or agencies that small businesses find most burdensome.

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