

HOUSE OF REPRESENTATIVES
Monday, February 15, 1999

Committee Substitute for House Bill No. 1816

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1816 -- By BONNY of the House and MADDOX of the Senate.

An Act relating to statutes and reports; enacting the Oklahoma Small Business Regulatory Flexibility Act; making legislative findings; defining terms; requiring agencies to make certain prior determinations; providing for methods to adopt administrative rules; requiring small business impact statements; prescribing content of statement; providing exemption from requirement for certain rules; requiring submission of statement to Small Business Regulatory Review Board; providing exemption; prescribing content of small business statement; creating Small Business Regulatory Review Board; stating purpose of Board; providing for membership; prescribing certain qualifications for membership; prescribing requirements for conduct of proceedings; authorizing exercise of powers; authorizing filing of petitions; stating basis for petition; requiring review of petitions by Small Business Regulatory Review Board; prescribing certain procedures for agencies; authorizing review of agency decision by Small Business Regulatory Review Board; prescribing basis for certain recommendations; requiring evaluation reports under certain circumstances; requiring submission to Small Business Regulatory Review Board; prescribing procedures for notification to agencies; authorizing certain hearing procedures; prescribing procedures for administrative rules for which fines or penalties assessable; providing exceptions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 501 of Title 75, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Small Business Regulatory Flexibility Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 502 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature finds that small business is the backbone of our state's economy. The Legislature further finds that administrative rules adopted by state agencies can at times have an adverse impact on the growth and vitality of small business. The Legislature therefore declares that it is the policy of this state to address the impact administrative rules may have on small business by requiring agencies to consult with the small business community

affected to better assess the impacts and consider alternatives for easing those impacts when drafting rules.

B. The Legislature further finds that an agency's interpretation or application of its rules may also at times have an adverse impact on a small business especially when the small business lacks the resources to contest an agency's interpretation or application of a rule imposing a fine, citation, or penalty. Improving the public's perception of government, particularly with regard to its regulatory and rulemaking functions, is inherent to improving the state's business climate. Despite the oftentimes burdensome regulatory requirements on businesses by government, regulations are also necessary for businesses to operate.

C. This act provides for a petition process to an agency for regulatory review, periodic administrative review of rules with small business impacts, and an independent Regulatory Review Board to consider concerns of small businesses and make recommendations to adopt, amend, or repeal rules. This act also requires agencies to provide an opportunity for compliance to rules affecting small business without the assessment of monetary fines.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 503 of Title 75, unless there is created a duplication in numbering, reads as follows:

As used in this act, unless the context clearly requires otherwise:

1. "Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business;
2. "Agency" means each state board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches;
3. "Board" means the Small Business Regulatory Review Board; and
4. "Small business" means a for-profit enterprise consisting of fewer than one hundred (100) full-time or part-time employees.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 504 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Prior to submitting proposed rules for adoption, amendment, or repeal pursuant to the Oklahoma Administrative Procedures Act, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

B. If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the Small Business Regulatory Review Board prior to providing notice for a public hearing. The statement shall provide a reasonable determination of the following:

1. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;

2. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;

3. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;

4. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;

5. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;

6. How the agency involved small business in the development of the proposed rules; and

7. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

C. This act shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations which affords the agency no discretion to consider less restrictive alternatives.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 505 of Title 75, unless there is created a duplication in numbering, reads as follows:

For any proposed rules that affect small business, the agency shall also submit a small business statement to the Small Business Regulatory Review Board after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

1. A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;

2. The number of persons who:

- a. attended the public hearing,
- b. testified at the hearing, and
- c. submitted written comments; and

3. If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 506 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. There shall be established a Small Business Regulatory Review Board to consider any request from small business owners for review of any rule adopted by a state agency and to make

recommendations to the agency or the Legislature regarding the need for a rule change or legislation.

B. The Small Business Regulatory Review Board shall consist of thirteen (13) members, who shall be appointed or serve by designation as follows:

1. Four (4) members to be appointed by the Governor;
2. Three (3) members to be appointed by the Lieutenant Governor;
3. The Chairman of the Small Business Committee of the Oklahoma House of Representatives, ex-officio and non-voting;
4. One (1) member to be appointed by the Chairman of the Small Business Committee of the Oklahoma House of Representatives;
5. The Chairman of the Small Business Committee of the Oklahoma State Senate, ex-officio and non-voting;
6. One (1) member to be appointed by the Chairman of the Small Business Committee of the Oklahoma State Senate;
7. One (1) member to be appointed by the Speaker of the House of Representatives; and
8. One (1) member to be appointed by the President Pro Tempore of the Senate.

All appointments made pursuant to this subsection shall be made from a list of nominees, submitted to each appointing authority, by a non-profit organization formed under the laws of this state the principal purpose of which is to function as a business membership service organization.

C. The appointments shall reflect representation of a variety of small businesses in the state; provided that no more than two (2) members shall be representatives from the same type of small business.

D. All appointed members of the Small Business Regulatory Review Board shall be either a current or former owner or officer of a small business and shall not be an officer or employee of the federal, state, or county government. The Governor shall appoint the initial chairperson of the Board and a majority of the Board shall elect subsequent chairpersons. The chairperson shall serve a

term of not more than one (1) year, unless removed earlier by a two-thirds vote of all members of the Board.

E. A majority of all the members of the Board shall constitute a quorum to do business and the concurrence of a majority of all the members of the Board present and voting shall be necessary to make any action of the Board valid.

F. In addition to any other powers provided by this act, the Board may:

1. Adopt any rules necessary to implement this act; and
2. Do any and all things necessary to effectuate the purposes of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 507 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Any affected small business may file a written petition with the agency that has adopted rules objecting to all or part of any rule affecting small business on any of the following grounds:

1. The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
2. The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
3. These impacts were not previously considered at the public hearing on the rules.

B. For rules adopted prior to the effective date of this act, an affected small business may file a written petition with the agency that adopted the rules objecting to all or part of any rules affecting small business on any of the following grounds:

1. The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
2. The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

C. Upon submission of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Review Board as notification of a petition filed under this act. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty (60) days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the Small Business Regulatory Review Board within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of the Oklahoma Administrative Procedures Act.

D. If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the Small Business Regulatory Review Board. The Board shall promptly convene a meeting for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with the Oklahoma Administrative Procedures Act. For rules adopted after the effective date of this act, the Board may base its recommendation on any of the following reasons:

1. The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
2. The impact statement did not consider new or significant economic information that reveals an undue impact on small business; or
3. These impacts were not previously considered at the public hearing on the rules.

E. For rules adopted prior to the effective date of this act, the Small Business Regulatory Review Board may base its recommendation to the agency on any of the following reasons:

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

2. The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or

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

F. If the Small Business Regulatory Review Board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection D or E of this section, it shall submit to the Legislature an evaluation report and the agency's response as provided in subsection C of this section. The Legislature may subsequently take such action in response to the evaluation report and the agency's response as it finds appropriate.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 508 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Each agency having rules that affect small business in effect on the effective date of this act shall submit by June 30 of each odd-numbered year, a list of those rules to the Small Business Regulatory Review Board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

B. The Small Business Regulatory Review Board shall 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, including any rules that the Board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five (45) days after being notified by the Board of the list, the agency shall submit a written report to the Board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

C. The Board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting. Upon consideration of any report submitted by an agency under this section and any public testimony, the Small Business Regulatory Review Board

shall submit an evaluation report to each regular session of the Legislature in even-numbered years. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The Legislature may take such action in response to the report as it finds appropriate.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 509 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

1. The small business corrects the violation within a minimum of thirty (30) days after receipt of a notice of violation or citation; and
2. The violation was unintentional or the result of excusable neglect; or
3. The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

B. Subsection A of this section shall not apply when:

1. A small business fails to exercise good faith in complying with the statute or rules;
2. A violation involves willful or criminal conduct; and
3. A violation results in serious health, safety, or environmental impact.

C. An agency may adopt rules to implement the requirements of this section.

SECTION 10. This act shall become effective November 1, 1999.