STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 948

By: Maddox of the Senate

and

Plunk of the House

COMMITTEE SUBSTITUTE

An Act relating to statutes and reports; amending 75 O.S. 2001, Sections 250.10 and 303, which relate to the Administrative Procedures Act; enacting the Oklahoma Small Business Regulatory Flexibility Act; defining terms; creating Small Business Regulatory Review Committee within the Oklahoma Department of Commerce; stating purpose of Committee; providing for membership, terms of office, qualifications for membership, conduct of proceedings, and duties; requiring agencies comply with certain provisions for making certain determination; requiring agencies submit proposed rules adversely affecting small business to Small Business Regulatory Review Committee and provide for certain review and comment period; requiring Committee submit certain request to agency; making Act inapplicable to certain rules; authorizing filing of certain petitions by small businesses; stating grounds for petition; requiring agency submit copy of petition to Committee, take certain actions and submit certain response to Committee; authorizing small businesses to seek review of agency decision by Committee under certain circumstances; prescribing procedures for Committee and basis for recommendations; requiring Committee submit certain report to Legislature under certain circumstances; authorizing agencies to waive or reduce administrative fines or penalties under certain circumstances; providing exceptions; requiring promulgation of rules related thereto; authorizing certain entities to request agencies to review rules for certain purposes; modifying time frame for certain comment period and conforming language; modifying list of entities who may request hearing on proposed rules; modifying information to be included in rule impact statement; providing for codification; providing an effective date; and declaring an emergency.

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:

Sections 1 through 6 of 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:

As used in the Oklahoma Small Business Regulatory Flexibility Act:

1. "Agency" is defined as provided by paragraph 3 of Section 250.3 of Title 75 of the Oklahoma Statutes, except that agencies established by Title 59 of the Oklahoma Statutes that license and regulate or discipline professions and occupations shall be exempt from the definition of agency in the Oklahoma Small Business Regulatory Flexibility Act;

2. "Committee" means the Small Business Regulatory Review Committee;

3. "Rule" is defined as provided by paragraph 15 of Section 250.3 of Title 75 of the Oklahoma Statutes, provided that the definition shall not include emergency or preemptive rules; and

4. "Small business" means a for-profit enterprise consisting of fifty or fewer full-time or part-time employees.

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:

A. 1. There shall be established a Small Business Regulatory Review Committee within the Oklahoma Department of Commerce.

2. The duties of the Committee shall be to:

a. provide agencies with input regarding proposed permanent rules which adversely affect small business and for which the notice of intended action is

published by "The Oklahoma Register" on or after July 1, 2002, and

b. review any rule promulgated by a state agency for which notice has been given by the agency to the Committee that the proposed rule adversely affects small business and make recommendations to the agency and the Legislature regarding the need for a rule or legislation as provided in Section 5 of this act.

3. Staff support for the Committee shall be provided by the Oklahoma Department of Commerce. The Department shall act only as a coordinator for the Committee within the budgeted amount appropriated by the Legislature, not to exceed Seventy-five Thousand Dollars ($75,000.00) per annum, to provide such services. The Department shall not be required to provide legal counsel for the Committee.

B. The Small Business Regulatory Review Committee shall consist of eleven (11) members, who shall be appointed as follows:

1. Three members to be appointed by the Governor;

2. Two members to be appointed by the Lieutenant Governor;

3. Two members to be appointed by the President Pro Tempore of the Senate;

4. Two members to be appointed by the Speaker of the House of Representatives;

5. One member to be appointed by the chair of the Small Business Committee of the Oklahoma Senate; and

6. One member to be appointed by the chair of the Small Business Committee of the Oklahoma House of Representatives.

In addition, the chair of the Small Business Committee of the Oklahoma Senate and the chair of the Small Business Committee of the Oklahoma House of Representatives shall serve as nonvoting, ex officio members of the Committee.

C. 1. Appointments to the Small Business Regulatory Review Committee shall be representative of a variety of small businesses in this state. All appointed members shall be either current or former owners or officers of a small business.

2. The Governor and Lieutenant Governor shall each appoint at least one member from small businesses located in municipalities having a population of three hundred thousand (300,000) or more.

3. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint at least one member from small businesses located in municipalities having a population of less than three hundred thousand (300,000).

D. The initial appointments to the Committee shall be made within thirty (30) days from the effective date of this act. The Oklahoma Department of Commerce shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the chairs of the House and Senate Small Business Committees.

E. 1. Members initially appointed to the Committee shall serve for terms ending December 31, 2004. Thereafter, appointed members shall serve for two-year terms that expire on December 31 of the second year.

2. The Governor shall appoint the initial chair of the Committee from the appointed members for a term ending December 31, 2004, and shall appoint subsequent chairs of the Committee from the appointed members for two-year terms that expire on December 31 of the second year.

3. Members shall not receive any compensation but shall be eligible for reimbursement by the Oklahoma Department of Commerce for necessary expenses in accordance with the State Travel Reimbursement Act; provided, however, legislative members shall be

reimbursed by the legislative body in which they serve pursuant to Section 456 of Title 74 of the Oklahoma Statutes.

4. The Committee shall meet at least semiannually or more often if necessary as determined by the chair of the Committee.

5. A majority of the voting members of the Committee shall constitute a quorum to do business. The concurrence of a majority of the members of the Committee present and voting shall be necessary to make any action of the Committee valid.

6. No appointed Committee member shall serve more than three consecutive terms.

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 permanent rules for adoption, amendment, revision or revocation pursuant to the Oklahoma Administrative Procedures Act, the agency shall comply with the provisions of paragraph 4 of subsection A of Section 303 of Title 75 of the Oklahoma Statutes in order to determine whether the proposed rules adversely affect small business.

B. If the proposed rules adversely affect small business, the agency shall submit a copy of the proposed rules and a rule impact statement to the Small Business Regulatory Review Committee for its review and comment pursuant to the review and comment provisions of paragraph 2 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes.

C. Within the review and comment period, if the Small Business Regulatory Review Committee determines that the proposed rules adversely affect small business, the Committee shall submit to the agency a request to consider:

1. The availability and practicability of less restrictive alternatives that could be implemented; and

2. Creative, innovative, or flexible methods of compliance for small businesses.

D. The Oklahoma Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules 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 state legislative or federally mandated provisions which afford 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:

A. For promulgated rules, any adversely affected small business may file a written petition with the agency that has promulgated the rules objecting to all or part of any rule adversely 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 formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the adoption of the rules;

2. These impacts were either not previously considered at the public hearing on the rules or there was no public hearing on the rules; or

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

B. Upon submission of the petition, the agency shall forward a copy of the petition to the Small Business Regulatory Review Committee as notification of a petition filed under the Oklahoma Small Business Regulatory Flexibility 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 or if conditions justifying the rule have changed. The agency shall submit a written response of its determination to the Small Business Regulatory Review Committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a rule, it may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

C. If the agency determines that the petition does not merit the amendment, revision, or revocation of any rule, any adversely affected small business may seek a review of the decision by the Small Business Regulatory Review Committee. The Committee shall promptly convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings in accordance with the Administrative Procedures Act. Such review shall not be de novo but shall be based upon the actual record presented to the agency. The Committee 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 small business impact statement formulated by the agency pursuant to the provisions of paragraph 4 of subsection A and paragraph 6 of subsection B of Section 303 of Title 75 of the Oklahoma Statutes prior to the promulgation of the rules;

2. These impacts were not previously considered by the agency; or

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

D. If the Small Business Regulatory Review Committee recommends that an agency initiate rulemaking proceedings for any reason provided in subsection C of this section, the Committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency's response as provided in subsection B of this section. The Legislature may subsequently take such action in response to the evaluation report and the agency's response as the Legislature finds appropriate.

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. Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine 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 thirty (30) days or less after receipt of a notice of violation or citation; or

2. 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 has been notified of the violation of a statute, ordinance, or rule by the agency pursuant to paragraph 1 of subsection A of this section and has been given a prior opportunity to correct the violation on a prior occasion;

2. A small business fails to exercise good faith in complying with the statute, ordinance, or rule;

3. A violation involves willful or criminal conduct;

4. A violation results in serious health, safety, or environmental impact; or

5. The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

C. An agency shall promulgate rules pursuant to the Administrative Procedures Act to implement the requirements of this section.

SECTION 7. AMENDATORY 75 O.S. 2001, Section 250.10, is amended to read as follows:

Section 250.10 The Governor~~,~~ by Executive Order~~, and~~ or either house of the Legislature or both houses of the Legislature~~,~~ by resolution, or a small business or the Small Business Regulatory Review Committee pursuant to Section 5 of this act, may request an agency to review its rules to determine whether or not the rules in question should be amended, repealed or redrafted. The agency shall respond to ~~such~~ requests from the Governor or the Legislature within ninety (90) calendar days of such request.

SECTION 8. AMENDATORY 75 O.S. 2001, Section 303, is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:

1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;

2. For at least ~~twenty (20)~~ thirty (30) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Hold a hearing, if required, as provided by subsection C of this section;

4. Consider the effect its intended action may have on the various types of business and governmental entities. Except where such modification or variance is prohibited by statute or

constitutional constraints, if an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms to vary according to the size of a business or governmental entity or its ability to comply or both. For business entities, the agency shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and

5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. The notice required by paragraph 1 of subsection A of this section shall include but not be limited to:

1. In simple language, a brief summary of the rule;

2. The proposed action being taken;

3. The circumstances which created the need for the rule;

4. The specific legal authority authorizing the proposed rule;

5. The intended effect of the rule;

6. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;

7. The time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;

8. Whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

9. The time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

10. Where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number of copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in "The Oklahoma Register" pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the agency shall cause a copy of the notice of the proposed rule adoption and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Each agency shall maintain a listing of persons or entities requesting such notice.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within ~~twenty (20)~~ <u>thirty (30)</u> days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

a. at least twenty-five persons,

b. a political subdivision,

c. an agency, ~~or~~

d. an association having not less than twenty-five members<u>, or</u>

e. the Small Business Regulatory Review Committee.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than ~~twenty (20)~~ thirty (30) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in "The Oklahoma Register" at least ~~twenty (20)~~ thirty (30) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include but not be limited to:

a. a brief description of the purpose of the proposed rule,

b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,

c. a description of the classes of persons who will benefit from the proposed rule,

d. a description of the probable economic impact of the proposed rule upon affected classes of persons or

political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,

e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,

f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,

g. a determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

~~h.~~ i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

~~i.~~ j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

~~j.~~ k. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

SECTION 9. This act shall become effective July 1, 2002.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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