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F I S C A L   I M P A C T   R E P O R T

SPONSOR Altamirano **DATE TYPED** 03/01/05 **HB**

SHORT TITLE Small Business Regulatory Relief Act **SB** 842

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			$100.0 -300.0 See Narrative	Recurring	General Fund
			$50.0 -200.0 See Narrative	Recurring	Various Other Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 869
Relates to: HB 705, SB 711

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General (AGO)
Economic Development Department (EDD)
Energy, Minerals and Natural Resources Department (EMNRD)
Environment Department (NMED)
General Services Department (GSD)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 842 enacts the Small Business Regulatory Relief Act, makes related findings and definitions, creates the small business regulatory advisory commission (the commission), allows the commission to review rules and make recommendations to agencies, requires certain rules to be provided to the commission for review, 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: Senate Bill 842 makes a number of findings related to the unique nature 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.

Small business regulatory advisory commission: The bill creates the commission to consist of nine members, 7 appointed by the governor and one each appointed by the speaker of the house of representatives and the president pro tempore of the senate, who are current or former small business owners. The commission is administratively attached to the EDD, which shall provide staff for the commission. The commission *may* provide agencies with input regarding proposed rules, consider requests from small business owners to review rules, review rules promulgated by an agency to determine if the rule places an unnecessary burden on small business and make recommendations to the agency to mitigate adverse effects, and provide an annual report to the governor and legislature, including recommendations and evaluations of agencies regarding regulatory fairness for small business. (It is important to note that the bill's use of the word "may" means that the commission is not actually required to do any of these tasks).

The commission 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.

Prior to adoption of a proposed rule that may have an adverse effect on small business, an agency shall provide a copy of the proposed rule to the commission at the same time as persons who have requested advance notice of rulemaking. Prior to adoption of a proposed rule that the agency deems to have an adverse effect on small business, the agency shall consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business.

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 each agency to provide a proposed rule to the commission if the rule would adversely impact small business. The bill provides little guidance as to how an agency should make this determination. What level of impact warrants review by the agency? The bill leaves the determination to the individual agency. If agency inattentiveness to the needs of small businesses is truly a problem as the findings suggest, then this provision may not be particularly effective.

Several agencies have noted that the bill adds another layer to an already-lengthy and cumbersome rule-making process. NMED notes that the trend in New Mexico, as exemplified in the Governor's Performance Review, is to streamline government, but this bill creates a new commission and charges state agencies with performing extensive reviews.

NMED and EMNRD have both raised issues that may question the effectiveness of the commission. NMED notes that the state may be required to adopt specific rules under programs delegated from the federal government. In these situations, agencies may not be able to adopt recommendations from the commission without risking the continued delegation of the program. EMNRD notes that the commission members may lack the technical expertise necessary to effectively review rules in specific industries, such as oil and gas or mining.

RLD writes that the commission review could have the unintended consequence of putting the agency's dual missions of consumer protection and business/economic development out of balance and potentially in conflict.

The bill establishes an extensive requirement when a more targeted approach may accomplish the same goals. (See "Alternatives.")

FISCAL IMPLICATIONS

Senate Bill 842 would likely result in recurring costs to the general fund, as well as to any special funds supporting specific boards, commissions or agency activities.

The bill requires every state agency to review existing rules by July 1, 2010 and to review new rules every five years. There are hundreds of agencies subject to this bill, some of which would be more significantly impacted than others. The bill may also lengthen the rule-making process. It is difficult to know how many agencies will require additional resources to conduct ongoing review of their rules.

The initial implementation of the bill may require additional resources to agencies and/or require agencies to shift resources. As agencies incorporate implementation into their processes, the costs of implementation are likely to diminish.

In addition, the EDD will also incur costs to provide staff support to the commission, the total impact of which would depend on how active the commission is. Commission members will be uncompensated and will meet upon call of the chairperson. They may require extensive staff support to review proposed rules, consider requests from small businesses, and provide reports to the governor and legislature.

ADMINISTRATIVE IMPLICATIONS

The bill would result in additional administrative requirements for all agencies to implement the ongoing rule review process and to determine if new rules pose a burden to small businesses.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill duplicates House Bill 869. The bill is similar to House Bill 970. The bill relates to House Bill 705 and Senate Bill 711 which require legislative hearings on rule adoptions by boards, commissions or agencies.

TECHNICAL ISSUES

The definition of small business is based on the number of full-time employees but does not account for any part-time employees.

ALTERNATIVES

It is possible that the cost of the bill could be reduced while maintaining effectiveness if the bill were more targeted to problem areas. For example, specific boards, commissions or agencies with extensive impacts on small businesses could be required to review their rules while other agencies could be exempt. Or the commission could establish a process to identify, perhaps by soliciting input from the small business community, those rules or agencies that are particularly burdensome. These options would save every agency from reviewing every rule while still targeting rules that hurt small businesses.

EF/lg