

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1467 - SB 1329

March 3, 2019

SUMMARY OF ORIGINAL BILL: Requires any agency, prior to filing a rule or regulation with the Secretary of State's Office (SOS), to first submit an estimate to the members of the Government Operations Committees of the Senate and House of Representatives.

The estimate must include:

- The total compliance and implementation costs incurred by all small businesses within the state, if any, affected by the rule or regulation;
- The number of small businesses affected by the rule or regulation;
- Any assumptions and reasoning upon which the estimate is based; and
- All information used in determining the estimate.

Prohibits any agency from promulgating any rule or regulation if the estimated total compliance and implementation costs over a three-year period, that begins on the effective date of the rule or regulation, are equal to or greater than \$3,000,000, unless there is authorizing legislation or germane modification to the proposed rule or regulation to reduce costs below the \$3,000,000.

This requirement does not apply to:

- Institutions of postsecondary and higher education;
- Emergency rules promulgated under Tenn. Code. Ann. § 4-5-208; or

Rules or regulations required by federal mandate.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – Due to the uncertain complexity of the additional responsibilities and the extent to which certain agencies will be impacted, there may be additional state expenditures incurred in order to comply. Future interpretation or expansion of what is requested of agencies may result in the need to contract for services.

SUMMARY OF AMENDMENT (005092): Deletes and rewrites all language after the enacting clause such that the only substantive changes include: requires agency estimates on the impacts to small businesses be sent to the Fiscal Review Committee (FRC), rather than to the members of the Government Operations Committees (GOCs) of the Senate and House of Representatives, and requires the FRC staff to review the estimates for accuracy, and to modify such estimates, if needed, to ensure their accuracy. Requires the Executive Director of the FRC to submit any estimate to the members of the GOCs and to promptly notify the FRC when these estimates have been reviewed and forwarded to the GOCs. Stipulates that an agency must submit

an estimate to the Fiscal Review Committee no more than 90 days and no less than 60 day prior to filing a rule or regulation with the SOS.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$264,600

Other Fiscal Impact – Due to the uncertain complexity of the additional responsibilities and the extent to which certain agencies will be impacted, there may be additional state expenditures incurred in order to comply. Future interpretation or expansion of what is requested of agencies may result in the need to contract for services.

Assumptions for the bill as amended:

- Pursuant to the 2006 Executive Order Number 38 by former Governor Bredesen, state agencies were required to, prior to initiating a rulemaking process, conduct a review of whether any rule under consideration affects small businesses. As part of such review, each agency was required to prepare an economic impact statement regarding a rule's impact on small businesses.
- Public Chapter 464 of the Public Acts of 2007 enacted the *Regulatory Flexibility Act* of 2007 (Tenn. Code Ann. §§ 4-5-401 through 4-5-404), to essentially codify the intent of the executive order. Pursuant to the Act, each state agency is required to prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses. This requirement does not apply to emergency rules, rules that are federally mandated, or rules that substantially codify existing state or federal law. The economic impact statement is required to include the following:
 - The type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;
 - The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule;
 - A statement of the probable effect on impacted small businesses and consumers;
 - A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small businesses;
 - A comparison of the proposed rule with any federal or state counterparts; and
 - Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.
- The proposed legislation requires each agency to prepare an estimate of the total compliance and implementation costs on small businesses, if any, affected by the rule, and the number of those affected by the rule and any assumptions and reasoning upon which the estimate is based, for submittal to the Executive Director of the FRC. This

requirement does not apply to emergency rules, rules that are federally mandated, or rules regarding institutions or postsecondary and higher education.

- Based on information provided by the Secretary of State's Office, an average of approximately 255 rules are filed each year that are non-emergency and not filed by an institution of postsecondary higher education. It is unknown how many of such filings are the result of a federal mandate. This number is assumed to remain constant into perpetuity.
- Due to uncertainty regarding the complexity of additional responsibilities, and the extent to which certain agencies will be impacted, there may be additional state expenditures incurred for compliance. Future interpretation or expansion of what is requested of agencies may result in the need to contract for services.
- The FRC does not currently have capacity to effectively meet the requirements of the proposed legislation which would be to analyze the economic impact on private sector businesses.
- The FRC will require one additional Fiscal Analyst III position and two additional Fiscal Analyst II positions to effectively review estimates received from statewide agencies for accuracy and to modify such estimates, as necessary.
- The recurring increase in state expenditures from the General Fund for funding these three positions for the FRC is estimated to be \$264,558 (\$210,000 salary + \$54,558 benefits).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/jdb