



Missouri Small Business Regulatory Fairness Board

May 25, 2011

The Honorable Jeremiah W. "Jay" Nixon
Governor of the State of Missouri

The Honorable Robert N. Mayer
President Pro Tem of the Missouri Senate

The Honorable Steven D. Tilley
Speaker of the Missouri House of Representatives

Dear Governor Nixon, President Pro Tem Mayer and Speaker Tilley:

During the fiscal year of 2010, the Missouri Small Business Regulatory Fairness Board (SBRFB) helped improve the business climate for all small Missouri businesses. This is both on micro (working with individual business owners) and macro (working with state agencies) levels.

The SBRFB is the only state board that is focused solely on small business. We have made significant progress over the years in working interactively with agencies to ensure the small business perspective is addressed as new rules are made. Small business owners have relied on us to address urgent and difficult issues, both large and small. We have reviewed many hundreds of regulations, acted upon dozens, and have made a difference for many small businesses to be competitive in the marketplace.

However, it has become increasingly obvious to Board members that the SBRFB lacks adequate administrative support so that the Board can function in the way it was intended when it was created by the legislature. **When established, the Fiscal Analysis determined that to properly perform its duties, the SBRFB would require 1 FTE, to perform administrative and analytical duties and .5 FTE to perform clerical duties.** Also, DED had estimated that it would need to budget \$75,000 for administrative support of the SBRFB. Over the last 6 years of our existence, we have not come close to having that level of support. The most we have had is approximately 1/3 FTE. In fact, in FY2009-2010 our support fell to its lowest ever, which has adversely impacted the work and the potential effectiveness of this Board. As it currently stands, there are things the SBRFB is charged with doing that we simply do not have the administrative support to adequately perform.

Background

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules;
- 2) State agencies take into account small businesses when enforcing new rules and regulations;
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed;
- 4) Established the Small Business Regulatory Fairness Board;
- 5) Granted judicial review to small businesses; and
- 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the Commission.

Board Responsibilities

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

Meetings

Seven meetings have been held in FY2008 by the Board on the following dates and at the following locations:

- July 14, 2009, Jefferson City
- September 22, 2009, Jefferson City
- October 8, 2009, Conference Call
- December 21, 2009, Conference Call
- February 16, 2010, Jefferson City
- March 16, 2010, Conference Call
- May 4, 2010, Conference Call

In addition the SBRFB held one Public Hearing in accordance with the February 16, 2010 meeting in Jefferson City for small business testimonies.

Bi-Annual State Agency Comprehensive Report

Each state agency will be required, on June 13, 2011, to submit a list of rules affecting small business to the General Assembly and the SBRFB per RSMo, 536.325:

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 existence. This list and report will be issued by each state agency every odd numbered year.

Improved Communication

Building on our FY2009 Areas for Improvement, the SBRFB has taken steps to create smoother internal communication with the agencies. We have also begun steps to create better outreach communication so that the small business owners know we exist. We are still lacking in areas regarding monitoring, more complete rule review, and data tracking. As our introductory letter indicates, having enough administrative support is remains an issue.

State Agency Evaluations

In fulfilling its duties outlined in 536.310 RSMo, the Board shall provide an evaluation report to the governor and the general assembly. The SBRFB is charged with tracking and providing results of agency compliance with SBRFB efforts. Agencies working with the SBRFB will ultimately result in higher compliance and fewer complaints from small business owners.

Providing feedback to the agencies is of prime importance, as is agency cooperation and communication back to the board. The SBRFB has created criteria and ongoing training for the agencies so that they have a clear understanding of what the board is looking for. The criteria used in making evaluations are listed at the top of each column in the following table.

SBRFB Agency Evaluations
2010 Fiscal Year

A	B	C	D	E	F	G	H	I	J
	RESPOND TO SMALL BUSINESS COMMENTS IN TIMELY MANNER	PROVIDE COMPLETE RESPONSE TO SMALL BUSINESS COMMENTS	NON-RETALIATION POLICY IN WRITING	PARTICIPATE IN REGULATORY FAIRNESS MEETINGS	PARTICIPATE IN REGULATORY FAIRNESS PUBLIC HEARINGS	TRAIN AGENCY STAFF ON SBRFB PROGRAMS	COMPLETE SMALL BUSINESS IMPACT STATEMENT	NOTIFY SBRFB ON SMALL BUSINESS COMMENTS IN PUBLIC HEARINGS	CONDUCT BIENNIAL EVALUATIONS OF RULES AFFECTING SMALL BUSINESS
Office of Administration	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Agriculture	N/A	N/A	A	Five of Six	N/A	A	X	X	Report Due 6/30/2011
Conservation	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Corrections	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Economic Development	N/A	N/A	A	Five of Six	N/A	A	X	X	Report Due 6/30/2011
Elementary & Secondary Education	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Higher Education	N/A	N/A	A	Five of Six	N/A	A	X	*	Report Due 6/30/2011
Health & Senior Services	A	A	A	Six of Six	A	A	X	*	Report Due 6/30/2011
Insurance, Financial Institutions & Professional Registration	N/A	N/A	A	Six of Six	N/A	A	X	X	Report Due 6/30/2011
Labor & Industrial Relations	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Mental Health	N/A	N/A	A	Six of Six	N/A	A	X	X	Report Due 6/30/2011
Natural Resources	N/A	N/A	A	Six of Six	N/A	A	X	X	Report Due 6/30/2011
Public Safety	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Revenue	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Social Services	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011
Transportation	N/A	N/A	A	Six of Six	N/A	A	X	*	Report Due 6/30/2011

* No Comments Received

New 2010 Small Business Comments

While the Board continued work on existing issues, we had 4 new ones initiated in FY2010.

- 1) Larry and Pam Dapprich, Little Ones Learning Center, Branson, 9/28/2009 -unfair rules and regulations regarding children's day care center by Department of Health and Senior Services.
- 2) Stephanie Patton, Peace of Mind Adult Day Care Center, Chesterfield, 1/8/2010-licensing and Medicaid payments, Department of Health and Senior Services.
- 3) Tina Scott, T-Construction, Marshall, 1/13/2010-small business loan program.
- 4) Jessica Henman, Birth and Wellness Center, LLC, Wright City, 5/13/2010-regulations for birthing centers promulgated by the Department of Health and Senior Services.

Adjusted Criteria for FY2011

In general, we have built a good working relationship with the state agencies, as can be observed by the evaluations. As we progress, the criteria need to be updated in keeping with the work of the Board as well as the agencies. We will continue to provide ongoing communication to the agencies regarding expectations, criteria, and training. Areas for adjusted evaluation criteria for FY2011 are:

1. Indicate that the column 'Respond to Small Business Comments in a Timely Manner' refers only to the initial comment in which the agency has 60 days to respond.
2. The column 'Provide Complete Response to Small Business Comment' measures the quality of content in the initial agency response.
3. Add a column for 'Agency Responsiveness to SBRFB Requests' which will include not only timeliness of the ongoing letters, but also the quality of content (ie, did it answer the questions.) This refers to the subsequent letters that frequently occur back and forth as the Board works through an issue. The agency has 30 days to respond to each request.
4. Remove column 'Non-Relation Policy in Writing.' All agencies now have this. Instead, title the column 'Adherence to Non-Retaliation Policy.' This will give us a place to track the rare, but disturbing, accusations of agency retaliation against a small business owner before or after their small business comments/issues brought before the SBRFB.
5. The column 'Participate in Regulatory Fairness Meetings' remains unchanged and refers to meeting attendance by the agency liaison.
6. The column 'Participate in Regulatory Fairness Public Hearings' remains unchanged and refers to the agency providing decision-makers and knowledgeable personnel to answer questions brought in front of the Board at the public hearings.
7. Retain 'Train agency staff on SBRFB Programs,' which refers to the liaison taking training and then training the agency personnel.
8. Retain the column, 'Complete Small Business Impact Statement' – which only tracks yes/no completion.
9. Add a column called 'Impact Statement Quality of Content' that evaluates the quality of content in the Impact Statement.
10. Regarding the column 'Notify SBRFB of Small Business Comments from Public' -- The Board intends to more closely monitor whether the agency notifies the SBRFB of small business comments that come directly to the agency from the public and therefore do not otherwise come in front of the Board.
11. Retain column 'Conduct Biennial Evaluations of Rules Affecting Small Business' – evaluations about both timeliness and quality of content.