

**Small Business Regulatory Fairness Board
GoToMeeting Board Meeting**

**Truman State Office Building
Room 680, Conference Room
Jefferson City, MO**

March 23, 2011

Chair Zurbuchen called the conference call meeting to order at 9:35 a.m. She welcomed fellow board members and State Agencies Liaisons attending the conference call. Roll call was conducted.

Members Attending: Chair Nancy Zurbuchen, Kansas City; Sheila Forrest, St. Louis; Scott George, Mt. Vernon; Micheal Ocello, St. Louis; Jim Seigfreid, Warrensburg; and Sheila Sweeney, St. Louis.

Members Absent: Bob Bess, St. Louis; Vicki Englund, St. Louis; and Vice Chair Shane Libel, St. Joseph.

State Agency Liaisons Present: Nancy Heyer, Office of Administration; Rachel Mobley, Department of Agriculture; Denise Bateman, Department of Conservation; Walt Fischer, Department of Corrections; Steve Kratky, Department of Economic Development; Cynthia Questsch, Department of Elementary and Secondary Education; Bret Fischer, Department of Health and Senior Services; Christopher Polley, Department of Higher Education; Jeannie Mitchell, Dept. of Labor and Industrial Relations; Melissa Manda, Department of Mental Health; Keith Bartle, Dept. of Natural Resources; James Klahr, Department of Public Safety; Joel Allison, Department of Revenue; Scotty Allen, Department of Social Services; and Rudy Nickens, MO Department of Transportation.

DED Staff Present: Sherry L. Anderson, DED-Boards and Commissions Liaison

After roll call the first order of business was to approve the meeting minutes from January 26, 2011 and February 11, 2011. Mr. Ocello moved the January 26, 2011 meeting minutes be approved. Mr. George seconded the motion. The motion passed unanimously. Mr. George moved the February 11, 2011 meeting minutes be approved. Mr. Ocello seconded the motion. The motion passed unanimously.

The Board reviewed the 2009 Agency Evaluation Report as a template for the 2010 Agency Evaluation Report and determined that the chart did provide a snapshot of the level of agency responses to the Board's recommendations and criteria.

Chair Zurbuchen asked Ms. Anderson how many small business comments were filed with SBRFB during the 2010 fiscal year. The Board has received small business comment on

September 28, 2009; on January 13, 2010; January 18, 2010, and on May 13, 2010. Ms. Anderson stated that four comments were filed during SBRFB's 2010 fiscal year:

- Larry and Pam Dapprich, Little Ones Learning Center, Branson filed a comment with the SBRFB on September 28, 2009. The Dapprichs were disappointed with the Department of Health and Senior Services filing of new rules and believed that the DHSS was targeting the children's day care industry and their children's day care business.
- Stephanie Patton, Peace of Mind Adult Day Care Center, Chesterfield filed a comment with the SBRFB on January 18, 2010. Ms. Patton claimed the Department of Health and Senior Services (DHSS) was undermining her small business, Peace of Mind Adult Day Care Center and forcing it to close. She also claimed the DHSS had retaliated by revoking her license, withholding Medicaid payments that were due to her; and destroying her credit rating and business integrity. The SBRFB received a letter on March 24, 2010, stating that the DHSS was currently in litigation before the Missouri Hearing Commission with Ms. Patton and the Missouri Attorney General's Medicaid Fraud Unit was investigating Ms. Patton. The SBRFB had been previously working with Ms. Patton on inspection and other issues she brought to the Board; unfortunately over time her interaction with DHSS escalated into litigation. It was at this point the Board determined the matter was beyond the purview of the Board. While this is still in litigation, the Board takes very seriously the charge of agency retaliation against the small business owners who comes forward with a complaint to the SBRFB.
- Tina Scott, T-Construction, Marshall filed a comment with the SBRFB on January 13, 2010. Ms. Scott was upset because she had applied for the loan through the Governor's Show Me Jobs program and she was denied. She was frustrated and she stated she had lost faith in the Governor Nixon and his program. The Board determined that Ms. Scott's comment was outside the scope of the SBRFB, because the Board is limited to issues that are the result of state agency rules and regulations. The Board sent a letter to Ms. Scott on February 8, 2010 and suggested she contact her state representative, Joe Aull and state senator, Bill Stouffer.
- Jessica Henman, Birth and Wellness Center, LLC, Wright City filed a comment with the SBRFB on May 13, 2010. The American Public Health Association and the American Association of Birth Centers have issued guidelines for states regulating birth centers, and both agencies clearly state that birth centers are not ambulatory surgical centers. However, this is not how Missouri regulates birth centers. The SBRFB conducted a public hearing on September 15, 2010 and at the present time, the comment is considered open.

The Board reviewed the SBRFB 2010 Fiscal Year Agency Regulation Log. Chair Zurbuchen asked if the spreadsheet identifies the number of Small Business Impact Statements (SBIS) that were filed by the state agencies. Ms. Anderson stated that she had performed an audit and tried to capture all the data from hard copies and the electronic filings which had been filed with SBRFB, but she did not feel comfortable stating that the information on the spreadsheet was 100% correct.

The Board identified several proposed rules that will require additional information in order for the Board to make an evaluation and assign a grade. The following rules will need further research:

- Line 22, Proposed Amendment-20 CSR 2085-9.020: Apprentice Supervisors-Cosmetology filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Lines 26, Proposed Amendment-20 CSR 2120-1040: Definitions-Licensed Embalmer Supervise, filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 27, Proposed Amendment-20 CSR 2120-2.010: Embalmer's Registration and Apprenticeship, filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 28, Proposed Amendment-20 CSR 2120-2.040: Licensure by Reciprocity, filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 29, Proposed Amendment-20 CSR 2120-2.060: Funeral Directing, filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 41, Proposed Recission-20 CSR 2232-2.040: Certifications Recognized by the Board, filed by the Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 161, Proposed Rule-20 CSR 2120-3.305: Funeral Director Agent Registration, filed by Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 162, Proposed Rule-20 CSR 2120-3.300: Provider Includes Funeral Establishment, filed by Dept. of Insurance, Financial Institutions and Professional Registration, it lists that a SBIS was not filed.
- Line 256, take out Darcie Rehagen and replace with name of the contact for that agency.

Check the dates the rules were filed with SBRFB because the filing dates listed were for 2009 fiscal year:

- Line 254, Proposed Amendment-11 CSR 40-2.061: New Installations, filed by the Department of Public Safety.
- Line 255, Proposed Amendment-11 CSR 40-2.015: Code/Standards Adopted by the Board, filed by the Department of Public Safety.
- Line 256, Proposed Amendment-11 CSR 40-2.010: Definitions for CDS-1, filed by the Department of Public Safety.

Mr. George volunteered to perform an audit on the 7 rules filed by the DIFP to verify if the proposed rule or amendment had any impact on small businesses as defined in the statute.

Mr. George asked if public comments submitted to the Secretary of State are captured as part of the review for column **J (Notify SBRFB on Small Business Comments in Public Hearings)** and Ms. Anderson stated yes. Ms. Anderson stated that following the publication of the

proposed rules, amendments, and rescissions, there is a public comment and/or public hearing period that extends a minimum of thirty (30) days after the date of publication in the Missouri Register. The agency must act on the rulemaking within ninety (90) days following the close of public comment. The comments submitted to the Secretary of State during the comment period can be from public hearings held by the state agencies or they can be comments submitted directly to the Secretary of State. Once the public comment and/or public hearing period is closed, information from the comments and/or public hearing are compiled by the agency and the agency writes the final order of rulemaking for the propose rulemaking. The State Agencies file a State Agency Public Hearing Statement with SBRFB and any public comments are published with the final order of rulemaking.

The SBRFB will not assign a grade to column **K (Conduct Biennial Evaluations of Rules Affecting Small Business)** because the Biennial Report from state agencies is due June 13, 2011 and is not included but will be included in the 2011 State Agency Evaluation. In accordance with Section 536.325.1, RSMo, each agency with rules that affect small business shall submit by June thirteenth (13) of each odd-numbered year a list of such rules to the General Assembly and the SBRFB. 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. The General Assembly may subsequently take such action in response to the report as it finds appropriate.

Chair Zurbuchen stated that the interaction between the state agency liaisons has been really positive and she would like to establish criteria to moving forward for 2011 fiscal year. Mr. George stated that the Board would be asking the agencies to change in mid-stream and it would be best to start with the new criteria for the 2012 fiscal year agency evaluation. The Board agreed.

Chair Zurbuchen stated she believes the part of the criteria should include the following information: Did you include the small businesses and how did the agency include the affected small businesses in the pre-filing process, whether it was by public hearings or requesting written comments from stakeholders?”

The Board decided to add column **G (Agency Responsive to SBRFB Requests)** to the SBRFB Agency Evaluation for 2012 fiscal year evaluating an agency’s responsiveness to the SBRFB requests, not just in a timely manner but to assist the Board in understanding issues and concerns regarding proposed and existing rules.

The Board also decided to eliminate column **D (Non-Retaliation Policy in Writing)**, which required the state agency have a non-retaliation policy in writing. It was noted that all the state agencies have compiled with this criterion and it was not considered a contributing factor to the evaluation. Mr. Seigfreid requested that the Board track the incidence of retaliation comments and complaints filed by small business owners against an agency. The Board agreed.

Chair Zurbuchen asked the state agency liaisons if they had any questions or comments to address to the Board.

Melissa Manda, Dept. of Mental Health liaison, stated that the SBRFB has been the conduit for the small businesses and state agency and that in the past, the SBRFB conducted public forums around the state that brought together agencies and small businesses.

Chair Zurbuchen stated that the SBRFB wants to continue to work continue the cooperative mode the SBRFB and state agency liaisons have developed.

Chair Zurbuchen announced the next meeting will be April 20 in Jefferson City. Mr. Ocello stated he will not be able to attend. Chair Zurbuchen will be e-mailing to Board members the additional information needed to make an evaluation and assign a grade to the Department of Insurance, Financial Institutions and Professional Registration (DIFP).

Chair Zurbuchen announced the SBRFB will meet April 20th in Jefferson City.

With no further business to be discussed, a motion was made by Mr. Ocello and seconded by Mr. Seigfreid to adjourn the meeting. The motion was adopted. The meeting was adjourned at 10:30.

Minutes Approved by the Board on April 20, 2011