~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 29, 2015

**S. 490**

Introduced by Senator Alexander

S. Printed 4/29/15--S.

Read the first time February 26, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 490) to amend Section 1‑23‑280 of the 1976 Code, relating to the Small Business Regulatory Review Committee, to provide that it is the duty of the committee to, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the committee amendment, as and if amended, page 3, by striking lines 8-20 and inserting:

/ “(3) ~~This subsection does not limit the committee’s ability to petition a state agency to amend, revise, or revoke an existing regulation.~~ This subsection does not limit the committee’s ability to request information for a regulatory flexibility analysis on a proposed regulation after the public hearing date or a regulatory flexibility analysis on an existing regulation. The agency which promulgated the regulation must respond to a request for information within fifteen days and must respond to a request for a regulatory flexibility analysis within thirty days. Should the committee determine that the regulation has a significant adverse impact on small businesses it may petition the state agency to amend, revise, or revoke the regulation.” /

Renumber sections to conform.

Amend title to conform.

A. SHANE MASSEY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

Senate Bill 490 amends Section 1-23-280 relating to the Small Business Regulatory Review Committee. The bill authorizes the committee to request information from a promulgating agency needed to determine if a flexibility analysis of the proposed regulation is warranted. Agencies are required to respond to the request for information within fifteen days and must respond to a request for a flexibility analysis within thirty days. The committee may petition the agency or the General Assembly to amend, revise, or revoke the regulation. The bill also adjusts termination dates for each of the members of the committee.

**Department of Commerce.**

The department indicates that this bill would have no expenditure impact on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 1‑23‑280 OF THE 1976 CODE, RELATING TO THE SMALL BUSINESS REGULATORY REVIEW COMMITTEE, TO PROVIDE THAT IT IS THE DUTY OF THE COMMITTEE TO REQUEST FROM AN AGENCY PROMULGATING A REGULATION BEING REVIEWED BY THE COMMITTEE A RESPONSE TO THE COMMITTEE’S REQUEST FOR INFORMATION RELATED TO THE REGULATION AND TO PROVIDE THAT THE AGENCY MUST RESPOND TO THE REQUEST WITHIN FIFTEEN DAYS, TO PROVIDE THAT THE COMMITTEE SHALL HAVE THE ABILITY TO REQUEST INFORMATION AND A REGULATORY FLEXIBILITY ANALYSIS ON A PROPOSED REGULATION AFTER THE PUBLIC HEARING DATE OR A REGULATORY FLEXIBILITY ANALYSIS ON AN EXISTING REGULATION, AND THE ABILITY TO PETITION THE STATE AGENCY OR THE GENERAL ASSEMBLY, OR BOTH, TO AMEND, REVISE, OR REVOKE A REGULATION IF THE COMMITTEE DETERMINES THERE WILL BE A SIGNIFICANT ADVERSE IMPACT ON SMALL BUSINESSES, TO PROVIDE FOR THE ADJUSTMENT OF COMMITTEE MEMBERS’ TERMS TO ACHIEVE STAGGERED TERMS, AND TO PROVIDE THAT AN APPOINTED COMMITTEE MEMBER SHALL NOT SERVE CONSECUTIVELY FOR MORE THAN SIX YEARS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑23‑280 of the 1976 Code is amended to read:

“Section 1‑23‑280. (A)(1) There is established a Small Business Regulatory Review Committee within the South Carolina Department of Commerce. For purposes of this article, “committee” is the Small Business Regulatory Review Committee and “department” is the South Carolina Department of Commerce.

(2) The duties of the committee, in determining if a proposed permanent regulation has a significant adverse impact on small businesses, are to:

(a) To request, at the committee’s discretion, from the promulgating agency a response to the committee’s request for information related to the regulation so that the committee can determine if a regulatory flexibility analysis as described in Section 1‑23‑270(C)(2) is warranted. The promulgating agency must respond within fifteen days to the request for information.

~~(a)~~(b) direct the promulgating agency to prepare the regulatory flexibility analysis described in Section 1‑23‑270(C)(2) no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1‑23‑110(A)(3); and

~~(b)~~(c) request, at the committee’s discretion, the Revenue and Fiscal Affairs Office to prepare a final assessment report, as provided in Section 1‑23‑115(B), of the proposed permanent regulation no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1‑23‑110(A)(3). The committee may request a final assessment report from the Revenue and Fiscal Affairs Office only in cases where the committee determines that information in addition to the agency’s economic impact as provided in Section 1‑23‑270(C)(1) is critical in the committee’s determination that a proposed permanent regulation has a significant adverse impact on small business. The Revenue and Fiscal Affairs Office:

(i) within the review and comment period, shall perform a final assessment report of the regulation on small businesses within sixty days of a request for assessment by the committee, and the promulgating agency has sixty days to complete a regulatory flexibility analysis; and

(ii) may request additional information from the agency. The sixty‑day final assessment report deadline must be tolled until the time that the Office of Research and Statistics receives the requested additional information. The one‑year deadline for submission of regulations to the General Assembly as provided in Section 1‑23‑120(A) also must be tolled until the time that both analyses are prepared and presented to the committee; and

~~(c)~~(d) submit to the promulgating agency, no later than thirty days after receipt of the regulatory flexibility analysis prepared by the promulgating agency and, if requested by the committee, after receipt of the final assessment report prepared by the Office of Research and Statistics, a written statement advising the agency that a proposed permanent regulation has a significant adverse impact on small business.

(3) ~~This subsection does not limit the committee’s ability to petition a state agency to amend, revise, or revoke an existing regulation.~~ This subsection does not limit the committee’s ability to request information for a regulatory flexibility analysis on a proposed regulation after the public hearing date or a regulatory flexibility analysis on an existing regulation. The agency which promulgated the regulation must respond to a request for information within fifteen days and must respond to a request for a regulatory flexibility analysis within thirty days. Should the committee determine that the regulation has a significant adverse impact on small businesses it may petition the state agency or the General Assembly, or both, to amend, revise, or revoke the regulation.

(4) Staff support for the committee must be provided by the department. The department shall act only as a coordinator for the committee, and may not provide legal counsel for the committee.

(B) The committee shall consist of eleven members, appointed as follows:

(1) five members to be appointed by the Governor;

(2) three members to be appointed by the President Pro Tempore of the Senate; and

(3) three members to be appointed by the Speaker of the House of Representatives.

(C) In addition, the Chairman of the Labor, Commerce and Industry Committee of the South Carolina Senate and the Chairman of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives, or their designees, shall serve as nonvoting, ex officio members of the committee. During the committee review process, the director or his designee, of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(D) Appointments to the committee must 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.

(E) The initial appointments to the committee must be made within sixty days from the effective date of this act. The department shall provide the name and address of each appointee to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Labor, Commerce and Industry Committees.

(F)(1) ~~Members initially appointed to the committee shall serve for terms ending December 31, 2005. Thereafter, appointed members shall serve two‑year terms that expire on December thirty‑first of the second year.~~ Members shall be appointed to two‑year terms that expire on December thirty‑first of the second year.

(2) The Governor shall appoint the ~~initial~~ chairman of the committee from the appointed members ~~for a term ending December 31, 2006, and shall appoint subsequent chairs of the committee from the appointed members for two‑year terms that expire on December thirty‑first of the second year~~.

(3) The committee shall meet as determined by its chairman but not less frequently than quarterly.

(4) A majority of the voting members of the committee constitutes a quorum to do business. The concurrence of a majority of the members of the committee present and voting is necessary for an action of the committee to be valid.

(5) An appointed committee member ~~may not serve more than three consecutive terms.~~ shall not serve consecutively for more than six years.

(6) Should a vacancy not be filled by the office holder having appointment authority for more than sixty days, the committee shall submit its properly qualified and vetted candidate to that office holder for consideration. If the office holder fails to select the committee’s candidate or another person of his choosing within thirty days, then the committee’s candidate shall fill the vacant position as if appointed by that office holder.”

SECTION 2. Notwithstanding the provisions contained in this act to the contrary as found in Section 1‑23‑280(F)(1), as amended by this act, the terms of the members of the committee as of the effective date of this act shall be staggered in the following manner:

(1) Of the members appointed by the Governor:

(a) one member’s term shall expire on December 31, 2016;

(b) one member’s term shall expire on December 31, 2017;

(c) one member’s term shall expire on December 31, 2018; and

(d) the remaining member’s terms shall expire on December 31, 2019.

(2) Of the members appointed by the President Pro Tempore of the Senate:

(a) one member’s term shall expire on December 31, 2016;

(b) one member’s term shall expire on December 31, 2017; and

(c) one member’s term shall expire on December 31, 2018.

(3) Of the members appointed by the Speaker of the House of Representatives:

(a) one member’s term shall expire on December 31, 2016;

(b) one member’s term shall expire on December 31, 2017; and

(c) one member’s term shall expire on December 31, 2018.

Upon the expiration of the terms contained in this SECTION the term of office for each member shall be subject to Section 1‑23‑280(F)(1).

SECTION 3. This act takes effect upon approval by the Governor.

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