A BILL FOR AN ACT

CONCERNING METHODS TO REDUCE THE REGULATORY BURDEN ON BUSINESSES FROM ADMINISTRATIVE RULES ADOPTED BY STATE AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The "State Administrative Procedure Act" (APA) currently defines a small business as a business with fewer than 500 employees. The bill redefines "small business", for purposes of the APA, to mean a business entity, including its affiliates, that:

1. Is independently owned and operated and employs fewer
than 500 employees; or

Has gross annual sales of less than $6 million.

Prior to adopting rules, an agency is required to prepare a regulatory flexibility analysis in which the agency considers using regulatory methods that will accomplish the objectives of applicable statutes while minimizing the adverse impact on small businesses. For purposes of the regulatory flexibility analysis, the bill defines "small business" as a business that is independently owned and operated and employs 100 or fewer employees.

When preparing the regulatory flexibility analysis, the agency shall consider methods to reduce the impact on small businesses, such as:

- Establishing less stringent compliance or reporting requirements;
- Establishing less stringent schedules or deadlines for compliance or reporting;
- Consolidating or simplifying compliance or reporting requirements;
- Establishing different performance standards; and
- Exemptions for small businesses.

The agency shall also:

- Determine the necessity for the proposed rules;
- Identify the fiscal impact of the rules;
- Identify and analyze the least costly alternatives to the rules and adopt the least costly alternatives unless the agency provides written justification for adopting a more costly regulatory approach; and
- Analyze whether small businesses should be exempted from the rules or whether less burdensome rules should be applied to small businesses and adopt exemptions or less burdensome rules, unless the agency provides written justification for a more burdensome regulatory approach.

The agency shall file the regulatory flexibility analysis with the secretary of state for publication in the Colorado register at the same time that it files its notice of proposed rule-making and the draft of proposed rules.

The existing provision in the APA on forming representative groups to give input on proposed rules is amended to require any state agency (agency) proposing rules that are likely to have an impact on small businesses to expand outreach to and actively solicit representatives of small businesses to participate in the representative group and in the rule-making hearing for the rules. The agency must make good faith efforts to expand outreach and notification to small businesses that lack a trade association or lobbyist to represent the types of small businesses impacted by the proposed rules.

The executive director of the department of regulatory agencies,
or his or her designee, shall develop a one-stop location on the
department's website that provides a place for small businesses and the
public to access the regulatory flexibility analyses that are prepared by
state agencies.

A small business that is adversely affected or aggrieved by the
failure of the agency to comply with the regulatory flexibility analysis
requirements may file a request with the executive director of the
department of regulatory agencies to require the agency to prepare a
cost-benefit analysis of the proposed rules and to direct the agency to
adjust the rule-making schedule to allow for the preparation of the
cost-benefit analysis.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-4-102, amend the
introductory portion and (18); and add (13.5) as follows:

24-4-102. Definitions. As used in this article ARTICLE 4, unless
the context otherwise requires:

(13.5) "REGULATORY FLEXIBILITY ANALYSIS" MEANS THE WRITTEN
ANALYSIS PREPARED BY AN AGENCY PURSUANT TO SECTION 24-4-103 (4.7)
THAT CONSIDERS METHODS OF REDUCING THE IMPACT OF A PROPOSED
RULE ON A SMALL BUSINESS.

(18) "Small business", EXCEPT AS OTHERWISE PROVIDED IN
SECTION 24-4-103 (4.7), means a business with ENTITY, INCLUDING ITS
AFFILIATES, THAT:

(a) IS INDEPENDENTLY OWNED AND OPERATED AND EMPLOYS
fewer than five hundred employees; OR

(b) HAS GROSS ANNUAL SALES OF LESS THAN SIX MILLION
DOLLARS.

SECTION 2. In Colorado Revised Statutes, 24-4-103, amend (2)
and (4)(a); and add (4.7) as follows:

24-4-103. Rule-making - procedure - definitions - repeal.
(2) When rule-making is contemplated, public announcement thereof may be made at such time and in such manner as the agency determines. The agency shall establish a representative group of participants with an interest in the subject of the rule-making to submit views or otherwise participate informally in conferences on the proposals under consideration or to participate in the public rule-making proceedings on the proposed rules. In establishing the representative group, the agency shall make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules. If the agency convenes a representative group prior to issuing a notice of proposed rule-making as provided in paragraph (a) of subsection (3) of this section, the agency shall add those persons who participated in the representative group to the list of persons who receive notification of proposed rule-making as provided in paragraph (b) of subsection (3) of this section. If the agency is proposing rules that are likely to have an impact on small businesses, the agency shall expand outreach to and actively solicit representatives of small businesses to participate in the representative group and to participate in the rule-making hearing for the rules, with specific actions required for small business outreach prior to drafting the proposed rules. The agency must make good faith efforts to expand outreach and notification to small businesses, including to those that may not be in a trade association and to those that do not have lobbyists that represent the types of small businesses that are impacted by the proposed rules. To assist small businesses in keeping up with proposed rule-making and to
ENSURE THEIR VOICES ARE HEARD WHEN AGENCIES ARE DISCUSSING PROPOSED RULES, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES OR HIS OR HER DESIGNEE SHALL DEVELOP A ONE-STOP LOCATION ON THE WEBSITE OF THE DEPARTMENT OF REGULATORY AGENCIES THAT PROVIDES A PLACE FOR SMALL BUSINESSES AND THE PUBLIC TO ACCESS THE REGULATORY FLEXIBILITY ANALYSES THAT ARE PREPARED BY STATE AGENCIES AND SUBMITTED TO THE SECRETARY OF STATE FOR PUBLICATION IN THE COLORADO REGISTER.

(4) (a) At the place and time stated in the notice, the agency shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the agency deems it unnecessary. The agency shall consider all such submissions. Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing, together with a proposed statement of basis, specific statutory authority, purpose, and the regulatory analysis required in subsection (4.5) of this section, shall AND THE REGULATORY FLEXIBILITY ANALYSIS REQUIRED IN SUBSECTION (4.7) OF THIS SECTION, MUST be made available to any person at least five days prior to said hearing. The rules promulgated by the agency MUST be based on the record, which shall consist CONSISTS of proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written comments or briefs filed.

(4.7) (a) FOR PURPOSES OF THIS SUBSECTION (4.7), "SMALL BUSINESS" MEANS A BUSINESS ENTITY, INCLUDING ITS AFFILIATES, THAT IS INDEPENDENTLY OWNED AND EMPLOYS ONE HUNDRED EMPLOYEES OR
FEWER.

(b) At the same time that the agency files its notice of proposed rule-making with the Secretary of State, the agency shall file a regulatory flexibility analysis with the Secretary of State's office for the proposed rules as described in subsection (4.7)(c) of this section along with the draft of the proposed rules. The regulatory flexibility analysis shall be published in the Colorado Register.

(c) Prior to the adoption of any rule, an agency shall prepare a regulatory flexibility analysis in which the agency shall consider using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall:

(I) Consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(A) The establishment of less stringent compliance or reporting requirements for small businesses;

(B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(C) The consolidation of or simplification of compliance or reporting requirements for small businesses;

(D) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule; and

(E) The exemption of small businesses from all or any part
OF THE REQUIREMENTS CONTAINED IN THE PROPOSED RULE;

(II) DETERMINE THE NECESSITY FOR THE PROPOSED RULES AND MAKE A WRITTEN FINDING, INCLUDING THE EMPIRICAL DATA USED FOR MAKING THE FINDING, THAT THE RULES ARE NECESSARY BASED UPON ONE OR MORE OF THE FOLLOWING:

(A) THE RULES ARE REQUIRED BY STATE STATUTE OR BY A COURT RULING;

(B) THE RULES ARE REQUIRED BY FEDERAL LAW;

(C) THE RULES ARE NECESSARY BASED UPON PUBLIC HEALTH, SAFETY, OR WELFARE;

(D) THE REGULATED COMMUNITY OR INDUSTRY HAS REQUESTED THE REGULATIONS;

(III) DETERMINE THE FISCAL IMPACT OF THE PROPOSED RULES ON SMALL BUSINESSES;


(V) ANALYZE WHETHER SMALL BUSINESSES SHOULD BE EXEMPTED FROM THE RULES OR WHETHER LESS BURDENSOME RULES MAY BE APPLIED TO SMALL BUSINESSES, AND, IF THE AGENCY ADOPTS THE RULES, THE AGENCY MUST ADOPT EXEMPTIONS OR LESS BURDENSOME RULES AS APPLIED TO SMALL BUSINESSES, UNLESS THE AGENCY PROVIDES WRITTEN JUSTIFICATION FOR A MORE BURDENSOME REGULATORY APPROACH;

(d) A SMALL BUSINESS THAT IS ADVERSELY AFFECTED OR
AGGRIEVED BY THE ACTION OF AN AGENCY IN PREPARING A REGULATORY FLEXIBILITY ANALYSIS UNDER THIS SUBSECTION (4.7) AND THAT IS NOT SATISFIED WITH THE REGULATORY FLEXIBILITY ANALYSIS MAY FILE A REQUEST WITH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES, OR HIS OR HER DESIGNEE, FOR THE PREPARATION OF A COST-BENEFIT ANALYSIS AS OUTLINED IN SUBSECTION (2.5) OF THIS SECTION. THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL DETERMINE WHETHER TO REQUIRE THE AGENCY TO PREPARE A COST-BENEFIT ANALYSIS AND SHALL DIRECT THAT THE RULE-MAKING SCHEDULE FOR THE PUBLIC HEARING BE ADJUSTED TO ALLOW FOR THE PREPARATION OF A COST-BENEFIT ANALYSIS OF THE PROPOSED RULES. FOR PURPOSES OF THIS SUBSECTION (4.7), A SMALL BUSINESS IS ADVERSELY AFFECTED OR AGGRIEVED BY THE ACTION OF THE AGENCY IF THE AGENCY FAILS TO ADDRESS THE REQUIRED CRITERIA IN SUBSECTION (4.7)(c) OF THIS SECTION, INCLUDING A STATEMENT OF WHY THE AGENCY FOUND THAT THE AGENCY DID NOT NEED TO TAKE PARTICULAR ACTION UNDER SUBSECTIONS (4.7)(c)(I) TO (4.7)(c)(V) OF THIS SECTION OR, IF APPLICABLE, A WRITTEN JUSTIFICATION FOR THE AGENCY’S ACTION AS DESCRIBED IN SUBSECTION (4.7)(c)(IV) OR (4.7)(c)(V) OF THIS SECTION.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election.
to be held in November 2018 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

(2) This act applies to rule-making initiated on or after the
applicable effective date of this act.