

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-0869.01 Debbie Haskins x2045

**SENATE BILL 17-186**

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**SENATE SPONSORSHIP**

**Tate,** Jahn, Priola, Smallwood, Williams A.

**HOUSE SPONSORSHIP**

**Carver and Lawrence,**

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

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**A BILL FOR AN ACT**

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

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**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:

!      Is independently owned and operated and employs fewer

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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.

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

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

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

6 (13.5) "REGULATORY FLEXIBILITY ANALYSIS" MEANS THE WRITTEN  
7 ANALYSIS PREPARED BY AN AGENCY PURSUANT TO SECTION 24-4-103 (4.7)  
8 THAT CONSIDERS METHODS OF REDUCING THE IMPACT OF A PROPOSED  
9 RULE ON A SMALL BUSINESS.

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

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

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

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

19 **24-4-103. Rule-making - procedure - definitions - repeal.**

1 (2) When rule-making is contemplated, public announcement thereof  
2 may be made at such time and in such manner as the agency determines.  
3 The agency shall establish a representative group of participants with an  
4 interest in the subject of the rule-making to submit views or otherwise  
5 participate informally in conferences on the proposals under consideration  
6 or to participate in the public rule-making proceedings on the proposed  
7 rules. In establishing the representative group, the agency shall make  
8 diligent attempts to solicit input from representatives of each of the  
9 various stakeholder interests that may be affected positively or negatively  
10 by the proposed rules. If the agency convenes a representative group prior  
11 to issuing a notice of proposed rule-making as provided in ~~paragraph (a)~~  
12 ~~of subsection (3)~~ SUBSECTION (3)(a) of this section, the agency shall add  
13 those persons who participated in the representative group to the list of  
14 persons who receive notification of proposed rule-making as provided in  
15 ~~paragraph (b) of subsection (3)~~ SUBSECTION (3)(b) of this section. IF THE  
16 AGENCY IS PROPOSING RULES THAT ARE LIKELY TO HAVE AN IMPACT ON  
17 SMALL BUSINESSES, THE AGENCY SHALL EXPAND OUTREACH TO AND  
18 ACTIVELY SOLICIT REPRESENTATIVES OF SMALL BUSINESSES TO  
19 PARTICIPATE IN THE REPRESENTATIVE GROUP AND TO PARTICIPATE IN THE  
20 RULE-MAKING HEARING FOR THE RULES, WITH SPECIFIC ACTIONS REQUIRED  
21 FOR SMALL BUSINESS OUTREACH PRIOR TO DRAFTING THE PROPOSED  
22 RULES. THE AGENCY MUST MAKE GOOD FAITH EFFORTS TO EXPAND  
23 OUTREACH AND NOTIFICATION TO SMALL BUSINESSES, INCLUDING TO  
24 THOSE THAT MAY NOT BE IN A TRADE ASSOCIATION AND TO THOSE THAT  
25 DO NOT HAVE LOBBYISTS THAT REPRESENT THE TYPES OF SMALL  
26 BUSINESSES THAT ARE IMPACTED BY THE PROPOSED RULES. TO ASSIST  
27 SMALL BUSINESSES IN KEEPING UP WITH PROPOSED RULE-MAKING AND TO

1 ENSURE THEIR VOICES ARE HEARD WHEN AGENCIES ARE DISCUSSING  
2 PROPOSED RULES, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
3 REGULATORY AGENCIES OR HIS OR HER DESIGNEE SHALL DEVELOP A  
4 ONE-STOP LOCATION ON THE WEBSITE OF THE DEPARTMENT OF  
5 REGULATORY AGENCIES THAT PROVIDES A PLACE FOR SMALL BUSINESSES  
6 AND THE PUBLIC TO ACCESS THE REGULATORY FLEXIBILITY ANALYSES  
7 THAT ARE PREPARED BY STATE AGENCIES AND SUBMITTED TO THE  
8 SECRETARY OF STATE FOR PUBLICATION IN THE COLORADO REGISTER.

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

25 (4.7) (a) FOR PURPOSES OF THIS SUBSECTION (4.7), "SMALL  
26 BUSINESS" MEANS A BUSINESS ENTITY, INCLUDING ITS AFFILIATES, THAT  
27 IS INDEPENDENTLY OWNED AND EMPLOYS ONE HUNDRED EMPLOYEES OR

1 FEWER.

2 (b) AT THE SAME TIME THAT THE AGENCY FILES ITS NOTICE OF  
3 PROPOSED RULE-MAKING WITH THE SECRETARY OF STATE, THE AGENCY  
4 SHALL FILE A REGULATORY FLEXIBILITY ANALYSIS WITH THE SECRETARY  
5 OF STATE'S OFFICE FOR THE PROPOSED RULES AS DESCRIBED IN  
6 SUBSECTION (4.7)(c) OF THIS SECTION ALONG WITH THE DRAFT OF THE  
7 PROPOSED RULES. THE REGULATORY FLEXIBILITY ANALYSIS SHALL BE  
8 PUBLISHED IN THE COLORADO REGISTER.

9 (c) PRIOR TO THE ADOPTION OF ANY RULE, AN AGENCY SHALL  
10 PREPARE A REGULATORY FLEXIBILITY ANALYSIS IN WHICH THE AGENCY  
11 SHALL CONSIDER USING REGULATORY METHODS THAT WILL ACCOMPLISH  
12 THE OBJECTIVES OF APPLICABLE STATUTES WHILE MINIMIZING ADVERSE  
13 IMPACT ON SMALL BUSINESSES. THE AGENCY SHALL:

14 (I) CONSIDER, WITHOUT LIMITATION, EACH OF THE FOLLOWING  
15 METHODS OF REDUCING THE IMPACT OF THE PROPOSED REGULATION ON  
16 SMALL BUSINESSES:

17 (A) THE ESTABLISHMENT OF LESS STRINGENT COMPLIANCE OR  
18 REPORTING REQUIREMENTS FOR SMALL BUSINESSES;

19 (B) THE ESTABLISHMENT OF LESS STRINGENT SCHEDULES OR  
20 DEADLINES FOR COMPLIANCE OR REPORTING REQUIREMENTS FOR SMALL  
21 BUSINESSES;

22 (C) THE CONSOLIDATION OF OR SIMPLIFICATION OF COMPLIANCE  
23 OR REPORTING REQUIREMENTS FOR SMALL BUSINESSES;

24 (D) THE ESTABLISHMENT OF PERFORMANCE STANDARDS FOR  
25 SMALL BUSINESSES TO REPLACE DESIGN OR OPERATIONAL STANDARDS  
26 REQUIRED IN THE PROPOSED RULE; AND

27 (E) THE EXEMPTION OF SMALL BUSINESSES FROM ALL OR ANY PART

1 OF THE REQUIREMENTS CONTAINED IN THE PROPOSED RULE;

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

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

8 (B) THE RULES ARE REQUIRED BY FEDERAL LAW;

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

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

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

15 (IV) IDENTIFY AND ANALYZE THE LEAST COSTLY ALTERNATIVES  
16 TO THE PROPOSED RULES, INCLUDING WHETHER THE COSTS ARE  
17 NECESSARY TO MEET THE STATED PURPOSE OF THE RULES, AND, IF THE  
18 AGENCY ADOPTS THE RULES, THE AGENCY MUST ADOPT THE LEAST COSTLY  
19 ALTERNATIVE, UNLESS THE AGENCY PROVIDES WRITTEN JUSTIFICATION  
20 FOR ADOPTING A MORE COSTLY REGULATORY APPROACH; AND

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

27 (d) A SMALL BUSINESS THAT IS ADVERSELY AFFECTED OR

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

20 **SECTION 3. Act subject to petition - effective date -**  
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
22 the expiration of the ninety-day period after final adjournment of the  
23 general assembly (August 9, 2017, if adjournment sine die is on May 10,  
24 2017); except that, if a referendum petition is filed pursuant to section 1  
25 (3) of article V of the state constitution against this act or an item, section,  
26 or part of this act within such period, then the act, item, section, or part  
27 will not take effect unless approved by the people at the general election



1 to be held in November 2018 and, in such case, will take effect on the  
2 date of the official declaration of the vote thereon by the governor.

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