

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0869.01 Debbie Haskins x2045

SENATE BILL 17-186

SENATE SPONSORSHIP

Tate, Jahn, Priola, Smallwood, Williams A.

HOUSE SPONSORSHIP

Carver and Lawrence,

Senate Committees

Business, Labor, & Technology
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING METHODS TO REDUCE THE REGULATORY BURDEN ON**
102 **BUSINESSES FROM ADMINISTRATIVE RULES ADOPTED BY STATE**
103 **AGENCIES, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

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

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.

SENATE
Amended 2nd Reading
April 11, 2017

entity, including its affiliates, that:

- ! 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.

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:

1 **24-4-103. Rule-making - procedure - definitions - repeal.**

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

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

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

26 (4.7) (a) FOR PURPOSES OF THIS SUBSECTION (4.7), "SMALL
27 BUSINESS" MEANS A BUSINESS ENTITY, INCLUDING ITS AFFILIATES, THAT

1 IS INDEPENDENTLY OWNED AND EMPLOYS ONE HUNDRED EMPLOYEES OR
2 FEWER.

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

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

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

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

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

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

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

1 (E) THE EXEMPTION OF SMALL BUSINESSES FROM ALL OR ANY PART
2 OF THE REQUIREMENTS CONTAINED IN THE PROPOSED RULE;

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

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

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

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

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

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

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

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

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

21 **SECTION 3. Appropriation. (1) For the 2017-18 state fiscal**
22 **year, \$323,886 is appropriated to the department of revenue. This**
23 **appropriation consists of \$32,842 from general fund and \$291,044 from**
24 **various cash funds. To implement this act, the department may use this**
25 **appropriation as follows:**

26 (a) **\$294,900 for use by the administration section of the**
27 **enforcement business group, which consists of \$3,856 from the general**

1 fund and \$291,044 from various cash funds, which amount is based on an
2 assumption that the department will require an additional 3.3 FTE; and

3 (b) \$28,986 from the general fund for use by the taxation and
4 compliance division, which amount is based on an assumption the
5 department will require an additional 0.5 FTE.

6 (2) For the 2017-18 state fiscal year, \$102,664 is appropriated to
7 the department of public health and environment for use by the division
8 of administration and support. This appropriation is from the general
9 fund. To implement this act, the division may use this appropriation as
10 follows:

11 (a) \$96,821 for personal services, which amount is based on an
12 assumption that the division will require an additional 1.2 FTE; and

13 (b) \$5,843 for operating expenses.

14 (3) For the 2017-18 state fiscal year, \$86,926 is appropriated to
15 the department of regulatory agencies for use by the executive director's
16 office. This appropriation is from various cash funds. To implement this
17 act, the department may use this appropriation as follows:

18 (a) \$75,063 for personal services, which amount is based on an
19 assumption that the department will require an additional 0.8 FTE; and

20 (b) \$11,863 for operating expenses.

21 (4) For the 2017-18 state fiscal year, \$8,240 is appropriated to the
22 department of state for use by the business and licensing division. This
23 appropriation is from the department of state cash fund created in section
24 24-21-104 (3)(b), C.R.S. To implement this act, the division may use this
25 appropriation for personal services.

26 (5) For the 2017-18 state fiscal year, \$5,586 is appropriated to the
27 department of personnel for use by the executive director's office. This

1 appropriation is from the general fund. To implement this act, the office
2 may use this appropriation for personal services, which amount is based
3 on an assumption that the office will require an additional 0.1 FTE.

4 (6) For the 2017-18 state fiscal year, \$3,776 is appropriated to the
5 department of public safety for use by the executive director's office. This
6 appropriation is from the general fund. To implement this act, the division
7 may use this appropriation for personal services, which amount is based
8 on an assumption that the office will require an additional 0.1 FTE.

9 **SECTION 4. Act subject to petition - effective date -**
10 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
11 the expiration of the ninety-day period after final adjournment of the
12 general assembly (August 9, 2017, if adjournment sine die is on May 10,
13 2017); except that, if a referendum petition is filed pursuant to section 1
14 (3) of article V of the state constitution against this act or an item, section,
15 or part of this act within such period, then the act, item, section, or part
16 will not take effect unless approved by the people at the general election
17 to be held in November 2018 and, in such case, will take effect on the
18 date of the official declaration of the vote thereon by the governor.

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