

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

**INTRODUCED**

LLS NO. 19-0797.01 Jennifer Berman x3286

**HOUSE BILL 19-1163**

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**HOUSE SPONSORSHIP**

**Carver,**

**SENATE SPONSORSHIP**

**Smallwood and Tate,**

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**House Committees**

Energy & Environment  
Appropriations

**Senate 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>.)*

Prior to adopting rules under the "State Administrative Procedure Act" (APA), a state agency (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

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

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, an agency is required to consider methods to reduce the impact on small businesses, including the following:

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

The agency is also required to:

- ! 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 is required to 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 a representative group to give input on proposed rules is amended to require an 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 (executive director), or the executive director's 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 agencies prepare.

A small business that is adversely affected or aggrieved by the failure of an agency to comply with the regulatory flexibility analysis requirements may:

- ! File a request with the executive director 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; or
- ! Request a hearing on the matter before an administrative law judge.

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

12 **24-4-103. Rule-making - procedure - definitions - statutory**  
13 **citation correction.** (2) (a) When rule-making is contemplated, AN  
14 AGENCY MAY MAKE A public announcement ~~thereof may be made at such~~  
15 ~~time and in such~~ OF THE RULE-MAKING AT A TIME AND IN THE manner ~~as~~  
16 THAT the agency determines. The agency shall establish a representative  
17 group of participants with an interest in the subject of the rule-making to  
18 submit views or otherwise participate informally in conferences on the  
19 proposals under consideration or to participate in the public rule-making  
20 proceedings on the proposed rules. In establishing the representative

1 group, the agency shall make diligent attempts to solicit input from  
2 representatives of each of the various stakeholder interests that may be  
3 affected positively or negatively by the proposed rules. If the agency  
4 convenes a representative group prior to issuing a notice of proposed  
5 rule-making as provided in ~~paragraph (a) of subsection (3)~~ SUBSECTION  
6 (3)(a) of this section, the agency shall add those persons who participated  
7 in the representative group to the list of persons who receive notification  
8 of proposed rule-making as provided in ~~paragraph (b) of subsection (3)~~  
9 SUBSECTION (3)(b) of this section.

10 (b) (I) (A) IF THE AGENCY IS PROPOSING RULES THAT ARE LIKELY  
11 TO HAVE AN IMPACT ON SMALL BUSINESSES, THE AGENCY SHALL EXPAND  
12 OUTREACH TO AND ACTIVELY SOLICIT REPRESENTATIVES OF SMALL  
13 BUSINESSES TO PARTICIPATE IN THE REPRESENTATIVE GROUP AND TO  
14 PARTICIPATE IN THE RULE-MAKING HEARING FOR THE RULES, WITH  
15 SPECIFIC ACTIONS REQUIRED FOR SMALL BUSINESS OUTREACH PRIOR TO  
16 DRAFTING THE PROPOSED RULES. THE AGENCY SHALL MAKE GOOD-FAITH  
17 EFFORTS TO EXPAND OUTREACH AND NOTIFICATION TO SMALL BUSINESSES,  
18 INCLUDING TO THOSE SMALL BUSINESSES THAT ARE NOT IN A TRADE  
19 ASSOCIATION AND THOSE THAT DO NOT HAVE A LOBBYIST THAT  
20 REPRESENTS THE TYPES OF SMALL BUSINESSES THAT ARE AFFECTED BY  
21 THE PROPOSED RULES.

22 (B) IF THE AGENCY HAS E-MAIL CONTACT INFORMATION FOR A  
23 SMALL BUSINESS THAT MIGHT BE AFFECTED BY A RULE THAT THE AGENCY  
24 IS CONTEMPLATING TO PROPOSE, THE AGENCY SHALL E-MAIL THE SMALL  
25 BUSINESS AND REQUEST THE SMALL BUSINESS'S PARTICIPATION IN AND  
26 VIEWS ON THE RULE BEING CONTEMPLATED.

27 (II) TO ASSIST SMALL BUSINESSES IN MONITORING PROPOSED

1 RULE-MAKING AND TO ENSURE THEIR VOICES ARE HEARD WHEN AGENCIES  
2 ARE DISCUSSING PROPOSED RULES, THE EXECUTIVE DIRECTOR OF THE  
3 DEPARTMENT OF REGULATORY AGENCIES OR THE EXECUTIVE DIRECTOR'S  
4 DESIGNEE SHALL DEVELOP A WEB PAGE ON THE DEPARTMENT OF  
5 REGULATORY AGENCIES' PUBLIC WEBSITE, TO WHICH THERE IS A  
6 CONSPICUOUS LINK FROM THE PUBLIC WEBSITE'S HOME PAGE, WHERE  
7 MEMBERS OF THE PUBLIC, INCLUDING SMALL BUSINESSES, MAY ACCESS  
8 AGENCIES' REGULATORY FLEXIBILITY ANALYSES PREPARED PURSUANT TO  
9 SUBSECTION (4.7) OF THIS SECTION.

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 MADE IN ACCORDANCE WITH THIS  
15 SUBSECTION (4)(a). Any proposed rule or revised proposed rule by an  
16 agency ~~which~~ THAT is to be considered at the public hearing, together  
17 with a proposed statement of basis, specific statutory authority, purpose,  
18 ~~and~~ the regulatory analysis ~~required in~~ PREPARED PURSUANT TO  
19 subsection (4.5) of this section, ~~shall~~ AND THE REGULATORY FLEXIBILITY  
20 ANALYSIS PREPARED PURSUANT TO SUBSECTION (4.7) OF THIS SECTION,  
21 MUST be made available to any person at least five days ~~prior to said~~  
22 BEFORE THE hearing. The rules promulgated by the agency ~~shall~~ MUST be  
23 based on the record, which ~~shall consist~~ CONSISTS of proposed rules,  
24 evidence, exhibits, and other matters presented or considered, matters  
25 officially noticed, rulings on exceptions, any findings of fact and  
26 conclusions of law proposed by any party, and any written comments or  
27 briefs filed.

1 (4.7) (a) FOR PURPOSES OF THIS SUBSECTION (4.7), "SMALL  
2 BUSINESS" MEANS A BUSINESS ENTITY, INCLUDING ITS AFFILIATES, THAT  
3 IS INDEPENDENTLY OWNED AND EMPLOYS ONE HUNDRED EMPLOYEES OR  
4 FEWER.

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

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

17 (I) CONSIDER METHODS OF REDUCING THE IMPACT OF THE  
18 PROPOSED REGULATION ON SMALL BUSINESSES, INCLUDING EACH OF THE  
19 FOLLOWING METHODS:

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

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

25 (C) THE CONSOLIDATION OR SIMPLIFICATION OF COMPLIANCE OR  
26 REPORTING REQUIREMENTS FOR SMALL BUSINESSES;

27 (D) THE ESTABLISHMENT OF PERFORMANCE STANDARDS FOR

1 SMALL BUSINESSES TO REPLACE DESIGN OR OPERATIONAL STANDARDS  
2 REQUIRED IN THE PROPOSED RULE; AND

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

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

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

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

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

14 (D) THE REGULATED COMMUNITY OR INDUSTRY HAS REQUESTED  
15 THE RULES;

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

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

24 AND

25 (V) ANALYZE WHETHER SMALL BUSINESSES SHOULD BE EXEMPTED  
26 FROM THE RULES OR WHETHER LESS BURDENSOME RULES MAY BE APPLIED  
27 TO SMALL BUSINESSES, AND, IF THE AGENCY ADOPTS THE RULES, THE

1 AGENCY SHALL ADOPT EXEMPTIONS OR LESS BURDENSOME RULES AS  
2 APPLIED TO SMALL BUSINESSES UNLESS THE AGENCY PROVIDES WRITTEN  
3 JUSTIFICATION FOR A MORE BURDENSOME REGULATORY APPROACH.

4 (d) (I) A SMALL BUSINESS THAT IS ADVERSELY AFFECTED OR  
5 AGGRIEVED BY THE ACTION OF AN AGENCY IN PREPARING A REGULATORY  
6 FLEXIBILITY ANALYSIS UNDER THIS SUBSECTION (4.7) AND THAT IS NOT  
7 SATISFIED WITH THE REGULATORY FLEXIBILITY ANALYSIS MAY:

8 (A) FILE A REQUEST WITH THE EXECUTIVE DIRECTOR OF THE  
9 DEPARTMENT OF REGULATORY AGENCIES, OR THE EXECUTIVE DIRECTOR'S  
10 DESIGNEE, FOR THE PREPARATION OF A COST-BENEFIT ANALYSIS AS  
11 OUTLINED IN SUBSECTION (2.5) OF THIS SECTION, IN WHICH CASE THE  
12 EXECUTIVE DIRECTOR, OR THE EXECUTIVE DIRECTOR'S DESIGNEE, SHALL  
13 REQUIRE THE AGENCY TO PREPARE A COST-BENEFIT ANALYSIS AND SHALL  
14 DIRECT THAT THE RULE-MAKING SCHEDULE FOR THE PUBLIC HEARING BE  
15 ADJUSTED TO ALLOW FOR THE PREPARATION OF A COST-BENEFIT ANALYSIS  
16 OF THE PROPOSED RULES; OR

17 (B) REQUEST A HEARING ON THE MATTER WITH THE DEPARTMENT  
18 OF REGULATORY AGENCIES. UPON RECEIVING THE REQUEST, THE  
19 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES, OR  
20 THE EXECUTIVE DIRECTOR'S DESIGNEE, SHALL ASSIGN AN ADMINISTRATIVE  
21 LAW JUDGE WHO HAS ALREADY BEEN APPOINTED PURSUANT TO PART 10  
22 OF ARTICLE 30 OF THIS TITLE 24 TO PROVIDE SERVICES FOR THE  
23 DEPARTMENT OF REGULATORY AGENCIES TO HEAR THE MATTER. THE  
24 ADMINISTRATIVE LAW JUDGE SHALL PROVIDE NOTICE OF, AND AN  
25 OPPORTUNITY TO BE HEARD AT, THE HEARING TO THE SMALL BUSINESS  
26 REQUESTING THE HEARING AND THE AGENCY THAT PREPARED THE  
27 REGULATORY FLEXIBILITY ANALYSIS. THE ADMINISTRATIVE LAW JUDGE

1 SHALL CONDUCT THE HEARING IN ACCORDANCE WITH SECTION 24-4-105.  
2 THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION ON THE MATTER IS A  
3 FINAL AGENCY ACTION SUBJECT TO JUDICIAL REVIEW PURSUANT TO  
4 SECTION 24-4-106.

5 (II) FOR PURPOSES OF THIS SUBSECTION (4.7), A SMALL BUSINESS  
6 IS ADVERSELY AFFECTED OR AGGRIEVED BY THE ACTION OF AN AGENCY IF  
7 THE AGENCY FAILS TO ADDRESS THE REQUIRED CRITERIA IN SUBSECTION  
8 (4.7)(c) OF THIS SECTION, INCLUDING A FAILURE TO PREPARE A STATEMENT  
9 OF WHY THE AGENCY FOUND THAT THE AGENCY DID NOT NEED TO TAKE  
10 PARTICULAR ACTION UNDER SUBSECTIONS (4.7)(c)(I) TO (4.7)(c)(V) OF  
11 THIS SECTION OR, IF APPLICABLE, A FAILURE TO PROVIDE A WRITTEN  
12 JUSTIFICATION FOR THE AGENCY'S ACTION AS DESCRIBED IN SUBSECTION  
13 (4.7)(c)(IV) OR (4.7)(c)(V) OF THIS SECTION.

14 **SECTION 3. Act subject to petition - effective date -**  
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
16 the expiration of the ninety-day period after final adjournment of the  
17 general assembly (August 2, 2019, if adjournment sine die is on May 3,  
18 2019); except that, if a referendum petition is filed pursuant to section 1  
19 (3) of article V of the state constitution against this act or an item, section,  
20 or part of this act within such period, then the act, item, section, or part  
21 will not take effect unless approved by the people at the general election  
22 to be held in November 2020 and, in such case, will take effect on the  
23 date of the official declaration of the vote thereon by the governor.

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