

## HOUSE BILL NO. HB0170

Administrative procedure-regulatory costs.

Sponsored by: Representative(s) Western and Olsen and  
Senator(s) Driskill

A BILL

for

1 AN ACT relating to administrative procedure; providing for  
2 the preparation of statements of estimated regulatory costs  
3 of an agency rule; specifying the information required for  
4 a statement of estimated regulatory costs; providing for  
5 proposed regulatory alternatives to an agency rule;  
6 requiring agencies to consider alternatives to mitigate  
7 impacts on small businesses, counties, cities and towns;  
8 providing for challenges to an agency rule as specified;  
9 providing a definition; specifying applicability; and  
10 providing for an effective date.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14 **Section 1.** W.S. 16-3-103.1 and 16-3-103.2 are created  
15 to read:

1

2           **16-3-103.1. Statement of estimated regulatory costs.**

3

4           (a) Pursuant to W.S. 16-3-103(k), a statement of  
5 estimated regulatory costs shall include an economic  
6 analysis showing whether the rule, directly or indirectly,  
7 is likely to:

8

9                   (i) Have an adverse impact on economic growth,  
10 private sector job creation, employment or private sector  
11 investment in excess of one hundred thousand dollars  
12 (\$100,000.00) in the aggregate within five (5) years after  
13 the implementation of the rule;

14

15                   (ii) Have an adverse impact on business  
16 competitiveness, including the ability of persons doing  
17 business in the state to compete with persons doing similar  
18 business in other states or domestic markets, productivity,  
19 or innovation in excess of one hundred thousand dollars  
20 (\$100,000.00) in the aggregate within five (5) years after  
21 the implementation of the rule; or

22

1           (iii) Increase regulatory costs in excess of one  
2 hundred thousand dollars (\$100,000.00) in the aggregate  
3 within five (5) years after the implementation of the rule.

4

5           (b) In addition to the economic analysis required  
6 under W.S. 16-3-103(k) and subsection (a) of this section,  
7 the statement of estimated regulatory costs shall include:

8

9           (i) An estimate of the number of persons and  
10 entities likely to be required to comply with the rule,  
11 together with a general description of the types of persons  
12 likely to be affected by the rule;

13

14           (ii) An estimate of the cost to the agency and  
15 other state and local government entities to implement and  
16 enforce the proposed rule and any anticipated effect on  
17 state or local revenues;

18

19           (iii) A good faith estimate of the transactional  
20 costs likely to be incurred by persons and entities,  
21 including local government entities, required to comply  
22 with the requirements of the rule;

23

1           (iv) A description of any regulatory  
2 alternatives submitted under W.S. 16-3-103(n) and  
3 16-3-103.2(a) and a statement adopting the regulatory  
4 alternatives or a statement of the reasons for rejecting  
5 the regulatory alternatives;

6

7           (v) Additional analysis, as necessary, of the  
8 impact on small businesses, counties, cities and towns if  
9 an agency does not adopt the regulatory alternatives  
10 submitted under W.S. 16-3-103(n) and 16-3-103.2(a);

11

12           (vi) Any additional information that the agency  
13 determines may be useful.

14

15           (c) As used in this section, "transactional costs"  
16 means the direct costs that are readily ascertainable based  
17 on standard business practices, including filing fees, the  
18 cost of obtaining a license, the cost of equipment required  
19 to be installed or used, the cost of procedures required to  
20 be employed in complying with the rule, additional  
21 operating costs incurred, the cost of monitoring and  
22 reporting and any other costs necessary to comply with the  
23 rule.

1

2 (d) An agency shall not be required to prepare a  
3 statement of estimated regulatory costs for any emergency  
4 rule, interpretive rule or statements of general policy.

5

6 (e) Any rule that is likely to have an adverse impact  
7 in excess of one hundred thousand dollars (\$100,000.00) in  
8 the aggregate within five (5) years after the  
9 implementation or enforcement of the rule pursuant to  
10 subsection (a) of this section, shall not be implemented or  
11 enforced until approved by the legislature in the next  
12 succeeding legislative session after the agency's final  
13 action on the rule. If the legislature, each house voting  
14 separately, approves of the rule, the rule may be  
15 implemented or enforced after compliance with all other  
16 applicable provisions of law. If the legislature fails to  
17 approve the rule, the rule is null and void and shall not  
18 be implemented or enforced.

19

20 **16-3-103.2. Procedure for a lower cost regulatory**  
21 **alternative; revised statements of regulatory costs;**  
22 **challenges based on noncompliance.**

23

1           (a) Within the forty-five (45) days after an agency  
2 gives notice of a proposed rule as required under W.S.  
3 16-3-103(a)(i), an interested person may submit to the  
4 agency a written proposal for a lower cost regulatory  
5 alternative to a proposed rule that substantially  
6 accomplishes the objectives of the rule being promulgated.  
7 The proposal may include the alternative of not adopting  
8 any rule if the proposal explains the lower costs and the  
9 objectives of the rule will be achieved by not adopting any  
10 rule. Upon the submission of the lower cost regulatory  
11 alternative, the agency shall prepare or revise a statement  
12 of estimated regulatory costs pursuant to W.S. 16-3-103.1.  
13 The agency shall either adopt the alternative or provide a  
14 statement of the reasons for rejecting the alternative in  
15 favor of the proposed rule in a manner as similar as  
16 possible to the procedure outlined in W.S. 16-3-103(o).

17

18           (b) The agency shall prepare or revise the statement  
19 of estimated regulatory costs if any change to the rule is  
20 made pursuant to subsection (a) of this section that would  
21 increase the regulatory costs of the rule.

22

1           (c) Not less than twenty-one (21) days before filing  
2 a rule for adoption, an agency that is required to revise a  
3 statement of estimated regulatory costs shall provide the  
4 revised statement to the person who submitted the lower  
5 cost regulatory alternative and to the management council  
6 and shall provide notice on the agency's website that the  
7 revised statement is available to the public.

8

9           (d) The failure of an agency to prepare a statement  
10 of estimated regulatory costs or to respond to a written  
11 lower cost regulatory alternative as provided in this  
12 section is grounds for noncompliance with the applicable  
13 procedural requirements of rulemaking set forth in this  
14 chapter. An agency's failure to prepare a statement of  
15 estimated regulatory costs or to respond to a written lower  
16 cost regulatory alternative may not be raised in a  
17 proceeding to contest any rule on the ground of  
18 noncompliance unless:

19

20           (i) The challenge is commenced within two (2)  
21 years from the effective date of the rule;

22

1           (ii) The challenge is to the agency's rejection  
2 of a lower cost regulatory alternative offered under W.S.  
3 16-3-103(n) or 16-3-103.2(a); and

4

5           (iii) The interests of the person challenging  
6 the rule are materially affected by the agency's failure to  
7 prepare a statement of estimated regulatory costs or by the  
8 rejection of the lower cost regulatory alternative.

9

10         **Section 2.** W.S. 16-3-101(b) by creating a new  
11 paragraph (xiii) and by renumbering (xiii) as (xiv) and  
12 16-3-103(a)(i) by creating a new subparagraph (M) and by  
13 creating new subsections (k) through (o) are amended to  
14 read:

15

16         **16-3-101. Short title; definitions.**

17

18         (b) As used in this act:

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20           (xiii) "Small business" means a business that  
21 employs two hundred (200) or fewer permanent full-time  
22 employees and that, together with its affiliates as defined  
23 by W.S. 9-12-1302(a)(i), has a net worth of not more than



1 five million dollars (\$5,000,000.00) in business  
2 investments. If the business is a sole proprietorship, the  
3 five million dollars (\$5,000,000.00) net worth requirement  
4 shall include both personal and business investments;

5

6 ~~(xiii)~~(xiv) "This act" means W.S. 16-3-101  
7 through 16-3-115.

8

9 16-3-103. Adoption, amendment and repeal of rules;  
10 notice; hearing; emergency rules; proceedings to contest;  
11 review and approval by governor; statement of estimated  
12 regulatory costs; mitigation of regulatory costs.

13

14 (a) Prior to an agency's adoption, amendment or  
15 repeal of all rules other than interpretative rules or  
16 statements of general policy, the agency shall:

17

18 (i) Give at least forty-five (45) days notice of  
19 its intended action. Notice shall be mailed to all persons  
20 making timely requests of the agency for advanced notice of  
21 its rulemaking proceedings and to the attorney general, the  
22 secretary of state's office as registrar of rules, and the  
23 legislative service office if a state agency. The agency

1 shall submit a copy of the proposed rules, in a format  
2 conforming to any requirements prescribed pursuant to  
3 subsection (f) of this section, with the notice given to  
4 the legislative service office. The notice shall include:

5

6 (M) The manner in which an interested  
7 person may submit to the agency a written proposal for a  
8 lower cost regulatory alternative to the proposed rule,  
9 pursuant to W.S. 16-3-103.2(a).

10

11 (k) In addition to all other requirements for the  
12 adoption, amendment or repeal of a rule under this section,  
13 other than an emergency rule, interpretive rule or  
14 statements of general policy, an agency shall consider the  
15 regulatory costs of the proposed rule and shall prepare a  
16 statement of estimated regulatory costs of the proposed  
17 rule before the adoption, amendment or repeal of any rule,  
18 if:

19

20 (i) The proposed rule will have an adverse  
21 impact on small business as provided in W.S.  
22 16-3-103.1(a)(i);

23

1           (ii) The proposed rule is likely to directly or  
2 indirectly increase regulatory costs for small businesses  
3 in excess of one hundred thousand dollars (\$100,000.00) in  
4 the aggregate within five (5) years after the  
5 implementation of the rule;

6  
7           (iii) An interested person submits to the agency  
8 a written proposal for a lower cost regulatory alternative  
9 to the proposed rule under W.S. 16-3-103.2(a).

10  
11          (m) Each agency, before the adoption, amendment or  
12 repeal of any rules, shall consider the impact of the rules  
13 on small businesses and the impact of the rule on counties,  
14 cities and towns. Whenever practicable, an agency shall  
15 formulate provisions within the agency's rule to reduce  
16 disproportionate impacts on small businesses, counties,  
17 cities or towns and to avoid regulating those entities that  
18 are not significantly within the purpose of the agency's  
19 rule. The agency shall consider each of the following  
20 methods for reducing the impact of a proposed rule on small  
21 businesses, counties, cities, towns or any combination of  
22 these entities:

23

1           (i) Establishing less stringent compliance or  
2 reporting requirements in the rule;

3  
4           (ii) Establishing less stringent schedules or  
5 deadlines in the rule for compliance or reporting  
6 requirements;

7  
8           (iii) Consolidating or simplifying the rule's  
9 compliance or reporting requirements;

10  
11           (iv) Establishing performance standards or best  
12 management practices to replace design or operational  
13 standards in the rule;

14  
15           (v) Where legally permissible, exempting small  
16 businesses, counties, cities or towns, or any combination  
17 of those entities, from any or all requirements of the  
18 rule.

19  
20           (n) If the agency determines that the proposed  
21 adoption, amendment or repeal of a rule will affect small  
22 businesses as provided in subsection (m) of this section,  
23 the agency shall send written notice of the rule to the

1 Wyoming business council and the Wyoming office of tourism  
2 not less than forty-five (45) days before the notice period  
3 required by paragraph (a)(i) of this section. The Wyoming  
4 business council and the Wyoming office of tourism shall  
5 consider and offer to the agency any regulatory  
6 alternatives determined by the council or office to be  
7 feasible and consistent with the stated objectives of the  
8 proposed rule and that would reduce the impact on small  
9 businesses. The alternatives shall be submitted within  
10 twenty-eight (28) days after receipt of the notice from the  
11 agency as required by this subsection. The agency shall  
12 adopt all or any portion of the regulatory alternatives  
13 offered by the Wyoming business council and the Wyoming  
14 office of tourism that are feasible and consistent with the  
15 stated objectives of the proposed rule. If the adopted  
16 regulatory alternatives represent substantive changes to  
17 the rules, the agency may determine to withdraw the rules  
18 and resubmit the adopted alternative rules under this  
19 section. Based on a determination that all or any portion  
20 of the regulatory alternatives are impracticable or for  
21 other good cause shown, the agency may elect to not adopt  
22 the regulatory alternatives. An agency shall not be  
23 required to consider or adopt any proposed regulatory

1 alternatives if the Wyoming business council or the Wyoming  
2 office of tourism does not provide any alternatives to the  
3 agency within the timeframe specified in this subsection.

4  
5 (o) If an agency does not adopt all or any portion of  
6 the regulatory alternatives offered by the Wyoming business  
7 council and the Wyoming office of tourism as required by  
8 subsection (n) of this section, the agency shall include a  
9 detailed written statement and a copy of all of the  
10 proposed regulatory alternatives with the copy of the  
11 proposed rule when giving notice pursuant to paragraph  
12 (a)(i) of this section to explain the reasons for electing  
13 to not adopt all or a portion of any proposed regulatory  
14 alternatives.

15  
16 **Section 3.** This act shall apply to all agency rules  
17 that are adopted, amended or repealed on or after the  
18 effective date of this act.

19  
20 **Section 4.** This act is effective July 1, 2024.

21  
22 (END)