

AN ACT

RELATING TO BUSINESS; ENACTING THE SMALL BUSINESS REGULATORY RELIEF ACT; PROVIDING FOR REGULATORY FLEXIBILITY; REQUIRING STATE AGENCIES TO PREPARE REGULATORY FLEXIBILITY ANALYSES AND ECONOMIC IMPACT STATEMENTS ON PROPOSED RULES; REQUIRING PERIODIC REVIEW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Small Business Regulatory Relief Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

B. small businesses bear a disproportionate share of regulatory costs and burdens;

C. fundamental changes that are needed in the regulatory culture of agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

D. when adopting rules to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small businesses;

E. uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs, upon small businesses with limited resources;

F. the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;

G. unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

H. the practice of treating all regulated businesses as equivalent may lead to inefficient use of agency resources, enforcement problems and, in some cases, to actions inconsistent with stated legislative intent of health, safety, environmental, economic welfare and other legislation;

I. alternative regulatory approaches that do not conflict with state objectives of applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

J. the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the effect of proposed and existing rules on such businesses and to review the continued need for existing rules.

Section 3. DEFINITIONS.--As used in the Small Business Regulatory Relief Act:

A. "agency" means any department, agency, board, commission, committee or council of the executive branch;

B. "proposed rule" means a proposal by an agency for a new rule or for a change in, addition to or repeal of an existing rule;

C. "rule" means any rule, regulation, order, standard or statement of policy, including amendments to or repeals of any of those, issued or promulgated by an agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed a rule nor shall it constitute specific adoption of a rule by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the New Mexico girls' school or a public hospital; or rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from an educational

institution; and

D. "small business" means a business entity, including its affiliates, that is independently owned and operated and employs fewer than fifty employees.

Section 4. ECONOMIC IMPACT STATEMENTS.--Prior to the adoption of a proposed rule that may have an adverse effect on small businesses, an agency shall prepare an economic impact statement that includes the following:

A. an identification and estimate of the number of small businesses that will be subject to the rule;

B. the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary to prepare the reports or records;

C. a statement of the probable effect on affected small businesses; and

D. a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

Section 5. REGULATORY FLEXIBILITY ANALYSIS.--Prior to the adoption of a proposed rule after December 31, 2005 that may adversely affect a small business, each agency that promulgates rules that affect small businesses shall prepare a regulatory flexibility analysis in which the agency, where consistent with health, safety, environmental and economic

welfare, shall consider using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse effects on small businesses. The agency shall consider each of the following methods of reducing the effect of the proposed rule on small businesses:

A. establishment of less stringent compliance or reporting requirements for small businesses;

B. establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

C. consolidation or simplification of compliance or reporting requirements for small businesses;

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

E. exemption of small businesses from all or part of the requirements in the proposed rule.

Section 6. SMALL BUSINESS REGULATORY REVIEW COMMITTEE
CREATED--MEMBERSHIP--POWERS AND DUTIES.--

A. The "small business regulatory review committee" is created consisting of nine members who are current or former small business owners appointed by the governor. Members shall serve two-year terms. A member shall not serve more than three consecutive terms. The governor shall name the chairperson of the committee, and the members

may select a vice chairperson from the membership. The committee shall meet at the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

B. The committee is administratively attached to the economic development department and staff for the committee shall be provided by the department.

C. In determining if a proposed rule has a significant effect on small businesses, the committee may:

(1) direct the agency to prepare a regulatory flexibility analysis no later than the end of the public comment period that follows notice of the proposed rule; and

(2) request the agency to prepare a final assessment report no later than the end of the public comment period that follows the notice of the proposed rule; provided that the committee shall request a final assessment report only in cases in which the committee determines that information in addition to the agency's economic impact is critical to the committee's determination that a proposed rule will have a significant adverse effect on small business.

D. The committee does not have authority to:

(1) interfere with, modify, prevent or delay

an agency or administrative enforcement action;

(2) intervene in legal actions; or

(3) subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

Section 7. PERIODIC REVIEW OF RULES.--

A. By July 1, 2010, each agency shall have reviewed all its rules that existed on the effective date of the Small Business Regulatory Relief Act to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses, subject to compliance with the stated objectives of the laws pursuant to which the rules were adopted.

B. Rules adopted and promulgated after the effective date of the Small Business Regulatory Relief Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses while implementing the state objectives of the laws pursuant to which the rules were adopted.

C. In reviewing its rules to minimize economic impacts on small businesses, an agency shall consider the following factors:

(1) continued need for the rule;

(2) the nature of complaints or comments

received from the public concerning the rule;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005._____