

SENATE, No. 2410

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 10, 2003

Sponsored by:

Senator JOSEPH M. KYRILLOS, JR.
District 13 (Middlesex and Monmouth)
Senator MARTHA W. BARK
District 8 (Burlington)

Co-Sponsored by:

Senators Gill and Allen

SYNOPSIS

Expands scope of New Jersey Regulatory Flexibility Act dealing with impact of rules on small businesses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/1/2003)

S2410 KYRILLOS, BARK

2

1 AN ACT expanding components of administrative rule-making that
2 deal with impact of rule on small businesses and amending and
3 supplementing P.L.1986, c.169 (C.52:14B-16 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 2 of P.L.1986, c.169 (C.52:14B-17) is amended to read
9 as follows:

10 2. As used in this act, "small business" means any business including its affiliates, which is resident in this State, independently
11 owned and operated and not dominant in its field, and which employs
12 fewer than **[100]** 500 full-time employees or has gross annual sales
13 of less than \$6 million.
14

15 (cf: P.L.1986, c.169, s.2)
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17 2. Section 3 of P.L.1986, c.169 (C.52:14B-18) is amended to read
18 as follows:

19 3. In developing and proposing a rule for adoption, the agency
20 involved shall utilize approaches which will accomplish the objectives
21 of applicable statutes while minimizing any adverse economic impact
22 of the proposed rule on small businesses of different types and of
23 differing sizes. Consistent with the objectives of applicable statutes,
24 the agency shall utilize such approaches as:

25 a. The establishment of differing compliance or reporting
26 requirements or timetables that take into account the resources
27 available to small businesses;

28 b. The consolidation or simplification of compliance or reporting
29 requirements for small businesses;

30 c. The use of performance rather than design standards; and

31 **[c.]** d. An exemption from coverage by the rule, or by any part
32 thereof, for small businesses so long as the public health, safety, or
33 general welfare is not endangered.

34 (cf: P.L.1986, c.169, s.3)
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36 3. Section 4 of P.L.1986, c.169 (C.52:14B-19) is amended to read
37 as follows:

38 4. In proposing a rule for adoption, the agency involved shall issue
39 a regulatory flexibility analysis regarding the rule, which shall be
40 included in the notice of a proposed rule as required by subsection (a)
41 of section 4 of P.L.1968, c.410 (C.52:14B-4). Each regulatory
42 flexibility analysis shall contain:

43 a. A description of the types and an estimate of the number of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 small businesses to which the proposed rule will apply;

2 b. A description of the reporting, record-keeping and other
3 compliance requirements being proposed for adoption, and the kinds
4 of professional services that a small business is likely to need in order
5 to comply with the requirements;

6 c. An estimate of the initial capital costs and an estimate of the
7 annual cost of complying with the rule, with an indication of any likely
8 variation in the costs for small businesses of different types and of
9 differing sizes; and

10 d. An indication of how the rule, as proposed for adoption, is
11 designed to minimize any adverse economic impact of the proposed
12 rule on small businesses.

13 This section shall not apply to any proposed rule which the agency
14 finds would not impose reporting, record-keeping, or other compliance
15 requirements on small businesses. The agency's finding and an
16 indication of the basis for its finding shall be included in the notice of
17 a proposed rule as required by subsection (a) of section 4 of P.L.1968,
18 c.410 (C.52:14B-4).

19 The agency shall transmit a copy of a proposed rule, or any notice
20 of intent for a proposed rule-making proceeding, to the New Jersey
21 Commerce and Economic Development Commission when a
22 regulatory flexibility analysis has been, or will be, performed pursuant
23 to this section regarding the rule due to an impact on small businesses.
24 The copy shall be transmitted when the notice of proposed rule is
25 given pursuant to subsection (a) of section 4 of P.L.1968, c.410
26 (C.52:14B-4), or when the notice of intent for a proposed rule making
27 proceeding is published pursuant to subsection (e) of that section. The
28 commission shall advise and assist an agency in its compliance with
29 P.L.1986, c.169 (C.52:14B-16 et seq.). The commission may conduct
30 its own regulatory flexibility analysis, modified as needed by the
31 commission, on the proposed or intended rule and submit any
32 comments it deems appropriate to the agency. An agency shall
33 cooperate with the commission and shall consider, prior to the
34 adoption of the proposed rule or in the development of a rule, the
35 commission's advice and assistance.

36 (cf: P.L.1986, c.169, s.4)

37

38 4. (New section) The Legislature finds and declares that:

39 a. A vibrant and growing small business sector is critical to
40 creating jobs in a dynamic economy. However, small businesses bear
41 a disproportionate share of regulatory costs and burdens.

42 Uniform regulatory and reporting requirements can impose
43 unnecessary and disproportionately burdensome demands, including
44 legal, accounting, and consulting costs, upon small businesses with
45 limited resources. The failure to recognize differences in the scale and
46 resources of regulated businesses can adversely affect competition in

1 the marketplace, discourage innovation, and restrict improvements in
2 productivity. Unnecessary regulations create entry barriers in many
3 industries and discourage potential entrepreneurs from introducing
4 beneficial products and processes.

5 The practice of treating all regulated businesses as equivalent may
6 lead to inefficient use of regulatory agency resources, enforcement
7 problems, and, in some cases, to actions inconsistent with the
8 legislative intent of health, safety, environmental, and economic
9 welfare legislation.

10 b. The regulatory and enforcement culture of State agencies can be
11 more responsive to small business without compromising the statutory
12 missions of the agencies. When adopting rules to protect the health,
13 safety, and economic welfare of New Jersey, State agencies should
14 seek to achieve statutory goals as effectively and efficiently as possible
15 without imposing unnecessary burdens on small employers. Alternative
16 regulatory approaches which do not conflict with the stated objective
17 of applicable statutes may be available to minimize the significant
18 economic impact of rules on small businesses.

19 c. Therefore, the process by which State rules are developed and
20 adopted should require agencies to solicit the ideas and comments of
21 small businesses, to examine the impact of proposed and existing rules
22 on such businesses, and to review the continued need for existing
23 rules. Judicial review for compliance should be available for small
24 businesses.

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26 5. (New section) An agency seeking to continue in effect an
27 expiring rule by duly proposing for re-adoption the rule, with or
28 without amendment, prior to its expiration pursuant to section 10 of
29 P.L.2001, c.5 (C.52:14B-5.1), shall consider, as part of the regulatory
30 flexibility analysis, the following factors to ensure that any adverse
31 economic impact of the rule on small businesses is minimized in a
32 manner consistent with the objectives of the applicable statutes:

- 33 a. The continued need for the rule;
34 b. The nature of complaints or comments received from the public
35 concerning the rule;
36 c. The complexity of the rule;
37 d. The extent to which the rule overlaps, duplicates, or conflicts
38 with other federal, State, and local governmental rules; and
39 e. The length of time since the rule has been evaluated or the
40 degree to which technology, economic conditions, or other factors
41 have changed in the area affected by the rule.

42 The agency's consideration of, and findings regarding, these factors
43 shall be described in the regulatory flexibility analysis issued on the
44 proposed rule pursuant to section 4 of P.L.1986, c.169 (C.52:14B-19).

45 In all other cases, the agency shall conduct and complete a
46 regulatory flexibility analysis and consider the additional factors set

1 forth in the section by the end of each five year period following the
2 effective date of a rule. The agency's consideration of, and findings
3 regarding, these factors as well as the regulatory analysis shall be filed
4 in writing for the record with the Office of Administrative Law and the
5 New Jersey Commerce and Economic Development Commission.

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7 6. (New section) For any rule subject to regulatory flexibility
8 analysis, a small business that is adversely affected or aggrieved by
9 final agency action shall be entitled to judicial review by the Appellate
10 Division of the Superior Court of agency compliance with the
11 requirements of P.L.1986, c.169 (C.52:14B-16 et seq.). A small
12 business may seek such review during the period beginning on the date
13 of final agency action and ending one year later. For the purpose of
14 this section, "date of final agency action" includes the date of
15 adoption of a rule or of an amendment to a rule, or of readoption of
16 a rule due to expiration.

17 In granting any relief in an action instituted pursuant to this section,
18 the court shall order the agency to take corrective action consistent
19 with P.L.1986, c.169, including, but not limited to, remanding the rule
20 to the agency, and deferring the enforcement of the rule against small
21 businesses unless the court finds that continued enforcement of the
22 rule is in the public interest.

23 Nothing in this section shall be construed to limit the authority of
24 any court to review agency action which review is available, or
25 provided for, by any other law; to stay the effective date of any rule or
26 provision thereof under any other provision of law; or to grant any
27 other relief in addition to the provisions of this section.

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29 7. This act shall take effect on the first day of the sixth month
30 following enactment.

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33 STATEMENT

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35 The purpose of this bill is to update the "New Jersey Regulatory
36 Flexibility Act," P.L.1986, c.169 (C.52:14B-16 et seq.), so that it
37 substantially reflects all the provisions of the model regulatory
38 flexibility legislation presented for consideration to all state
39 legislatures by the Office of Advocacy of the United States Small
40 Business Administration.

41 While the focus of the office's activity has been mostly on the
42 federal level, the office recognizes that state and local governments
43 can also be a source of burdensome regulations for small businesses.
44 According to the office, many states have some provisions that deal
45 with this subject; few have the complete package that includes all of
46 the important components in the model legislation. The objective of

1 this model legislation is to foster a climate in which small businesses
2 can continue to prosper and remain the viable economic force small
3 business has always been.

4 This bill adds to New Jersey's law a findings and declarations
5 statement to explain the need for a specific focus on small business in
6 the regulatory process, to specify the Legislature's goal in passing the
7 "New Jersey Regulatory Flexibility Act", and to provide guidance for
8 the Executive Branch in implementing the act and for the judiciary in
9 interpreting the act.

10 The bill broadens the definition of small business from a business
11 that employs fewer than 100 full-time employees to one which, along
12 with its affiliates, employs fewer than 500 full-time employees or has
13 gross annual sales of less than \$6 million.

14 The bill will require an agency to use, when developing rules,
15 consolidation or simplification of a compliance or reporting
16 requirement for small businesses as an approach to minimize the rule's
17 impact on small businesses.

18 Under the bill, a review using additional specified factors is to be
19 conducted by an agency at the time a rule that impacts small
20 businesses is proposed for re-adoption upon its expiration (which is
21 generally every five years), or in any other case every five years, to
22 ensure that the rule continues to have a minimal impact on small
23 businesses. Judicial review of compliance with the regulatory
24 flexibility act by an agency may be instituted by any small business
25 adversely affected or aggrieved by final agency action within one year
26 following the agency action. The relief that a court may provide is
27 also noted in the bill,

28 Finally, the bill requires that each proposed rule, or intent for
29 proposed rule-making, be transmitted by an agency to the New Jersey
30 Commerce and Economic Development Commission. The commission
31 is required by the bill to advise and assist agencies in compliance with
32 the "New Jersey Regulatory Flexibility Act," thus providing an office
33 within the Executive Branch which will focus and lead the effort
34 towards regulatory flexibility for small employers.