

ASSEMBLY, No. 255

STATE OF NEW JERSEY

211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblyman UPENDRA J. CHIVUKULA

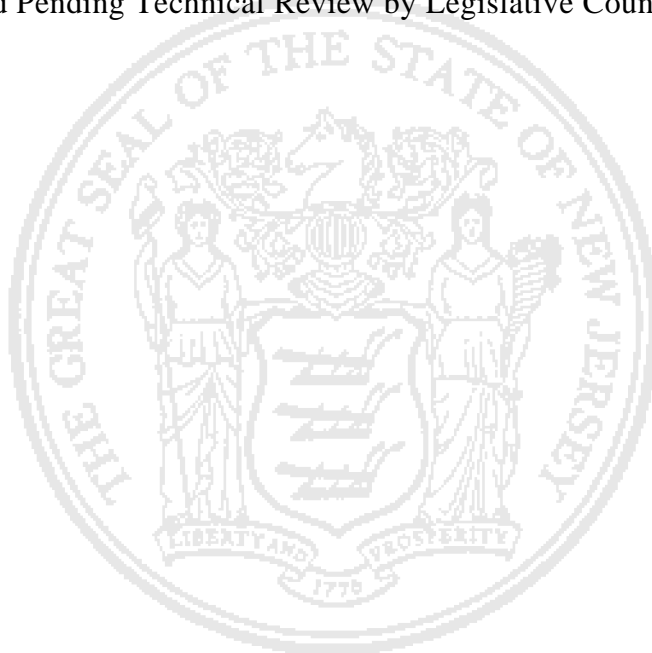
District 17 (Middlesex and Somerset)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/3/2004)

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)
16

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:

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 a. A description of the types and an estimate of the number of
2 small businesses to which the proposed rule will apply;

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

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

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

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

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

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

38

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

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

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

1 resources of regulated businesses can adversely affect competition in
2 the marketplace, discourage innovation, and restrict improvements in
3 productivity. Unnecessary regulations create entry barriers in many
4 industries and discourage potential entrepreneurs from introducing
5 beneficial products and processes.

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

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

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

26

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

34 a. The continued need for the rule;

35 b. The nature of complaints or comments received from the public
36 concerning the rule;

37 c. The complexity of the rule;

38 d. The extent to which the rule overlaps, duplicates, or conflicts
39 with other federal, State, and local governmental rules; and

40 e. The length of time since the rule has been evaluated or the
41 degree to which technology, economic conditions, or other factors
42 have changed in the area affected by the rule.

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

46 In all other cases, the agency shall conduct and complete a

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

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

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

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

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

32
33
34 STATEMENT

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

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

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

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

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

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

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

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