

ASSEMBLY, No. 3578

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MARCH 12, 2018

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/7/2019)

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
9 read as follows:

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

19 3. In developing and proposing a rule for adoption, the agency
20 involved shall utilize approaches which will accomplish the
21 objectives of applicable statutes while minimizing any adverse
22 economic impact of the proposed rule on small businesses of
23 different types and of differing sizes. Consistent with the objectives
24 of applicable statutes, 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
29 reporting requirements for small businesses so long as the public
30 health, safety, or general welfare is not endangered;

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

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

35 (cf: P.L.1986, c.169, s.3)
36

37 3. (New section) The Legislature finds and declares that:

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

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

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

Matter underlined thus is new matter.

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

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

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

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

26

27 4. (New section) An agency seeking to continue in effect an
28 expiring rule by duly proposing for re-adoption the rule, with an
29 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
31 regulatory flexibility analysis, the following factors to ensure that
32 any adverse economic impact of the rule on small businesses is
33 minimized in a manner consistent with the objectives of the
34 applicable statutes:

35 a. The continued need for the rule;

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

38 c. The complexity of the rule;

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

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

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

1 In all other cases, the agency shall conduct and complete a
2 regulatory flexibility analysis and consider the additional factors set
3 forth in the section by the end of each seven year period following
4 the effective date of a rule. The agency's consideration of, and
5 findings regarding, these factors as well as the regulatory analysis
6 shall be filed in writing for the record with the New Jersey Business
7 Action Center within the Department of State.

8
9 5. (New section) a. A small business that is adversely affected
10 economically or aggrieved by final rule-making action may object
11 to all or a part of a rule subject to regulatory flexibility analysis by
12 filing a petition with the agency within 90 days after the date of
13 final rule-making action. For the purpose of this subsection, "date
14 of final rule-making action" includes the date of adoption of a rule
15 or of an amendment to a rule, or of readoption of a rule due to
16 expiration, or of the end of a seven year period following the
17 effective date of a rule, whichever is applicable.

18 A petition filed pursuant to this subsection shall be based on the
19 following grounds:

20 (1) the agency failed to prepare a regulatory flexibility analysis;
21 or

22 (2) the regulatory flexibility analysis issued failed to contain or
23 consider a matter or factor required by law or contained a clear
24 error or omission of a material fact which directly resulted in the
25 agency's failure to consider, or the agency's underestimation of, an
26 adverse economic impact.

27 The petition shall include a detailed and comprehensive
28 explanation of the grounds.

29 After receiving a petition, an agency shall determine whether the
30 petition has merit and respond to the petitioner within 45 days after
31 the petition is filed. If the agency finds that the petition is without
32 merit, it shall state the finding and explain the basis for that finding
33 in writing. If the agency finds that the petition has merit, the
34 agency shall state the finding and explain the basis for that finding
35 in writing, and shall take such action as the agency deems necessary
36 to ensure compliance with P.L.1986, c.169 (C.52:14B-16 et seq.),
37 including, if appropriate, to amend the rule to which the small
38 business objected.

39 b. If an agency determines that the petition filed under
40 subsection a. of this section has no merit or an agency fails to take
41 action it deemed necessary on a petition that the agency determined
42 had merit, the small business that is adversely affected
43 economically or aggrieved by final rule-making action may seek
44 judicial review by the Appellate Division of the Superior Court of
45 agency compliance with the requirements of P.L.1986,
46 c.169 (C.52:14B-16 et seq.) on the same grounds as set forth in its
47 petition.

48 A small business may seek such review during the period

1 beginning on the date the agency renders a determination that the
2 petition filed under subsection a. of this section has no merit and
3 ending 90 days later.

4 The agency may cause the requested review to be dismissed
5 upon a filing with the court of a motion for summary disposition
6 accompanied by an affidavit setting forth, with particularity, the
7 facts that demonstrate that the grounds for the request for review by
8 the small business fail to show in a clear and definitive way that the
9 small business would prevail on the plenary review. The small
10 business shall have the right to challenge such a motion by
11 submitting an affidavit that contradicts the assertions of the
12 agency's affidavit. The court may render a ruling on the motion for
13 the summary disposition based solely on the affidavits submitted.

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

20 If the court finds that the grounds set forth by a small business in
21 the request for the judicial review are false, inaccurate, trivial,
22 frivolous or vexatious, the court shall impose appropriate sanctions
23 including, but not limited to, an order to pay to the agency the
24 amount of the reasonable expenses incurred as a result of the
25 agency's response to the request for review including reasonable
26 attorneys fees.

27 Nothing in this section shall be construed to limit the authority of
28 any court to review agency action which review is available, or
29 provided for, by any other law; or to stay the effective date of any
30 rule or provision thereof under any other provision of law.
31 Compliance by an agency with P.L.1986, c.169 shall be subject to
32 judicial review only in accordance with this section.

33
34 6. This act shall take effect on the first day of the sixth month
35 following enactment.

36 37 38 STATEMENT

39
40 This bill makes changes to the "New Jersey Regulatory
41 Flexibility Act" in order to expand the scope of the law with regard
42 to small businesses, defined as businesses that employ fewer than
43 100 full-time employees or having gross annual sales of less than \$6
44 million.

45 The bill requires an agency to use, when developing rules, the
46 consolidation or simplification of a compliance or reporting
47 requirement for small businesses as an approach to minimize the

1 rule's impact on small businesses, so long as the public health,
2 safety, or general public welfare is not endangered.

3 Under the bill, an agency seeking to continue in effect an
4 expiring rule by duly proposing for re-adoption the rule, with
5 amendment, prior to its expiration, is to consider a series of factors,
6 as part of the regulatory flexibility analysis, which are set forth in
7 the bill. This review is to be conducted by the agency at the time a
8 rule is proposed for re-adoption (which is generally every seven
9 years), to ensure that the rule continues to have a minimal impact
10 on small businesses.

11 The bill establishes a process by which a small business that is
12 adversely affected economically or aggrieved by final rule-making
13 action may file a petition with the agency objecting to all or a part
14 of a rule subject to regulatory flexibility analysis. For cases in
15 which the agency rejects the petition, this process addresses
16 concerns about frivolous appeals without creating unprecedented
17 procedures with respect to the courts. Specifically, the bill: (1)
18 establishes a petition process as a prerequisite for a court appeal; (2)
19 requires the appeal petition to be filed within 90 days after final
20 rule-making action; (3) creates an optional summary disposition
21 process based on affidavits; (4) sets sanctions for frivolous appeals;
22 and (5) places a restriction on appeals based on compliance with the
23 regulatory flexibility process.