

Senate File 2227 - Introduced

SENATE FILE _____
BY McKINLEY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring a regulatory analysis of administrative rules
2 impacting small business.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 6039XS 82
5 jr/nh/8

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1 1 Section 1. Section 17A.4A, Code 2007, is amended to read
1 2 as follows:
1 3 17A.4A REGULATORY ANALYSIS.
1 4 1. a. An agency shall issue a regulatory analysis of a
1 5 proposed rule that complies with subsection 2, paragraph "a",
1 6 if, within thirty-two days after the published notice of
1 7 proposed rule adoption, a written request for the analysis is
1 8 submitted to the agency by the administrative rules review
1 9 committee or the administrative rules coordinator. ~~An agency~~
~~1 10 shall issue a regulatory analysis of a proposed rule that~~
~~1 11 complies with subsection 2, paragraph "b", if the rule would~~
~~1 12 have a substantial impact on small business and if, within~~
~~1 13 thirty-two days after the published notice of proposed rule~~
~~1 14 adoption, a written request for analysis is submitted to the~~
~~1 15 agency by the administrative rules review committee, the~~
~~1 16 administrative rules coordinator, at least twenty-five persons~~
~~1 17 signing that request who each qualify as a small business or~~
~~1 18 by an organization representing at least twenty-five such~~
~~1 19 persons.~~ If a rule has been adopted without prior notice and
1 20 an opportunity for public participation in reliance upon
1 21 section 17A.4, subsection 2, the written request for an
1 22 analysis that complies with subsection 2, paragraph "a" or
1 23 "b", may be made within seventy days of publication of the
1 24 rule.
1 25 b. An agency shall issue a regulatory analysis of a rule
1 26 that complies with subsection 2, paragraph "b", if the rule is
1 27 a proposed rule, or has been adopted without prior notice and
1 28 an opportunity for public participation, if the rule would
1 29 have an adverse impact on small business. A regulatory
1 30 analysis issued pursuant to this paragraph shall be published
1 31 as part of the notice of proposed rule adoption or published
1 32 along with a rule that has been adopted without notice.
1 33 2. a. Except to the extent that a written request for a
1 34 regulatory analysis expressly waives one or more of the
1 35 following, the regulatory analysis must contain all of the
2 1 following:
2 2 (1) A description of the classes of persons who probably
2 3 will be affected by the proposed rule, including classes that
2 4 will bear the costs of the proposed rule and classes that will
2 5 benefit from the proposed rule.
2 6 (2) A description of the probable quantitative and
2 7 qualitative impact of the proposed rule, economic or
2 8 otherwise, upon affected classes of persons, including a
2 9 description of the nature and amount of all of the different
2 10 kinds of costs that would be incurred in complying with the
2 11 proposed rule.
2 12 (3) The probable costs to the agency and to any other
2 13 agency of the implementation and enforcement of the proposed
2 14 rule and any anticipated effect on state revenues.
2 15 (4) A comparison of the probable costs and benefits of the
2 16 proposed rule to the probable costs and benefits of inaction.
2 17 (5) A determination of whether less costly methods or less
2 18 intrusive methods exist for achieving the purpose of the
2 19 proposed rule.
2 20 (6) A description of any alternative methods for achieving

2 21 the purpose of the proposed rule that were seriously
2 22 considered by the agency and the reasons why they were
2 23 rejected in favor of the proposed rule.

2 24 b. In the case of a rule that would have a substantial
2 25 impact on small business, the regulatory analysis must contain
2 26 a discussion of whether it would be feasible and practicable
2 27 to do any of the following to reduce the impact of the rule on
2 28 small business:

2 29 (1) Establish less stringent compliance or reporting
2 30 requirements in the rule for small business.

2 31 (2) Establish less stringent schedules or deadlines in the
2 32 rule for compliance or reporting requirements for small
2 33 business.

2 34 (3) Consolidate or simplify the rule's compliance or
2 35 reporting requirements for small business.

3 1 (4) Establish performance standards to replace design or
3 2 operational standards in the rule for small business.

3 3 (5) Exempt small business from any or all requirements of
3 4 the rule.

3 5 c. The agency shall reduce the impact of a proposed rule
3 6 that would have ~~a substantial~~ an adverse impact on small
3 7 business by using a method discussed in paragraph "b" if the
3 8 agency finds that the method is legal and feasible in meeting
3 9 the statutory objectives which are the basis of the proposed
3 10 rule. For purposes of judicial review, a small business shall
3 11 be deemed to be aggrieved or adversely affected by an agency
3 12 determination that it would not be legal and feasible to
3 13 reduce the impact of a rule.

3 14 3. Each regulatory analysis must include quantifications
3 15 of the data to the extent practicable and must take account of
3 16 both short-term and long-term consequences.

3 17 4. Upon receipt by an agency of a timely request for a
3 18 regulatory analysis, the agency shall extend the period
3 19 specified in this chapter for each of the following until at
3 20 least twenty days after publication in the administrative
3 21 bulletin of a concise summary of the regulatory analysis:

3 22 a. The end of the period during which persons may make
3 23 written submissions on the proposed rule.

3 24 b. The end of the period during which an oral proceeding
3 25 may be requested.

3 26 c. The date of any required oral proceeding on the
3 27 proposed rule.

3 28 In the case of a rule adopted without prior notice and an
3 29 opportunity for public participation in reliance upon section
3 30 17A.4, subsection 2, the summary must be published within
3 31 seventy days of ~~the a request made pursuant to subsection 1,~~
3 32 paragraph "a".

3 33 5. The published summary of the regulatory analysis issued
3 34 pursuant to subsection 1, paragraph "a", must also indicate
3 35 where persons may obtain copies of the full text of the
4 1 regulatory analysis and where, when, and how persons may
4 2 present their views on the proposed rule and demand an oral
4 3 proceeding thereon if one is not already provided. Agencies
4 4 shall make available to the public, to the maximum extent
4 5 feasible, the published summary and the full text of the
4 6 regulatory analysis described in this subsection in an
4 7 electronic format, including, but not limited to, access to
4 8 the documents through the internet.

4 9 6. If the agency has made a good faith effort to comply
4 10 with the requirements of subsections 1 through 3, the rule may
4 11 not be invalidated on the ground that the contents of the
4 12 regulatory analysis are insufficient or inaccurate.

4 13 7. For the purpose of this section, "small business" means
4 14 any entity including but not limited to an individual,
4 15 partnership, corporation, joint venture, association, or
4 16 cooperative, to which all of the following apply:

4 17 a. It is not an affiliate or subsidiary of an entity
4 18 dominant in its field of operation.

4 19 b. It has either twenty or fewer full-time equivalent
4 20 positions or less than one million dollars in annual gross
4 21 revenues in the preceding fiscal year.

4 22 For purposes of this definition, "dominant in its field of
4 23 operation" means having more than twenty full-time equivalent
4 24 positions and more than one million dollars in annual gross
4 25 revenues, and "affiliate or subsidiary of an entity dominant
4 26 in its field of operation" means an entity which is at least
4 27 twenty percent owned by an entity dominant in its field of
4 28 operation, or by partners, officers, directors, majority
4 29 stockholders, or their equivalent, of an entity dominant in
4 30 that field of operation.

4 31 8. By July 1, 2012, and every five years thereafter, each

4 32 agency shall review all existing rules under its purview to
4 33 determine whether such rules should be continued without
4 34 change, or should be amended or rescinded, consistent with the
4 35 stated objectives of the applicable statutes, to minimize
5 1 economic impact of the rules on small businesses in a manner
5 2 consistent with the stated objectives of the applicable
5 3 statutes. If the agency determines that completion of the
5 4 review of existing rules is not feasible by July 1, 2012, the
5 5 agency shall publish notice of that finding in the Iowa
5 6 administrative bulletin. The agency may then extend the
5 7 completion date by one year at a time for a total of not more
5 8 than five years. In reviewing rules to minimize the economic
5 9 impact of the rules on small businesses, the agency shall
5 10 consider all of the following factors:
5 11 a. The continued need for the rule.
5 12 b. The nature of complaints or comments received
5 13 concerning the rule from the public.
5 14 c. The complexity of the rule.
5 15 d. The extent to which the rule overlaps, duplicates, or
5 16 conflicts with other federal, state, or local governmental
5 17 statutes or rules.
5 18 e. The length of time since the rule has been evaluated or
5 19 the degree to which technology, economic conditions, or other
5 20 factors have changed in the area affected by the rule.

5 21 EXPLANATION

5 22 Code section 17A.4A sets out a procedure for requesting a
5 23 regulatory analysis for proposed rules or rules adopted
5 24 without notice. This analysis is essentially a cost/benefit
5 25 study identifying the impact of a rule on the affected public
5 26 and, in the case of a rule that would have a substantial
5 27 impact on small business, the regulatory analysis must contain
5 28 a discussion of whether it would be feasible and practicable
5 29 to reduce the impact of the rule on small business.

5 30 This bill requires an analysis on every new rule which has
5 31 an adverse impact on small business and requires the analysis
5 32 to be published in the Iowa administrative bulletin along with
5 33 the new rule. If an agency determines that it would not be
5 34 legal and feasible to reduce the adverse impact on small
5 35 business, a small business would have judicial standing to
6 1 challenge that determination in district court.

6 2 The bill also requires a periodic review of all rules to
6 3 minimize the economic impact of the rules on small businesses.
6 4 The initial review must be completed by July 1, 2012, and will
6 5 be repeated every five years. The review must analyze all of
6 6 the following:

- 6 7 1. The continued need for the rule.
- 6 8 2. The nature of complaints or comments received.
- 6 9 3. The complexity of the rule.
- 6 10 4. Duplication of or conflict with other federal, state,
6 11 or local governmental statutes or rules.
- 6 12 5. The length of time since the rule has been evaluated or
6 13 the degree to which various factors have changed in the area
6 14 affected by the rule.

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