

**Senate File 231 - Introduced**

SENATE FILE 231

BY MCKINLEY

**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:

1 Section 1. Section 17A.4A, Code 2011, is amended to read as  
2 follows:

3 **17A.4A Regulatory analysis.**

4 1. a. An agency shall issue a regulatory analysis of  
5 a proposed rule that complies with subsection 2, paragraph  
6 "a", if, within thirty-two days after the published notice of  
7 proposed rule adoption, a written request for the analysis is  
8 submitted to the agency by the administrative rules review  
9 committee or the administrative rules coordinator. ~~An agency  
10 shall issue a regulatory analysis of a proposed rule that  
11 complies with subsection 2, paragraph "b", if the rule would  
12 have a substantial impact on small business and if, within  
13 thirty-two days after the published notice of proposed rule  
14 adoption, a written request for analysis is submitted to the  
15 agency by the administrative rules review committee, the  
16 administrative rules coordinator, at least twenty-five persons  
17 signing that request who each qualify as a small business or by  
18 an organization representing at least twenty-five such persons.~~  
19 If a rule has been adopted without prior notice and an  
20 opportunity for public participation in reliance upon section  
21 17A.4, subsection 3, the written request for an analysis that  
22 complies with subsection 2, paragraph "a" or "b", may be made  
23 within seventy days of publication of the rule.

24 b. An agency shall issue a regulatory analysis of a rule  
25 that complies with subsection 2, paragraph "b", if the rule is a  
26 proposed rule, or has been adopted without prior notice and an  
27 opportunity for public participation, if the rule would have an  
28 adverse impact on small business. A regulatory analysis issued  
29 pursuant to this paragraph shall be published as part of the  
30 notice of proposed rule adoption or published along with a rule  
31 that has been adopted without notice.

32 2. a. Except to the extent that a written request for  
33 a regulatory analysis expressly waives one or more of the  
34 following, the regulatory analysis must contain all of the  
35 following:

1 (1) A description of the classes of persons who probably  
2 will be affected by the proposed rule, including classes that  
3 will bear the costs of the proposed rule and classes that will  
4 benefit from the proposed rule.

5 (2) A description of the probable quantitative and  
6 qualitative impact of the proposed rule, economic or otherwise,  
7 upon affected classes of persons, including a description of  
8 the nature and amount of all of the different kinds of costs  
9 that would be incurred in complying with the proposed rule.

10 (3) The probable costs to the agency and to any other agency  
11 of the implementation and enforcement of the proposed rule and  
12 any anticipated effect on state revenues.

13 (4) A comparison of the probable costs and benefits of the  
14 proposed rule to the probable costs and benefits of inaction.

15 (5) A determination of whether less costly methods or  
16 less intrusive methods exist for achieving the purpose of the  
17 proposed rule.

18 (6) A description of any alternative methods for achieving  
19 the purpose of the proposed rule that were seriously considered  
20 by the agency and the reasons why they were rejected in favor  
21 of the proposed rule.

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

27 (1) Establish less stringent compliance or reporting  
28 requirements in the rule for small business.

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

32 (3) Consolidate or simplify the rule's compliance or  
33 reporting requirements for small business.

34 (4) Establish performance standards to replace design or  
35 operational standards in the rule for small business.

1 (5) Exempt small business from any or all requirements of  
2 the rule.

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

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

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

20 a. The end of the period during which persons may make  
21 written submissions on the proposed rule.

22 b. The end of the period during which an oral proceeding may  
23 be requested.

24 c. The date of any required oral proceeding on the proposed  
25 rule.

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

31 6. The published summary of the regulatory analysis  
32 issued pursuant to subsection 1, paragraph "a", must also  
33 indicate where persons may obtain copies of the full text  
34 of the regulatory analysis and where, when, and how persons  
35 may present their views on the proposed rule and demand

1 an oral proceeding thereon if one is not already provided.  
2 Agencies shall make available to the public, to the maximum  
3 extent feasible, the published summary and the full text of  
4 the regulatory analysis described in this subsection in an  
5 electronic format, including, but not limited to, access to the  
6 documents through the internet.

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

11 8. a. For the purpose of this section, "*small business*"  
12 means any entity including but not limited to an individual,  
13 partnership, corporation, joint venture, association, or  
14 cooperative, to which all of the following apply:

15 (1) It is not an affiliate or subsidiary of an entity  
16 dominant in its field of operation.

17 (2) It has either twenty or fewer full-time equivalent  
18 positions or less than one million dollars in annual gross  
19 revenues in the preceding fiscal year.

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

29 9. By July 1, 2013, and every five years thereafter, each  
30 agency shall review all existing rules under its purview to  
31 determine whether such rules should be continued without  
32 change, or should be amended or rescinded, consistent with  
33 the stated objectives of the applicable statutes, to minimize  
34 economic impact of the rules on small businesses in a manner  
35 consistent with the stated objectives of the applicable

1 statutes. If the agency determines that completion of the  
2 review of existing rules is not feasible by July 1, 2013,  
3 the agency shall publish notice of that finding in the Iowa  
4 administrative bulletin. The agency may then extend the  
5 completion date by one year at a time for a total of not more  
6 than five years. In reviewing rules to minimize the economic  
7 impact of the rules on small businesses, the agency shall  
8 consider all of the following factors:

9 a. The continued need for the rule.

10 b. The nature of complaints or comments received concerning  
11 the rule from the public.

12 c. The complexity of the rule.

13 d. The extent to which the rule overlaps, duplicates, or  
14 conflicts with other federal, state, or local governmental  
15 statutes or rules.

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

19 EXPLANATION

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

28 This bill requires an analysis on every new rule which has an  
29 adverse impact on small business and requires the analysis to  
30 be published in the Iowa administrative bulletin along with the  
31 new rule. If an agency determines that it would not be legal  
32 and feasible to reduce the adverse impact on small business, a  
33 small business would have judicial standing to challenge that  
34 determination in district court. The bill also requires a  
35 periodic review of all rules to minimize the economic impact of

1 the rules on small businesses.

2 The initial review must be completed by July 1, 2013, and  
3 will be repeated every five years. The review must analyze all  
4 of the following:

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