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HOUSE BILL 869

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO BUSINESS; ENACTING THE SMALL BUSINESS REGULATORY RELIEF ACT; REQUIRING PERIODIC REVIEW; CREATING AN ADVISORY COMMISSION; PROVIDING POWERS AND DUTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Small Business Regulatory Relief Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

B. small businesses bear a disproportionate share of regulatory costs and burdens;

C. fundamental changes that are needed in the regulatory culture of state agencies to make them more

1 responsive to small business can be made without compromising  
2 the statutory missions of the agencies;

3 D. when adopting rules to protect the health,  
4 safety and economic welfare of the state, agencies should seek  
5 to achieve statutory goals as effectively and efficiently as  
6 possible without imposing unnecessary burdens on small  
7 businesses;

8 E. uniform regulatory reporting requirements can  
9 impose unnecessary and disproportionately burdensome demands,  
10 including legal, accounting and consulting costs, upon small  
11 businesses with limited resources;

12 F. the failure to recognize differences in the  
13 scale and resources of regulated businesses can adversely  
14 affect competition in the marketplace, discourage innovation  
15 and restrict improvements in productivity;

16 G. unnecessary rules create entry barriers in many  
17 industries and discourage potential entrepreneurs from  
18 introducing beneficial products and processes;

19 H. the practice of treating all regulated  
20 businesses as equivalent may lead to inefficient use of agency  
21 resources, enforcement problems and, in some cases, to actions  
22 inconsistent with stated legislative intent of health, safety,  
23 environmental, economic welfare and other legislation;

24 I. alternative regulatory approaches that do not  
25 conflict with applicable statutes may be available to minimize

1 the significant economic impact of rules on small businesses;  
2 and

3 J. the process by which state rules are developed  
4 and adopted should be reformed to require agencies to solicit  
5 the ideas and comments of small businesses, to examine the  
6 effect of proposed and existing rules on such businesses and to  
7 review the continued need for existing rules.

8 Section 3. DEFINITIONS.--As used in the Small Business  
9 Regulatory Relief Act:

10 A. "agency" means every department, agency, board,  
11 commission, committee or institution of the executive branch of  
12 state government;

13 B. "commission" means the small business regulatory  
14 advisory commission;

15 C. "proposed rule" means a proposal by an agency  
16 for a new rule or for a change in, addition to or repeal of an  
17 existing rule;

18 D. "rule" means any rule, regulation, order,  
19 standard or statement of policy, including amendments to or  
20 repeals of any of those, issued or promulgated by an agency and  
21 purporting to affect one or more agencies besides the agency  
22 issuing the rule or to affect persons not members or employees  
23 of the issuing agency. An order or decision or other document  
24 issued or promulgated in connection with the disposition of any  
25 case or agency decision upon a particular matter as applied to

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1 a specific set of facts shall not be deemed a rule nor shall it  
2 constitute specific adoption of a rule by the agency. "Rule"  
3 does not include rules relating to the management, confinement,  
4 discipline or release of inmates of any penal or charitable  
5 institution, the New Mexico boys' school, the girls' welfare  
6 home or a public hospital; or rules made relating to the  
7 management of any particular educational institution, whether  
8 elementary or otherwise; or rules made relating to admissions,  
9 discipline, supervision, expulsion or graduation of students  
10 from an educational institution; and

11 E. "small business" means a business entity,  
12 including its affiliates, that is independently owned and  
13 operated and employs fifty or fewer full-time employees.

14 Section 4. RULES AFFECTING SMALL BUSINESS.--

15 A. Prior to the adoption of a proposed rule that  
16 may have an adverse effect on small business, an agency shall  
17 provide a copy of the proposed rule to the commission at the  
18 same time as persons who have requested advance notice of  
19 rulemaking.

20 B. Prior to the adoption of a proposed rule that  
21 the agency deems to have an adverse effect on small business,  
22 the agency shall consider regulatory methods that accomplish  
23 the objectives of the applicable law while minimizing the  
24 adverse effects on small business.

25 Section 5. SMALL BUSINESS REGULATORY ADVISORY COMMISSION

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1       CREATED--MEMBERSHIP--POWERS AND DUTIES.--

2               A.   The "small business regulatory advisory  
3       commission" is created.  The commission shall consist of nine  
4       members who are current or former small business owners, seven  
5       appointed by the governor and one each appointed by the speaker  
6       of the house of representatives and the president pro tempore  
7       of the senate.  Members shall serve two-year terms.  A member  
8       shall not serve more than three consecutive terms.  The  
9       governor shall name the chairperson of the commission, and the  
10       members may select a vice chairperson from the membership.  The  
11       commission shall meet at the call of the chairperson.  A  
12       majority of the members constitutes a quorum for the conduct of  
13       business.  Members are entitled to per diem and mileage as  
14       provided in the Per Diem and Mileage Act and shall receive no  
15       other compensation, perquisite or allowance.

16               B.   The commission is administratively attached to  
17       the economic development department, and staff for the  
18       commission shall be provided by the department.

19               C.   The commission may:

20                       (1)  provide state agencies with input  
21       regarding proposed rules that may adversely affect small  
22       business;

23                       (2)  consider requests from small business  
24       owners to review rules adopted by an agency;

25                       (3)  review rules promulgated by an agency to

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1 determine whether a rule places an unnecessary burden on small  
2 business and make recommendations to the agency to mitigate the  
3 adverse effects; and

4 (4) provide an annual evaluation report to the  
5 governor and the legislature, including recommendations and  
6 evaluations of agencies regarding regulatory fairness for small  
7 businesses.

8 D. The commission does not have authority to:

9 (1) interfere with, modify, prevent or delay  
10 an agency or administrative enforcement action;

11 (2) intervene in legal actions; or

12 (3) subpoena witnesses to testify or to  
13 produce documents, but it may request witnesses to voluntarily  
14 testify or produce documents.

15 Section 6. PERIODIC REVIEW OF RULES.--

16 A. By July 1, 2010, each agency shall have reviewed  
17 all of its rules that existed on the effective date of the  
18 Small Business Regulatory Relief Act to determine whether the  
19 rules should be continued without change or should be amended  
20 or repealed to minimize the economic impact of the rules on  
21 small businesses, subject to compliance with the stated  
22 objectives of the laws pursuant to which the rules were  
23 adopted.

24 B. Rules adopted and promulgated after the  
25 effective date of the Small Business Regulatory Relief Act

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1 shall be reviewed every five years to ensure that they continue  
2 to minimize economic impacts on small businesses while  
3 implementing the state objectives of the laws pursuant to which  
4 the rules were adopted.

5 C. In reviewing its rules to minimize economic  
6 impacts on small businesses, an agency shall consider the  
7 following factors:

- 8 (1) continued need for the rule;
- 9 (2) the nature of complaints or comments  
10 received from the public concerning the rule;
- 11 (3) the complexity of the rule;
- 12 (4) the extent to which the rule overlaps,  
13 duplicates or conflicts with other federal, state and local  
14 government rules; and
- 15 (5) the length of time since the rule has been  
16 evaluated or the degree to which technology, economic  
17 conditions or other factors have changed in the topical area  
18 affected by the rule.

19 Section 7. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2005.