

1 SENATE BILL 109

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Mark Boitano

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10 AN ACT

11 RELATING TO RULES; AMENDING THE SMALL BUSINESS REGULATORY
12 REVIEW ACT TO ENSURE AGENCY COOPERATION WITH THE SMALL BUSINESS
13 REGULATORY ADVISORY COMMISSION; REPEALING A SECTION OF LAW
14 DEALING WITH THE PERIODIC REVIEW OF RULES.

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

17 SECTION 1. Section 14-4A-4 NMSA 1978 (being Laws 2005,
18 Chapter 244, Section 4) is amended to read:

19 "14-4A-4. RULES AND AGENCY FORMS AFFECTING SMALL
20 BUSINESS.--

21 A. Prior to the adoption of a proposed rule that
22 may ~~[have an adverse effect on]~~ affect small business or a
23 change to a new form or a modification of a form that an agency
24 requires a small business to use in reporting to the agency,
25 including the conversion of a form from paper to electronic

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1 format, an agency shall provide a copy of the proposed rule or
2 form to the commission for review at the same time as persons
3 who have requested advance notice of rulemaking.

4 ~~[B. Prior to the adoption of a proposed rule that~~
5 ~~the agency deems to have an adverse effect on small business,~~
6 ~~the agency shall consider regulatory methods that accomplish~~
7 ~~the objectives of the applicable law while minimizing the~~
8 ~~adverse effects on small business.]~~

9 B. The commission shall have thirty days from
10 receipt of the proposed rule or form to respond with a notice
11 of intent to review the rule or form. The commission's
12 response does not require a meeting or a quorum but may be
13 accomplished by any three members communicating with the chair
14 that they wish to review the rule or form.

15 C. If the commission does not respond within thirty
16 days from receipt of the proposed rule or form, or if the
17 commission responds that it has no objections to the proposed
18 rule or form, the rulemaking or form revision or development
19 process may proceed without further response from the
20 commission.

21 D. If the commission responds that it wishes to
22 review the rule or form, the commission shall meet within
23 forty-five days from the commission's response to the agency
24 and make recommendations concerning the proposed rule or form.
25 The cabinet secretary of the agency or an authorized

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1 representative shall attend the meeting. If the commission
2 fails to hold the meeting within forty-five days from the
3 commission's response to the agency, the rulemaking or form
4 revision or development process may proceed.

5 E. The agency need not comply with the commission's
6 recommendations but shall report its decision to the
7 commission.

8 F. If the commission responds pursuant to
9 Subsection B of this section, and the commission schedules and
10 holds a meeting pursuant to Subsection D of this section, the
11 proposed rule or form shall not take effect until after that
12 meeting."

13 SECTION 2. Section 14-4A-5 NMSA 1978 (being Laws 2005,
14 Chapter 244, Section 5) is amended to read:

15 "14-4A-5. SMALL BUSINESS REGULATORY ADVISORY COMMISSION
16 CREATED--MEMBERSHIP--POWERS AND DUTIES.--

17 A. The "small business regulatory advisory
18 commission" is created. The commission shall consist of nine
19 members who are current or former small business owners, five
20 appointed by the governor and two each appointed by the speaker
21 of the house of representatives and the president pro tempore
22 of the senate. Each member shall be from a different
23 geographic region of the state. Members shall serve two-year
24 terms. A member shall not serve more than three consecutive
25 terms. Members shall name the [~~chairperson~~] chair of the

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1 commission. The commission shall meet at the call of the
2 [~~chairperson~~] chair. A majority of the members constitutes a
3 quorum for the conduct of business. Members are entitled to
4 per diem and mileage as provided in the Per Diem and Mileage
5 Act and shall receive no other compensation, perquisite or
6 allowance.

7 B. The commission is administratively attached to
8 the economic development department, and staff for the
9 commission shall be provided by the department.

10 C. The commission [~~may~~] shall:

11 (1) provide state agencies with input
12 regarding proposed rules or forms that may [~~adversely~~] affect
13 small business;

14 (2) consider requests from small business
15 owners to review rules or forms adopted by an agency; and

16 [~~(3) review rules promulgated by an agency to~~
17 ~~determine whether a rule places an unnecessary burden on small~~
18 ~~business and make recommendations to the agency to mitigate the~~
19 ~~adverse effects; and~~

20 ~~(4)]~~ (3) provide an annual evaluation report
21 to the governor and the legislature, including recommendations
22 and evaluations of agencies regarding regulatory fairness for
23 small businesses.

24 D. The commission may:

25 (1) review existing agency rules and forms to

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1 determine whether a rule or form places an unnecessary burden
2 on small business and make recommendations to the agency to
3 mitigate the adverse effects. If the commission makes a
4 recommendation regarding a rule or form, the agency shall
5 review the rule or form and respond pursuant to Subsection E of
6 Section 14-4A-4 NMSA 1978 within sixty days from the date the
7 commission made the recommendation or the rule or form shall be
8 nullified and cease to be in effect or in use one hundred
9 eighty days from the date of notice by the commission to the
10 agency. The nullification shall not affect any pending
11 administrative actions by the agency that were in process at
12 the time of the review; and

13 (2) adopt a schedule of proposed reviews of
14 rules and forms. Agencies whose rules and forms are to be
15 reviewed under this schedule are required to participate in the
16 review by having the agency head or authorized representative
17 attend meetings of the commission.

18 ~~[D-]~~ E. The commission does not have authority to:

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

21 (2) intervene in legal actions; or

22 (3) subpoena witnesses to testify or to
23 produce documents, but it may request witnesses to voluntarily
24 testify or produce documents."

25 SECTION 3. REPEAL.--Section 14-4A-6 NMSA 1978 (being Laws

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1 2005, Chapter 244, Section 6) is repealed.

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