

1 SB222  
2 136198-1  
3 By Senator Holtzclaw  
4 RFD: Business and Labor  
5 First Read: 07-FEB-12

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8 SYNOPSIS: This bill would require an agency which  
9 proposes a rule which may have an adverse impact on  
10 small businesses to prepare and file a small  
11 business economic impact statement. The bill would  
12 require an agency which proposes a rule that  
13 affects a small business to prepare and file a  
14 small business regulatory flexibility analysis.  
15 Compliance with these requirements would be subject  
16 to judicial review. The bill would also require  
17 agencies to review all rules every five years for  
18 their effect on small businesses.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 Relating to the Administrative Procedure Act; to add  
25 Sections 41-22-5.1 and 41-22-5.2 to the Code of Alabama 1975;  
26 to define small business; to require any agency which proposes  
27 a rule which may have an adverse impact on small businesses to

1 prepare and file a small business economic impact statement;  
2 to require an agency which proposes a rule which affects a  
3 small business to prepare and file a small business regulatory  
4 flexibility analysis; to provide for judicial review of  
5 compliance with these provisions; and to require agencies to  
6 periodically review rules affecting small businesses.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited  
9 as the Small Business Regulatory Flexibility Act of 2012.

10 Section 2. Sections 41-22-5.1 and 41-22-5.2 are  
11 added to Chapter 22, Title 41, Code of Alabama 1975, to read  
12 as follows:

13 §41-22-5.1.

14 (a) For the purpose of this section, the term "small  
15 business" means a business entity, including any affiliates  
16 that meet both of the following:

17 (1) Is independently owned and operated.

18 (2) Employs less than 250 full-time employees or has  
19 gross annual sales of less than twenty-five million dollars  
20 (\$25,000,000).

21 (b) Prior to the adoption of any rule that may have  
22 an adverse impact on small businesses, each agency shall  
23 prepare a small business economic impact statement that  
24 includes all of the following:

25 (1) An identification and estimate of the number of  
26 the small businesses subject to the rule.

1           (2) The projected reporting, recordkeeping, and  
2 other administrative costs required for compliance with the  
3 proposed regulation, including the type of professional skills  
4 necessary for preparation of the report or record.

5           (3) A statement of the probable effect on impacted  
6 small businesses, including the total number of potential job  
7 losses.

8           (4) A description of any less intrusive or less  
9 costly alternative methods of achieving the purpose of the  
10 rule.

11           (c) Prior to the adoption of any rule affecting any  
12 small business, each agency shall prepare a small business  
13 regulatory flexibility analysis in which the agency, where  
14 consistent with the health, safety, environmental, and  
15 economic welfare, shall consider utilizing regulatory methods  
16 that will accomplish the objectives of applicable statutes  
17 while minimizing adverse impact on small businesses. The  
18 agency shall consider, without limitation, all of the  
19 following methods of reducing the impact of the rule on small  
20 businesses:

21           (1) The establishment of less stringent compliance  
22 or reporting requirements for small businesses.

23           (2) The establishment of less stringent schedules or  
24 deadlines for compliance or reporting requirements for small  
25 businesses.

26           (3) The consolidation or simplification of  
27 compliance or reporting requirements for small businesses.

1           (4) The establishment of performance standards for  
2 small businesses to replace design or operational standards  
3 required in the rule.

4           (5) The exemption of small businesses from all or  
5 any part of the requirements contained in the rule.

6           (d) A small business economic impact statement and a  
7 small business regulatory flexibility analysis required to be  
8 filed pursuant to this section shall be filed with the  
9 Legislative Reference Service at the time of filing the notice  
10 of intent to adopt a rule pursuant to Section 41-22-5.  
11 Additionally, these documents shall be available for public  
12 inspection.

13           (e) For any rule subject to this section, a small  
14 business that is adversely affected or aggrieved by final  
15 agency action is entitled to judicial review of agency  
16 compliance with the requirements of this section. A small  
17 business may seek review during the period beginning on the  
18 date of final agency action and ending one year thereafter.

19           §41-22-5.2.

20           (a) Within four years of the effective date of this  
21 section, each agency shall review all agency rules existing on  
22 that date to determine whether the rules should be continued  
23 without change, or should be amended or rescinded, consistent  
24 with the stated objectives of those statutes, to minimize  
25 economic impact of the rules on small businesses in a manner  
26 consistent with the stated objective of applicable statutes.  
27 If the head of the agency determines that completion of the

1 review of existing rules is not feasible by the established  
2 date the agency shall publish a statement certifying that  
3 determination. The agency may extend the completion date by  
4 one year at a time for a total of not more than five years.

5 (b) A rule adopted after the effective date of this  
6 section should be reviewed every five years to ensure that it  
7 minimizes economic impact on small businesses in a manner  
8 consistent with the stated objectives of applicable statutes.

9 (c) In reviewing rules to minimize economic impact  
10 of the rule on small businesses, the agency shall consider all  
11 of the following factors:

12 (1) The continued need for the rule.

13 (2) The nature of complaints or comments received  
14 concerning the rule from the public.

15 (3) The complexity of the rule.

16 (4) The extent to which the rule overlaps,  
17 duplicates, or conflicts with other federal, state, and local  
18 governmental rules.

19 (5) The length of time since the rule has been  
20 evaluated or the degree to which technology, economic  
21 conditions, or other factors have changed in the area affected  
22 by the rule.

23 Section 3. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.