



House of Representatives

General Assembly

File No. 270

January Session, 2009

Substitute House Bill No. 5930

House of Representatives, March 26, 2009

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING SMALL BUSINESS IMPACT ANALYSES FOR PROPOSED REGULATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 4-168 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (a) Except as provided in subsection (g) of this section, an agency,
5 prior to adopting a proposed regulation, shall: (1) Give at least thirty
6 days' notice by publication in the Connecticut Law Journal of its
7 intended action. The notice shall include (A) either a statement of the
8 terms or of the substance of the proposed regulation or a description
9 sufficiently detailed so as to apprise persons likely to be affected of the
10 issues and subjects involved in the proposed regulation, (B) a
11 statement of the purposes for which the regulation is proposed, (C) a
12 reference to the statutory authority for the proposed regulation, (D)
13 when, where and how interested persons may obtain a copy of the
14 small business impact and regulatory flexibility analyses required

15 pursuant to section 4-168a, as amended by this act, and [(D)] (E) when,
16 where and how interested persons may present their views on the
17 proposed regulation; (2) give notice by mail to each joint standing
18 committee of the General Assembly having cognizance of the subject
19 matter of the proposed regulation; (3) give notice by mail to all persons
20 who have made requests to the agency for advance notice of its
21 regulation-making proceedings. The agency may charge a reasonable
22 fee for such notice based on the estimated cost of providing the service;
23 (4) provide a copy of the proposed regulation to persons requesting it.
24 The agency may charge a reasonable fee for copies in accordance with
25 the provisions of section 1-212; (5) [following] no later than the date of
26 publication of the notice in the Connecticut Law Journal, prepare a
27 fiscal note, including [(A)] an estimate of the cost or of the revenue
28 impact (A) on the state or any municipality of the state, and (B) on
29 small businesses in the state, including an estimate of the number of
30 small businesses subject to the proposed regulation and the projected
31 costs, including but not limited to, reporting, recordkeeping and
32 administrative, associated with compliance with the proposed
33 regulation and, if applicable, the regulatory flexibility analysis
34 prepared under section 4-168a, as amended by this act. The governing
35 body of any municipality, if requested, shall provide the agency,
36 within twenty working days, with any information that may be
37 necessary for analysis in preparation of such fiscal note; (6) afford all
38 interested persons reasonable opportunity to submit data, views or
39 arguments, orally at a hearing granted under subdivision (7) of this
40 subsection or in writing, and to inspect and copy the fiscal note
41 prepared pursuant to subdivision (5) of this subsection; (7) grant an
42 opportunity to present oral argument if requested by fifteen persons,
43 by a governmental subdivision or agency or by an association having
44 not less than fifteen members, if notice of the request is received by the
45 agency within fourteen days after the date of publication of the notice;
46 and (8) consider fully all written and oral submissions respecting the
47 proposed regulation and revise the fiscal note in accordance with the
48 provisions of subdivision (5) of this subsection to indicate any changes
49 made in the proposed regulation. No regulation shall be found invalid

50 due to the failure of an agency to give notice to each committee of
51 cognizance pursuant to subdivision (2) of this subsection, provided
52 one such committee has been so notified.

53 Sec. 2. Section 4-168a of the general statutes is repealed and the
54 following is substituted in lieu thereof (*Effective October 1, 2009*):

55 (a) As used in this section:

56 (1) "Agency", "proposed regulation" and "regulation" shall have the
57 same meanings as provided in section 4-166; and

58 (2) "Small business" means a business entity, including its affiliates,
59 that (A) is independently owned and operated and (B) employs fewer
60 than [fifty] seventy-five full-time employees or has gross annual sales
61 of less than five million dollars, provided that an agency, in adopting
62 regulations in accordance with the provisions of this chapter, may
63 define "small business" to include a greater number of full-time
64 employees, not to exceed applicable federal standards or five hundred,
65 whichever is less, if necessary to meet the needs and address specific
66 problems of small businesses.

67 (b) Prior to the adoption of any proposed regulation, [on and after
68 October 1, 1994,] each agency shall prepare a regulatory flexibility
69 analysis in which the agency shall [, where consistent with public
70 health, safety and welfare,] consider utilizing regulatory methods that
71 will accomplish the objectives of applicable statutes while minimizing
72 adverse impact on small businesses. Such regulatory methods shall be
73 consistent with public health, safety and welfare. The agency shall
74 consider, without limitation, each of the following methods of
75 reducing the impact of the proposed regulation on small businesses:

76 (1) The establishment of less stringent compliance or reporting
77 requirements for small businesses;

78 (2) The establishment of less stringent schedules or deadlines for
79 compliance or reporting requirements for small businesses;

80 (3) The consolidation or simplification of compliance or reporting
81 requirements for small businesses;

82 (4) The establishment of performance standards for small businesses
83 to replace design or operational standards required in the proposed
84 regulation; and

85 (5) The exemption of small businesses from all or any part of the
86 requirements contained in the proposed regulation.

87 (c) Prior to the adoption of any proposed regulation that may have
88 an adverse impact on small businesses, each agency shall notify the
89 Department of Economic and Community Development and the joint
90 standing committee of the General Assembly having cognizance of
91 matters relating to commerce of its intent to adopt the proposed
92 regulation. [The Department of Economic and Community
93 Development] Said department and committee shall advise and assist
94 agencies in complying with the provisions of this section.

95 (d) The requirements contained in this section shall not apply to
96 emergency regulations issued pursuant to subsection (c) of section 4-
97 168; regulations that do not affect small businesses directly, including,
98 but not limited to, regulations concerning the administration of federal
99 programs; regulations concerning costs and standards for service
100 businesses such as nursing homes, long-term care facilities, medical
101 care providers, day care facilities, water companies, nonprofit 501(c)(3)
102 agencies, group homes and residential care facilities; and regulations
103 adopted to implement the provisions of sections 4a-60g to 4a-60i,
104 inclusive.

105 Sec. 3. Section 4-168b of the general statutes is repealed and the
106 following is substituted in lieu thereof (*Effective October 1, 2009*):

107 (a) Each agency shall maintain an official regulation-making record
108 for the period required by law for each regulation it proposes in
109 accordance with the provisions of section 4-168, as amended by this
110 act. The regulation-making record and materials incorporated by

111 reference in the record shall be available for public inspection and
112 copying.

113 (b) The agency regulation-making record shall contain: (1) Copies of
114 all publications in the Connecticut Law Journal with respect to the
115 regulation or the proceeding upon which the regulation is based; (2) a
116 copy of any written analysis prepared for the proceeding upon which
117 the regulation is based, including the regulatory flexibility analyses
118 required pursuant to section 4-168a, as amended by this act; (3) all
119 written petitions, requests, submissions, and comments received by the
120 agency and considered by the agency in connection with the
121 formulation, proposal or adoption of the regulation or the proceeding
122 upon which the regulation is based; (4) the official transcript, if any, of
123 proceedings upon which the regulation is based or, if not transcribed,
124 any tape recording or stenographic record of such proceedings, and
125 any memoranda prepared by any member or employee of the agency
126 summarizing the contents of the proceedings; (5) a copy of all official
127 documents relating to the regulation, including the regulation filed in
128 the office of the Secretary of the State, a statement of the principal
129 considerations in opposition to the agency's action, and the agency's
130 reasons for rejecting such considerations, as required pursuant to
131 section 4-168, as amended by this act, and the fiscal note prepared
132 pursuant to subsection (a) of said section 4-168 and section 4-170, as
133 amended by this act; (6) a copy of any petition for the regulation filed
134 pursuant to section 4-174; and (7) copies of all comments or
135 communications between the agency and the legislative regulation
136 review committee.

137 (c) The agency regulation-making record need not constitute the
138 exclusive basis for agency action on that regulation or for judicial
139 review thereof.

140 Sec. 4. Subsection (b) of section 4-170 of the general statutes is
141 repealed and the following is substituted in lieu thereof (*Effective*
142 *October 1, 2009*):

143 (b) (1) No adoption, amendment or repeal of any regulation, except

144 a regulation issued pursuant to subsection (f) of section 4-168, shall be
145 effective until (A) the original of the proposed regulation approved by
146 the Attorney General, as provided in section 4-169, the regulatory
147 flexibility analyses as provided in section 4-168a, as amended by this
148 act, and eighteen copies thereof are submitted to the standing
149 legislative regulation review committee at the designated office of the
150 committee, in a manner designated by the committee, by the agency
151 proposing the regulation, (B) the regulation is approved by the
152 committee, at a regular meeting or a special meeting called for the
153 purpose, and (C) the regulation is filed in the office of the Secretary of
154 the State by the agency, as provided in section 4-172. (2) The date of
155 submission for purposes of subsection (c) of this section shall be the
156 first Tuesday of each month. Any regulation received by the committee
157 on or before the first Tuesday of a month shall be deemed to have been
158 submitted on the first Tuesday of that month. Any regulation
159 submitted after the first Tuesday of a month shall be deemed to be
160 submitted on the first Tuesday of the next succeeding month. (3) The
161 form of proposed regulations which are submitted to the committee
162 shall be as follows: New language added to an existing regulation shall
163 be in capital letters or underlining, as determined by the committee;
164 language to be deleted shall be enclosed in brackets and a new
165 regulation or new section of a regulation shall be preceded by the
166 word "(NEW)" in capital letters. Each proposed regulation shall have a
167 statement of its purpose following the final section of the regulation.
168 (4) The committee may permit any proposed regulation, including, but
169 not limited to, a proposed regulation which by reference incorporates
170 in whole or in part, any other code, rule, regulation, standard or
171 specification, to be submitted in summary form together with a
172 statement of purpose for the proposed regulation. On and after
173 October 1, 1994, if the committee finds that a federal statute requires,
174 as a condition of the state exercising regulatory authority, that a
175 Connecticut regulation at all times must be identical to a federal statute
176 or regulation, then the committee may approve a Connecticut
177 regulation that by reference specifically incorporates future
178 amendments to such federal statute or regulation provided the agency

179 that proposed the Connecticut regulation shall submit for approval
 180 amendments to such Connecticut regulations to the committee not
 181 later than thirty days after the effective date of such amendment, and
 182 provided further the committee may hold a public hearing on such
 183 Connecticut amendments. (5) The agency shall [prepare a fiscal note,
 184 including an estimate of the cost or of the revenue impact on the state
 185 and any municipality, and shall] append a copy of the fiscal note,
 186 prepared pursuant to subsection (a) of section 4-168, as amended by
 187 this act, to each copy of the proposed regulation. At the time of
 188 submission to the committee, the agency shall mail or submit a copy of
 189 the proposed regulation and the fiscal note [, prepared in accordance
 190 with subsection (a) of section 4-168,] to (A) the Office of Fiscal Analysis
 191 which, within seven days of receipt, shall submit an analysis of the
 192 fiscal note to the committee; and (B) each joint standing committee of
 193 the General Assembly having cognizance of the subject matter of the
 194 proposed regulation. No regulation shall be found invalid due to the
 195 failure of an agency to submit a copy of the proposed regulation and
 196 the fiscal note to each committee of cognizance, provided such
 197 regulation and fiscal note has been submitted to one such committee.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	4-168(a)
Sec. 2	<i>October 1, 2009</i>	4-168a
Sec. 3	<i>October 1, 2009</i>	4-168b
Sec. 4	<i>October 1, 2009</i>	4-170(b)

Statement of Legislative Commissioners:

Section 1(a)(5), "(A)" was bracketed and "A" was inserted before "on the state" for clarity.

CE *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Various State Agencies	Various - Cost	Potential	Potential

Municipal Impact: None

Explanation

The bill could result in a cost to various agencies associated with requiring small business impact analyses for proposed regulations. Any overtime or additional staff costs for each agency is dependent upon the number of regulations filed and time required to complete such analyses.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5930

AN ACT REQUIRING SMALL BUSINESS IMPACT ANALYSES FOR PROPOSED REGULATIONS.

SUMMARY:

This bill requires any state agency proposing a regulation to identify how it affects small businesses (i.e., small business impact analysis) and include the analysis as part of the fiscal note it must submit to the Regulations Review Committee. The law already requires agencies to determine if a proposed regulation adversely affects small businesses and, if it does, to consider other less burdensome ways to achieve the regulation's goal (i.e., regulatory flexibility analysis). The bill raises the threshold for the regulatory flexibility analysis, from fewer than 50 to fewer than 75 employees. It does not define small business for the small business impact analysis.

Before adopting a regulation, the bill requires agencies to notify the public about how to obtain copies of the small business impact and regulatory flexibility analyses. The agencies must also notify the Commerce Committee about the regulation if they believe it could adversely affect small businesses, and it must help them prepare the flexibility analysis. Agencies must already notify the Department of Economic and Community Development about proposed regulations that could adversely affect small businesses, and the department must help them prepare the analysis.

Under the bill, a proposed regulation does not take effect until the agency submits the regulatory flexibility analysis to the Regulations Review Committee. By law, the regulation does not take effect until the agency gives the committee the original proposed regulation, as approved the attorney general, and 18 copies.

EFFECTIVE DATE: October 1, 2009

SMALL BUSINESS IMPACT ANALYSIS

Scope

By law, agencies must prepare and attach a fiscal note to a proposed regulation when they submit it to the Regulations Review Committee. The bill requires agencies to prepare the fiscal note before, rather than after, publishing the public notice. It also requires that the fiscal note include an estimate of the regulation's cost or revenue impact on the state's small businesses, including the (1) estimated number of small businesses that would have to comply with the regulation and (2) how much it would cost them to do so. Costs include reporting, recordkeeping, and administrative costs. The law already requires the agency to include the regulatory flexibility analysis in the fiscal note, which it must also submit to the committee.

Public Notice

The bill requires agencies to inform the public about how it can obtain copies of the small business impact and regulatory flexibility analyses before adopting a regulation. (The bill contains an incorrect statutory reference regarding the small business impact analyses.) They must include this information in the notice advising the public of their intent to adopt regulations. By law, agencies must publish this notice in the *Connecticut Law Journal* at least 30 days before adopting a regulation.

REGULATORY FLEXIBILITY ANALYSES

The law requires agencies to determine if a proposed regulation adversely affects small businesses and, if it does, to prepare a regulatory flexibility analysis to consider ways to minimize the impact and still accomplish the regulation's purpose without compromising public health, safety, and welfare. The bill specifies that the regulatory methods must be consistent with public health, safety, and welfare. And it makes a technical change.

The bill requires agencies to include the regulatory flexibility

analysis in the regulation’s official record.

By law, agencies do not have to prepare regulatory flexibility analyses for emergency regulations, those indirectly affecting small businesses, or certain other types of regulations.

Small Business Definition

Under current law, independently owned and operated businesses with fewer than 50 full-time employees or gross sales under \$5 million are considered small businesses. The bill increases this threshold to 75 employees. By law, agencies may set a higher full-time employee limit if necessary to meet or address specific small business needs and concerns. The limit cannot exceed the applicable federal standard or 500 employees, whichever is less.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 20 Nay 0 (03/10/2009)