



# Senate

General Assembly

**File No. 515**

February Session, 2016

Senate Bill No. 362

*Senate, April 6, 2016*

The Committee on Government Administration and Elections reported through SEN. CASSANO, S. of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT MODIFYING THE REGULATORY FLEXIBILITY ANALYSIS OF REGULATIONS AFFECTING SMALL BUSINESSES.***

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

1 Section 1. Section 4-168a of the 2016 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2016*):

4 (a) As used in this section:

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

7 (2) "Small business" means a business entity, including its affiliates,  
8 that (A) is independently owned and operated and (B) employs fewer  
9 than [seventy-five] two hundred fifty full-time employees or has gross  
10 annual sales of less than five million dollars, [provided] except that an  
11 agency, in adopting regulations in accordance with the provisions of  
12 this chapter, may define "small business" to include a greater number

13 of full-time employees, not to exceed applicable federal standards or  
14 five hundred, whichever is less, if necessary to meet the needs and  
15 address specific problems of small businesses.

16 (b) Prior to or at the time of issuing a notice for hearing or public  
17 comment regarding the adoption of any proposed regulation pursuant  
18 to section 4-168, as amended by this act, each agency shall prepare a  
19 regulatory flexibility analysis [in which the agency shall, to the extent  
20 appropriate, utilize regulatory methods] of the proposed regulation  
21 that identifies:

22 (1) The scope and objectives of the regulation;

23 (2) The types of small businesses potentially affected by the  
24 regulation;

25 (3) The total number of small businesses potentially subject to the  
26 regulation;

27 (4) The potential necessity that small businesses, in order to comply  
28 with the regulation, be required to: (A) Create, file or issue additional  
29 reports; (B) implement additional recordkeeping procedures; (C)  
30 provide additional administrative oversight; (D) hire additional  
31 employees; (E) hire one or more professionals, including, but not  
32 limited to, an attorney, accountant, engineer, auditor or inspector; (F)  
33 purchase a product or make any other capital investment; (G) conduct  
34 additional training, audits or inspections; or (H) pay additional taxes  
35 or fees;

36 (5) Whether, and to what extent, the agency communicated with  
37 small businesses or small business organizations in developing the  
38 proposed regulation and the regulatory flexibility analysis;

39 (6) Whether, and to what extent, the regulation provides alternate  
40 compliance methods for small businesses that will accomplish the  
41 objectives of applicable statutes while minimizing adverse impact on  
42 small businesses. Such [regulatory] methods shall be consistent with  
43 public health, safety and welfare [. The agency shall use, to the extent

44 appropriate, each of the following methods of reducing the impact of  
45 the proposed regulation on small businesses] and may include, but  
46 need not be limited to, the following:

47 [(1)] (A) The establishment of less stringent compliance or reporting  
48 requirements for small businesses;

49 [(2)] (B) The establishment of less stringent schedules or deadlines  
50 for compliance or reporting requirements for small businesses;

51 [(3)] (C) The consolidation or simplification of compliance or  
52 reporting requirements for small businesses;

53 [(4)] (D) The establishment of performance standards for small  
54 businesses to replace design or operational standards required in the  
55 proposed regulation; and

56 [(5)] (E) The exemption of small businesses from all or any part of  
57 the requirements contained in the proposed regulation.

58 (c) Prior to the adoption of any proposed regulation that may have  
59 an adverse impact on small businesses, each agency shall notify the  
60 Department of Economic and Community Development and the joint  
61 standing committee of the General Assembly having cognizance of  
62 matters relating to commerce of its intent to adopt the proposed  
63 regulation. Said department and committee shall advise and assist  
64 agencies in complying with the provisions of this section.

65 (d) The requirements [contained in] of this section shall not apply to  
66 emergency regulations issued pursuant to subsection (g) of section 4-  
67 168; regulations that do not affect small businesses directly, including,  
68 but not limited to, regulations concerning the administration of federal  
69 programs; regulations concerning costs and standards for service  
70 businesses such as nursing homes, long-term care facilities, medical  
71 care providers, day care facilities, water companies, nonprofit 501(c)(3)  
72 agencies, group homes and residential care facilities; and regulations  
73 adopted to implement the provisions of sections 4a-60g to 4a-60i,  
74 inclusive.

75 Sec. 2. Subsection (a) of section 4-168 of the general statutes is  
76 repealed and the following is substituted in lieu thereof (*Effective*  
77 *October 1, 2016*):

78 (a) Except as provided in subsections (g) and (h) of this section, an  
79 agency, not less than thirty days prior to adopting a proposed  
80 regulation, shall (1) post a notice of its intended action on the  
81 eRegulations System, which notice shall include (A) a specified public  
82 comment period of not less than thirty days, (B) a description  
83 sufficiently detailed so as to apprise persons likely to be affected of the  
84 issues and subjects involved in the proposed regulation, (C) a  
85 statement of the purposes for which the regulation is proposed, (D) a  
86 reference to the statutory authority for the proposed regulation, (E)  
87 [when,] where and how interested persons may obtain a copy of the  
88 small business impact and regulatory flexibility analysis required  
89 pursuant to section 4-168a, as amended by this act, and (F) when,  
90 where and how interested persons may present their views on the  
91 proposed regulation; (2) post a copy of the proposed regulation on the  
92 eRegulations System; (3) give notice electronically to each joint  
93 standing committee of the General Assembly having cognizance of the  
94 subject matter of the proposed regulation; (4) give notice electronically  
95 or provide a paper copy notice, if requested, to all persons who have  
96 made requests to the agency for advance notice of its regulation-  
97 making proceedings; (5) provide a paper copy or electronic version of  
98 the proposed regulation to persons requesting it; and (6) prepare a  
99 fiscal note, including an estimate of the cost or of the revenue impact  
100 (A) on the state or any municipality of the state, and (B) on small  
101 businesses in the state, including an estimate of the number of small  
102 businesses subject to the proposed regulation and the projected costs,  
103 including but not limited to, reporting, recordkeeping and  
104 administrative, associated with compliance with the proposed  
105 regulation and, if applicable, the regulatory flexibility analysis  
106 prepared under section 4-168a, as amended by this act. The governing  
107 body of any municipality, if requested, shall provide the agency,  
108 within twenty working days, with any information that may be  
109 necessary for analysis in preparation of such fiscal note.

110 Sec. 3. Section 31-51ww of the general statutes is repealed and the  
111 following is substituted in lieu thereof (*Effective October 1, 2016*):

112 As used in this section and sections 31-51xx to 31-51eee, inclusive:

113 (1) "Account holder" means a participant in a certified state IDA  
114 program;

115 (2) "Department" means the Labor Department;

116 (3) "Approved plan" means a plan prepared jointly by the account  
117 holder and the community-based organization that defines savings  
118 goals, program requirements and permissible uses of the individual  
119 development account and its matching funds pursuant to sections 31-  
120 51xx to 31-51aaa, inclusive, and regulations adopted pursuant to  
121 section 31-51ddd. The approved plan shall be a contract between the  
122 account holder and the community-based organization;

123 (4) "Area median income" means area median household income as  
124 determined from time to time by the United States Department of  
125 Housing and Urban Development;

126 (5) "Certified state IDA program" means a program of matched  
127 savings accounts that has been certified by the department in  
128 accordance with regulations adopted pursuant to section 31-51ddd;

129 (6) "Clearinghouse" means a service to provide organizations  
130 interested in establishing, or which have established, individual  
131 development account programs with literature on federal, state and  
132 other sources of funding, guidelines for best practices and program  
133 standards, and information regarding the establishment and  
134 maintenance of certified state IDA programs;

135 (7) "Community-based organization" means an organization exempt  
136 from taxation pursuant to section 501(c)(3) of the Internal Revenue  
137 Code of 1986 or any subsequent corresponding internal revenue code  
138 of the United States, as from time to time amended, which meets the  
139 requirements set forth in regulations pursuant to section 31-51ddd;

140 (8) "Education" means (A) a postsecondary program of instruction  
141 provided by a college, university, community college, area technical  
142 high school, professional institution or specialized college or school  
143 legally authorized to grant degrees, or (B) any related educational  
144 program approved by the community-based organization and the  
145 department;

146 (9) "Entrepreneurial activity" means the purchase of or investment  
147 in a small business [, as defined in subsection (a) of section 4-168a,] in  
148 Connecticut in which, upon such purchase or investment, the account  
149 holder will be a principal;

150 (10) "Federal poverty level" means the most recent poverty income  
151 guidelines published by the United States Department of Health and  
152 Human Services;

153 (11) "Financial institution" means a "financial institution", as defined  
154 in section 36a-330;

155 (12) "Household" means a household, as defined in the federal  
156 Assets for Independence Act, P.L. 105-235;

157 (13) "Individual development account" means a savings account,  
158 maintained in a program that is established pursuant to section 31-  
159 51xx that is held in a financial institution, for the sole purpose of  
160 holding the funds of the account holder for one of the purposes  
161 described in subsection (a) of section 31-51xx;

162 (14) "Individual Development Account Reserve Fund" means a  
163 nonlapsing fund administered by the department for the purposes of  
164 providing matching funds for individual development accounts in  
165 certified state IDA programs, and for funding costs incurred by  
166 community-based organizations in the operation and administration of  
167 such programs and department's administrative costs for the  
168 Connecticut IDA Initiative;

169 (15) "Connecticut IDA Initiative" means the state-wide individual  
170 development account initiative established in section 31-51xx;

171 (16) "Job training" means a program for job entrance or skill  
172 development approved by the community-based organization and the  
173 department; [and]

174 (17) "Qualified disabled individual" means a disabled individual  
175 eligible for assistance to the disabled pursuant to chapter 319mm; and

176 (18) "Small business" means a business entity, including its affiliates,  
177 that (A) is independently owned and operated, and (B) employs fewer  
178 than seventy-five full-time employees or has gross annual sales of less  
179 than five million dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	4-168a
Sec. 2	October 1, 2016	4-168(a)
Sec. 3	October 1, 2016	31-51ww

**GAE**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 17 \$</b>	<b>FY 18 \$</b>
Various State Agencies	Various - Cost	Potential	Potential

Note: Various=Various

**Municipal Impact:** None

**Explanation**

This bill expands the types of information that must be included in the regulatory flexibility analysis that agencies must prepare before adopting regulations that directly affect small businesses. It increases, from 75 to 250, the maximum number of employees a business may have to be considered a small business for the purpose of requiring preparation of a fiscal note for a regulatory flexibility analysis.

The bill could result in a cost to various agencies associated with requiring small business impact analyses for proposed regulations. Any 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****SB 362*****AN ACT MODIFYING THE REGULATORY FLEXIBILITY ANALYSIS OF REGULATIONS AFFECTING SMALL BUSINESSES.*****SUMMARY:**

This bill expands the requirements of the regulatory flexibility analysis that state agencies must prepare before adopting regulations that directly affect small businesses. It (1) adds several factors that agencies must take into account when conducting the analysis and (2) increases, from 75 to 250, the maximum number of employees a business may have to be considered a small business for purposes of the analysis.

The bill also specifies that agencies must prepare the regulatory flexibility analysis before, or concurrently with, posting a notice of hearing or public comment on the proposed regulation. This notice must be posted at least 30 days before adopting regulations. Current law similarly requires agencies to prepare the flexibility analysis at least 30 days before adopting the regulation but allows the analysis to be prepared after notice is posted (CGS § 4-168(a)).

The bill also makes technical changes, including a change to retain current law's definition of small business for purposes of individual development accounts, which are administered by the Department of Labor.

By law, a small business is an entity that (1) is independently owned and operated and (2) has fewer than the maximum number of employees or gross annual sales of less than \$5 million. By law, the flexibility analysis requirements do not apply to emergency regulations, regulations that do not directly affect small businesses, regulations concerning costs and standards for service businesses (e.g.,

nursing homes), and regulations to implement the state's set-aside program for small and minority-owned businesses.

EFFECTIVE DATE: October 1, 2016

### **REGULATORY FLEXIBILITY ANALYSIS**

The bill expands the types of information that must be included in a regulatory flexibility analysis, some of which the law already requires agencies to include in other documents associated with a proposed regulation (CGS § 4-168(a)). The bill requires that the analysis include the following with respect to the proposed regulation:

1. its scope and objectives (existing law requires agencies to include the regulation's purpose in their notice of intent to adopt regulations);
2. the types of small businesses it potentially affects;
3. the total number of small businesses potentially subject to it (existing law requires that this be included in the fiscal note that agencies must prepare for the proposed regulation);
4. the potential necessity for small businesses to (a) create, file, or issue additional reports; (b) implement additional recordkeeping procedures; (c) provide additional administrative oversight; (d) hire additional employees or one or more professionals, including attorneys, accountants, engineers, auditors, or inspectors; (e) purchase a product or make capital investments; (f) conduct additional training, audits, or inspections; or (g) pay additional taxes or fees; and
5. whether and to what extent the agency communicated with small businesses or small business organizations in developing the proposed regulation and regulatory flexibility analysis.

Current law requires agencies to use, to the extent appropriate, certain strategies to accomplish statutory objectives while minimizing the regulation's impact on small businesses. The bill instead requires

agencies to state whether and to what extent the regulations provide alternative compliance methods for small businesses, which may include any of the strategies specified in current law. The strategies are the following:

1. establishing less stringent compliance or reporting requirements for small businesses, or simplifying or consolidating the requirements;
2. establishing less stringent compliance or reporting schedules or deadlines;
3. establishing small business performance standards to replace design or operational standards required in the proposed regulation; and
4. exempting small businesses from all or part of the proposed regulation's requirements.

## **BACKGROUND**

### ***Related Bill***

sSB 302, reported favorably by the Commerce Committee, contains substantially similar provisions expanding the information that must be included in a regulatory flexibility analysis.

## **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 15    Nay 0    (03/18/2016)