

**Colorado Senate Republican Caucus**  
**Business Roundtables on the Colorado Regulatory Environment**

**SUMMARY REPORT**

**October 24, 2011**

**I. INTRODUCTION**

**A. BACKGROUND**

From July 28 to September 12, the Senate Republican Caucus conducted six regional roundtables with business employers. Participants were invited for the specific purpose of discussing the business regulatory environment in Colorado.

In most cases, the meeting was chaired by the Senator in whose district the meeting was being held and co-chaired by a second Senator from Senate Republican leadership. Each meeting was co-hosted by a local chamber of commerce organization or business coalition, with business participation drawn from lists developed jointly by Senators and the local co-hosts. Employers invited to each meeting represented a cross-section of the community, not any specific business sector.

Roundtable participants were provided with background information on the state's economy, recent proposed legislation and recent regulatory activity by both the federal government and state agencies.

Participants were asked to share their own experiences and ideas regarding the costs of regulatory compliance and what changes they would like to see to spur job creation and economic expansion. The meetings had no predetermined legislative agenda and specific bills were seldom discussed.

Over 100 business owners, local chamber executives and community leaders participated in the roundtable sessions, with employer participation at each ranging from eleven to twenty-two.

## B. THE HIDDEN TAX ON BUSINESS

Since 2005, Colorado state government agencies have issued an average of 15,000 pages of new rules each year, but the cost of compliance with any specific rule has little to do with the number of pages. More importantly, the full impact and cost of regulatory compliance is cumulative: businesses must comply with all regulations, not only new rules and amendments to rules.

In 2003 the Colorado General Assembly passed SB121, which requires each state rulemaking agency to submit proposed rules in draft form to the executive director of the Department of Regulatory Agencies (DORA) for a review. The law empowers the executive director of DORA to order a cost-benefit analysis of the proposed rule, but DORA has broad discretion in those decisions. According to DORA, since SB121 took effect, only 4% of new rules have been subjected to a cost-benefit analysis.

The total impact on the Colorado economy of compliance with state business regulations is unknown. Neither the General Assembly nor the state Department of Regulatory Agencies make an effort to estimate the compliance costs for new laws affecting employers, and there has never been an independent study of the total cost of regulatory compliance in Colorado's private sector.

There is, however, solid data on the cost of compliance with *federal* regulations. While no inference can be drawn from that federal data about the overall compliance cost of state regulations, the data does give us at least a hint that the burden may be substantial.

The US Small Business Administration's Office of Advocacy sponsors an independent study to estimate the costs of compliance with federal regulations. The study is conducted every five years. The 2010 report concluded that in 2008, US businesses spent \$1.75 *trillion* in order to comply with federal regulations.

If we use Colorado GDP (\$249 billion in 2008) and calculate Colorado's percentage of national GDP as 1.73%, then Colorado's approximate share of the \$1.75 trillion national regulatory burden in 2008 was over \$30 billion.

That figure does not include any costs associated with business compliance with *state* regulations. (A good case can be made that the state legislature should instruct the Governor's Office of State Planning and Budget to sponsor a similar study, perhaps using the SBA methodology.)

### C. COMPARING BENEFITS & COSTS:

In both national and state legislative bodies, there is an inherent disequilibrium in the debate over costs and benefits of government regulation of business. The benefits to be gained by any proposed new regulatory scheme are always cited by the proponents of new legislation, but the costs are left to speculation and or dismissed as "special interest pleadings." When legislation is proposed to require an assessment or estimate of compliance costs — as in the 2011 proposal by Sen. Mitchell, SB116 — the proposal is rejected on grounds of "fiscal cost." The government claims it cannot afford the resources to calculate the business impact of new laws.

No one will deny that some benefits may be derived from new regulations, but if the cost side of the equation is not considered, then from the public policy perspective, there can be no fair-minded judgment of the overall merits of the proposal. Yet, such proposals are routinely rejected because of the alleged cost to government in collecting the data. The result is that the alleged benefits are heralded while costs are left to be determined at a later date -- if at all. Under these rules, the impact of new regulations on job retention or job creation in the private sector is not considered important enough to warrant the investment of public resources.

Whatever the “state of the art” of cost-benefit analysis or the prospects for changing the way new regulations are imposed on business, it has become abundantly clear that the *cumulative cost* of business compliance with federal and state regulations is enormous and growing. Compliance costs are a hidden tax imposing substantial overhead costs that constrain business expansion and job creation.

## II. SUMMARY OF REGIONAL BUSINESS ROUNDTABLES

The purpose of the roundtable meetings was to allow employers to talk about the regulatory burdens that are affecting their business operations directly. The format was an open conversation around the table, and the topics raised at each meeting varied with the interests and experiences of the participants. There was no effort to take a poll or establish a priority list of needed reforms. The goal was simply to let business employers tell us what the obstacles are to business success and job creation.

### COLORADO SPRINGS. JULY 28

An example of the diverse concerns voiced by employers is this list of complaints from participants in the business roundtable in Colorado Springs:

- Lack of funds caused by tight bank lending practices
- The recent sharp rise in the cost of unemployment insurance
- The clear bias in the adjudication of employer-employee unemployment claims in that system
- How minimum wage laws are applied in the retail sector
- The enormous costs of implementing the new EPA rules on sewer water treatment
- The impending disaster for small business in the implementation of Obamacare
- The growing burden of the Gallagher formula in local business property taxes
- The stupidity of the Business Personal Property Tax
- The practice of imposing punitive fines instead of providing assistance in meeting compliance goals
- Lawsuit abuse —“fixing it will not cost the state anything.”

### RIFLE, AUGUST 2

In Rifle, Colorado, the overriding concern was the devastating economic impact of the decline in oil and gas drilling since 2008. Among the comments heard:

- “The drilling rigs have moved to Dakota and Wyoming, and they left because of the new regulations.”
- “Construction activity is down, real estate sales are down, and retail sales are down, so jobs have been disappearing. Banks are not lending.”
- “New regulations merely add to the problems of local business struggling to survive.”
- “What we need is a partnership attitude from state agencies on economic development instead of the punitive attitude we see.”
- “Permitting process is faster but you still wait months for the inspections and approvals; that have not improved much.”
- “Business community needs certainty and predictability and reasonableness.”
- “The governor’s ‘Bottom-Up Blueprint’ is good on local government support for development, but we’re not so sure about the state action we need.”
- “Counties need relief from state-imposed mandates.”
- Some equipment license fees are stupid, like paying for a license for equipment you are not using.”
- Often the state Labor Department imposes huge compliance costs through an audit that may take weeks or months and yet results in only a very small penalty—but the manpower cost in compliance was huge.
- Access to public lands is a big issue because tourism is being adversely affected, which obviously affects jobs.

#### GREELEY, AUGUST 10

At the Greeley meeting, fourteen people joined the two senators in the discussion of regulatory burdens. The main complaints were the following:

- The inept, arrogant and seemingly arbitrary behavior of the staff of the Department of Revenue
- The increase in unemployment insurance rates
- The need for tort reform
- Obamacare complexity and costs for small business
- Bureaucrats who have “jobs for life” despite incompetence
- The new child care regulations were developed through a process that did not adequately reflect or weigh the likely impact on providers, the result being that many providers will be driven out of business.
- The regulatory drafting process used by the Department of Human Services reveals the undue influence of non-profit activists and bureaucratic “empire building” to the disadvantage of private sector child care providers.

#### MONTROSE, AUGUST 18

Fourteen business owners and community leaders came together in a meeting hosted by the Montrose Association of Commerce and Tourism. State Representative Don Coram, who has a long-standing interest in regulatory reform, joined Senators Mark Scheffel and Ellen Roberts in listening to their concerns. Among the major points made in the roundtable conversation were:

- State government often puts more “rocks in the road” instead of assisting local business development. An example is the Gallagher Amendment, which adds serious property tax burdens on local business.
- The Business personal Property Tax is a huge cost; even when sales receipts are down that tax remains the same.
- Another participant called Gallagher an unfunded state mandate.
- CDOT regulations inhibit the hiring of local residents.
- Federal regulations are obstructing the harvest of dead trees and state agencies are not helping resolve the problem.
- Unemployment benefits need to be reined in because unemployment insurance premiums are really hurting.
- Fear of what is coming down the pike in new health care regulations is causing delays in business investment and job expansion.
- The federal government blackmailed state government into expanding unemployment benefits and now we are paying the price.
- Applying for state grants from DOLA often requires an 80-page application and is hardly worth the administrative cost.
- A participant in the roundtable disclosed that in the last session of the legislature, a proposal to require a “business impact” statement for new legislation and new regulations was torpedoed by strong objections from the bureaucracy that “the cost of making those estimates would be prohibitive.”
- Travelling to Denver to testify or lobby for local interests is expensive for people on the Western Slope or the Eastern Plains, so rural concerns are often overlooked or given a low priority.

## LA JUNTA, SEPTEMBER 7

In the roundtable conversation in la Junta, business and community leaders had concrete suggestions for changes in Colorado government policies and practices.

- A local school district official complained that the legislature's cap for procurement codes lags inflation. They requested that the cap be raised so that fewer of their purchases will be subject to the procurement rules.
- There is often a large disconnect between laws and the rules which are written to implement them. Bills could be written more narrowly so the rulemakers don't have as much scope to go awry.
- While one businessman supported the idea of a Buy Colorado bill, another suggested that the regulations he would have to comply with to qualify would be too burdensome to make it worthwhile.
- The Unemployment Insurance system makes it difficult for employers to prove that employees were fired for cause. A business owner said that the appeals process is stacked against employers, and that they have begun to assume that anyone who no longer works for them will get UI benefits.
- CDPHE's Air and Water Division takes years to issue permits. This inhibits the ability of agricultural operators to expand.
- CDOT's off-site advertising regulations are poorly written and too strictly enforced. They make even sidewalk boards for sandwich shops illegal.

### LITTLETON, SEPTEMBER 12

Twenty-two employers, chamber executives and economic development leaders gathered in Littleton for the sixth and final roundtable session. Energy-related regulations occupied center stage, but other more general business concerns were voiced as well.

- Several individuals from oil and gas companies expressed support for expanding on Ritter's attempt to make Colorado "The New Energy State" and instead make it simply "The Energy State," uniting traditional energy sources with so-called green ones.
- Oil and gas company representatives said that the attractiveness of a state's regulatory environment depends not just on their regulations, but also the attitude of the enforcers. Colorado was singled out as one of the least attractive states for natural resources development.
- CDPHE takes far too long to issue permits.
- Some business leaders stated their support for targeted government incentives to entice large companies to locate to Colorado – from cash to expedited permitting to special tax carve-outs.
- Other business leaders said that the focus on large companies was misplaced and that the political class should focus on policies that help all companies, including those too small to garner meetings with the governor.
- A health insurance broker said that Colorado should revisit its health coverage mandates, which would "dramatically" drive down premium costs. He also said he regretted ever having supported SB 200 and asked if the board could be replaced.
- The staff at the Unemployment Insurance office is trying to exploit every possible loophole to maximize the amount of benefits they give out.
- Unions have "a direct and catastrophic effect on jobs." A businessman said that the uncertainty surrounding union activity has kept him from hiring.
- The sales tax compliance rules resulting from each home rule city's separate rules is a nightmare for businesses. A centralized processing/enforcement system would greatly reduce their compliance costs, even if the rates between jurisdictions remain different.

- The government should mimic the businesses that have weathered the recession and prioritize their obligations. It's time to admit that the government can't do everything – fewer bills focused on fixing a few big issues would be ideal for the coming session.

### III. GENERAL OBSERVATIONS

Business leaders across Colorado are very concerned about the costs of regulatory compliance as a major factor affecting their business operations and specifically the hiring and retention of employees. Among the general observations from the six business roundtables are the following:

1. Regulatory compliance impacts almost every aspect of business operations, but the most common complaints affecting nearly all businesses deal with tax compliance, unemployment compensation, and environment regulations.
2. There is no one set of new rules causing business uncertainty and constraining business expansion: compliance costs are cumulative.
3. Complaints against agency enforcement practices run the gamut; some point to bureaucratic ineptitude, some to punitive attitudes, others to costs of litigation and appeals.
4. Many complaints are expressions of frustration over the way rules are administered, not a protest against the rule itself.
5. There is institutional, anti-business bias in some agencies, such as in the administration of the Unemployment Insurance program.
6. Many of the most onerous state regulations have their origins in federal mandates, but business leaders believe state agencies do nothing to mitigate those mandates.
7. The anticipated costs of Obamacare pose a major obstacle to hiring, planning and investment.
8. The state has imposed many unfunded mandates on local government and local businesses.
9. The Business Personal Property tax is widely seen as unfair and a major impediment to business expansion.
10. Business owners understand taxes because they impact their bottom line directly in a very tangible way, but the overhead costs of compliance with regulations do not always show up on the balance sheet in a measurable way.
11. The Gallagher Amendment commercial property tax rate imposes a substantial and growing burden on business.
12. Tort reform is one of the most frequently cited remedies for reducing business overhead costs.
13. Many state agencies appear to place a higher priority on punitive penalties than on assisting firms in meeting compliance standards.
14. State agencies have no incentive to act expeditiously to resolve disputes or complete required inspections, often taking months to issue final permits even when there is no valid reason for delay and no penalties levied.
15. There is widespread support for reform of the agency rulemaking process to assure that the costs of compliance can be taken into account before a proposed rule becomes final.

### IV. LEGISLATIVE PERSPECTIVES

1. Business owners by and large are not aware of bills in the legislature that deal with reform of the regulatory process as a whole, such as proposals for more cost-benefit analysis of new regulations. They generally are aware of only bills affecting their specific industry or line of business.
2. Many business complaints are about the perceived punitive or arbitrary manner in which rules are enforced, not about the rules themselves, which is a problem best addressed by executive branch leadership, not legislative mandates.
3. Trade associations and business coalitions tend to prioritize their lobbying for or against bills which have an immediate and concrete impact on a specific business sector. This short-term perspective gives low priority to regulatory relief proposals that are not associated with the “crime du jour.”
4. The annual “rule review” process in the state legislature is not well understood in the business community outside a few lobbying professionals, and therefore is not often utilized by business owners or business organizations. The 2009 controversy over new oil and gas regulations flowing from the 2008 legislation was the exception that proves the rule.
5. While small business is the engine that generates over 75% of jobs in the Colorado economy, the burden of compliance costs for small business is seldom considered in legislative debates.
6. Lack of accurate, comprehensive data on business compliance costs is a major obstacle to sensible and balanced regulatory policy, yet legislative committees and the state bureaucracy routinely oppose efforts to improve data collection and analysis regarding the relative costs and benefits of business regulations.

## V. APPENDICES

- A. Sample invitation to the business roundtables
- B. Pages of new rules issued 2001-2010
- C. Colorado Regulatory Structure
- D. SB-03-121
- E. Business-related bills offered in the 2011 legislative session
- F. Summary of 2010 SBA report, “Impact of Regulatory Costs on Small Firms”



PLEASE JOIN

SENATOR ELLEN ROBERTS AND SENATOR MARK SCHEFFEL

FOR A BUSINESS ROUNDTABLE ON

**BUSINESS DEREGULATION AGENDA FOR JOB CREATION**

Thursday, August 18

1:00 – 2:30 PM

at

MONTROSE ASSOCIATION OF COMMERCE AND TOURISM

1519 East Main, Montrose

RSVP to Lori Brown at 303-866-2638 or [lori.brown@state.co.us](mailto:lori.brown@state.co.us)  
RSVP required - Invitation is not transferable

*This business roundtable...*

*is one of a series of conversations with business leaders across Colorado organized by Senate Republicans to identify good regulatory reform proposals for state government. Cutting red tape in business regulations has been one of Gov. Hickenlooper's themes since January, but the General Assembly killed several important regulatory reform bills in the last session. Moreover, state agencies continue to issue new regulations which have an adverse impact on business vitality and job growth. As we begin planning for the 2012 session, Senate Republicans are seeking new ideas and rule-making reform proposals that can help jumpstart our sluggish Colorado economy.*



**Ellen Roberts** represents Colorado's 6th Senate District which includes Archuleta, Dolores, La Plata, Montezuma, Montrose, Ouray, San Juan and San Miguel Counties. Since being elected to office, Ellen Roberts has distinguished herself as a capable and thoughtful legislator. The Denver Post reported, "In her first term as State Representative, Ellen has been a rising star in the Colorado State House. Her non-partisan positions on issues critical to the state of Colorado and to her constituents have earned her respect from both voters and fellow lawmakers."

**Mark Scheffel** represents Colorado State Senate District 4 which includes: Lake, Park, and Teller Counties; Castle Rock, Sedalia, Franktown, and Larkspur in Douglas County; and Monument and Palmer Lake in El Paso County. Senator Scheffel currently serves as Caucus Chair for the Senate Republicans. Scheffel graduated from the University of Denver with a degree in finance. He then went to the John Marshall School of Law where he obtained his juris doctor. Later, Scheffel earned his LL.M. (master of laws) degree from New York University's School of Law.



## New Pages Issued in the State Register by Year

Year	New Pages
2006	14,684
2007	14,776
2008	15,554
2009	16,470
2010	16,582
2011 (through June)	7,158
<b>TOTAL</b>	<b>85,224</b>



Below you will find the number of rules promulgated by DORA Divisions in the past 10 years, as well as the corresponding page count.

DIVISION	YEARS	RULES	PAGES
DOI	2001-2011	133 rules	1,186 pages
PUC	2001-2011	156 rule dockets	4,514 pages
REGISTRATIONS	2001-2011	624 rules	967 pages
REAL ESTATE	2006-2011	219	547 pages
CCRD	2006-2011	8 rules	2 pages
FINANCIAL SERVICES	2001-2011	3 rules	3 pages
BANKING	2001-2011	40 rules	46 pages
SECURITIES	2001-2011	4 rules	4 pages



**Dora**  
Department of Regulatory Agencies

Office of Policy,  
Research and  
Regulatory Reform



## Colorado Regulatory Structure

### Introduction - What is a "Regulation" - Rulemaking Procedure

#### Flowchart of State Rulemaking Process

#### A. Introduction

It is the Department of Regulatory Agencies' belief that the public has a right to know what the consequences are of state regulatory action. It is hoped that with full disclosure, Coloradans will be better prepared to participate in the regulatory process and act as watchdogs to make sure that our guiding principle -- "First, do no harm!" -- is followed.

#### B. What is a "Regulation?"

A regulation is a policy or procedure created by a state agency that has an impact on the public. The regulation is the state agency's action in implementing, interpreting, applying or enforcing a statute enacted by the legislature and signed into law by the Governor. Regulations range from the seemingly insignificant (the size of Swiss cheese holes) to the serious (dealing with Chronic Wasting Disease).

#### C. Rulemaking Procedure

Every state agency in the Executive Branch must adhere to the rulemaking process outlined in the Administrative Procedure Act or APA (Section 24-4-101, Colorado Revised Statutes) unless explicitly exempted. The rulemaking process involves four stages: Notice of Proposed Rule, Comment Period on Proposed Rule, Hearing on Proposed Rule and Final Adoption of Proposed Rule.

##### 1. Notice of Proposed Rule

When an agency wants to promulgate a new rule or an amendment to an existing rule, it must first file a Notice of Proposed Rule with the Secretary of State. The Secretary of State then publishes the Notice of Proposed Rule in the Colorado Register. This publication acts as notice to the public.

Due to the passage of Senate Bill 03-121, agencies must also send a copy of the proposed rule to the Office of Policy, Research and Regulatory Reform so that the Director can evaluate the proposed rule to determine if a cost-benefit analysis should be performed by the agency. If you sign-up to receive a Regulatory Notice, you will receive an e-mail telling you that a proposed rule has been submitted by an agency covering a subject matter of interest to you.

Statutorily, agencies are also required to notify any individual who has told the agency that they want to be notified of any proposed rulemaking. The individual needs to file the appropriate form with the agency. The agency then will send the notice to the individual either by ordinary mail or via electronic mail. There may be a small fee for those individuals who want to receive notice by ordinary mail.

##### 2. Comment Period on Proposed Rule

Once the Notice of Proposed Rule is filed with the Secretary of State, the public is allowed to offer comments on the proposed rule. A Colorado state governmental agency must accept and consider comments from the public before that agency can adopt, amend or otherwise change any regulation not explicitly exempted from the APA.

Regulatory Notice subscribers will receive the contact information of the individuals in the agency submitting the proposed rule so that they can send comments or get further information. Citizens also can contact the

Office of Policy, Research and Regulatory Reform to discuss the proposed rule.

### 3. Hearing on Proposed Rule

At the hearing on the proposed rule, the agency accepts written and oral testimony about the rule. The testimony can be supportive of or in opposition to the proposed rule. Once the hearing ends, the public is no longer able to offer comments on the proposed rule unless the agency alters the proposed rule in a manner that requires the process to begin again.

### 4. Final Adoption of Rule

Following the hearing on the proposed rule, the agency has 180 days to file adopted rules with the Secretary of State for publication in the Colorado Register. Adopted rules go into effect twenty days after publication or on such later date as is stated in the rule.

### 5. Timeline Illustrating the Regulatory Process

The following timeline illustrates the regulatory process. The timeline below assumes statutorily minimum days used by an agency, which means that a proposed rule could become final in no less than ninety-one days.

<b>Anytime</b>	Receive electronic notices of rulemaking hearings by signing up on the <u>Office of Policy, Research and Regulatory Reform's site</u> or submit your name to a specific state agency requesting that you receive notices of proposed rulemaking (a fee may be charged if you request notices by mail; there is not a fee if you request notices by electronic mail).
<b>Anytime</b>	Notice of proposed rulemaking is filed with the Secretary of State for publication in the Colorado Register and draft rules are submitted to the Office of Policy, Research and Regulatory Reform in the Department of Regulatory Agencies (DORA).
<b>20 days prior to first hearing</b>	Executive Director of DORA may request a cost-benefit analysis from the agency proposing rule changes.
<b>15 days prior to first hearing</b>	A member of the public may request a regulatory analysis from the agency proposing rule changes.
<b>5 days prior to first hearing</b>	Cost-benefit analysis is completed, made available to the public and submitted to the Executive Director of DORA. Regulatory analysis is completed and made available to the public.
<b>0 days</b>	<b>First Public Hearing</b> (public has the opportunity to submit written data, views or arguments).
<b>Up to 180 days after hearing</b>	Rules must be adopted.
<b>Within 20 days after adoption of rules</b>	Final adopted rules are filed with the Secretary of State for publication in the Colorado Register.
<b>At least 30 days after filing adopted rules with the Secretary of State</b>	Final rules becomes effective.



NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws. 2003



SENATE BILL 03-121

BY SENATOR(S) McElhany, Cairns, Johnson S., Jones, Lamborn, May R., and Teck;  
also REPRESENTATIVE(S) Williams T., Brophy, Crane, Lee, and Mitchell.

CONCERNING THE PREPARATION OF A COST-BENEFIT ANALYSIS OF RULES PROPOSED FOR ADOPTION BY STATE AGENCIES UNDER THE "STATE ADMINISTRATIVE PROCEDURE ACT" TO DETERMINE THE IMPACT OF THE PROPOSED RULES ON THE STATE'S ECONOMY.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-4-101.5, Colorado Revised Statutes, is amended to read:

**24-4-101.5. Legislative declaration.** The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his OR HER affairs, use his OR HER property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

state. The general assembly also finds that many government programs may be adopted without stating the direct and indirect costs to consumers AND BUSINESSES and without consideration of such costs in relation to the benefits to be derived from the programs. The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment. THE GENERAL ASSEMBLY FURTHER FINDS THAT AGENCY RULES CAN NEGATIVELY IMPACT THE STATE'S BUSINESS CLIMATE BY IMPEDING THE ABILITY OF LOCAL BUSINESSES TO COMPETE WITHOUT-OF-STATE BUSINESSES, BY DISCOURAGING NEW OR EXISTING BUSINESSES FROM MOVING TO THIS STATE, AND BY HINDERING ECONOMIC COMPETITIVENESS AND JOB CREATION. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.

**SECTION 2.** 24-4-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**24-4-102. Definitions.** As used in this article, unless the context otherwise requires:

(5.5) "ECONOMIC COMPETITIVENESS" MEANS THE ABILITY OF THE STATE OF COLORADO TO ATTRACT NEW BUSINESS AND THE ABILITY OF THE BUSINESSES CURRENTLY OPERATING IN COLORADO TO CREATE NEW JOBS AND RAISE PRODUCTIVITY.

(18) "SMALL BUSINESS" MEANS A BUSINESS WITH FEWER THAN FIVE HUNDRED EMPLOYEES.

**SECTION 3.** 24-4-103 (6), (8.1) (b) (V), and (11) (b), Colorado Revised Statutes, are amended, and the said 24-4-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**24-4-103. Rule-making - procedure - repeal.** (2.5) (a) AT THE TIME OF FILING A NOTICE OF PROPOSED RULE-MAKING WITH THE SECRETARY OF STATE AS THE SECRETARY MAY REQUIRE, AN AGENCY SHALL SUBMIT A DRAFT OF THE PROPOSED RULE OR THE PROPOSED AMENDMENT TO AN

EXISTING RULE TO THE OFFICE OF THE EXECUTIVE DIRECTOR IN THE DEPARTMENT OF REGULATORY AGENCIES. THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAY DETERMINE IF THE PROPOSED RULE OR AMENDMENT MAY HAVE A NEGATIVE IMPACT ON ECONOMIC COMPETITIVENESS OR ON SMALL BUSINESS IN COLORADO. IF THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, DETERMINES THAT THE PROPOSED RULE OR AMENDMENT MAY HAVE SUCH NEGATIVE IMPACT, HE OR SHE MAY DIRECT THE SUBMITTING AGENCY TO PERFORM A COST-BENEFIT ANALYSIS OF THE RULE OR AMENDMENT. IF THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAKES SUCH A REQUEST, IT SHALL BE MADE AT LEAST TWENTY DAYS BEFORE THE DATE OF THE HEARING ON THE RULE OR AMENDMENT. THE AGENCY RECEIVING SUCH REQUEST SHALL COMPLETE A COST-BENEFIT ANALYSIS AT LEAST FIVE DAYS BEFORE THE HEARING ON THE RULE OR AMENDMENT, SHALL MAKE THE ANALYSIS AVAILABLE TO THE PUBLIC, AND SHALL SUBMIT A COPY TO THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE. FAILURE TO COMPLETE A REQUESTED COST-BENEFIT ANALYSIS PURSUANT TO THIS SUBSECTION (2.5) SHALL PRECLUDE THE ADOPTION OF SUCH RULE OR AMENDMENT. SUCH COST-BENEFIT ANALYSIS SHALL INCLUDE THE FOLLOWING:

(I) THE REASON FOR THE RULE OR AMENDMENT;

(II) THE ANTICIPATED ECONOMIC BENEFITS OF THE RULE OR AMENDMENT, WHICH SHALL INCLUDE ECONOMIC GROWTH, THE CREATION OF NEW JOBS, AND INCREASED ECONOMIC COMPETITIVENESS;

(III) THE ANTICIPATED COSTS OF THE RULE OR AMENDMENT, WHICH SHALL INCLUDE THE DIRECT COSTS TO THE GOVERNMENT TO ADMINISTER THE RULE OR AMENDMENT AND THE DIRECT AND INDIRECT COSTS TO BUSINESS AND OTHER ENTITIES REQUIRED TO COMPLY WITH THE RULE OR AMENDMENT;

(IV) ANY ADVERSE EFFECTS ON THE ECONOMY, CONSUMERS, PRIVATE MARKETS, SMALL BUSINESSES, JOB CREATION, AND ECONOMIC COMPETITIVENESS; AND

(V) AT LEAST TWO ALTERNATIVES TO THE PROPOSED RULE OR AMENDMENT THAT CAN BE IDENTIFIED BY THE SUBMITTING AGENCY OR A MEMBER OF THE PUBLIC, INCLUDING THE COSTS AND BENEFITS OF PURSUING EACH OF THE ALTERNATIVES IDENTIFIED.

(b) THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL

STUDY THE COST-BENEFIT ANALYSIS AND MAY URGE THE AGENCY TO REVISE THE RULE OR AMENDMENT TO ELIMINATE OR REDUCE THE NEGATIVE ECONOMIC IMPACT. THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAY INFORM THE PUBLIC ABOUT THE NEGATIVE IMPACT OF THE PROPOSED RULE OR THE PROPOSED AMENDMENT TO AN EXISTING RULE.

(c) ANY PROPRIETARY INFORMATION PROVIDED TO THE DEPARTMENT OF REVENUE BY A BUSINESS OR TRADE ASSOCIATION FOR THE PURPOSE OF PREPARING A COST-BENEFIT ANALYSIS SHALL BE CONFIDENTIAL.

(d) IF THE AGENCY HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2.5), THE RULE OR AMENDMENT SHALL NOT BE INVALIDATED ON THE GROUND THAT THE CONTENTS OF THE COST-BENEFIT ANALYSIS ARE INSUFFICIENT OR INACCURATE.

(e) THIS SUBSECTION (2.5) SHALL NOT APPLY TO ORDERS, LICENSES, PERMITS, ADJUDICATION, OR RULES AFFECTING THE DIRECT REIMBURSEMENT OF VENDORS OR PROVIDERS WITH STATE FUNDS.

(f) (I) THIS SUBSECTION (2.5) IS REPEALED, EFFECTIVE JULY 1, 2006.

(II) PRIOR TO SUCH REPEAL, THE PROVISIONS REGARDING THE PREPARATION OF A COST-BENEFIT ANALYSIS PURSUANT TO THIS SUBSECTION (2.5) SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C. R. S.

(6) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section (or where circumstances imperatively require, without notice) only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. A TEMPORARY OR EMERGENCY RULE MAY BE ADOPTED WITHOUT COMPLIANCE WITH SUBSECTION (2.5) OF THIS SECTION, BUT SHALL NOT BECOME PERMANENT WITHOUT COMPLIANCE WITH SUCH SUBSECTION (2.5). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for

not more than three months from the adoption thereof or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section. The period of effectiveness provided by this subsection (6) does not apply to temporary or emergency rules adopted by the public utilities commission under section 40-2-108 (2), C.R.S.

(8.1) (b) The agency rule-making record shall contain:

(V) A copy of any regulatory analysis OR COST-BENEFIT ANALYSIS prepared for the proceeding upon which the rule was based, if applicable, AND ANY FORMAL STATEMENT MADE TO THE AGENCY PROMULGATING THE RULE BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES REGARDING SUCH COST-BENEFIT ANALYSIS;

(11) (b) The secretary of state shall cause to be published in electronic form and may cause to be published in printed form, at the least cost possible to the state, the code of Colorado regulations and the Colorado register no less often than once each calendar month and shall make all diligent effort to enter into a publication agreement to such effect for a period not to exceed five years, but such agreement may include a renewal provision for additional periods not to exceed five years each. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR HIS OR HER DESIGNEE MAY WORK WITH THE SECRETARY OF STATE TO MAKE THE CODE OF COLORADO REGULATIONS AND THE COLORADO REGISTER AVAILABLE TO THE PUBLIC IN AN ELECTRONIC FORMAT THAT IS ACCESSIBLE AND USER-FRIENDLY.

**SECTION 4.** 24-34-104 (37), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (37) The following agencies, functions, or both, shall terminate on July 1, 2006:

(f) THE REQUIREMENTS AND PROCEDURES REGARDING THE PREPARATION OF A COST-BENEFIT ANALYSIS IN ACCORDANCE WITH SECTION 24-4-103 (2.5).

**SECTION 5. Effective date - applicability.** (1) This act shall take

agency as defined by section 24-4-102 (3), Colorado Revised Statutes, on or after the applicable effective date of this act.

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John Andrews  
PRESIDENT OF  
THE SENATE

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Lola Spradley  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Mona Heustis  
SECRETARY OF  
THE SENATE

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Judith Rodrigue  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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Bill Owens  
GOVERNOR OF THE STATE OF COLORADO

# **The Impact of Regulatory Costs on Small Firms**

by

**W. Mark Crain  
Lafayette College  
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for



under contract number SBHQ-03-M-0522

Release Date: September 2005

*The statements, findings, conclusions, and recommendations found in this study are those of the authors and do not necessarily reflect the views of the Office of Advocacy, the United States Small Business Administration, or the United States Government.*

## Executive Summary

The annual cost of federal regulations in the United States increased to more than \$1.1 trillion in 2004. Had every household received a bill for an equal share, each would have owed \$10,172, an amount that exceeds what the average American household spent on health care in 2004 (slightly under \$9,000). While all citizens and businesses of course pay some portion of these costs, the distribution of the burden of regulations is quite uneven. The portion of regulatory costs that falls initially on businesses was \$5,633 per employee in 2004, a 4.1 percent cost increase since 2000 after adjusting for inflation. Small businesses, defined as firms employing fewer than 20 employees, bear the largest burden of federal regulations, as they did in the mid-1990s and in 2000. Small businesses face an annual regulatory cost of \$7,647 per employee, which is 45 percent higher than the regulatory cost facing large firms (defined as firms with 500 or more employees).

The regulatory landscape highlighted above and detailed in this report emerges from an updated analysis of the regulatory record explored in two previous studies for the Office of the Chief Counsel for Advocacy of the U.S. Small Business Administration (Hopkins, 1995 and Crain and Hopkins, 2001).

## **Business-Related Bills 2011 Session**

*\*Bills with an asterisk passed. Bills without an asterisk were killed.  
Party affiliation of prime sponsors indicated in parenthesis.*

### **Taxes**

- SB 026 Exempt new equipment from business personal property tax (R/R)
- SB 056 Online sales tax exemption (R/R)
- SB 073 Repeal “dirty dozen” tax increases (R)
- SB 098 Phase out business personal property tax (R)
- SB 223\* Reinstatement of sales tax credit for retailers through the vendor fee (D/R)
- SCR 004 Opposition to tax increases (R)
- HB 1025 Repeal hospital bed tax (R)
- HB 1005\* Repeal agriculture tax (R/R)
- HB 1091\* Sales tax exemption for medical equipment (R/D)
- HB 1141 Two-year suspension of business personal property tax (R/R)
- HB 1265\* Sales and use tax refund claims extend deadline (R/D)
- HB 1293\* Repeal software tax (R/D)
- HB 1299 Repeal Colorado estate tax (R/R)
- HB 1318 Repeal online sales tax (R&D/R&R)

### **Regulation**

- SB 118 Committee of reference rule review (R)
- SB 167 Efficiencies in state regulatory system (R)
- HB 1223 Increase members with industry experience on oil and gas commission (R/R)
- SB 116 Business fiscal impact statements on all bills (R/D)
- SB 262 Eliminate price controls in the telecoms industry (R&D/R&D)
- HB 1127 Limit employer use of credit score for applicant screening (D/D)
- HB 1214 Transparency in energy use of rental property (D)
- HB 1244 Mandatory electronic device recycling program for manufacturers (D/D&D)
- HB 1247 Beverage container deposit program (D/D)
- SB 130 Require utilities to maintain energy consumption data on all commercial buildings (D/D)
- SB 068\* Expand Attorney General’s power to define unfair trade practices beyond those listed in current law (D/D)
- HB 1314 Streamline certification process for enterprise zone tax credits (R/D)

## **Cost of Doing Business**

- SB 058 Least-cost planning electric utilities (R)
- SB 072 Increase damages cap for employment discrimination lawsuits (D/D)
- SB 095 Repeal FASTER car tax (R/R)
- SB 071 Reduce energy costs for Colorado consumers (R)
- SB 113 Prohibit PUC from increasing rates in anticipation of the costs of global warming (R)
- SB 168 Single payer health care (D/D)
- HB 1070 Public works prevailing wages & benefits (D/D)
- HB 1084 Reduce late vehicle registration fines (R/R)
- HB 1188\* Unemployment insurance solvency reform (R/D)
- HB 1271 Limit tiered rates by electric utilities (R/R)
- HB 1302 Business training for judges (R/D)
- HB 1307\* Audit state agency payments for waste, fraud and abuse on an on-going basis (R/D)