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2D SESSION

S. 3024

To ensure that the creation of jobs by small businesses is considered during the Federal legislative and rulemaking process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2010

Ms. SNOWE (for herself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure that the creation of jobs by small businesses is considered during the Federal legislative and rulemaking process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Job Impact Analysis Act of 2010”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Job impact statement for reported bills and joint resolutions.

Sec. 4. Clarification and expansion of rules covered by the Regulatory Flexibility Act.

Sec. 5. Requirements providing for more detailed analyses.

Sec. 6. Periodic review of rules.

Sec. 7. Office of Advocacy.

Sec. 8. Clerical amendments.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) A vibrant and growing small business sector
4 is critical to the recovery of the economy of the
5 United States.

6 (2) Regulations designed for application to
7 large-scale entities have been applied uniformly to
8 small businesses and other small entities, sometimes
9 inhibiting the ability of small entities to create new
10 jobs.

11 (3) Uniform Federal regulatory and reporting
12 requirements in many instances have imposed on
13 small businesses and other small entities unneces-
14 sary and disproportionately burdensome demands,
15 including legal, accounting, and consulting costs,
16 thereby threatening the viability of small entities
17 and the ability of small entities to compete and cre-
18 ate new jobs in a global marketplace.

19 (4) Since 1980, Federal agencies have been re-
20 quired to recognize and take account of the dif-
21 ferences in the scale and resources of regulated enti-
22 ties, but in many instances have failed to do so.

1 (5) In 2009, there were nearly 70,000 pages in
2 the Federal Register, and, according to research by
3 the Office of Advocacy of the Small Business Admin-
4 istration, the annual cost of Federal regulations to-
5 tals \$1,100,000,000,000. Small firms bear a dis-
6 proportionate burden, paying approximately 45 per-
7 cent, or \$7,647, more per employee than larger
8 firms in annual regulatory compliance costs.

9 (6) The Federal Government should fully con-
10 sider the costs, including indirect economic impacts
11 and the potential for job creation and job loss, of
12 proposed rules.

13 (7) It is the intention of Congress to amend
14 chapter 6 of title 5, United States Code, to ensure
15 that all impacts, including foreseeable indirect ef-
16 fects, of proposed and final rules are considered by
17 agencies during the rulemaking process and that the
18 agencies assess a full range of alternatives that will
19 limit adverse economic consequences, enhance eco-
20 nomic benefits, and fully address potential job cre-
21 ation or job loss.

22 (8) To the maximum extent practicable, the Di-
23 rector of the Congressional Budget Office should, in
24 certain estimates the Director prepares with respect
25 to bills or joint resolutions reported by congressional

1 committees, estimate the potential job creation or
2 job loss attributable to the bills or joint resolutions.

3 **SEC. 3. JOB IMPACT STATEMENT FOR REPORTED BILLS**
4 **AND JOINT RESOLUTIONS.**

5 Section 424 of the Congressional Budget and Im-
6 poundment Control Act of 1974 (2 U.S.C. 658c) is amend-
7 ed—

8 (1) in subsection (a)(2)—

9 (A) in subparagraph (B), by striking
10 “and” at the end;

11 (B) in subparagraph (C), by striking the
12 period at the end and inserting “; and”; and

13 (C) by adding at the end the following:

14 “(D) if the Director estimates that the
15 total amount of direct costs of all Federal inter-
16 governmental mandates in the bill or joint reso-
17 lution will equal or exceed \$5,000,000,000 (ad-
18 justed annually for inflation), to the extent
19 practicable, the potential job creation or job loss
20 in State, local, and tribal governments as a re-
21 sult of the mandates.”; and

22 (2) in subsection (b)(2)—

23 (A) in subparagraph (A), by striking
24 “and” at the end;

1 (B) in subparagraph (B), by striking the
2 period at the end and inserting “; and”;

3 (C) by adding at the end the following:

4 “(C) if the Director estimates that the
5 total amount of direct costs of all Federal pri-
6 vate sector mandates in the bill or joint resolu-
7 tion will equal or exceed \$5,000,000,000 (ad-
8 justed annually for inflation), to the extent
9 practicable, the potential job creation or job loss
10 in the private sector as a result of the man-
11 dates.”.

12 **SEC. 4. CLARIFICATION AND EXPANSION OF RULES COV-**
13 **ERED BY THE REGULATORY FLEXIBILITY**
14 **ACT.**

15 Section 601 of title 5, United States Code, is amend-
16 ed—

17 (1) in paragraph (6), by striking “and” at the
18 end;

19 (2) in paragraph (7)(B), by striking the period
20 at the end and inserting a semicolon;

21 (3) in paragraph (8)—

22 (A) by striking “RECORDKEEPING RE-
23 QUIREMENT.—The” and inserting “the”; and

24 (B) by striking the period at the end and
25 inserting “; and”;

1 (4) by adding at the end the following:

2 “(9) the term ‘economic impact’ means, with
3 respect to a proposed or final rule—

4 “(A) any direct economic effect of the rule
5 on small entities; and

6 “(B) any indirect economic effect on small
7 entities, including potential job creation or job
8 loss, that is reasonably foreseeable and that re-
9 sults from the rule, without regard to whether
10 small entities are directly regulated by the
11 rule.”.

12 **SEC. 5. REQUIREMENTS PROVIDING FOR MORE DETAILED**
13 **ANALYSES.**

14 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
15 Section 603 of title 5, United States Code, is amended—

16 (1) by striking subsection (b) and inserting the
17 following:

18 “(b) Each initial regulatory flexibility analysis re-
19 quired under this section shall contain a detailed state-
20 ment—

21 “(1) describing the reasons why action by the
22 agency is being considered;

23 “(2) describing the objectives of, and legal basis
24 for, the proposed rule;

1 “(3) estimating the number and type of small
2 entities to which the proposed rule will apply;

3 “(4) describing the projected reporting, record-
4 keeping, and other compliance requirements of the
5 proposed rule, including an estimate of the classes of
6 small entities which will be subject to the require-
7 ment and the type of professional skills necessary
8 for preparation of the report and record;

9 “(5) describing all relevant Federal rules which
10 may duplicate, overlap, or conflict with the proposed
11 rule, or the reasons why such a description could not
12 be provided; and

13 “(6) estimating the additional cumulative eco-
14 nomic impact of the proposed rule on small entities,
15 including job creation and employment by small enti-
16 ties, beyond that already imposed on the class of
17 small entities by the agency, or the reasons why
18 such an estimate is not available.”; and

19 (2) by adding at the end the following:

20 “(d) An agency shall notify the Chief Counsel for Ad-
21 vocacy of the Small Business Administration of any draft
22 rules that may have a significant economic impact on a
23 substantial number of small entities either—

24 “(1) when the agency submits a draft rule to
25 the Office of Information and Regulatory Affairs at

1 the Office of Management and Budget under Execu-
2 tive Order 12866, if that order requires such sub-
3 mission; or

4 “(2) if no submission to the Office of Informa-
5 tion and Regulatory Affairs is so required, at a rea-
6 sonable time prior to publication of the rule by the
7 agency.”.

8 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

9 (1) IN GENERAL.—Section 604(a) of title 5,
10 United States Code, is amended—

11 (A) by inserting “detailed” before “de-
12 scription” each place it appears;

13 (B) in paragraph (1), by striking “suc-
14 cinct”;

15 (C) in paragraph (2)—

16 (i) by striking “summary” each place
17 it appears and inserting “statement”; and

18 (ii) by inserting “(or certification of
19 the proposed rule under section 605(b))”
20 after “initial regulatory flexibility anal-
21 ysis”;

22 (D) in paragraph (3), by striking “an ex-
23 planation” and inserting “a detailed expla-
24 nation”;

1 (E) by redesignating paragraphs (3), (4),
2 and (5) as paragraphs (4), (5), and (6), respec-
3 tively; and

4 (F) by inserting after paragraph (2) the
5 following:

6 “(3) the response of the agency to any com-
7 ments filed by the Chief Counsel for Advocacy of the
8 Small Business Administration in response to the
9 proposed rule, and a detailed statement of any
10 change made to the proposed rule in the final rule
11 as a result of the comments;”.

12 (2) PUBLICATION OF ANALYSIS ON WEB SITE,
13 ETC.—Section 604(b) of title 5, United States Code,
14 is amended to read as follows:

15 “(b) The agency shall—

16 “(1) make copies of the final regulatory flexi-
17 bility analysis available to the public, including by
18 publishing the entire final regulatory flexibility anal-
19 ysis on the Web site of the agency; and

20 “(2) publish in the Federal Register the final
21 regulatory flexibility analysis, or a summary of the
22 analysis that includes the telephone number, mailing
23 address, and address of the Web site where the com-
24 plete final regulatory flexibility analysis may be ob-
25 tained.”.

1 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
2 Section 605(a) of title 5, United States Code, is amended
3 to read as follows:

4 “(a) A Federal agency shall be deemed to have satis-
5 fied a requirement regarding the content of a regulatory
6 flexibility agenda or regulatory flexibility analysis under
7 section 602, 603, or 604, if the Federal agency provides
8 in the agenda or regulatory flexibility analysis a cross-ref-
9 erence to the specific portion of an agenda or analysis that
10 is required by another law and that satisfies the require-
11 ment.”.

12 (d) CERTIFICATIONS.—The second sentence of sec-
13 tion 605(b) of title 5, United States Code, is amended by
14 striking “statement providing the factual” and inserting
15 “detailed statement providing the factual and legal”.

16 (e) QUANTIFICATION REQUIREMENTS.—Section 607
17 of title 5, United States Code, is amended to read as fol-
18 lows:

19 **“§ 607. Quantification requirements**

20 “In complying with sections 603 and 604, an agency
21 shall provide—

22 “(1) a quantifiable or numerical description of
23 the effects of the proposed or final rule, including an
24 estimate of the potential for job creation or job loss,
25 and alternatives to the proposed or final rule; or

1 “(2) a more general descriptive statement and
2 a detailed statement explaining why quantification is
3 not practicable or reliable.”.

4 **SEC. 6. PERIODIC REVIEW OF RULES.**

5 Section 610 of title 5, United States Code, is amend-
6 ed to read as follows:

7 **“§ 610. Periodic review of rules**

8 “(a) Not later than 180 days after the enactment of
9 the Job Impact Analysis Act of 2010, each agency shall
10 publish in the Federal Register and place on its Web site
11 a plan for the periodic review of rules issued by the agency
12 that the head of the agency determines has a significant
13 economic impact on a substantial number of small entities.
14 Such determination shall be made without regard to
15 whether the agency performed an analysis under section
16 604. The purpose of the review shall be to determine
17 whether such rules should be continued without change,
18 or should be amended or rescinded, consistent with the
19 stated objectives of applicable statutes, to minimize any
20 significant adverse economic impacts on a substantial
21 number of small entities (including an estimate of any ad-
22 verse impacts on job creation and employment by small
23 entities). Such plan may be amended by the agency at any
24 time by publishing the revision in the Federal Register

1 and subsequently placing the amended plan on the Web
2 site of the agency.

3 “(b) The plan shall provide for the review of all such
4 agency rules existing on the date of the enactment of the
5 Job Impact Analysis Act of 2010 within 10 years after
6 the date of publication of the plan in the Federal Register
7 and every 10 years thereafter and for review of rules
8 adopted after the date of enactment of the Job Impact
9 Analysis Act of 2010 within 10 years after the publication
10 of the final rule in the Federal Register and every 10 years
11 thereafter. If the head of the agency determines that com-
12 pletion of the review of existing rules is not feasible by
13 the established date, the head of the agency shall so certify
14 in a statement published in the Federal Register and may
15 extend the review for not longer than 2 years after publi-
16 cation of notice of extension in the Federal Register. Such
17 certification and notice shall be sent to the Chief Counsel
18 for Advocacy and Congress.

19 “(c) Each agency shall annually submit a report re-
20 garding the results of its review pursuant to such plan
21 to Congress and, in the case of agencies other than inde-
22 pendent regulatory agencies (as defined in section 3502(5)
23 of title 44, United States Code), to the Administrator of
24 the Office of Information and Regulatory Affairs of the
25 Office of Management and Budget. Such report shall in-

1 clude the identification of any rule with respect to which
2 the head of the agency made a determination of infeasibility under paragraph (5) or (6) of subsection (d) and
3 a detailed explanation of the reasons for such determination.
4
5

6 “(d) In reviewing rules under such plan, the agency
7 shall consider—

8 “(1) the continued need for the rule;

9 “(2) the nature of complaints received by the
10 agency from small entities concerning the rule;

11 “(3) comments by the Regulatory Enforcement
12 Ombudsman and the Chief Counsel for Advocacy;

13 “(4) the complexity of the rule;

14 “(5) the extent to which the rule overlaps, du-
15 plicates, or conflicts with other Federal rules and,
16 unless the head of the agency determines it to be in-
17 feasible, State and local rules;

18 “(6) the contribution of the rule to the cumu-
19 lative economic impact of all Federal rules on the
20 class of small entities affected by the rule, unless the
21 head of the agency determines that such calculations
22 cannot be made and reports that determination in
23 the annual report required under subsection (c);

24 “(7) the length of time since the rule has been
25 evaluated, or the degree to which technology, eco-

1 nomic conditions, or other factors have changed in
2 the area affected by the rule; and

3 “(8) the current impact of the rule, including—

4 “(A) the estimated number of small enti-
5 ties to which the rule will apply;

6 “(B) the estimated number of small busi-
7 ness jobs that will be lost or created by the
8 rule; and

9 “(C) the projected reporting, recordkeeping
10 and other compliance requirements of the pro-
11 posed rule, including—

12 “(i) an estimate of the classes of small
13 entities that will be subject to the require-
14 ment; and

15 “(ii) the type of professional skills
16 necessary for preparation of the report or
17 record.

18 “(e) The agency shall publish in the Federal Register
19 and on the Web site of the agency a list of rules to be
20 reviewed pursuant to such plan. Such publication shall in-
21 clude a brief description of the rule, the reason why the
22 agency determined that it has a significant economic im-
23 pact on a substantial number of small entities (without
24 regard to whether the agency had prepared a final regu-
25 latory flexibility analysis for the rule), and request com-

1 ments from the public, the Chief Counsel for Advocacy,
2 and the Regulatory Enforcement Ombudsman concerning
3 the enforcement of the rule.”.

4 **SEC. 7. OFFICE OF ADVOCACY.**

5 (a) IN GENERAL.—Section 203 of Public Law 94–
6 305 (15 U.S.C. 634c) is amended—

7 (1) in paragraph (4), by striking “and” at the
8 end;

9 (2) in paragraph (5), by striking the period and
10 inserting “; and”; and

11 (3) by adding at the end the following:

12 “(6) carry out the responsibilities of the Office
13 of Advocacy under chapter 6 of title 5, United
14 States Code.”.

15 (b) BUDGETARY LINE ITEM AND AUTHORIZATION OF
16 APPROPRIATIONS.—Title II of Public Law 94–305 (15
17 U.S.C. 634a et seq.) is amended by striking section 207
18 and inserting the following:

19 **“SEC. 207. BUDGETARY LINE ITEM AND AUTHORIZATION OF**
20 **APPROPRIATIONS.**

21 “(a) APPROPRIATION REQUESTS.—Each budget of
22 the United States Government submitted by the President
23 under section 1105 of title 31, United States Code, shall
24 include a separate statement of the amount of appropria-
25 tions requested for the Office of Advocacy of the Small

1 Business Administration, which shall be designated in a
2 separate account in the General Fund of the Treasury.

3 “(b) ADMINISTRATIVE OPERATIONS.—The Adminis-
4 trator of the Small Business Administration shall provide
5 the Office of Advocacy with appropriate and adequate of-
6 fice space at central and field office locations, together
7 with such equipment, operating budget, and communica-
8 tions facilities and services as may be necessary, and shall
9 provide necessary maintenance services for such offices
10 and the equipment and facilities located in such offices.

11 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated such sums as are nec-
13 essary to carry out this title. Any amount appropriated
14 under this subsection shall remain available, without fiscal
15 year limitation, until expended.”.

16 **SEC. 8. CLERICAL AMENDMENTS.**

17 (a) HEADING.—The heading of section 605 of title
18 5, United States Code, is amended to read as follows:

19 **“§ 605. Incorporations by reference and certifi-**
20 **cations”.**

21 (b) TABLE OF SECTIONS.—The table of sections for
22 chapter 6 of title 5, United States Code, is amended—

23 (1) by striking the item relating to section 605
24 and inserting the following:

“605. Incorporations by reference and certifications.”;

25 and

- 1 (2) by striking the item relating to section 607
- 2 and inserting the following:

“607. Quantification requirements.”.

○