

2 **SSB 5739** - H COMM AMD

3 By Committee on Trade, Economic Development & Housing

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 19.85.020 and 1989 c 374 s 1 are each amended to read
8 as follows:

9 Unless the context clearly indicates otherwise, the definitions in
10 this section apply through this chapter.

11 (1) "Small business" has the meaning given in RCW 43.31.025(4).

12 (2) "Small business economic impact statement" means a statement
13 meeting the requirements of RCW 19.85.040 prepared by a state agency
14 pursuant to RCW 19.85.030.

15 (3) "Industry" means all of the businesses in this state in any one
16 (~~three-digit~~) four-digit standard industrial classification as
17 published by the United States department of commerce.

18 **Sec. 2.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read as
19 follows:

20 The legislature finds that small businesses in (~~the state of~~)
21 Washington (~~have in the past been subjected~~) are subject to rules
22 adopted by agencies, departments, and instrumentalities of the state
23 government which (~~have placed~~) place a proportionately higher burden
24 on (~~the small business community in Washington state~~) them. The
25 legislature also finds that such proportionately higher burdens placed
26 on small businesses have reduced competition, reduced employment,
27 reduced new employment opportunities, reduced innovation, and
28 threatened the very existence of some small businesses. Therefore, it
29 is the intent of the legislature that rules affecting the business
30 community shall not place proportionately higher burdens on small
31 businesses. The legislature therefore enacts this Regulatory Fairness
32 Act to minimize such proportionately higher impacts of rules on small
33 businesses in the future.

1 **Sec. 3.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
2 each reenacted and amended to read as follows:

3 ~~((In the adoption of any rule pursuant to RCW 34.05.320 that will
4 have an economic impact on more than twenty percent of all industries,
5 or more than ten percent of any one industry, the adopting agency:~~

6 ~~(1) Shall reduce the economic impact of the rule on small business
7 by doing one or more of the following when it is legal and feasible in
8 meeting the stated objective of the statutes which are the basis of the
9 proposed rule:~~

10 ~~(a) Establish differing compliance or reporting requirements or
11 timetables for small businesses;~~

12 ~~(b) Clarify, consolidate, or simplify the compliance and reporting
13 requirements under the rule for small businesses;~~

14 ~~(c) Establish performance rather than design standards;~~

15 ~~(d) Exempt small businesses from any or all requirements of the
16 rule;~~

17 ~~(2) Shall prepare a small business economic impact statement in
18 accordance with RCW 19.85.040 and file such statement with the code
19 reviser along with the notice required under RCW 34.05.320;~~

20 ~~(3))~~ (1) In the adoption of a rule pursuant to RCW 34.05.320, an
21 agency shall prepare a small business economic impact statement: (a)
22 If the proposed rule will impose more than minor costs on small
23 business; or (b) if requested to do so by a majority vote of the joint
24 administrative rules review committee within fifteen days after notice
25 of the proposed rule is published in the state register.

26 An agency shall prepare the small business economic impact
27 statement in accordance with RCW 19.85.040, and file it with the code
28 reviser along with the notice required under RCW 34.05.320. However,
29 an agency shall file a statement prepared at the request of the joint
30 administrative rules review committee with the code reviser upon its
31 completion prior to the adoption of the rule. An agency shall notify
32 each person who has requested a copy of the small business economic
33 impact statement upon completion of the statement.

34 The agency may request assistance from the business assistance
35 center in the preparation of the small business economic impact
36 statement.

37 (2) A proposed rule will impose more than minor costs on small
38 business if:

1 (a) In order to comply with the rule, a small business will be
2 required to:

3 (i) Submit a new report or form to an agency;

4 (ii) Keep a new record, cease or change an industrial process or
5 business practice, or prepare a plan;

6 (iii) Acquire additional equipment, supplies, or personnel; or

7 (iv) Obtain legal, consulting, or accounting services; or

8 (b) The proposed rule will be more stringent or substantially
9 different than applicable federal statutes or regulations.

10 (3) Upon a finding by the agency that a proposed rule imposes a
11 disproportionate negative impact on small businesses identified in the
12 statement prepared under RCW 19.85.040, the agency shall, unless
13 reasonable justification exists to do otherwise, reduce the costs on
14 small businesses. Methods to reduce the costs on small businesses may
15 include, but are not limited to:

16 (a) Reducing, modifying, or eliminating substantive regulatory
17 requirements;

18 (b) Establishing performance rather than design standards;

19 (c) Simplifying, reducing, or eliminating recordkeeping and
20 reporting requirements;

21 (d) Reducing the frequency of inspections;

22 (e) Delaying compliance time tables; or

23 (f) Reducing or modifying fine schedules for noncompliance.

24 **Sec. 4.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
25 each reenacted and amended to read as follows:

26 (1) A small business economic impact statement ((must include a
27 brief description of the reporting, recordkeeping, and other compliance
28 requirements of the rule, and the kinds of professional services that
29 a small business is likely to need in order to comply with such
30 requirements. A small business economic impact statement shall
31 analyze, based on existing data, the costs of compliance for businesses
32 required to comply with the provisions of a rule adopted pursuant to
33 RCW 34.05.320, including costs of equipment, supplies, labor, and
34 increased administrative costs, and compare to the greatest extent
35 possible the cost of compliance for small business with the cost of
36 compliance for the ten percent of firms which are the largest
37 businesses required to comply with the proposed new or amendatory

1 ~~rules. The small business economic impact statement shall use one or~~
2 ~~more of the following as a basis for comparing costs:~~

3 ~~(1) Cost per employee;~~

4 ~~(2) Cost per hour of labor;~~

5 ~~(3) Cost per one hundred dollars of sales;~~

6 ~~(4) Any combination of (1), (2), or (3))~~ shall clearly state the
7 following with regard to a proposed rule:

8 (a) A description of reports or recordkeeping that will be required
9 to comply with the proposed rule, and an estimate of how much each will
10 cost small businesses to prepare;

11 (b) A description and estimate of the direct and indirect costs of
12 compliance for small businesses affected by the proposed rule,
13 including, but not limited to, lost sales or revenue and costs of
14 equipment, supplies, labor, training, and increased administrative
15 costs;

16 (c) The nature and estimated cost of legal, consulting, and
17 accounting services that small businesses would incur in complying with
18 the proposed rule;

19 (d) The general ability of small businesses to absorb the costs
20 estimated under (a) through (c) of this subsection without adversely
21 affecting competition in the marketplace;

22 (e) The manner in which the agency reduced the costs of the rule on
23 small businesses as required under RCW 19.85.030, or reasonable
24 justification for not doing so;

25 (f) Whether and how the agency has involved small businesses in the
26 development of the rule;

27 (g) A list of industries that would be required to comply with the
28 proposed rule; and

29 (h) The probable benefits of the proposed rule.

30 (2) In order to obtain cost information for purposes of subsection
31 (1) of this section, an agency may survey a representative sample of
32 affected small businesses or trade associations. An agency may also
33 use other reasonable means to collect information to accurately assess
34 the costs and impact of a proposed rule on small businesses.

35 (3) An agency may amend a small business economic impact statement
36 based on information provided during the public participation process
37 provided for in RCW 34.05.325. An amended small business economic
38 impact statement shall be filed with the office of the code reviser
39 along with the rule as adopted.

1 **Sec. 5.** RCW 19.85.070 and 1992 c 197 s 1 are each amended to read
2 as follows:

3 When any rule is proposed for which a small business economic
4 impact statement is ~~((required))~~ prepared, the adopting agency shall
5 provide notice to small businesses of the proposed rule through any of
6 the following:

7 (1) Direct notification of known interested small businesses or
8 trade organizations affected by the proposed rule, and notification of
9 a representative sample of affected small businesses based on standard
10 industrial classification codes; or

11 (2) Providing information of the proposed rule making to
12 publications likely to be obtained by small businesses of the types
13 affected by the proposed rule.

14 **Sec. 6.** RCW 34.05.310 and 1989 c 175 s 5 are each amended to read
15 as follows:

16 (1) In addition to seeking information by other methods, an agency,
17 before publication of a notice of a proposed rule adoption under RCW
18 34.05.320, is encouraged to solicit comments from the public on a
19 subject of possible rule making under active consideration within the
20 agency, by causing notice to be published in the state register of the
21 subject matter and indicating where, when, and how persons may comment.

22 (2) Each agency may appoint committees to comment, before
23 publication of a notice of proposed rule adoption under RCW 34.05.320,
24 on the subject of a possible rule-making action under active
25 consideration within the agency.

26 ~~((3) Each agency shall designate a rules coordinator, who shall
27 have knowledge of the subjects of rules being proposed or prepared
28 within the agency for proposal, maintain the records of any such
29 action, and respond to public inquiries about possible or proposed
30 rules and the identity of agency personnel working, reviewing, or
31 commenting on them. The office and mailing address of the rules
32 coordinator shall be published in the state register at the time of
33 designation and in the first issue of each calendar year thereafter for
34 the duration of the designation. The rules coordinator may be an
35 employee of another agency.))~~

36 NEW SECTION. **Sec. 7.** A new section is added to chapter 34.05 RCW
37 to read as follows:

1 (1) Each agency shall designate a rules coordinator who shall:

2 (a) Have experience with either the implementation of agency rules
3 or administrative law;

4 (b) Have knowledge of the subjects of rules, policies, or
5 interpretive statements being proposed or developed within the agency;

6 (c) Maintain the records of such action pursuant to this title and
7 the index of agency records listed under RCW 42.17.260(5);

8 (d) Maintain contact with other agency rules coordinators in order
9 to coordinate rule-making hearings on similar subjects or for similar
10 industries;

11 (e) Develop and file the annual rule-making plan as required in
12 section 8 of this act; and

13 (f) Respond to public inquiries about possible or proposed rules,
14 policies, or interpretive statements and the identity of agency
15 personnel working, reviewing, or commenting on them.

16 (2) The office, mailing address, and telephone number of the rules
17 coordinator shall be published in the state register at the time of
18 designation and in the first issue of each calendar year thereafter for
19 the duration of the designation. The rules coordinator may be an
20 employee of another agency.

21 (3) Within six months of designation, the agency rules coordinator
22 shall complete the administrative procedures training courses
23 recommended by the business assistance center.

24 NEW SECTION. **Sec. 8.** A new section is added to chapter 34.05 RCW
25 to read as follows:

26 (1) To encourage greater public participation in administrative
27 rule making, each agency shall adopt an annual rule-making plan. The
28 rule-making plan shall be prepared by the agency rules coordinator and
29 shall list rules currently under development and rules that the agency
30 may propose for adoption within the year. The rule-making plan may
31 also include agency interpretive or policy statements to be issued or
32 adopted within the year.

33 (2) Activities in the rule-making plan shall be listed in order of
34 priority. For each activity in the rule-making plan, the agency shall
35 list:

36 (a) A descriptive title for the activity;

37 (b) A Washington Administrative Code citation for reference;

38 (c) An intended adoption date; and

1 (d) Agency personnel, with their telephone number, who are
2 responsible for drafting or implementing the rule, policy, or
3 interpretive statement.

4 (3) Agency rule-making plans shall be published annually in the
5 state register after January 1st, but prior to January 31st.
6 Supplemental agency rule-making plans shall be published in the state
7 register no later than sixty days after a regular session of the
8 legislature. Upon filing the annual rule-making plan with the code
9 reviser, the agency rules coordinator shall forward a copy of the plan
10 to the appropriate standing committees of the legislature. Agencies
11 are encouraged to publish rule-making plans in state newspapers or
12 business publications to facilitate public review.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.31 RCW
14 to read as follows:

15 To assist state agencies in reducing regulatory costs to small
16 business and to promote greater public participation in the rule-making
17 process, the business assistance center shall:

18 (1) Develop agency guidelines for the preparation of a small
19 business economic impact statement and compliance with chapter 19.85
20 RCW;

21 (2) Review and provide comments to agencies on draft or final small
22 business economic impact statements;

23 (3) Provide information on the toll-free telephone line regarding
24 how to participate in the rule-making process to small businesses
25 requesting the information;

26 (4) Advise the joint administrative rules review committee on
27 whether an agency reasonably assessed the costs and impact of a
28 proposed rule and reduced the costs for small business as required by
29 chapter 19.85 RCW; and

30 (5) Organize and chair a state rules coordinating committee,
31 comprised of agency rules coordinators and interested members of the
32 public, to develop an education and training program for agency
33 personnel responsible for rule development and implementation. The
34 business assistance center shall submit recommendations to the
35 department of personnel for an administrative procedures training
36 program that is based on the sharing of interagency resources.

1 NEW SECTION. **Sec. 10.** RCW 19.85.060 and 1989 c 374 s 5 are each
2 repealed."

--- END ---