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**SUBSTITUTE HOUSE BILL 1494**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Trade, Economic Development & Housing (originally sponsored by Representatives Wineberry, Sheldon, Springer, Morris, Schoesler, Chandler, Casada, Quall, Forner, Foreman, Hansen, Shin, Locke, Brough, Roland, Fuhrman, Miller, Ballasiotes, Edmondson, Van Luven, Silver, Cooke, Long, Dyer, Sheahan, Talcott, Lisk and Rayburn)

Read first time 03/03/93.

1 AN ACT Relating to review of administrative rules; adding new  
2 sections to chapter 19.85 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
5 ensure that administrative rules currently in effect impose the least  
6 possible economic burden on small businesses while maintaining existing  
7 protections for the health, safety, and welfare of the public and  
8 workers, and that all administrative rules adopted by state agencies  
9 are periodically reviewed so that rules that are no longer necessary  
10 are eliminated and that rules can be modified to reduce their economic  
11 impacts on small businesses. The legislature finds that existing and  
12 new administrative rules do and can impose significant economic burdens  
13 on small businesses and such economic burdens can restrict the ability  
14 of small businesses to expand, create jobs, and strengthen the state's  
15 economy. The legislature is very concerned about the failure of state  
16 agencies to carry out the review of their administrative rules as  
17 required by RCW 19.85.050 by June 10, 1992, and therefore the  
18 legislature renews the demand that state agencies carry out a review as

1 provided in this act of all existing administrative rules that have an  
2 economic impact on small businesses.

3 NEW SECTION. **Sec. 2.** (1) By July 1, 1996, each state agency that  
4 administers a rule identified in subsection (2) of this section that  
5 imposes requirements or imposes costs on small businesses shall either:

6 (a) Repeal the rule in accordance with chapter 34.05 RCW;

7 (b) Have completed amending and adopting the rule as amended in  
8 accordance with chapter 34.05 RCW; or

9 (c) Have completed a rule review as provided in section 3 of this  
10 act.

11 (2) The following rules contained in the Washington Administrative  
12 Code in effect on January 1, 1993, shall be subject to the requirements  
13 of this act: Title 44, Title 51, Title 130, chapter 137-57, chapter  
14 137-80, Title 162, Title 173, Title 175, Title 192, Title 212, Title  
15 220, Title 222, Title 232, chapter 236-24, chapter 236-28, chapter 236-  
16 47, chapter 236-48, chapter 238-49, Title 263, chapter 296-04, chapter  
17 296-10, chapter 296-14, chapter 296-15, chapter 296-15A, chapter 296-  
18 16, chapter 296-17, chapter 296-24, chapter 296-27, chapter 296-36,  
19 chapter 296-62, chapter 296-63, chapter 296-125, chapter 296-126,  
20 chapter 296-127, chapter 296-128, chapter 296-129, chapter 296-131,  
21 chapter 296-155, chapter 296-200, chapter 296-360, Title 306, Title  
22 314, Title 326, Title 332, Title 365, chapter 400-12, chapter 458-08,  
23 chapter 458-12, chapter 458-18, chapter 458-20, Title 461, chapter 478-  
24 355, and chapter 504-12 WAC.

25 NEW SECTION. **Sec. 3.** An administrative rule review consists of  
26 the following:

27 (1) The agency shall prepare an administrative rule review  
28 statement and file the statement with the code reviser for publication  
29 in the state register. For the purposes of this section, a rule may  
30 include any number of sections of the Washington Administrative Code if  
31 all of the sections deal with the same subject matter. For example, an  
32 agency may review all of their rules dealing with the same subject  
33 matter, i.e., general worker safety standards, identification, storage,  
34 handling, and disposal of hazardous wastes, rules governing the  
35 application of taxes on a particular type of business activity, such as  
36 purchases from out of state, and so forth. The statement must contain  
37 each of the following elements:

1 (a) A statement indicating the reason the agency finds there is a  
2 continued need for the rule;

3 (b) Either prepare a small business economic impact statement for  
4 the rule, prepared in accordance with this chapter, or if the agency  
5 previously prepared a small business economic impact statement for the  
6 rule, and the rule has the same effect at the time the rule is being  
7 reviewed by the agency, the agency may reuse the previously prepared  
8 small business economic impact statement. If an agency reuses a  
9 previously prepared small business economic impact statement, the  
10 statement shall be considered in the same manner as a newly prepared  
11 statement for its meeting the requirements of chapter 19.85 RCW, and  
12 the fact that the statement was previously issued by the agency shall  
13 not be considered by the courts or any other review body in the  
14 determining if the statement meets the requirements of chapter 19.85  
15 RCW. However, in the case of a rule that has been adopted to conform  
16 with federal regulations and that does not impose any requirements that  
17 are more stringent or different than the federal regulation, the agency  
18 may cite the federal regulation to which the rule is designed to  
19 conform, and the agency need not prepare a small business economic  
20 impact statement nor meet the requirements of subsections (1)(c), (2),  
21 or (3) of this section;

22 (c) For any rules that the agency proposes to maintain in effect,  
23 an economic impact mitigation statement for the rule that indicates  
24 what mitigation measures that are both legal and feasible that the  
25 agency has considered to reduce the economic impact of the rule on  
26 small businesses, and why the mitigation measures are not being  
27 proposed as adopted and which are an amendment to the rule.

28 (2) The agency issuing the rule review statement shall solicit  
29 public comments for not less than thirty days from the date the notice  
30 appears in the state register and may hold a public hearing not less  
31 than twenty days after the rule review statement has been published in  
32 the state register on the contents of the rule review statement  
33 prepared by the agency, and solicit proposals to mitigate the economic  
34 impact of the rule on small businesses.

35 (3) Not less than thirty days after the public hearing and after  
36 consideration of written comments received before and within five  
37 calendar days after the public hearing, the agency shall file with the  
38 code reviser a written statement to be published in the state register  
39 of its:

1 (a) Finding that the rule shall continue in effect without change  
2 and that no mitigation option exists that is legal and feasible to  
3 reduce the economic impact of the rule; or

4 (b) Decision to repeal or amend the rule before July 1, 1996.

5 NEW SECTION. **Sec. 4.** (1) Within one hundred twenty days of the  
6 effective date of this act, each agency that issued rules identified in  
7 section 2(2) of this act shall forward a schedule of how it intends to  
8 meet the requirements of sections 2 through 7 of this act for the rules  
9 it is responsible for and for the rules that are subject to sections 2  
10 through 7 of this act to the house of representatives trade, economic  
11 development and housing committee and the senate commerce and labor  
12 committee.

13 (2) By December 1 of each year beginning in 1993, each agency  
14 responsible for issuing rules identified in section 2(2) of this act  
15 shall notify in writing the house of representatives trade, economic  
16 development and housing committee and the senate commerce and labor  
17 committee, or their appropriate successors, of its progress in meeting  
18 its schedule to carry out the requirements of sections 2 through 7 of  
19 this act and any modification it has made to that schedule.

20 NEW SECTION. **Sec. 5.** (1) Any person may file a petition for a  
21 declaratory judgment provided by chapter 34.05 RCW, objecting to the  
22 finding by an agency that a rule has been adopted solely to conform to  
23 a federal regulation and that the rule is not more stringent nor does  
24 it impose different requirements than imposed by the federal  
25 regulation. If the court finds that a rule is not adopted solely to  
26 conform with a federal regulation but that it imposes more stringent or  
27 different requirements on small businesses, the agency must meet the  
28 requirements of sections 2 and 3 of this act or the rule becomes null  
29 and void and unenforceable.

30 (2) Any person may file a petition for a declaratory judgment to  
31 invalidate a rule as provided by chapter 34.05 RCW, objecting to the  
32 decision of an agency that the agency cannot amend a rule to implement  
33 a legal and feasible reduction in the economic impacts of a rule on  
34 small businesses. The court shall find for the petitioner if the  
35 agency's position is not substantially justified.

1        NEW SECTION.    **Sec. 6.**    Failure of an agency to meet the  
2 requirements of sections 2 and 3 of this act for any rule it  
3 administers that was adopted before January 1, 1989, and that imposes  
4 economic costs on small businesses causes that rule to be null and void  
5 and unenforceable after July 1, 1996.

6        NEW SECTION.    **Sec. 7.**    No rule adopted after July 1, 1993, is valid  
7 unless the rule contains a termination date not more than sixty  
8 calendar months after the date of adoption of the rule.    On the  
9 termination date the rule becomes invalid and of no force and effect.  
10 An agency may readopt the rule at any time and may reestablish the  
11 termination date, not to exceed sixty months from the date of  
12 readoption.    An agency that readopts a rule without change is not  
13 required to prepare a small business impact statement as set forth in  
14 this chapter.

15        NEW SECTION.    **Sec. 8.**    Sections 2 through 7 of this act are each  
16 added to chapter 19.85 RCW.

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