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HOUSE BILL 2855

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By Representatives McMorris, Anderson, Holmquist, Mielke, Boldt, Nixon, Pearson, Dunn, Casada, Morell, Pflug, Schmidt, Bush, Lisk, Esser, Schoesler, Woods, Mulliken and Alexander

Read first time 02/01/2002. Referred to Committee on State Government.

1 AN ACT Relating to regulatory reform for small businesses; amending  
2 RCW 34.05.360 and 34.05.570; adding a new section to chapter 34.05 RCW;  
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that many small  
6 businesses in the state are frustrated by the complexity of the  
7 regulatory system. The Washington Administrative Code containing  
8 agency rules now fills twelve volumes, and appears to be growing each  
9 year. While the vast majority of small businesses make a good faith  
10 attempt to comply with applicable laws and rules, many find it  
11 extremely difficult to keep up with agencies' issuance of new rules and  
12 requirements. Therefore, state agencies are directed to make a good  
13 faith attempt to notify businesses affected by rule changes that may  
14 subject noncomplying businesses to penalties. Further, the legislature  
15 finds that requiring the governor's signatures on new agency rules will  
16 promote accountability and reduce future regulatory burdens on small  
17 businesses. Finally, the legislature finds that small businesses lack  
18 the resources that state agencies routinely use in defending  
19 administrative rules that may have been adopted unlawfully, without

1 regard to proper administrative procedures, or which exceed an agency's  
2 statutory authority. The legislature therefore finds that it is  
3 necessary to place the burden of demonstrating that new administrative  
4 rules are adopted in a lawful manner upon the adopting agency.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW  
6 to read as follows:

7 Within two hundred days of the effective date of a rule that  
8 imposes additional requirements on businesses the violation of which  
9 subjects the business to a penalty, assessment, or administrative  
10 sanction, an agency shall make a good faith effort to notify businesses  
11 affected by the rule of the requirements of the rule and how to obtain  
12 technical assistance to comply. For purposes of this section, "good  
13 faith" means: (1) The agency at least notifies businesses in the  
14 standard industrial classifications or their successor identified in  
15 the rule-making file as businesses affected by the rule that are  
16 registered with the department of revenue; or (2) for rules imposing  
17 additional requirements only on persons or firms licensed, registered,  
18 or operating under a permit, the agency notifies those persons or firms  
19 holding the license, registration, or permit. The notification must  
20 announce the rule change, briefly summarize the rule change, and  
21 include a contact for more information. Notification may be by  
22 individual notice, agency bulletins or newsletters, or any other means  
23 that will reasonably inform affected businesses. Failure to notify a  
24 specific business under this section does not invalidate a rule or  
25 waive the requirement to comply with the rule.

26 **Sec. 3.** RCW 34.05.360 and 1988 c 288 s 311 are each amended to  
27 read as follows:

28 The order of adoption by which each rule is adopted by an agency  
29 shall contain all of the following:

- 30 (1) The signature of the governor;  
31 (2) The date the agency adopted the rule;  
32 ~~((+2))~~ (3) A concise statement of the purpose of the rule;  
33 ~~((+3))~~ (4) A reference to all rules repealed, amended, or  
34 suspended by the rule;  
35 ~~((+4))~~ (5) A reference to the specific statutory or other  
36 authority authorizing adoption of the rule;

1       (~~(5)~~) (6) Any findings required by any provision of law as a  
2 precondition to adoption or effectiveness of the rule; and  
3       (~~(6)~~) (7) The effective date of the rule if other than that  
4 specified in RCW 34.05.380(2).

5       **Sec. 4.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
6 read as follows:

7       (1) Generally. Except to the extent that this chapter or another  
8 statute provides otherwise:

9       (a) Except as provided in subsection (2) of this section and except  
10 that an agency bears the burden of demonstrating that the agency action  
11 was authorized by law, the burden of demonstrating the invalidity of  
12 agency action is on the party asserting invalidity;

13       (b) The validity of agency action shall be determined in accordance  
14 with the standards of review provided in this section, as applied to  
15 the agency action at the time it was taken;

16       (c) The court shall make a separate and distinct ruling on each  
17 material issue on which the court's decision is based; and

18       (d) The court shall grant relief only if it determines that a  
19 person seeking judicial relief has been substantially prejudiced by the  
20 action complained of.

21       (2) Review of rules. (a) A rule may be reviewed by petition for  
22 declaratory judgment filed pursuant to this subsection or in the  
23 context of any other review proceeding under this section. In an  
24 action challenging the validity of a rule, the agency shall be made a  
25 party to the proceeding.

26       (b) The validity of any rule may be determined upon petition for a  
27 declaratory judgment addressed to the superior court of Thurston  
28 county, when it appears that the rule, or its threatened application,  
29 interferes with or impairs or immediately threatens to interfere with  
30 or impair the legal rights or privileges of the petitioner. When the  
31 validity of a rule is challenged, after the petitioner has identified  
32 the defects in the rule, the burden of going forward with the evidence  
33 is on the agency. The declaratory judgment order may be entered  
34 whether or not the petitioner has first requested the agency to pass  
35 upon the validity of the rule in question.

36       (c) In a proceeding involving review of a rule, the court shall  
37 declare the rule invalid only if it finds that: The rule violates  
38 constitutional provisions; the rule exceeds the statutory authority of

1 the agency; the rule was adopted without compliance with statutory  
2 rule-making procedures; or the rule is arbitrary and capricious.

3 (3) Review of agency orders in adjudicative proceedings. The court  
4 shall grant relief from an agency order in an adjudicative proceeding  
5 only if it determines that:

6 (a) The order, or the statute or rule on which the order is based,  
7 is in violation of constitutional provisions on its face or as applied;

8 (b) The order is outside the statutory authority or jurisdiction of  
9 the agency conferred by any provision of law;

10 (c) The agency has engaged in unlawful procedure or decision-making  
11 process, or has failed to follow a prescribed procedure;

12 (d) The agency has erroneously interpreted or applied the law;

13 (e) The order is not supported by evidence that is substantial when  
14 viewed in light of the whole record before the court, which includes  
15 the agency record for judicial review, supplemented by any additional  
16 evidence received by the court under this chapter;

17 (f) The agency has not decided all issues requiring resolution by  
18 the agency;

19 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050  
20 was made and was improperly denied or, if no motion was made, facts are  
21 shown to support the grant of such a motion that were not known and  
22 were not reasonably discoverable by the challenging party at the  
23 appropriate time for making such a motion;

24 (h) The order is inconsistent with a rule of the agency unless the  
25 agency explains the inconsistency by stating facts and reasons to  
26 demonstrate a rational basis for inconsistency; ((or))

27 (i) The order is arbitrary or capricious; or

28 (j) The order is based on a de facto rule.

29 (4) Review of other agency action.

30 (a) All agency action not reviewable under subsection (2) or (3) of  
31 this section shall be reviewed under this subsection.

32 (b) A person whose rights are violated by an agency's failure to  
33 perform a duty that is required by law to be performed may file a  
34 petition for review pursuant to RCW 34.05.514, seeking an order  
35 pursuant to this subsection requiring performance. Within twenty days  
36 after service of the petition for review, the agency shall file and  
37 serve an answer to the petition, made in the same manner as an answer  
38 to a complaint in a civil action. The court may hear evidence,

1 pursuant to RCW 34.05.562, on material issues of fact raised by the  
2 petition and answer.

3 (c) Relief for persons aggrieved by the performance of an agency  
4 action, including the exercise of discretion, or an action under (b) of  
5 this subsection can be granted only if the court determines that the  
6 action is:

7 (i) Unconstitutional;

8 (ii) Outside the statutory authority of the agency or the authority  
9 conferred by a provision of law;

10 (iii) Arbitrary or capricious; (~~(or)~~)

11 (iv) Taken by persons who were not properly constituted as agency  
12 officials lawfully entitled to take such action; or

13 (v) Based on a de facto rule.

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