

HOUSE BILL REPORT

HB 1445

As Reported by House Committee On:
State Government Operations & Accountability

Title: An act relating to regulatory fairness for small businesses.

Brief Description: Modifying state regulatory provisions for small businesses.

Sponsors: Representatives Chase, Skinner, DeBolt, Green, Kessler, Morrell, Newhouse, P. Sullivan, Conway, Eickmeyer, Kirby, B. Sullivan, Flannigan, Linville, Campbell, Clements, Kristiansen, Miloscia, McCune, Dunn, Pettigrew, Quall, Kenney, Simpson, Appleton, Moeller, Sells, Haler, Condotta, McDonald, Takko, Kagi, Kilmer and Clibborn.

Brief History:

Committee Activity:

State Government Operations & Accountability: 2/16/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Changes the process and requirements for small business economic impact statements.
- Creates the small business advocacy committee.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Miloscia, Schindler and Sump.

Staff: Jim Morishima (786-7191).

Background:

Under the Regulatory Fairness Act (Act), an agency must develop a small business economic impact statement (SBEIS) if a rule it is adopting under the Administrative Procedures Act will impose more than minor costs on businesses in an industry or if the agency is ordered to do so by the Joint Administrative Rules Review Committee (JARRC). The Act defines "industry" as all of the businesses in the state in any one four-digit standard industrial classification as published by the United States Department of Commerce, unless use of the four-digit

classification would violate state confidentiality laws, in which case all of the businesses in a three-digit standard industrial classification. The Act does not define "minor costs."

An agency does not have to develop a SBEIS if a similar analysis was already conducted pursuant to the significant legislative rulemaking process or if the rule is:

- proposed for expedited adoption or repeal;
- an emergency rule;
- a rule relating only to internal governmental operations;
- a rule that incorporates by reference without material change federal statutes or regulations, state statutes, rules of other agencies, certain shoreline master programs, or certain national consensus codes;
- a rule that only corrects typographical errors, makes address or name changes, or clarifies language;
- a rule the content of which is specifically dictated by statute;
- a rule that sets or adjusts fees or rates pursuant to legislative standards; or
- a rule that adopts, amends, or repeals a procedure, practice, or requirement relating to agency hearings or a filing or related process for applying for a license or permit.

A SBEIS must contain a variety of information, including:

- a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule;
- a description of the professional services that a small business is likely to need in order to comply with the requirements of the proposed rule;
- an analysis of the costs of compliance;
- a consideration of whether the rule will cause businesses to lose sales or revenue;
- a determination of whether the rule has a disproportionate impact on small businesses;
- a description of how the agency will involve small businesses in the development of the rule; and
- a list of industries that will be required to comply with the rule.

If the SBEIS shows that a rule will have a disproportionate impact on small businesses, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. Methods the agency can use to do this include: reducing, modifying, or eliminating substantive requirements; simplifying, reducing, or eliminating recordkeeping and reporting requirements; reducing the frequency of inspections; or reducing or modifying the fine schedule for noncompliance. The SBEIS must list the steps taken to reduce the costs on small businesses or a reasonable justification for not doing so.

Summary of Substitute Bill:

"Minor cost" is defined to mean a cost per business that is less than 0.30 of 1 percent of annual revenue or income, or \$100, whichever is greater, or 1 percent of annual payroll. The definition of "industry" is expanded to include a four-digit or three-digit standard industrial

classification as published by the North American Industry Classification System as published by the executive office of the President and the Office of Management and Budget.

The analysis of compliance costs in a SBEIS must include the costs of professional services. If an agency determines that it cannot reduce the costs imposed by a rule on small businesses, the agency must provide a clear explanation of why it has made that determination in its filing for proposed rulemaking.

The Small Business Advocacy Committee (SBAC) is created. The committee is composed of the following seven members:

- two members of the JARRC from the House of Representatives, one from each caucus, appointed by the Speaker of the House;
- two members of the JARRC from the Senate, one from each caucus, appointed by the President of the Senate; and
- three small business owners appointed by the Governor for two year terms. The small business owners must suggest replacements when their terms are up.

The SBAC must review SBEISs. If the committee finds that a rule will have a disproportionate impact on small businesses and that the proposed agency mitigation does not meet statutory requirements, it may recommend additional mitigation measures to the agency.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) Restores the current law with respect to when a SBEIS must be developed; (2) changes the contents of the SBEIS to include the costs of professional services; (3) requires the legislative members of the SBAC to be members of the JARRC; (4) removes the ability of the SBAC to recommend that the JARRC conduct a hearing on a rule; (5) allows the SBAC to make recommendations for further mitigation to the agency adopting the rule; (6) eliminates the regulatory flexibility analysis; (7) requires an agency to provide an explanation if it cannot mitigate the impact on small businesses; (8) eliminates the provisions relating to agency rules review and judicial proceedings; and (9) adds a definition of "minor costs" and amends the definition of "industry."

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The purpose of this bill is to give relief to small businesses. The Legislature passes a great deal of legislation to help large corporations, but most businesses are small businesses. Small businesses employ over half of all private employees in the state, are responsible for most new jobs, produce innovation, and provide living wage jobs. Small businesses are currently inundated with rules and regulations. This bill will give small businesses recourse to challenge rules. Allowing mitigation is a win-win situation; it creates

new jobs, helps businesses survive and flourish, and also increases tax revenue for the state. The rules review element of this bill is the most important aspect; it will have a huge impact on small businesses.

(With concerns) There may be unintended consequences to this bill. The costs to agencies of this bill are enormous. This bill may open the floodgates to litigation.

Testimony Against: None.

Persons Testifying: (In support) Representative Chase, prime sponsor; Myron Phillips, Shoreline Chamber of Commerce; Rick Stephens, Shoreline Merchants Association; and Connie Marshall, Office of Advocacy, United States Small Business Administration.

(With concerns) Gary Smith, Independent Businesses Association; and Bruce Wishart; People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.