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HOUSE BILL 1445

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State of Washington                      59th Legislature                      2005 Regular Session

By 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

Read first time 01/25/2005. Referred to Committee on State Government Operations & Accountability.

1            AN ACT Relating to regulatory fairness for small businesses;  
2 amending RCW 19.85.020 and 19.85.025; adding new sections to chapter  
3 19.85 RCW; creating new sections; repealing RCW 19.85.030, 19.85.040,  
4 and 19.85.050; and providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that:

7            (1) A vibrant and growing small business sector is critical to  
8 creating jobs in a dynamic economy;

9            (2) Small businesses bear a disproportionate share of regulatory  
10 costs and burdens;

11           (3) Fundamental changes that are needed in the regulatory and  
12 enforcement culture of state agencies to make them more responsive to  
13 small business can be made without compromising the statutory missions  
14 of the agencies;

15           (4) When adopting rules to protect the health, safety, and economic  
16 welfare of Washington, state agencies should seek to achieve statutory  
17 goals as effectively and efficiently as possible without imposing  
18 unnecessary burdens on small employers;

1 (5) Uniform regulatory and reporting requirements can impose  
2 unnecessary and disproportionately burdensome demands including legal,  
3 accounting, and consulting costs upon small businesses with limited  
4 resources;

5 (6) The failure to recognize differences in the scale and resources  
6 of regulated businesses can adversely affect competition in the  
7 marketplace, discourage innovation, and restrict improvements in  
8 productivity;

9 (7) Unnecessary regulations create entry barriers in many  
10 industries and discourage potential entrepreneurs from introducing  
11 beneficial products and processes;

12 (8) The practice of treating all regulated businesses the same  
13 leads to inefficient use of regulatory agency resources, enforcement  
14 problems, and, in some cases, to actions inconsistent with the  
15 legislative intent of health, safety, environmental, and economic  
16 welfare legislation;

17 (9) Alternative regulatory approaches which do not conflict with  
18 the state objective of applicable statutes may be available to minimize  
19 the significant economic impact of rules on small businesses; and

20 (10) The process by which state rules are developed and adopted  
21 should be reformed to require agencies to solicit the ideas and  
22 comments of small businesses, to examine the impact of proposed and  
23 existing rules on such businesses, and to review the continued need for  
24 existing rules.

25 **Sec. 2.** RCW 19.85.020 and 2003 c 166 s 1 are each amended to read  
26 as follows:

27 Unless the context clearly indicates otherwise, the definitions in  
28 this section apply through this chapter.

29 (1) "Agency" means any state board, commission, department, or  
30 officer authorized by law to adopt rules or to determine contested  
31 cases.

32 (2) "Industry" means all of the businesses in this state in any one  
33 four-digit standard industrial classification as published by the  
34 United States department of commerce. However, if the use of a four-  
35 digit standard industrial classification would result in the release of  
36 data that would violate state confidentiality laws, "industry" means  
37 all businesses in a three-digit standard industrial classification.

1 (3) "Proposed rule" means a proposal by an agency for a new rule or  
2 for a change in, addition to, or repeal of an existing rule.

3 (4) "Rule" means each agency statement of general applicability,  
4 without regard to its designation, that implements, interprets, or  
5 prescribes law or policy, or describes the organization, procedure, or  
6 practice requirements of any agency. The term includes the amendment  
7 or repeal of a prior rule, but does not include:

8 (a) Statements concerning only the internal management of any  
9 agency and not affecting private rights or procedures available to the  
10 public;

11 (b) Declaratory rulings; or

12 (c) Intragency or interagency memoranda.

13 (5) "Small business" means any business entity, including ((a sole  
14 proprietorship, corporation, partnership, or other legal entity)) its  
15 affiliates, that:

16 (a) Is owned and operated independently from all other  
17 businesses((~~τ~~)); and ((~~that~~))

18 (b) Has fifty or fewer employees or has gross annual sales of less  
19 than six million dollars.

20 ((~~+2~~)) (6) "Small business economic impact statement" means a  
21 statement meeting the requirements of RCW 19.85.040 prepared by a state  
22 agency pursuant to RCW 19.85.030.

23 ((~~3~~) "Industry" means all of the businesses in this state in any  
24 one four digit standard industrial classification as published by the  
25 United States department of commerce. However, if the use of a four  
26 digit standard industrial classification would result in the release of  
27 data that would violate state confidentiality laws, "industry" means  
28 all businesses in a three digit standard industrial classification.))

29 **Sec. 3.** RCW 19.85.025 and 1997 c 409 s 212 are each amended to  
30 read as follows:

31 (1) Unless an agency receives a written objection to the expedited  
32 repeal of a rule, this chapter does not apply to a rule proposed for  
33 expedited repeal pursuant to RCW ((~~34.05.354~~)) 34.05.353. If an agency  
34 receives a written objection to expedited repeal of the rule, this  
35 chapter applies to the rule-making proceeding.

36 (2) This chapter does not apply to a rule proposed for expedited

1 adoption under RCW ((~~34.05.230(1) through (8)~~)) 34.05.353, unless a  
2 written objection is timely filed with the agency and the objection is  
3 not withdrawn.

4 (3) This chapter does not apply to the adoption of a rule described  
5 in RCW 34.05.310(4).

6 (4) An agency is not required to prepare a separate small business  
7 economic impact statement under RCW 19.85.040 if it prepared an  
8 analysis under RCW 34.05.328 that meets the requirements of a small  
9 business economic impact statement, and if the agency reduced the costs  
10 imposed by the rule on small business to the extent required by ((~~RCW~~  
11 ~~19.85.030(3)~~)) section 6(1) of this act. The portion of the analysis  
12 that meets the requirements of RCW 19.85.040 shall be filed with the  
13 code reviser and provided to any person requesting it in lieu of a  
14 separate small business economic impact statement.

15 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.85 RCW  
16 to read as follows:

17 (1) Prior to the adoption of any proposed rule that may have an  
18 adverse impact on small businesses, each agency shall prepare a small  
19 business economic impact statement that includes the following:

20 (a) An identification and estimate of the number of small  
21 businesses subject to the proposed rule;

22 (b) A brief description of the projected reporting, recordkeeping,  
23 and other administrative costs required for compliance with the  
24 proposed rule, including the type of professional skills necessary for  
25 preparation of the report or record;

26 (c) An analysis of the costs of compliance for businesses required  
27 to comply with the proposed rule adopted pursuant to RCW 34.05.320,  
28 including costs of equipment, supplies, labor, and increased  
29 administrative costs;

30 (d) A statement of the probable effect on impacted small  
31 businesses, including lost sales and revenue;

32 (e) A comparison of the cost of compliance for small businesses  
33 with the cost of compliance for the ten percent of businesses that are  
34 the largest businesses required to comply with the proposed rules,  
35 using one or more of the following as a basis for comparing cost:

36 (i) Cost per employee;

37 (ii) Cost per hour of labor; or

1 (iii) Cost per one hundred dollars of sales;

2 (f) A description of any less intrusive or less costly alternative  
3 methods of achieving the purpose of the proposed regulation or a  
4 reasonable justification for not doing so;

5 (g) A description how the agency will involve small businesses in  
6 the development of the rule; and

7 (h) A list of industries that will be required to comply with the  
8 rule. However, this list shall not be construed to preclude the  
9 application of the rule to any business or industry to which it would  
10 otherwise apply.

11 (2) To obtain information for the purposes of this section, an  
12 agency may survey a representative sample of affected businesses or  
13 trade associations and should, whenever possible, appoint a committee  
14 under RCW 34.05.310(2) to assist in the accurate assessment of the  
15 costs of the proposed rule, and the means to reduce the costs imposed  
16 on small business.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.85 RCW  
18 to read as follows:

19 (1) Prior to the adoption of any proposed rule on and after July 1,  
20 2005, each agency shall prepare a regulatory flexibility analysis in  
21 which the agency shall, where consistent with health, safety, and  
22 environmental and economic welfare, consider utilizing regulatory  
23 methods that will accomplish the objectives of applicable statutes  
24 while minimizing adverse impact on small businesses. The agency shall  
25 consider, without limitation, each of the following methods of reducing  
26 the impact of the proposed rule on small businesses:

27 (a) The establishment of less stringent compliance or reporting  
28 requirements for small businesses;

29 (b) The establishment of less stringent schedules or deadlines for  
30 compliance or reporting requirements for small businesses;

31 (c) The consolidation or simplification of compliance or reporting  
32 requirements for small businesses;

33 (d) The establishment of performance standards for small businesses  
34 to replace design or operational standards required in the proposed  
35 rule; and

36 (e) The exemption of small businesses from all or any part of the  
37 requirements contained in the proposed rule.

1 (2) Prior to the adoption of any proposed rule that may have an  
2 adverse impact on small businesses, each agency shall notify the joint  
3 administrative rules review committee of its intent to adopt the  
4 proposed rule. The joint administrative rules review committee shall  
5 advise and assist agencies in complying with the provisions of this  
6 section.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.85 RCW  
8 to read as follows:

9 (1) For any rule subject to this section, a small business that is  
10 adversely affected or aggrieved by final agency action is entitled to  
11 judicial review of agency compliance with the requirements of this  
12 section.

13 (2) The right to seek review under this section ends one year from  
14 the date of final agency action.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.85 RCW  
16 to read as follows:

17 (1) Beginning July 1, 2009, each agency shall review all agency  
18 rules existing at the time of the enactment to determine whether the  
19 rules should continue without change, or should be amended or  
20 rescinded, consistent with the stated objectives of this chapter. If  
21 the head of the agency determines that completion of the review of  
22 existing rules is not feasible by the established date, the agency  
23 shall publish a statement certifying that determination. The agency  
24 may extend the completion date by one year at a time for a total of not  
25 more than five years.

26 (2) Rules adopted after the effective date of this act shall be  
27 reviewed within five years of the publication of the final rule and  
28 every five years thereafter to ensure that they minimize economic  
29 impact on small businesses in a manner consistent with the stated  
30 objectives of this chapter.

31 (3) In reviewing the rules to minimize the economic impact of the  
32 rule on small businesses, the agency shall consider the following  
33 factors:

- 34 (a) The continued need for the rule;
- 35 (b) The nature of the complaints or comments received concerning  
36 the rule from the public;

- 1 (c) The complexity of the rule;
- 2 (d) The extent to which the rule overlaps, duplicates, or conflicts
- 3 with other federal, state, and local government rules; and
- 4 (e) The length of time since the rule has been evaluated or the
- 5 degree to which technology, economic conditions, or other factors have
- 6 changed in the area affected by the rule.

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.85 RCW  
8 to read as follows:

9 (1) The small business advocacy committee is created. The  
10 committee shall be comprised of seven members: (a) Two members of the  
11 house of representatives, appointed by the speaker of the house of  
12 representatives, from each of the two major caucuses of the house of  
13 representatives; (b) two members of the senate, appointed by the  
14 president of the senate, from each of the two major caucuses of the  
15 senate; and (c) three small business owners or their designees,  
16 appointed by the governor. The business owners, who shall serve two-  
17 year terms, shall make recommendations to the governor regarding their  
18 replacements at the end of their terms.

19 (2) The small business advocacy committee is charged with reviewing  
20 small business economic impact statements. If a majority of the  
21 members find that a proposed rule will have an adverse impact on small  
22 businesses and the proposed mitigation by an agency is insufficient,  
23 the committee shall recommend that the joint administrative rules  
24 review committee hold a public hearing on the proposed rule.

25 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each  
26 repealed:

27 (1) RCW 19.85.030 (Agency rules--Small business economic impact  
28 statement--Reduction of costs imposed by rule) and 2000 c 171 s 60,  
29 1995 c 403 s 402, & 1994 c 249 s 11;

30 (2) RCW 19.85.040 (Small business economic impact statement--  
31 Purpose--Contents) and 1995 c 403 s 403 & 1994 c 249 s 12; and

32 (3) RCW 19.85.050 (Agency plan for review of business rules--  
33 Scope--Factors applicable to review--Annual list) and 1989 c 175 s 74  
34 & 1982 c 6 s 5.

1        NEW SECTION.   **Sec. 10.**   This act does not affect any existing right  
2        acquired or liability or obligation incurred under the sections amended  
3        or repealed in this act or under any rule or order adopted under those  
4        sections, nor does it affect any proceeding instituted under those  
5        sections.

6        NEW SECTION.   **Sec. 11.**   If any provision of this act or its  
7        application to any person or circumstance is held invalid, the  
8        remainder of the act or the application of the provision to other  
9        persons or circumstances is not affected.

10       NEW SECTION.   **Sec. 12.**   This act takes effect August 1, 2005.

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