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HOUSE BILL 1950

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Holmquist, Schindler, McCune, Dunn, Haler and Crouse

Read first time 02/11/2005.                      Referred to Committee on State  
Government Operations & Accountability.

1            AN ACT Relating to housing; and amending RCW 19.85.011, 19.85.020,  
2 19.85.025, 19.85.030, 19.85.040, 19.85.050, and 19.85.070.

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

4            **Sec. 1.** RCW 19.85.011 and 1994 c 249 s 9 are each amended to read  
5 as follows:

6            The legislature finds that administrative rules adopted by state  
7 agencies can have a disproportionate impact on the state's small  
8 businesses, particularly those providing housing, because of the size  
9 of those businesses and the regulations imposed upon them. This  
10 disproportionate impact reduces competition, innovation, employment,  
11 and new employment opportunities, and threatens the very existence of  
12 some small businesses. Further, because most providers of housing are  
13 small businesses, this disproportionate impact upon them significantly  
14 reduces the availability of housing to Washington residents,  
15 particularly those with lower incomes and middle incomes. The  
16 legislature therefore enacts the Regulatory Fairness Act with the  
17 intent of reducing the disproportionate impact of state administrative  
18 rules on small business and housing.

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

3       Unless the context clearly indicates otherwise, the definitions in  
4 this section apply through this chapter.

5       (1) "Housing" means residential housing that is rented or owned by  
6 a person or household.

7       (2) "Housing impact statement" means a statement meeting the  
8 requirements of RCW 19.85.040 prepared by a state agency pursuant to  
9 RCW 19.85.030.

10       (3) "Industry" means all of the businesses in this state in any one  
11 four-digit standard industrial classification as published by the  
12 United States department of commerce. However, if the use of a four-  
13 digit standard industrial classification would result in the release of  
14 data that would violate state confidentiality laws, "industry" means  
15 all businesses in a three-digit standard industrial classification.

16       (4) "Provider of housing" means a business that engages, in whole  
17 or in any part, in the development and building of housing.

18       (5) "Significant adverse impact on housing" means causing an  
19 increase of five percent or more on the cost on housing, or on the cost  
20 of a component of housing.

21       (6) "Small business" means any business entity, including a sole  
22 proprietorship, corporation, partnership, or other legal entity, that  
23 is owned and operated independently from all other businesses, and that  
24 has fifty or fewer employees.

25       ((+2)) (7) "Small business economic impact statement" means a  
26 statement meeting the requirements of RCW 19.85.040 prepared by a state  
27 agency pursuant to RCW 19.85.030.

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

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

36       (1) Unless an agency receives a written objection to the expedited  
37 repeal of a rule, this chapter does not apply to a rule proposed for

1 expedited repeal pursuant to RCW (~~(34.05.354)~~) 34.05.353. If an agency  
2 receives a written objection to expedited repeal of the rule, this  
3 chapter applies to the rule-making proceeding.

4 (2) This chapter does not apply to a rule proposed for expedited  
5 adoption under RCW (~~(34.05.230 (1) through (8))~~) 34.05.353, unless a  
6 written objection is timely filed with the agency and the objection is  
7 not withdrawn.

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

10 (4) An agency is not required to prepare a separate small business  
11 economic impact statement or a housing impact statement under RCW  
12 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the  
13 requirements of a small business economic impact statement or a housing  
14 impact statement, respectively, and if the agency reduced the costs  
15 imposed by the rule on small business or the significant adverse impact  
16 on housing to the extent required by RCW 19.85.030(~~(+3)~~) (2). The  
17 portion of the analysis that meets the requirements of RCW 19.85.040  
18 shall be filed with the code reviser and provided to any person  
19 requesting it in lieu of a separate small business economic impact  
20 statement or housing impact statement.

21 **Sec. 4.** RCW 19.85.030 and 2000 c 171 s 60 are each amended to read  
22 as follows:

23 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
24 shall prepare:

25 (a) A small business economic impact statement: (~~(+a)~~)(i) If the  
26 proposed rule will impose more than minor costs on businesses in an  
27 industry; or (~~(+b)~~)(ii) if requested to do so by a majority vote of  
28 the joint administrative rules review committee within forty-five days  
29 of receiving the notice of proposed rule making under RCW 34.05.320; or

30 (b) A housing impact statement if the proposed rule will have a  
31 significant adverse impact on housing. However, if the agency has  
32 completed the pilot rule process as defined by RCW 34.05.313 before  
33 filing the notice of a proposed rule, the agency is not required to  
34 prepare a small business economic impact statement or a housing impact  
35 statement.

36 An agency shall prepare the small business economic impact  
37 statement or housing impact statement in accordance with RCW 19.85.040,

1 and file it with the code reviser along with the notice required under  
2 RCW 34.05.320. An agency shall file a statement prepared at the  
3 request of the joint administrative rules review committee with the  
4 code reviser upon its completion before the adoption of the rule. An  
5 agency shall provide a copy of the small business economic impact  
6 statement or housing impact statement to any person requesting it.

7 If a housing impact statement is required to be prepared, it may be  
8 included as a component of a small business economic impact statement.

9 (2) The governor's housing advisory board, in consultation with the  
10 homebuilding industry, shall develop guidelines to assist agencies in  
11 determining whether a proposed rule will create a significant adverse  
12 impact on housing, and therefore require preparation of a housing  
13 impact statement. The department of community, trade, and economic  
14 development may review an agency determination that a proposed rule  
15 will not have such an impact, and shall advise the joint administrative  
16 rules review committee on disputes involving agency determinations  
17 under this section.

18 (3) Based upon the extent of disproportionate impact on small  
19 business or the extent of the significant adverse impact on housing  
20 identified in the statement prepared under RCW 19.85.040, the agency  
21 shall, where legal and feasible in meeting the stated objectives of the  
22 statutes upon which the rule is based, reduce the costs imposed by the  
23 rule on small businesses or reduce the significant adverse impact on  
24 housing. Methods to reduce the costs on small businesses or reduce the  
25 significant adverse impact on housing may include:

26 (a) Reducing, modifying, or eliminating substantive regulatory  
27 requirements;

28 (b) Simplifying, reducing, or eliminating recordkeeping and  
29 reporting requirements;

30 (c) Reducing the frequency of inspections;

31 (d) Delaying compliance timetables;

32 (e) Reducing or modifying fine schedules for noncompliance; or

33 (f) Any other mitigation techniques.

34 **Sec. 5.** RCW 19.85.040 and 1995 c 403 s 403 are each amended to  
35 read as follows:

36 (1) A small business economic impact statement and housing impact  
37 statement must include a brief description of the reporting, record

1 keeping, and other compliance requirements of the proposed rule, and  
2 the kinds of professional services that a small business or provider of  
3 housing is likely to need in order to comply with such requirements.  
4 It shall analyze the costs of compliance for businesses or providers of  
5 housing required to comply with the proposed rule adopted pursuant to  
6 RCW 34.05.320, including costs of equipment, supplies, labor,  
7 financing, and increased administrative costs. It shall consider,  
8 based on input received, whether compliance with the rule will cause  
9 businesses or providers of housing to lose sales or revenue. To  
10 determine whether the proposed rule will have a disproportionate impact  
11 on small businesses or the affordability of housing, the impact  
12 statement must compare the cost of compliance for small business or  
13 providers of housing with the cost of compliance for the ten percent of  
14 businesses or providers of housing that are the largest businesses or  
15 providers of housing required to comply with the proposed rules using  
16 one or more of the following as a basis for comparing costs:

- 17 (a) Cost per employee;
- 18 (b) Cost per hour of labor; (~~(or)~~)
- 19 (c) Cost per one hundred dollars of sales; or
- 20 (d) Cost per unit of housing.

21 (~~(A small business economic)~~) An impact statement must also  
22 include:

23 (a) A statement of the steps taken by the agency to reduce the  
24 costs of the rule on small businesses or providers of housing as  
25 required by RCW 19.85.030(3), or reasonable justification for not doing  
26 so, addressing the options listed in RCW 19.85.030(3);

27 (b) A description of how the agency will involve small businesses  
28 or providers of housing in the development of the rule; and

29 (c) A list of industries that will be required to comply with the  
30 rule. However, this subsection (2)(c) shall not be construed to  
31 preclude application of the rule to any business or industry to which  
32 it would otherwise apply.

33 (3) To obtain information for purposes of this section, an agency  
34 may survey a representative sample of affected businesses or trade  
35 associations and should, whenever possible, appoint a committee under  
36 RCW 34.05.310(2) to assist in the accurate assessment of the costs of  
37 a proposed rule, and the means to reduce the costs imposed on small  
38 business or providers of housing.

1       **Sec. 6.** RCW 19.85.050 and 1989 c 175 s 74 are each amended to read  
2 as follows:

3       (1) Within one year after June 10, 1982, each agency shall publish  
4 and deliver to the office of financial management and to all persons  
5 who make requests of the agency for a copy of a plan to periodically  
6 review all rules then in effect and which have been issued by the  
7 agency which have an economic impact on more than twenty percent of all  
8 industries or ten percent of the businesses in any one industry. Such  
9 plan may be amended by the agency at any time by publishing a revision  
10 to the review plan and delivering such revised plan to the office of  
11 financial management and to all persons who make requests of the agency  
12 for the plan. The purpose of the review is to determine whether such  
13 rules should be continued without change or should be amended or  
14 rescinded, consistent with the stated objectives of applicable  
15 statutes, to minimize the economic impact on small businesses and  
16 providers of housing as described by this chapter. The plan shall  
17 provide for the review of all such agency rules in effect on June 10,  
18 1982, within ten years of that date.

19       (2) In reviewing rules to minimize any significant economic impact  
20 of the rule on small businesses and any significant adverse impact on  
21 housing as described by this chapter, and in a manner consistent with  
22 the stated objectives of applicable statutes, the agency shall consider  
23 the following factors:

24       (a) The continued need for the rule;

25       (b) The nature of complaints or comments received concerning the  
26 rule from the public;

27       (c) The complexity of the rule;

28       (d) The extent to which the rule overlaps, duplicates, or conflicts  
29 with other state or federal rules, and, to the extent feasible, with  
30 local governmental rules; and

31       (e) The degree to which technology, economic conditions, or other  
32 factors have changed in the subject area affected by the rule.

33       (3) Each year each agency shall publish a list of rules which are  
34 to be reviewed pursuant to this section during the next twelve months  
35 and deliver a copy of the list to the office of financial management  
36 and all persons who make requests of the agency for the list. The list  
37 shall include a brief description of the legal basis for each rule as

1 described by RCW 34.05.360, and shall invite public comment upon the  
2 rule.

3 **Sec. 7.** RCW 19.85.070 and 1992 c 197 s 1 are each amended to read  
4 as follows:

5 When any rule is proposed for which a small business economic  
6 impact statement or a housing impact statement is required, the  
7 adopting agency shall provide notice to small businesses or providers  
8 of housing of the proposed rule through any of the following:

9 (1) Direct notification of known interested small businesses,  
10 providers of housing, or trade organizations affected by the proposed  
11 rule; or

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

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