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**SUBSTITUTE SENATE BILL 5730**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on International Trade & Economic Development  
(originally sponsored by Senators Doumit, Zarelli, Eide, Shin,  
Rasmussen and Mulliken)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to regulation of small businesses; and amending RCW  
2 19.85.020, 19.85.030, 19.85.040, 19.85.050, 19.85.070, and 34.05.671.

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

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

6 Unless the context clearly indicates otherwise, the definitions in  
7 this section apply through this chapter.

8 (1) "Small business" means any business entity, including a sole  
9 proprietorship, corporation, partnership, or other legal entity, that  
10 is owned and operated independently from all other businesses, and that  
11 has fifty or fewer employees.

12 (2) "Small business economic impact statement" means a statement  
13 meeting the requirements of RCW 19.85.040 prepared by a state agency  
14 pursuant to RCW 19.85.030.

15 (3) "Industry" means all of the businesses in this state in any  
16 ~~((one))~~ single North American industry classification system  
17 classification or four-digit standard industrial classification as  
18 published by the United States department of commerce. However, if the  
19 use of a ~~((four-digit standard industrial))~~ classification would result

1 in the release of data that would violate state confidentiality laws,  
2 "industry" means all businesses in a three-digit standard industrial  
3 classification or equivalent North American industry classification  
4 system classification.

5 (4) "Minor cost" means a cost per business that is less than three-  
6 tenths of one percent of one hundred dollars in sales, or less than  
7 one-tenth of one percent of the annual payroll.

8 **Sec. 2.** RCW 19.85.030 and 2000 c 171 s 60 are each amended to read  
9 as follows:

10 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
11 shall prepare a small business economic impact statement: (a) If the  
12 proposed rule will impose more than minor costs on businesses in an  
13 industry; or (b) if requested to do so by a majority vote of the joint  
14 administrative rules review committee within forty-five days of  
15 receiving the notice of proposed rule making under RCW 34.05.320.  
16 However, if the agency has completed the pilot rule process as defined  
17 by RCW 34.05.313 before filing the notice of a proposed rule, the  
18 agency is not required to prepare a small business economic impact  
19 statement.

20 An agency shall prepare the small business economic impact  
21 statement in accordance with RCW 19.85.040, and file it with the code  
22 reviser along with the notice required under RCW 34.05.320. An agency  
23 shall file a statement prepared at the request of the joint  
24 administrative rules review committee with the code reviser upon its  
25 completion before the adoption of the rule. An agency shall provide a  
26 copy of the small business economic impact statement to any person  
27 requesting it.

28 (2) Based upon the extent of disproportionate impact on small  
29 business identified in the statement prepared under RCW 19.85.040, the  
30 agency shall, where legal and feasible in meeting the stated objectives  
31 of the statutes upon which the rule is based, maximally reduce the  
32 costs imposed by the rule on small businesses. (~~Methods to reduce the~~  
33 ~~costs on small businesses may include~~) The agency shall consider,  
34 without limitation, each of the following methods of reducing the  
35 impact of the proposed rule on small businesses:

36 (a) Reducing, modifying, or eliminating substantive regulatory  
37 requirements;

1 (b) Simplifying, reducing, or eliminating recordkeeping and  
2 reporting requirements;

3 (c) Reducing the frequency of inspections;

4 (d) Delaying compliance timetables;

5 (e) Reducing or modifying fine schedules for noncompliance; (~~or~~)

6 (f) Any other mitigation techniques including those suggested by  
7 small businesses or their advocates.

8 (3) If the agency determines it cannot reduce the disproportionate  
9 impact of a rule on small businesses, the agency shall provide a clear  
10 explanation of why it has made that determination and include a  
11 statement to that effect with the notice required by RCW 34.05.320.

12 **Sec. 3.** RCW 19.85.040 and 1995 c 403 s 403 are each amended to  
13 read as follows:

14 (1) A small business economic impact statement must include a brief  
15 description of the reporting, recordkeeping, and other compliance  
16 requirements of the proposed rule, and the kinds of professional  
17 services that a small business is likely to need in order to comply  
18 with such requirements. It shall analyze the costs of compliance for  
19 businesses required to comply with the proposed rule adopted pursuant  
20 to RCW 34.05.320, including costs of equipment, supplies, labor,  
21 professional services, and increased administrative costs. It shall  
22 consider, based on input received, whether compliance with the rule  
23 will cause businesses to lose sales or revenue. To determine whether  
24 the proposed rule will have a disproportionate cost impact on small  
25 businesses, the impact statement must compare the cost of compliance  
26 for small business with the cost of compliance for the ten percent of  
27 businesses that are the largest businesses required to comply with the  
28 proposed rules using one or more of the following as a basis for  
29 comparing costs:

30 (a) Cost per employee;

31 (b) Cost per hour of labor; or

32 (c) Cost per one hundred dollars of sales.

33 (2) A small business economic impact statement must also include:

34 (a) A statement of the steps taken by the agency to reduce the  
35 costs of the rule on small businesses as required by RCW  
36 19.85.030(~~(3)~~) (2), or reasonable justification for not doing so,  
37 addressing the options listed in RCW 19.85.030(~~(3)~~) (2);

1 (b) A description of how the agency will involve small businesses  
2 in the development of the rule; and

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

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

13 **Sec. 4.** RCW 19.85.050 and 1989 c 175 s 74 are each amended to read  
14 as follows:

15 ~~(1) ((Within one year after June 10, 1982, each agency shall  
16 publish and deliver to the office of financial management and to all  
17 persons who make requests of the agency for a copy of a plan to  
18 periodically review all rules then in effect and which have been issued  
19 by the agency which have an economic impact on more than twenty percent  
20 of all industries or ten percent of the businesses in any one industry.  
21 Such plan may be amended by the agency at any time by publishing a  
22 revision to the review plan and delivering such revised plan to the  
23 office of financial management and to all persons who make requests of  
24 the agency for the plan. The purpose of the review is to determine  
25 whether such rules should be continued without change or should be  
26 amended or rescinded, consistent with the stated objectives of  
27 applicable statutes, to minimize the economic impact on small  
28 businesses as described by this chapter. The plan shall provide for  
29 the review of all such agency rules in effect on June 10, 1982, within  
30 ten years of that date)) Any state agency receiving separate written  
31 requests by more than twenty persons, excluding identical form letter-  
32 type requests, within one hundred twenty calendar days to review an  
33 existing rule shall review that rule in accordance with the criteria  
34 established in subsection (2) of this section within ninety days of  
35 receiving the twenty-first request and complete the review within one  
36 hundred eighty days from commencing the review. For the purposes of  
37 this section, a request for a review of a rule includes any request~~

1 submitted to the agency rules coordinator that identifies all or a  
2 portion of a rule by title and chapter without regard to a specific  
3 section within the chapter and any request that provides a narrative  
4 description of the rule that reasonably identifies the rule but may not  
5 identify the title or chapter of the rule.

6 (2) In reviewing rules under subsection (1) of this section to  
7 minimize (~~(any significant)~~) the economic impact of the rule on small  
8 businesses as described by this chapter, and in a manner consistent  
9 with the stated objectives of applicable statutes, the agency shall  
10 consider the following factors:

11 (a) (~~(The continued need for the rule)~~) Whether the rule is  
12 authorized by statute;

13 (b) (~~(The nature of complaints or comments received concerning the~~  
14 ~~rule from the public)~~) Whether the rule is needed;

15 (c) (~~(The complexity of the rule)~~) Whether the rule is clearly and  
16 simply stated;

17 (d) The extent to which the rule overlaps, duplicates, or conflicts  
18 with other state or federal rules, and, to the extent feasible, with  
19 local governmental rules; (~~and~~)

20 (e) The degree to which technology, economic conditions, or other  
21 factors have changed in the subject area affected by the rule;

22 (f) Whether alternatives to the rule exist that will meet the  
23 objectives of the applicable statutes at less cost;

24 (g) Whether the rule serves the purposes and goals for which it was  
25 adopted; and

26 (h) Whether the rule was adopted according to all provisions of  
27 law, including RCW 34.05.328(1), if applicable.

28 (3) (~~(Each year each)~~) At the end of the review of its rule, the  
29 agency shall publish a ((list of rules which are to be reviewed  
30 pursuant to this section during the next twelve months)) report and  
31 deliver a copy ((of the list)) to the office of financial management  
32 and all persons who make requests of the agency for the ((list))  
33 report. The ((list)) report shall include a brief description of the  
34 legal basis for each rule as described by RCW 34.05.360, ((and shall  
35 invite public comment upon the rule)) a summary of the agency's  
36 consideration and analysis of the factors in subsection (2) of this  
37 section, and the agency's decision on whether it is required to

1 initiate rule making under the criterion in subsection (4) of this  
2 section. The agency shall invite public comment upon the rule during  
3 the course of its review.

4 (4) If the review under subsection (2) of this section identifies  
5 ways to revise the rule to reduce the economic impacts of the rule by  
6 more than a minor cost on business in an industry while meeting the  
7 objectives of the applicable statutes, the agency shall file a  
8 statement of inquiry under RCW 34.05.310 within sixty days of issuing  
9 its report and file its proposed rule making in accordance with RCW  
10 34.05.320 within one year of issuing its report.

11 (5) An agency's decision on whether it is required to initiate rule  
12 making under the criterion in subsection (4) of this section may be  
13 challenged under the provisions of RCW 34.05.570(4). An agency's  
14 failure to timely commence review or to timely issue a report under  
15 this section may be challenged under RCW 34.05.570(4).

16 **Sec. 5.** RCW 19.85.070 and 1992 c 197 s 1 are each amended to read  
17 as follows:

18 When any rule is proposed for which a small business economic  
19 impact statement is required, the adopting agency shall provide notice  
20 to small businesses of the proposed rule through (~~any of the~~  
21 ~~following~~):

22 (1) Direct notification of known interested small businesses or  
23 trade organizations affected by the proposed rule; (~~or~~)

24 (2) Providing information of the proposed rule making to  
25 publications likely to be obtained by small businesses of the types  
26 affected by the proposed rule; and

27 (3) Posting on the agency web site.

28 **Sec. 6.** RCW 34.05.671 and 1995 c 403 s 505 are each amended to  
29 read as follows:

30 (1) The rules review committee may make reports from time to time  
31 to the members of the legislature and to the public with respect to any  
32 of its findings or recommendations. The committee shall keep complete  
33 minutes of its meetings.

34 (2) The committee may establish ad hoc advisory boards, including  
35 but not limited to, ad hoc economics or science advisory boards to

1 assist the committee in its rules review functions. The committee  
2 shall establish a small business advisory board to ensure that small  
3 business concerns are reflected in the rules review process.

4 (3) The committee may hire staff as needed to perform functions  
5 under this chapter.

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