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ENGROSSED HOUSE BILL 1525

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State of Washington

60th Legislature

2007 Regular Session

By Representatives Chase, Kessler, Morris, Sump, B. Sullivan, Hunt and Hudgins

Read first time 01/22/2007. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to regulatory fairness for small businesses;  
2 amending RCW 19.85.020, 19.85.030, and 19.85.040; and creating a new  
3 section.

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

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

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

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

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

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

18 (5) Uniform regulatory and reporting requirements can impose

1 unnecessary and disproportionately burdensome demands including legal,  
2 accounting, and consulting costs upon small businesses with limited  
3 resources;

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

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

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

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

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

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

26 (~~Unless the context clearly indicates otherwise,~~) The definitions  
27 in this section apply through this chapter unless the context clearly  
28 requires otherwise.

29 (1) "Industry" means all of the businesses in this state in any one  
30 four-digit standard industrial classification as published by the  
31 United States department of commerce, or the North American industry  
32 classification system as published by the executive office of the  
33 president and the office of management and budget. However, if the use  
34 of a four-digit standard industrial classification or North American  
35 industry classification system would result in the release of data that  
36 would violate state confidentiality laws, "industry" means all

1 businesses in a three-digit standard industrial classification or the  
2 North American industry classification system.

3 (2) "Minor cost" means a cost per business that is less than three-  
4 tenths of one percent of annual revenue or income, or one hundred  
5 dollars, whichever is greater, or one percent of annual payroll.  
6 Provided: That for the rules of the department of social and health  
7 services "minor cost" means cost per business that is less than fifty  
8 dollars of annual cost per client or other appropriate unit of service.

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

13 ~~((+2))~~ (4) "Small business economic impact statement" means a  
14 statement meeting the requirements of RCW 19.85.040 prepared by a state  
15 agency pursuant to RCW 19.85.030.

16 ~~((3) "Industry" means all of the businesses in this state in any~~  
17 ~~one four digit standard industrial classification as published by the~~  
18 ~~United States department of commerce. However, if the use of a four-~~  
19 ~~digit standard industrial classification would result in the release of~~  
20 ~~data that would violate state confidentiality laws, "industry" means~~  
21 ~~all businesses in a three digit standard industrial classification.))~~

22 **Sec. 3.** RCW 19.85.030 and 2000 c 171 s 60 are each amended to read  
23 as follows:

24 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
25 shall prepare a small business economic impact statement: (a) If the  
26 proposed rule will impose more than minor costs on businesses in an  
27 industry; or (b) if requested to do so by a majority vote of the joint  
28 administrative rules review committee within forty-five days of  
29 receiving the notice of proposed rule making under RCW 34.05.320.  
30 However, if the agency has completed the pilot rule process as defined  
31 by RCW 34.05.313 before filing the notice of a proposed rule, the  
32 agency is not required to prepare a small business economic impact  
33 statement.

34 An agency shall prepare the small business economic impact  
35 statement in accordance with RCW 19.85.040, and file it with the code  
36 reviser along with the notice required under RCW 34.05.320. An agency  
37 shall file a statement prepared at the request of the joint

1 administrative rules review committee with the code reviser upon its  
2 completion before the adoption of the rule. An agency shall provide a  
3 copy of the small business economic impact statement to any person  
4 requesting it.

5 (2) Based upon the extent of disproportionate impact on small  
6 business identified in the statement prepared under RCW 19.85.040, the  
7 agency shall, where legal and feasible in meeting the stated objectives  
8 of the statutes upon which the rule is based, reduce the costs imposed  
9 by the rule on small businesses. Methods to reduce the costs on small  
10 businesses may include:

11 (a) Reducing, modifying, or eliminating substantive regulatory  
12 requirements;

13 (b) Simplifying, reducing, or eliminating recordkeeping and  
14 reporting requirements;

15 (c) Reducing the frequency of inspections;

16 (d) Delaying compliance timetables;

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

18 (f) Any other mitigation techniques.

19 (3) If the agency determines it cannot reduce the costs imposed by  
20 the rule on small businesses, the agency shall provide a clear  
21 explanation of why it has made that determination and include that  
22 statement with its filing of the proposed rule pursuant to RCW  
23 34.05.320.

24 (4)(a) All small business economic impact statements are subject to  
25 selective review by the joint administrative rules review committee  
26 pursuant to RCW 34.05.630.

27 (b) Any person affected by a proposed rule where there is small  
28 business economic impact statement may petition the joint  
29 administrative rules review committee for review pursuant to the  
30 procedure in RCW 34.05.655.

31 **Sec. 4.** RCW 19.85.040 and 1995 c 403 s 403 are each amended to  
32 read as follows:

33 (1) A small business economic impact statement must include a brief  
34 description of the reporting, recordkeeping, and other compliance  
35 requirements of the proposed rule, and the kinds of professional  
36 services that a small business is likely to need in order to comply  
37 with such requirements. It shall analyze the costs of compliance for

1 businesses required to comply with the proposed rule adopted pursuant  
2 to RCW 34.05.320, including costs of equipment, supplies, labor,  
3 professional services, and increased administrative costs. It shall  
4 consider, based on input received, whether compliance with the rule  
5 will cause businesses to lose sales or revenue. To determine whether  
6 the proposed rule will have a disproportionate cost impact on small  
7 businesses, the impact statement must compare the cost of compliance  
8 for small business with the cost of compliance for the ten percent of  
9 businesses that are the largest businesses required to comply with the  
10 proposed rules using one or more of the following as a basis for  
11 comparing costs:

12 (a) Cost per employee;

13 (b) Cost per hour of labor; or

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

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

16 (a) A statement of the steps taken by the agency to reduce the  
17 costs of the rule on small businesses as required by RCW  
18 19.85.030(~~(+3)~~) (2), or reasonable justification for not doing so,  
19 addressing the options listed in RCW 19.85.030(~~(+3)~~) (2);

20 (b) A description of how the agency will involve small businesses  
21 in the development of the rule; (~~and~~)

22 (c) A list of industries that will be required to comply with the  
23 rule. However, this subsection (2)(c) shall not be construed to  
24 preclude application of the rule to any business or industry to which  
25 it would otherwise apply; and

26 (d) The number of jobs that will be created or lost as the result  
27 of compliance with the proposed rule.

28 (3) To obtain information for purposes of this section, an agency  
29 may survey a representative sample of affected businesses or trade  
30 associations and should, whenever possible, appoint a committee  
31 (~~under~~) to engage in negotiated rule making pursuant to RCW  
32 34.05.310(2) to assist in the accurate assessment of the costs of a  
33 proposed rule, and the means to reduce the costs imposed on small  
34 business.

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