
**State Government & Tribal Affairs
Committee**

HB 1671

Brief Description: Enacting the regulatory fairness act of 2011.

Sponsors: Representatives Overstreet, Blake, Taylor, Haler, Takko, Johnson, Klippert, Shea, Short, Kristiansen, Angel, Hinkle, Bailey, McCune, Warnick, Zeiger, Wilcox, Orcutt, Schmick, Fagan, Ross, Condotta and Harris.

Brief Summary of Bill

- Establishes that an administrative rule having a specified economic impact cannot be enforced until enacted into law by the Legislature.
- Requires that an agency provide notification to the Legislature before adopting a rule having a specified economic impact.
- Requires an agency to conduct an annual review of its rules to determine whether any existing rules have resulted in a specified economic impact.

Hearing Date: 2/9/11

Staff: Thamas Osborn (786-7129).

Background:

Rulemaking under the Administrative Procedure Act.

The Administrative Procedure Act (APA) details requirements that must be satisfied in order for an agency to adopt a significant legislative rule. A significant legislative rule is one that:

- adopts substantive provisions of law, the violation of which subjects the violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts a new policy or regulatory program, or makes significant amendments to a policy or regulatory program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Significant legislative rules do not include emergency rules, procedural rules, interpretative rules, or rules adopted through expedited rule-making. Examples of the requirements for adoption of a significant legislative rule include a cost/benefit analysis, a determination of whether the rule imposes more stringent requirements on private entities than on public entities, and a determination of whether the rule differs from federal regulations and law. The following agencies must satisfy the APA requirements in order to adopt a significant legislative rule:

- the Department of Ecology
- the Department of Labor and Industries
- the Department of Health
- the Department of Revenue
- the Department of Social and Health Services
- the Department of Natural Resources
- the Employment Security Department
- the Forest Practices Board
- the Office of the Insurance Commissioner; and
- the Department of Fish and Wildlife

The final order by which any rule is adopted by an agency must contain:

- the date the agency adopted the rule;
- a concise description of the purpose of the rule;
- a reference to all rules repealed, amended or suspended by the rule;
- a reference to the specific authority, statutory or otherwise, authorizing the agency to adopt the rule;
- any findings required for adoption of the rule; and
- the effective date.

Agency Review of Business Rules

Each agency must have a plan to periodically review its rules in order to minimize their impact on small businesses. When conducting the review, the agency must consider

- the continued need for the rule;
- the nature of complaints or comments received from the public;
- the extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and to the extent feasible, with local government rules; and
- the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

Each agency is required to publish an annual list of rules to be reviewed during the year.

Regulatory Fairness Act and Small Business Economic Impact Statements.

Under the Regulatory Fairness Act (RFA), an agency must develop a small business economic impact statement (SBEIS) if a rule it is adopting under the APA 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.

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;
- a list of industries that will be required to comply with the rule; and
- an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed 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.

The RFA defines "small business" as any business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and has 50 or fewer employees.

Summary of Bill:

Before adopting a rule, an agency must determine whether the rule will result in a *specified economic impact*. If so, the agency must *provide notification*, and may not enforce the rule until it is enacted into law by the Legislature.

"Specified economic impact" means the:

- imposition of annual costs of \$1,000 or more upon any individual; or
- imposition of annual costs of \$5,000 or more upon any business, partnership, corporation, association, or public or private organization; or
- loss of one or more existing jobs of a Washington resident within one year as the direct result of the adoption of a rule.

"Provide notification" means to transmit a proposed or existing rule having a *specified economic impact* to the Code Reviser for publication in the state register and to the appropriate committees of the of the Senate and the House of Representatives. The required notification must include the findings supporting the determination that the rule has a specified economic impact as well as any relevant public comments.

Within 180 days of the effective date of this act, and annually thereafter, each agency must determine whether any of its existing rules have resulted in a specified economic impact during

the preceding year. If so, the agency must provide notification, and may not continue to enforce the rule until it is enacted into law by the Legislature.

A person may bring an action in Superior Court for either an injunction or a writ of mandamus in order to enforce the requirements of this act.

Appropriation: None.

Fiscal Note: Available.

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