SENATE BILL REPORT
2SHB 1120

As Reported by Senate Committee On:
State Government, March 29, 2017

Title: An act relating to enhancing the economic development and viability of small businesses.

Brief Description: Concerning the regulatory fairness act.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Smith, Morris, Short, Hayes, Stanford, Koster, Van Werven, McDonald, MacEwen, Muri, Haler, Ryu, Condotta and Buys).

Brief History: Passed House: 3/02/17, 98-0.
Committee Activity: State Government: 3/17/17, 3/29/17 [DP-WM].

Brief Summary of Bill

- Exempts agencies that are able to demonstrate their proposed rule does not affect small businesses from completing a small business economic impact statement (SBEIS) as required by the Regulatory Fairness Act (RFA).
- Requires agencies proposing a rule that affects only small businesses to consider certain mitigation options to reduce the cost to small businesses.
- Requires an agency whose proposed rule imposes more than minor costs on small businesses to mitigate those costs when it does not have sufficient data to calculate disproportionate impacts.
- Requires the Office of Regulatory Innovation and Assistance (ORIA) to act as the central entity to assist agencies with meeting the requirements of the RFA.
- Requires the State Auditor's Office (SAO) to conduct performance reviews of agency compliance with the RFA.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Hunt, Ranking Minority Member; Kuderer and Pearson.

Staff: Melissa Van Gorkom (786-7491)

Background: SBEIS. Under the RFA, an agency must develop a SBEIS if a rule it is adopting under the Administrative Procedures Act 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. Minor cost is defined as a cost per business that is less than three-tenths of one percent of annual revenue or income or $100, whichever is greater, or one percent of annual payroll.

A SBEIS must contain a variety of information, including the following:

- 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 by comparing at least one of the following: cost per employee, cost per hour of labor, or cost per $100 of sales;
- 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 by comparing the cost of compliance for businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules;
- 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;
- an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule; and
- the steps taken to reduce the costs on small businesses or state a reasonable justification for not doing so.

If the SBEIS shows that a rule will have a disproportionate impact on small businesses—businesses with 50 or fewer employees, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. Methods the agency must consider to reduce the costs imposed by the rule on a small business including the following:

- reducing, modifying, or eliminating substantive requirements;
- simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- reducing the frequency of inspections;
- reducing or modifying the fine schedule for noncompliance; or
- any other mitigation techniques, including those suggested by small businesses or small business advocates.

ORIA. The ORIA, formerly the Office of Regulatory Assistance and Office of Permit Assistance, was created within the Office of the Governor in 2002 by the Legislature. The ORIA assists citizens and small businesses with permitting, licensing, and regulatory issues, including developing improvements to the regulatory system. The ORIA's duties include providing clear information and assistance to citizens, businesses, and local governments on state regulations, permit requirements, and agency rule-making processes.

SAO. By State Constitution, the State Auditor has the power to examine the financial affairs of all governments in the state, including local governments, schools, state agencies, and institutions of higher education. The SAO carries out special investigations and performance audits of state agencies and local governments.

Summary of Bill: SBEIS. An agency that demonstrates its proposed rule does not affect small businesses is exempt from completing a SBEIS under the RFA.

Agencies proposing a rule that affects only small businesses must consider all of the cost reduction options listed in the RFA.

An agency whose proposed rule imposes more than minor costs on small businesses must mitigate these costs when the agency does not have sufficient data to calculate disproportionate impacts on small businesses.

ORIA. The ORIA must act as the central entity to collaborate with and provide support to agencies in meeting the requirements of the RFA.

The ORIA's support must include, but is not limited to, the following:

- providing online guidance and tools by December 31, 2017;
- providing access to available data for agencies to complete cost calculations; and
- facilitating sharing of information among agencies and between agencies and business associations.

The ORIA must consult with the Office of the Attorney General in providing online guidance and tools.

SAO. The SAO is required to conduct a performance review of agency compliance of the RFA, no earlier than June 30, 2020. The SAO must report its findings and recommendations by June 30, 2021. The SAO must complete subsequent compliance reviews of the agencies, depending on the degree to which agencies are found to be in compliance with the RFA. The SAO must report findings and any recommendations from subsequent reviews following the review.

Null and Void. If funding is not provided by June 30, 2017, this act is null and void.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Regulations are the top concern of small businesses. The Auditor did a performance audit on the Regulatory Fairness Act (RFA) because the Legislature recognized that regulation has an undue and disproportionate burden on small businesses. The Legislature enacted the RFA to ensure that small businesses have a voice and that the state is mitigating that burden. The audit showed that the agencies are not doing that well. This bill addresses the audit, increasing the accountability and transparency of the RFA and strengthening it.

Persons Testifying: PRO: Representative Norma Smith, Prime Sponsor; Gary Smith, Independent Business Association; Mike Ennis, Association of Washington Business; Mark Johnson, Washington Retail Association; Sheri Sawyer, Governor's Policy Office/Senior Policy Advisor; Patrick Connor, National Federation of Independent Business/Washington.

Persons Signed In To Testify But Not Testifying: No one.