
SUBSTITUTE SENATE BILL 5739

State of Washington**53rd Legislature****1993 Regular Session**

By Senate Committee on Labor & Commerce (originally sponsored by
Senators Moore, Anderson, Oke and Winsley)

Read first time 03/02/93.

1 AN ACT Relating to small businesses; amending RCW 19.85.020,
2 19.85.010, 19.85.070, and 34.05.310; reenacting and amending RCW
3 19.85.030 and 19.85.040; adding new sections to chapter 34.05 RCW;
4 adding a new section to chapter 43.31 RCW; and repealing RCW 19.85.060.

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

6 **Sec. 1.** RCW 19.85.020 and 1989 c 374 s 1 are each amended to read
7 as follows:

8 Unless the context clearly indicates otherwise, the definitions in
9 this section apply through this chapter.

10 (1) "Small business" has the meaning given in RCW 43.31.025(4).
11 (2) "Small business economic impact statement" means a statement
12 meeting the requirements of RCW 19.85.040 prepared by a state agency
13 pursuant to RCW 19.85.030.

14 (3) "Industry" means all of the businesses in this state in any one
15 ((three-digit)) four-digit standard industrial classification as
16 published by the United States department of commerce.

17 **Sec. 2.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read as
18 follows:

1 The legislature finds that small businesses in ((the state of))
2 Washington ((have in the past been subjected)) are subject to rules
3 adopted by agencies, departments, and instrumentalities of the state
4 government which ((have placed)) place a proportionately higher burden
5 on ((the small business community in Washington state)) them. The
6 legislature also finds that such proportionately higher burdens placed
7 on small businesses have reduced competition, reduced employment,
8 reduced new employment opportunities, reduced innovation, and
9 threatened the very existence of some small businesses. Therefore, it
10 is the intent of the legislature that rules affecting the business
11 community shall not place proportionately higher burdens on small
12 businesses. The legislature therefore enacts this Regulatory Fairness
13 Act to minimize such proportionately higher impacts of rules on small
14 businesses in the future.

15 **Sec. 3.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
16 each reenacted and amended to read as follows:

17 ((In the adoption of any rule pursuant to RCW 34.05.320 that will
18 have an economic impact on more than twenty percent of all industries,
19 or more than ten percent of any one industry, the adopting agency:
20 (1) Shall reduce the economic impact of the rule on small business
21 by doing one or more of the following when it is legal and feasible in
22 meeting the stated objective of the statutes which are the basis of the
23 proposed rule:
24 (a) Establish differing compliance or reporting requirements or
25 timetables for small businesses;

26 (b) Clarify, consolidate, or simplify the compliance and reporting
27 requirements under the rule for small businesses;

28 (c) Establish performance rather than design standards;

29 (d) Exempt small businesses from any or all requirements of the
30 rule;

31 (2) Shall prepare a small business economic impact statement in
32 accordance with RCW 19.85.040 and file such statement with the code
33 reviser along with the notice required under RCW 34.05.320;

34 (3))) (1) In the adoption of a rule pursuant to RCW 34.05.320, an
35 agency shall prepare a small business economic impact statement: (a)
36 If the proposed rule will impose more than minor costs on small
37 business; or (b) if requested to do so by a majority vote of the joint

1 administrative rules review committee within fifteen days after notice
2 of the proposed rule is published in the state register.

3 An agency shall prepare the small business economic impact
4 statement in accordance with RCW 19.85.040, and file it with the code
5 reviser along with the notice required under RCW 34.05.320. However,
6 an agency shall file a statement prepared at the request of the joint
7 administrative rules review committee with the code reviser upon its
8 completion prior to the adoption of the rule. An agency shall notify
9 each person who has requested a copy of the small business economic
10 impact statement upon completion of the statement.

11 The agency may request assistance from the business assistance
12 center in the preparation of the small business economic impact
13 statement.

14 (2) A proposed rule will impose more than minor costs on small
15 business if:

16 (a) In order to comply with the rule, a small business will be
17 required to:

18 (i) Submit a new report or form to an agency;
19 (ii) Keep a new record, cease or change an industrial process or
20 business practice, or prepare a plan;
21 (iii) Acquire additional equipment, supplies, or personnel; or
22 (iv) Obtain legal, consulting, or accounting services; or
23 (b) The proposed rule will be more stringent or substantially
24 different than applicable federal statutes or regulations.

25 (3) Based upon the degree of impact on small business identified in
26 the statement prepared under RCW 19.85.040, the agency shall, unless
27 reasonable justification exists to do otherwise, reduce the costs on
28 small businesses. Methods to reduce the costs on small businesses may
29 include, but are not limited to:

30 (a) Reducing, modifying, or eliminating substantive regulatory
31 requirements;
32 (b) Establishing performance rather than design standards;
33 (c) Simplifying, reducing, or eliminating recordkeeping and
34 reporting requirements;
35 (d) Reducing the frequency of inspections;
36 (e) Delaying compliance time tables; or
37 (f) Reducing or modifying fine schedules for noncompliance.

1 **Sec. 4.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
2 each reenacted and amended to read as follows:

3 (1) A small business economic impact statement ((must include a
4 brief description of the reporting, recordkeeping, and other compliance
5 requirements of the rule, and the kinds of professional services that
6 a small business is likely to need in order to comply with such
7 requirements. A small business economic impact statement shall
8 analyze, based on existing data, the costs of compliance for businesses
9 required to comply with the provisions of a rule adopted pursuant to
10 RCW 34.05.320, including costs of equipment, supplies, labor, and
11 increased administrative costs, and compare to the greatest extent
12 possible the cost of compliance for small business with the cost of
13 compliance for the ten percent of firms which are the largest
14 businesses required to comply with the proposed new or amendatory
15 rules. The small business economic impact statement shall use one or
16 more of the following as a basis for comparing costs:

17 (1) Cost per employee;

18 (2) Cost per hour of labor;

19 (3) Cost per one hundred dollars of sales;

20 (4) Any combination of (1), (2), or (3)) shall clearly state the
21 following with regard to a proposed rule:

22 (a) A description of reports or recordkeeping that will be required
23 to comply with the proposed rule, and an estimate of how much each will
24 cost small businesses to prepare;

25 (b) A description and estimate of the direct and indirect costs of
26 compliance for small businesses affected by the proposed rule,
27 including, but not limited to, lost sales or revenue and costs of
28 equipment, supplies, labor, training, and increased administrative
29 costs;

30 (c) The nature and estimated cost of legal, consulting, and
31 accounting services that small businesses would incur in complying with
32 the proposed rule;

33 (d) The general ability of small businesses to absorb the costs
34 estimated under (a) through (c) of this subsection without adversely
35 affecting competition in the marketplace;

36 (e) The manner in which the agency reduced the costs of the rule on
37 small businesses as required under RCW 19.85.030, or reasonable
38 justification for not doing so;

1 (f) Whether and how the agency has involved small businesses in the
2 development of the rule; and

3 (g) A list of industries that would be required to comply with the
4 proposed rule.

5 (2) In order to obtain cost information for purposes of subsection
6 (1) of this section, an agency may survey a representative sample of
7 affected small businesses or trade associations. An agency may also
8 use other reasonable means to collect information to accurately assess
9 the costs and impact of a proposed rule on small businesses.

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

12 When any rule is proposed for which a small business economic
13 impact statement is ((required)) prepared, the adopting agency shall
14 provide notice to small businesses of the proposed rule through any of
15 the following:

16 (1) Direct notification of known interested small businesses or
17 trade organizations affected by the proposed rule; or

18 (2) Providing information of the proposed rule making to
19 publications likely to be obtained by small businesses of the types
20 affected by the proposed rule.

21 **Sec. 6.** RCW 34.05.310 and 1989 c 175 s 5 are each amended to read
22 as follows:

23 (1) In addition to seeking information by other methods, an agency,
24 before publication of a notice of a proposed rule adoption under RCW
25 34.05.320, is encouraged to solicit comments from the public on a
26 subject of possible rule making under active consideration within the
27 agency, by causing notice to be published in the state register of the
28 subject matter and indicating where, when, and how persons may comment.

29 (2) Each agency may appoint committees to comment, before
30 publication of a notice of proposed rule adoption under RCW 34.05.320,
31 on the subject of a possible rule-making action under active
32 consideration within the agency.

33 ((+3) Each agency shall designate a rules coordinator, who shall
34 have knowledge of the subjects of rules being proposed or prepared
35 within the agency for proposal, maintain the records of any such
36 action, and respond to public inquiries about possible or proposed
37 rules and the identity of agency personnel working, reviewing, or

1 commenting on them. The office and mailing address of the rules
2 coordinator shall be published in the state register at the time of
3 designation and in the first issue of each calendar year thereafter for
4 the duration of the designation. The rules coordinator may be an
5 employee of another agency.))

6 **NEW SECTION.** **Sec. 7.** A new section is added to chapter 34.05 RCW
7 to read as follows:

- 8 (1) Each agency shall designate a rules coordinator who shall:
 - 9 (a) Have experience with either the implementation of agency rules
10 or administrative law;
 - 11 (b) Have knowledge of the subjects of rules, policies, or
12 interpretive statements being proposed or developed within the agency;
 - 13 (c) Maintain the records of such action pursuant to this title and
14 the index of agency records listed under RCW 42.17.260(5);
 - 15 (d) Maintain contact with other agency rules coordinators in order
16 to coordinate rule-making hearings on similar subjects or for similar
17 industries;
 - 18 (e) Develop and file the annual rule-making plan as required in
19 section 8 of this act; and
 - 20 (f) Respond to public inquiries about possible or proposed rules,
21 policies, or interpretive statements and the identity of agency
22 personnel working, reviewing, or commenting on them.
- 23 (2) The office, mailing address, and telephone number of the rules
24 coordinator shall be published in the state register at the time of
25 designation and in the first issue of each calendar year thereafter for
26 the duration of the designation. The rules coordinator may be an
27 employee of another agency.
- 28 (3) Within six months of designation, the agency rules coordinator
29 shall complete the administrative procedures training courses
30 recommended by the business assistance center.

31 **NEW SECTION.** **Sec. 8.** A new section is added to chapter 34.05 RCW
32 to read as follows:

- 33 (1) To encourage greater public participation in administrative
34 rule making, each agency shall adopt an annual rule-making plan. The
35 rule-making plan shall be prepared by the agency rules coordinator and
36 shall list rules currently under development and rules that the agency
37 may propose for adoption within the year. The rule-making plan may

1 also include agency interpretive or policy statements to be issued or
2 adopted within the year.

3 (2) Activities in the rule-making plan shall be listed in order of
4 priority. For each activity in the rule-making plan, the agency shall
5 list:

- 6 (a) A descriptive title for the activity;
7 (b) A Washington Administrative Code citation for reference;
8 (c) An intended adoption date; and

9 (d) Agency personnel, with their telephone number, who are
10 responsible for drafting or implementing the rule, policy, or
11 interpretive statement.

12 (3) Agency rule-making plans shall be published annually in the
13 state register after January 1st, but prior to January 31st.
14 Supplemental agency rule-making plans shall be published in the state
15 register no later than sixty days after a regular session of the
16 legislature. Upon filing the annual rule-making plan with the code
17 reviser, the agency rules coordinator shall forward a copy of the plan
18 to the appropriate standing committees of the legislature. Agencies
19 are encouraged to publish rule-making plans in state newspapers or
20 business publications to facilitate public review.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.31 RCW
22 to read as follows:

23 To assist state agencies in reducing regulatory costs to small
24 business and to promote greater public participation in the rule-making
25 process, the business assistance center shall:

26 (1) Develop agency guidelines for the preparation of a small
27 business economic impact statement and compliance with chapter 19.85
28 RCW;

29 (2) Review and provide comments to agencies on draft or final small
30 business economic impact statements;

31 (3) Advise the joint administrative rules review committee on
32 whether an agency reasonably assessed the costs and impact of a
33 proposed rule and reduced the costs for small business as required by
34 chapter 19.85 RCW; and

35 (4) Organize and chair a state rules coordinating committee,
36 comprised of agency rules coordinators and interested members of the
37 public, to develop an education and training program for agency
38 personnel responsible for rule development and implementation. The

1 business assistance center shall submit recommendations to the
2 department of personnel for an administrative procedures training
3 program that is based on the sharing of interagency resources.

4 NEW SECTION. **Sec. 10.** RCW 19.85.060 and 1989 c 374 s 5 are each
5 repealed.

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