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HOUSE BILL 1488

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State of Washington

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By Representatives Quall, Haigh, Radcliff, Mielke, Campbell, Talcott, Mitchell, Lambert, Boldt, Cairnes and Kessler

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1 AN ACT Relating to housing; and amending RCW 19.85.011, 19.85.020,  
2 19.85.025, 19.85.030, 19.85.040, 19.85.050, and 19.85.070.

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

4 **Sec. 1.** RCW 19.85.011 and 1994 c 249 s 9 are each amended to read  
5 as follows:

6 The legislature finds that administrative rules adopted by state  
7 agencies can have a disproportionate impact on the state's small  
8 businesses, particularly those providing housing, because of the size  
9 of those businesses and the regulations imposed upon them. This  
10 disproportionate impact reduces competition, innovation, employment,  
11 and new employment opportunities, and threatens the very existence of  
12 some small businesses. Further, because most providers of housing are  
13 small businesses, this disproportionate impact upon them significantly  
14 reduces the availability of housing to Washington residents,  
15 particularly those with lower incomes and middle incomes. The  
16 legislature therefore enacts the Regulatory Fairness Act with the  
17 intent of reducing the disproportionate impact of state administrative  
18 rules on small business and housing.

1       **Sec. 2.** RCW 19.85.020 and 1994 c 249 s 10 are each amended to read  
2 as follows:

3       Unless the context clearly indicates otherwise, the definitions in  
4 this section apply through this chapter.

5       (1) "Small business" means any business entity, including a sole  
6 proprietorship, corporation, partnership, or other legal entity, that  
7 is owned and operated independently from all other businesses, that has  
8 the purpose of making a profit, and that has fifty or fewer employees.

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

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

18       (4) "Housing" means residential housing that is rented or owned by  
19 a person or household.

20       (5) "Housing impact statement" means a statement meeting the  
21 requirements of RCW 19.85.040 prepared by a state agency pursuant to  
22 RCW 19.85.030.

23       (6) "Provider of housing" means a business that engages, in whole  
24 or in any part, in the development and building of housing.

25       (7) "Significant adverse impact on housing" means causing an  
26 increase of five percent or more on the cost on housing, or on the cost  
27 of a component of housing.

28       **Sec. 3.** RCW 19.85.025 and 1997 c 409 s 212 are each amended to  
29 read as follows:

30       (1) Unless an agency receives a written objection to the expedited  
31 repeal of a rule, this chapter does not apply to a rule proposed for  
32 expedited repeal pursuant to RCW 34.05.354. If an agency receives a  
33 written objection to expedited repeal of the rule, this chapter applies  
34 to the rule-making proceeding.

35       (2) This chapter does not apply to a rule proposed for expedited  
36 adoption under RCW 34.05.230 (1) through (8), unless a written  
37 objection is timely filed with the agency and the objection is not  
38 withdrawn.

1 (3) This chapter does not apply to the adoption of a rule described  
2 in RCW 34.05.310(4).

3 (4) An agency is not required to prepare a separate small business  
4 economic impact statement or a housing impact statement under RCW  
5 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the  
6 requirements of a small business economic impact statement or a housing  
7 impact statement, respectively, and if the agency reduced the costs  
8 imposed by the rule on small business or the significant adverse impact  
9 on housing to the extent required by RCW 19.85.030(3). The portion of  
10 the analysis that meets the requirements of RCW 19.85.040 shall be  
11 filed with the code reviser and provided to any person requesting it in  
12 lieu of a separate small business economic impact statement or housing  
13 impact statement.

14 **Sec. 4.** RCW 19.85.030 and 1995 c 403 s 402 are each amended to  
15 read as follows:

16 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
17 shall prepare:

18 (a) A small business economic impact statement: ~~((a))~~ (i) If the  
19 proposed rule will impose more than minor costs on businesses in an  
20 industry; or ~~((b))~~ (ii) if requested to do so by a majority vote of  
21 the joint administrative rules review committee within forty-five days  
22 of receiving the notice of proposed rule making under RCW 34.05.320; or

23 (b) A housing impact statement if the proposed rule will have a  
24 significant adverse impact on housing. However, if the agency has  
25 completed the pilot rule process as defined by RCW 34.05.313 before  
26 filing the notice of a proposed rule, the agency is not required to  
27 prepare a small business economic impact statement or a housing impact  
28 statement.

29 An agency shall prepare the small business economic impact  
30 statement or housing impact statement in accordance with RCW 19.85.040,  
31 and file it with the code reviser along with the notice required under  
32 RCW 34.05.320. An agency shall file a statement prepared at the  
33 request of the joint administrative rules review committee with the  
34 code reviser upon its completion before the adoption of the rule. An  
35 agency shall provide a copy of the small business economic impact  
36 statement or housing impact statement to any person requesting it.

37 ~~((An agency may request assistance from the business assistance~~  
38 ~~center in the preparation of the small business economic impact~~

1 statement.)) If a housing impact statement is required to be prepared,  
2 it may be included as a component of a small business economic impact  
3 statement.

4 (2) The (~~business assistance center~~) department of community,  
5 trade, and economic development, in consultation with the governor's  
6 housing advisory board, shall develop guidelines to assist agencies in  
7 determining whether a proposed rule will impose more than minor costs  
8 on businesses in an industry, or create a significant adverse impact on  
9 housing, and therefore require preparation of a small business economic  
10 impact statement or a housing impact statement. The (~~business~~  
11 assistance center) department of community, trade, and economic  
12 development may review an agency determination that a proposed rule  
13 will not impose such costs or have such an impact, and shall advise the  
14 joint administrative rules review committee on disputes involving  
15 agency determinations under this section.

16 (3) Based upon the extent of disproportionate impact on small  
17 business or the extent of the significant adverse impact on housing  
18 identified in the statement prepared under RCW 19.85.040, the agency  
19 shall, where legal and feasible in meeting the stated objectives of the  
20 statutes upon which the rule is based, reduce the costs imposed by the  
21 rule on small businesses or reduce the significant adverse impact on  
22 housing. Methods to reduce the costs on small businesses or reduce the  
23 significant adverse impact on housing may include:

24 (a) Reducing, modifying, or eliminating substantive regulatory  
25 requirements;

26 (b) Simplifying, reducing, or eliminating record keeping and  
27 reporting requirements;

28 (c) Reducing the frequency of inspections;

29 (d) Delaying compliance timetables;

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

31 (f) Any other mitigation techniques.

32 **Sec. 5.** RCW 19.85.040 and 1995 c 403 s 403 are each amended to  
33 read as follows:

34 (1) A small business economic impact statement and housing impact  
35 statement must include a brief description of the reporting, record  
36 keeping, and other compliance requirements of the proposed rule, and  
37 the kinds of professional services that a small business or provider of  
38 housing is likely to need in order to comply with such requirements.

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

- 14 (a) Cost per employee;
- 15 (b) Cost per hour of labor; ((or))
- 16 (c) Cost per one hundred dollars of sales; or
- 17 (d) Cost per unit of housing.

18 (2) ((A small business economic)) An impact statement must also  
19 include:

20 (a) A statement of the steps taken by the agency to reduce the  
21 costs of the rule on small businesses or providers of housing as  
22 required by RCW 19.85.030(3), or reasonable justification for not doing  
23 so, addressing the options listed in RCW 19.85.030(3);

24 (b) A description of how the agency will involve small businesses  
25 or providers of housing in the development of the rule; and

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

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

36 **Sec. 6.** RCW 19.85.050 and 1989 c 175 s 74 are each amended to read  
37 as follows:

1 (1) Within one year after June 10, 1982, each agency shall publish  
2 and deliver to the office of financial management and to all persons  
3 who make requests of the agency for a copy of a plan to periodically  
4 review all rules then in effect and which have been issued by the  
5 agency which have an economic impact on more than twenty percent of all  
6 industries or ten percent of the businesses in any one industry. Such  
7 plan may be amended by the agency at any time by publishing a revision  
8 to the review plan and delivering such revised plan to the office of  
9 financial management and to all persons who make requests of the agency  
10 for the plan. The purpose of the review is to determine whether such  
11 rules should be continued without change or should be amended or  
12 rescinded, consistent with the stated objectives of applicable  
13 statutes, to minimize the economic impact on small businesses and  
14 providers of housing as described by this chapter. The plan shall  
15 provide for the review of all such agency rules in effect on June 10,  
16 1982, within ten years of that date.

17 (2) In reviewing rules to minimize any significant economic impact  
18 of the rule on small businesses and any significant adverse impact on  
19 housing as described by this chapter, and in a manner consistent with  
20 the stated objectives of applicable statutes, the agency shall consider  
21 the following factors:

22 (a) The continued need for the rule;

23 (b) The nature of complaints or comments received concerning the  
24 rule from the public;

25 (c) The complexity of the rule;

26 (d) The extent to which the rule overlaps, duplicates, or conflicts  
27 with other state or federal rules, and, to the extent feasible, with  
28 local governmental rules; and

29 (e) The degree to which technology, economic conditions, or other  
30 factors have changed in the subject area affected by the rule.

31 (3) Each year each agency shall publish a list of rules which are  
32 to be reviewed pursuant to this section during the next twelve months  
33 and deliver a copy of the list to the office of financial management  
34 and all persons who make requests of the agency for the list. The list  
35 shall include a brief description of the legal basis for each rule as  
36 described by RCW 34.05.360, and shall invite public comment upon the  
37 rule.

1       **Sec. 7.** RCW 19.85.070 and 1992 c 197 s 1 are each amended to read  
2 as follows:

3       When any rule is proposed for which a small business economic  
4 impact statement or a housing impact statement is required, the  
5 adopting agency shall provide notice to small businesses or providers  
6 of housing of the proposed rule through any of the following:

7       (1) Direct notification of known interested small businesses,  
8 providers of housing, or trade organizations affected by the proposed  
9 rule; or

10       (2) Providing information of the proposed rule making to  
11 publications likely to be obtained by small businesses or providers of  
12 housing of the types affected by the proposed rule.

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