

HOUSE BILL REPORT

2SHB 1120

As Passed Legislature

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:

Committee Activity:

Technology & Economic Development: 1/18/17, 2/1/17 [DPS];

Appropriations: 2/13/17, 2/24/17 [DP2S(w/o sub TED)].

Floor Activity:

Passed House: 3/2/17, 98-0.

Passed Senate: 4/7/17, 49-0.

Passed Legislature.

Brief Summary of Second Substitute Bill

- Exempts agencies that are able to demonstrate their proposed rule does not affect small businesses from completing a small business economic impact statement as required by the Regulatory Fairness Act.
- 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 to act as the central entity to assist agencies with meeting the requirements of the Regulatory Fairness Act.
- Requires the Office of the Washington State Auditor to conduct performance reviews of agency compliance with the Regulatory Fairness Act.

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.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Morris, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Doglio, Fey, Harmsworth, Hudgins, McDonald, Nealey, Santos, Slatter, Steele, Wylie and Young.

Staff: Kirsten Lee (786-7133).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology & Economic Development. Signed by 33 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

Staff: Jordan Clarke (786-7123).

Background:

The 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 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.

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;
- 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 (businesses with 50 or fewer employees), the agency must, where legal and feasible, reduce

the costs imposed by the rule on small businesses. Agencies determine whether a 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. Agencies calculate the cost of compliance by comparing at least one of the following:

- cost per employee;
- cost per hour of labor; or
- cost per \$100 of sales.

Methods the agency may use to reduce the costs imposed by the rule on a small business include:

- 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.

The SBEIS must list the steps taken to reduce the costs on small businesses or state a reasonable justification for not doing so.

Office of Regulatory Innovation and Assistance.

The Office of Regulatory Innovation and Assistance (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.

State Auditor's Office.

The Office of the Washington State Auditor (SAO) holds state and local governments accountable for the use of public resources. 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. In addition, the SAO carries out special investigations and performance audits of state agencies and local governments.

Summary of Second Substitute Bill:

The Regulatory Fairness Act and Small Business Economic Impact Statements.

An agency that demonstrates its proposed rule does not affect small businesses is exempt from completing a SBEIS under the RFA. An agency must consider all of the cost reduction options listed in the RFA when its proposed rule affects only small businesses.

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 determine the extent of disproportionate impact on small businesses.

Office of Regulatory Innovation and Assistance.

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:

- 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 (AGO) in providing online guidance and tools. Online guidance and tools may include the creation of templates and resources to assist agency employees with consistent compliance with the RFA.

State Auditor's Office.

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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Technology & Economic Development):

(In support) The SAO's findings regarding compliance with the RFA are concerning, including problems with agencies improperly claiming exemptions as they pertain to the RFA. It is important that small business impact statements, required under the Regulatory Fairness Act, are completed when required, that they are completed properly, and there is review of and accountability for these statements when they are not completed correctly. Agencies should be equipped with the tools they need to determine if their proposed rules will have an impact on small businesses, minor or otherwise. This is important to small businesses because the cost of regulation on small businesses is overwhelming. Discussions with the Office of the Governor are taking place to address the issues and concerns from the SAO's findings.

(Other) The Office of the Governor has assembled a working group, which is working with the sponsor on recommendations to address the issues and concerns expressed in the SAO's report. The working group is looking to identify what resources would be most helpful and how to make those resources available.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The Regulatory Fairness Act was acknowledged and put into law because the Legislature saw that small businesses are often unduly impacted by regulations. This bill is in response to these impacts. An audit found a number of issues relating to the Regulatory Fairness Act. The Legislature has been working with the Office of the Governor to reduce the negative impacts on small businesses in Washington. This is essential legislation that should move forward immediately. The bulk of the fiscal note is for a second State Auditor's Office audit report in 2020. This bill would provide state agencies with provisional tools and information they lack to allow them to determine whether a small business economic impact statement is necessary. If necessary, it would give state agencies additional resources to provide it correctly. Twenty percent of rules have moved forward without an appropriate and valid exemption to the requirement for small business economic impact statements. Once the tools are given, the State Auditor's Office should review agency compliance of rules and regulations.

A report by the United States Small Businesses Administration on the impact of regulatory costs on small businesses from 2010 estimates the costs at \$1.75 trillion in 2008. The cost on small business is 36 percent higher per employee for complying with regulations than their larger business counterparts. There are 555,000 small businesses in the State of Washington, which make up 98 percent of all businesses and employ 51.7 percent of workers in the state. The number of small business starts have decreased while the number of small business exits have increased. These businesses pay taxes to the state.

(Opposed) None.

Persons Testifying (Technology & Economic Development): (In support) Representative Smith, prime sponsor; Patrick Connor, National Federation of Independent Business; Gary Smith; and Mike Ennis, Association of Washington Business.

(Other) Sheri Sawyer, Office of the Governor.

Persons Testifying (Appropriations): Representative Smith, prime sponsor; Sheri Sawyer, Office of the Governor; Patrick Connor, National Federation of Independent Business-Washington; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying (Technology & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.