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HOUSE BILL 1430

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State of Washington

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By Representatives Miloscia, Armstrong, Haigh and Benson

Read first time 01/27/2003. Referred to Committee on State Government.

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~~)) 34.05.353. If an agency  
33 receives a written objection to expedited repeal of the rule, this  
34 chapter applies 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)~~)) 34.05.353, unless a

1 written objection is timely filed with the agency and the objection is  
2 not withdrawn.

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

5 (4) An agency is not required to prepare a separate small business  
6 economic impact statement or a housing impact statement under RCW  
7 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the  
8 requirements of a small business economic impact statement or a housing  
9 impact statement, respectively, and if the agency reduced the costs  
10 imposed by the rule on small business or the significant adverse impact  
11 on housing to the extent required by RCW 19.85.030(~~(3)~~) (2). The  
12 portion of the analysis that meets the requirements of RCW 19.85.040  
13 shall be filed with the code reviser and provided to any person  
14 requesting it in lieu of a separate small business economic impact  
15 statement or housing impact statement.

16 **Sec. 4.** RCW 19.85.030 and 2000 c 171 s 60 are each amended to read  
17 as follows:

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

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

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

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

1 agency shall provide a copy of the small business economic impact  
2 statement or housing impact statement to any person requesting it.

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

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

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

22 (a) Reducing, modifying, or eliminating substantive regulatory  
23 requirements;

24 (b) Simplifying, reducing, or eliminating recordkeeping and  
25 reporting requirements;

26 (c) Reducing the frequency of inspections;

27 (d) Delaying compliance timetables;

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

29 (f) Any other mitigation techniques.

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

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

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

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

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

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

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

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

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

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

37 (1) Within one year after June 10, 1982, each agency shall publish

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

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

21 (a) The continued need for the rule;

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

24 (c) The complexity of the rule;

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

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

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