
SENATE BILL 5920

State of Washington

59th Legislature

2005 Regular Session

By Senators Esser, Pflug, Shin and Rasmussen

Read first time 02/14/2005. Referred to Committee on International Trade & Economic Development.

1 AN ACT Relating to regulatory flexibility; amending RCW 19.85.011,
2 19.85.020, 19.85.025, 19.85.030, 19.85.061, and 34.05.320; adding new
3 sections to chapter 19.85 RCW; creating a new section; and repealing
4 RCW 19.85.040 and 19.85.050.

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

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

8 The legislature finds that:

9 (1) A vibrant and growing small business sector is critical to
10 creating jobs in a dynamic economy;

11 (2) Administrative rules adopted by state agencies can have a
12 disproportionate impact on the state's small businesses because of the
13 size of those businesses(~~(. This disproportionate impact reduces~~
14 competition, innovation, employment, and new employment opportunities,
15 and threatens the very existence of some small businesses));

16 (3) Fundamental changes needed in the regulatory and enforcement
17 culture of state agencies to make them more responsive to small
18 business can be made without compromising the statutory missions of the
19 agencies;

1 (4) When adopting rules to protect the health, safety, and economic
2 welfare of this state, state agencies shall seek to achieve statutory
3 goals as effectively and efficiently as possible without imposing
4 unnecessary burdens on small employers;

5 (5) Uniform regulatory and reporting requirements impose
6 unnecessary and disproportionately burdensome demands, including legal,
7 accounting, and consulting costs, upon small businesses with limited
8 resources;

9 (6) The failure to recognize differences in the scale and resources
10 of regulated businesses adversely affects competition in the
11 marketplace, discourages innovation, and restricts improvements in
12 productivity;

13 (7) Unnecessary rules create entry barriers in many industries and
14 discourage potential entrepreneurs from introducing beneficial products
15 and processes;

16 (8) The practice of treating all regulated businesses as equivalent
17 leads to inefficient use of regulatory agency resources, enforcement
18 problems, and actions inconsistent with the legislative intent of
19 health, safety, environmental, and economic welfare legislation;

20 (9) Alternative regulatory approaches that do not conflict with the
21 stated objective of applicable statutes are available to minimize the
22 significant economic impact of regulations on small businesses; and

23 (10) The process by which state rules are developed and adopted
24 must be reformed to require agencies to solicit the ideas and comments
25 of small businesses, to examine the impact of proposed and existing
26 regulations on these businesses, and to review the continued need for
27 existing regulations.

28 The legislature therefore enacts the Small Business Regulatory
29 ((Fairness)) Flexibility Act with the intent of reducing the
30 disproportionate impact of state administrative rules on small
31 business.

32 **Sec. 2.** RCW 19.85.020 and 2003 c 166 s 1 are each amended to read
33 as follows:

34 Unless the context clearly indicates otherwise, the definitions in
35 this section apply through this chapter.

36 (1) "Small business" means ~~((any business entity, including a sole~~
37 ~~proprietorship, corporation, partnership, or other legal entity, that~~

1 ~~is owned and operated independently from all other businesses, and that~~
2 ~~has fifty or fewer employees))~~ a commercial retail service, industry
3 entity, or nonprofit corporation, including its affiliates, that:

4 (a) Is, if a commercial retail service or industry service,
5 independently owned and operated; and

6 (b) Employs fewer than one hundred full-time employees or has gross
7 annual sales or program service revenues of less than five million
8 dollars.

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

20 (1) Unless an agency receives a written objection to the expedited
21 repeal of a rule, this chapter does not apply to a rule proposed for
22 expedited repeal pursuant to RCW (~~(34.05.354))~~ 34.05.353. If an agency
23 receives a written objection to expedited repeal of the rule, this
24 chapter applies to the rule-making proceeding.

25 (2) This chapter does not apply to a rule proposed for expedited
26 adoption under RCW (~~(34.05.230 (1) through (8))~~) 34.05.353, unless a
27 written objection is timely filed with the agency and the objection is
28 not withdrawn.

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

31 (4) An agency is not required to prepare a separate small business
32 economic impact statement (~~(under RCW 19.85.040))~~ if it prepared an
33 analysis under RCW 34.05.328 that meets the requirements of a small
34 business economic impact statement, and if the agency reduced the costs
35 imposed by the rule on small business to the extent required by RCW
36 19.85.030(3). The portion of the analysis that meets the requirements

1 of RCW (~~19.85.040~~) 19.85.030 shall be filed with the code reviser and
2 provided to any person requesting it in lieu of a separate small
3 business economic impact statement.

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

6 (1) (~~In the adoption of a rule under chapter 34.05 RCW, an agency~~
7 ~~shall prepare a small business economic impact statement: (a) If the~~
8 ~~proposed rule will impose more than minor costs on businesses in an~~
9 ~~industry; or (b) if requested to do so by a majority vote of the joint~~
10 ~~administrative rules review committee within forty five days of~~
11 ~~receiving the notice of proposed rule making under RCW 34.05.320.~~
12 ~~However, if the agency has completed the pilot rule process as defined~~
13 ~~by RCW 34.05.313 before filing the notice of a proposed rule, the~~
14 ~~agency is not required to prepare a small business economic impact~~
15 ~~statement.~~

16 An agency shall prepare the small business economic impact
17 statement in accordance with RCW 19.85.040, and file it with the code
18 reviser along with the notice required under RCW 34.05.320. An agency
19 shall file a statement prepared at the request of the joint
20 administrative rules review committee with the code reviser upon its
21 completion before the adoption of the rule. An agency shall provide a
22 copy of the small business economic impact statement to any person
23 requesting it.

24 (2) Before an agency submits to the joint administrative rules
25 review committee for review a rule that may have a significant adverse
26 impact on small businesses, the agency, if directed by the small
27 business regulatory review committee, shall prepare:

28 (a) An economic impact statement that includes the following:

29 (i) An identification and estimate of the number of small
30 businesses subject to the proposed rule;

31 (ii) The projected reporting, recordkeeping, and other
32 administrative costs required for compliance with the proposed
33 regulation, including the type of professional skills necessary for
34 preparation of the report or record;

35 (iii) A statement of the economic impact on small businesses; and

36 (iv) A description of less intrusive or less costly alternative
37 methods of achieving the purpose of the proposed rule;

1 (b) A regulatory flexibility analysis in which the agency, where
2 consistent with health, safety, and environmental and economic welfare,
3 shall consider using regulatory methods that accomplish the objectives
4 of applicable statutes while minimizing a significant adverse impact on
5 small businesses.

6 (2) The agency shall consider, without limitation, each of the
7 following methods of reducing the impact of the proposed rule on small
8 businesses:

9 (a) Establishment of less stringent compliance or reporting
10 requirements for small businesses;

11 (b) Establishment of less stringent schedules or deadlines for
12 compliance or reporting requirements for small businesses;

13 (c) Consolidation or simplification of compliance or reporting
14 requirements for small businesses;

15 (d) Establishment of performance standards for small businesses to
16 replace design or operational standards required in the proposed rule;
17 and

18 (e) Exemption of small businesses from all or a part of the
19 requirements contained in the proposed rule.

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

26 (a) Reducing, modifying, or eliminating substantive regulatory
27 requirements;

28 (b) Simplifying, reducing, or eliminating recordkeeping and
29 reporting requirements;

30 (c) Reducing the frequency of inspections;

31 (d) Delaying compliance timetables;

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

33 (f) Any other mitigation techniques.

34 NEW SECTION. Sec. 5. A new section is added to chapter 19.85 RCW
35 to read as follows:

36 A small business that is adversely impacted or aggrieved in
37 connection with the adoption of a rule is entitled to judicial review

1 of agency compliance with the requirements of this chapter. A small
2 business may seek that review during the period beginning on the date
3 of final agency action.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.85 RCW
5 to read as follows:

6 (1) Within five years of the effective date of this act, each
7 agency shall review all agency rules existing at the time of the
8 effective date of this act to determine whether to continue the rules
9 without change or amend or repeal them to minimize economic impact of
10 the rules on small businesses in a manner consistent with the stated
11 objective of applicable statutes. If the head of the agency determines
12 that completion of the review of existing rules is not feasible by the
13 established date, the agency shall publish in the state register a
14 statement certifying that determination.

15 (2) Rules that take effect on or after the effective date of this
16 act must be reviewed within five years of the publication of the final
17 rule in the state register and every five years after that to ensure
18 that they minimize economic impact on small businesses in a manner
19 consistent with the stated objectives of applicable statutes.

20 (3) In reviewing rules to minimize their economic impact on small
21 businesses, the agency shall consider the:

- 22 (a) Continued need for the rule;
- 23 (b) Nature of complaints or comments received concerning the rule
24 from the public;
- 25 (c) Complexity of the rule;
- 26 (d) Extent to which the rule overlaps, duplicates, or conflicts
27 with other federal, state, and local governmental rules; and
- 28 (e) Length of time since the rule has been evaluated or the degree
29 to which technology, economic conditions, or other factors have changed
30 in the area affected by the rule.

31 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.85 RCW
32 to read as follows:

33 (1) The small business regulatory review committee is established
34 within the department of community, trade, and economic development.
35 For purposes of this chapter, "committee" is the small business

1 regulatory review committee and "department" is the department of
2 community, trade, and economic development.

3 (2) The duties of the committee, in determining if a proposed
4 permanent rule has a significant adverse impact on small businesses,
5 are to:

6 (a) Direct the adopting agency to prepare the regulatory
7 flexibility analysis described in RCW 19.85.030 no later than the end
8 of the public comment period that follows the notice of the proposed
9 rule as provided in RCW 34.05.320;

10 (b) Request, at the committee's discretion, the office of financial
11 management to prepare a final assessment report of the proposed
12 permanent rule no later than the end of the public comment period that
13 follows the notice of the proposed rule. The committee may request a
14 final assessment report from the office of financial management only in
15 cases where the committee determines that information in addition to
16 the agency's economic impact is critical in the committee's
17 determination that a proposed permanent rule has a significant adverse
18 impact on small business. The office of financial management:

19 (i) Within the review and comment period, shall perform a final
20 assessment report of the rule on small businesses within sixty days of
21 a request for assessment by the committee, and the adopting agency has
22 sixty days to complete a regulatory flexibility analysis; and

23 (ii) May request additional information from the agency. The
24 sixty-day final assessment report deadline must be tolled until the
25 time that the office of financial management receives the requested
26 additional information; and

27 (c) Submit to the adopting agency, no later than thirty days after
28 receipt of the regulatory flexibility analysis prepared by the adopting
29 agency and, if requested by the committee, after receipt of the final
30 assessment report prepared by the office of financial management, a
31 written statement advising the agency that a proposed permanent rule
32 has a significant adverse impact on small business.

33 (3) This section does not limit the committee's ability to petition
34 a state agency to amend or repeal an existing rule.

35 (4) Staff support for the committee must be provided by the
36 department. The department shall act only as a coordinator for the
37 committee, and may not provide legal counsel for the committee.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.85 RCW
2 to read as follows:

3 (1) The committee consists of eleven members, appointed as follows:

4 (a) Five members to be appointed by the governor;

5 (b) Three members to be appointed by the president pro tempore of
6 the senate; and

7 (c) Three members to be appointed by the speaker of the house of
8 representatives.

9 (2) In addition, the chair of the labor, commerce, research and
10 development committee of the senate and the chair of the commerce and
11 labor committee of the house of representatives, or their designees,
12 shall serve as nonvoting, ex officio members of the committee. During
13 the committee review process, the director, or a designee, of the
14 adopting agency shall be available at the request of the committee for
15 comment on the proposed rule.

16 (3) Appointments to the committee must be representative of a
17 variety of small businesses in this state. All appointed members must
18 be either current or former owners or officers of a small business.

19 (4) The initial appointments to the committee must be made within
20 sixty days from the effective date of this act. The department shall
21 provide the name and address of each appointee to the governor, the
22 president pro tempore of the senate, the speaker of the house of
23 representatives, the chair of the senate labor, commerce, research and
24 development committee, and the chair of the commerce and labor
25 committee of the house of representatives.

26 (5) Members initially appointed to the committee shall serve for
27 terms ending December 31, 2006. Thereafter, appointed members shall
28 serve two-year terms that expire on December 31st of the second year.

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.85 RCW
30 to read as follows:

31 (1) The governor shall appoint the initial chair of the committee
32 from the appointed members for a term ending December 31, 2006, and
33 shall appoint subsequent chairs of the committee from the appointed
34 members for two-year terms that expire on December 31st of the second
35 year.

36 (2) The committee shall meet as determined by its chair.

1 (3) A majority of the voting members of the committee constitutes
2 a quorum to do business. The concurrence of a majority of the members
3 of the committee present and voting is necessary for an action of the
4 committee to be valid.

5 (4) An appointed committee member may not serve more than three
6 consecutive terms.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 19.85 RCW
8 to read as follows:

9 (1) For adopted rules, the committee may file a written petition
10 with the agency that has adopted the rules opposing all or part of a
11 rule that has a significant adverse impact on small business.

12 (2) Within sixty days after the receipt of the petition, the agency
13 shall determine whether the impact statement or the public hearing
14 addressed the actual and significant impact on small business or if
15 conditions justifying the rule have changed. The agency shall submit
16 a written response of its determination to the committee within sixty
17 days after receipt of the petition. If the agency determines that the
18 petition merits the amendment or repeal of a rule, the agency may
19 initiate proceedings in accordance with the applicable requirements of
20 chapter 34.05 RCW, the Administrative Procedure Act.

21 (3) If the agency determines that the petition does not merit the
22 amendment or repeal of a rule, the committee promptly shall convene a
23 meeting for the purpose of determining whether to recommend that the
24 agency initiate proceedings to amend or repeal the rule in accordance
25 with the Administrative Procedure Act. The review must be based upon
26 the actual record presented to the agency. The committee shall base
27 its recommendation on any of the following reasons:

28 (a) The actual impact on small business was not reflected in, or
29 significantly exceeded, the economic impact statement formulated by the
30 office of financial management under section 7(2) of this act;

31 (b) The actual impact was not previously considered by the agency
32 in its economic impact statement formulated under RCW 19.85.030(1)(a)
33 or its regulatory flexibility analysis formulated under RCW
34 19.85.030(1)(b); or

35 (c) The technology, economic conditions, or other relevant factors
36 justifying the purpose for the rules have changed or no longer exist.

1 (4) If the committee recommends that an agency initiate rule-making
2 proceedings for a reason provided in subsection (3) of this section,
3 the committee shall submit to the speaker of the house of
4 representatives and the president pro tempore of the senate an
5 evaluation report and the agency's response as provided in subsection
6 (2) of this section. The legislature may take later action in response
7 to the evaluation report and the agency's response as the legislature
8 finds appropriate.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.85 RCW
10 to read as follows:

11 (1) Notwithstanding another provision of law, an agency authorized
12 to assess administrative penalties or administrative fines upon a
13 business may waive or reduce an administrative penalty or
14 administrative fine for a violation of a rule by a small business if
15 the:

16 (a) Small business corrects the violation within thirty days or
17 less after receipt of a notice of violation or citation; or

18 (b) Violation was the result of an excusable misunderstanding of
19 the agency's interpretation of a rule.

20 (2) Subsection (1) of this section does not apply if:

21 (a) A small business has been notified previously of the violation
22 of a rule by the agency under subsection (1) of this section and has
23 been given an opportunity to correct the violation on a previous
24 occasion;

25 (b) A small business fails to exercise good faith in complying with
26 the rule;

27 (c) A violation involves willful or criminal conduct;

28 (d) A violation results in imminent or adverse health, safety, or
29 environmental impact; or

30 (e) The penalty or fine is assessed under a federal law or rule,
31 for which a waiver or reduction is not authorized by the federal law or
32 rule.

33 **Sec. 12.** RCW 19.85.061 and 1995 c 403 s 404 are each amended to
34 read as follows:

35 Unless so requested by a majority vote of the (~~joint~~
36 ~~administrative rules~~) small business regulatory review committee under

1 ((~~RCW 19.85.030~~)) section 7 of this act, an agency is not required to
2 comply with this chapter when adopting any rule solely for the purpose
3 of conformity or compliance, or both, with federal statute or
4 regulations. In lieu of the statement required under ((~~RCW 19.85.030~~))
5 section 7 of this act, the agency shall file a statement citing, with
6 specificity, the federal statute or regulation with which the rule is
7 being adopted to conform or comply, and describing the consequences to
8 the state if the rule is not adopted.

9 **Sec. 13.** RCW 34.05.320 and 2004 c 31 s 2 are each amended to read
10 as follows:

11 (1) At least twenty days before the rule-making hearing at which
12 the agency receives public comment regarding adoption of a rule, the
13 agency shall cause notice of the hearing to be published in the state
14 register. The publication constitutes the proposal of a rule. The
15 notice shall include all of the following:

16 (a) A title, a description of the rule's purpose, and any other
17 information which may be of assistance in identifying the rule or its
18 purpose;

19 (b) Citations of the statutory authority for adopting the rule and
20 the specific statute the rule is intended to implement;

21 (c) A short explanation of the rule, its purpose, and anticipated
22 effects, including in the case of a proposal that would modify existing
23 rules, a short description of the changes the proposal would make, and
24 a statement of the reasons supporting the proposed action;

25 (d) The agency personnel, with their office location and telephone
26 number, who are responsible for the drafting, implementation, and
27 enforcement of the rule;

28 (e) The name of the person or organization, whether private,
29 public, or governmental, proposing the rule;

30 (f) Agency comments or recommendations, if any, regarding statutory
31 language, implementation, enforcement, and fiscal matters pertaining to
32 the rule;

33 (g) Whether the rule is necessary as the result of federal law or
34 federal or state court action, and if so, a citation to such law or
35 court decision;

36 (h) When, where, and how persons may present their views on the
37 proposed rule;

1 (i) The date on which the agency intends to adopt the rule;

2 (j) A copy of the small business economic impact statement and the
3 regulatory flexibility analysis prepared under chapter 19.85 RCW, or an
4 explanation for why the agency did not prepare the statement or the
5 analysis;

6 (k) A statement indicating whether RCW 34.05.328 applies to the
7 rule adoption; and

8 (l) If RCW 34.05.328 does apply, a statement indicating that a copy
9 of the preliminary cost-benefit analysis described in RCW
10 34.05.328(1)(c) is available.

11 (2)(a) Upon filing notice of the proposed rule with the code
12 reviser, the adopting agency shall have copies of the notice on file
13 and available for public inspection. Except as provided in (b) of this
14 subsection, the agency shall forward three copies of the notice to the
15 rules review committee.

16 (b) A pilot of at least ten agencies, including the departments of
17 labor and industries, fish and wildlife, revenue, ecology, retirement
18 systems, and health, shall file the copies required under this
19 subsection, as well as under RCW 34.05.350 and 34.05.353, with the
20 rules review committee electronically for a period of four years from
21 June 10, 2004. The office of regulatory assistance shall negotiate the
22 details of the pilot among the agencies, the legislature, and the code
23 reviser.

24 (3) No later than three days after its publication in the state
25 register, the agency shall cause either a copy of the notice of
26 proposed rule adoption, or a summary of the information contained on
27 the notice, to be mailed to each person, city, and county that has made
28 a request to the agency for a mailed copy of such notices. An agency
29 may charge for the actual cost of providing a requesting party mailed
30 copies of these notices.

31 (4) In addition to the notice required by subsections (1) and (2)
32 of this section, an institution of higher education shall cause the
33 notice to be published in the campus or standard newspaper of the
34 institution at least seven days before the rule-making hearing.

35 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
36 each repealed:

1 (1) RCW 19.85.040 (Small business economic impact statement--
2 Purpose--Contents) and 1995 c 403 s 403 & 1994 c 249 s 12; and
3 (2) RCW 19.85.050 (Agency plan for review of business rules--
4 Scope--Factors applicable to review--Annual list) and 1989 c 175 s 74
5 & 1982 c 6 s 5.

6 NEW SECTION. **Sec. 15.** This act may be known and cited as the
7 "Small Business Regulatory Flexibility Act."

--- END ---