

HOUSE BILL REPORT

EHB 1525

As Amended by the Senate

Title: An act relating to regulatory fairness for small businesses.

Brief Description: Reducing the impact of regulatory provisions on small businesses.

Sponsors: By Representatives Chase, Kessler, Morris, Sump, B. Sullivan, Hunt and Hudgins.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/9/07, 2/20/07 [DP].

Floor Activity:

Passed House: 3/12/07, 97-1.

Senate Amended.

Passed Senate: 4/10/07, 49-0.

Brief Summary of Engrossed Bill

- Creates the Small Business Advocacy Committee to review Small Business Economic Impact Statements.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 9 members: Representatives Hunt, Chair; Appleton, Vice Chair; Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Green, Kretz, McDermott, Miloscia and Ormsby.

Staff: Colleen Kerr (786-7168).

Background:

The Legislature adopted the Regulatory Fairness Act (RFA) in 1994 to protect small businesses from being disproportionately impacted by state business regulations. The statute requires agencies to prepare a Small Business Economic Impact Statement (SBEIS) when adopting a rule. The SBEIS must include:

- a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule;

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.

- 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; The determination must compare the cost of compliance on small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the rule. The agency must use at least one of the following measures when making this comparison: cost per employee, cost per hour of labor, or cost per \$100 of sales.
- a description of how the agency will involve small businesses in the development of the rule; and
- a list of industries that will be required to comply with the rule.

Based on the extent of impact identified in the SBEIS, the agency shall attempt to reduce the costs imposed by the rule on small business. These cost reduction methods can include:

- reducing, modifying, or eliminating substantive regulatory requirements;
- simplifying, reducing or eliminating recordkeeping and reporting requirements;
- reducing the frequency of inspections;
- delaying compliance timetables;
- reducing or modifying fine schedules for noncompliance; or
- other mitigation techniques.

The RFA defines "small business" as any business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other business and has 50 or fewer employees.

Summary of Engrossed Bill:

In the event an agency cannot find a method to reduce costs on small business, the agency has the added requirement of providing an explanation of why a reduction is not possible. This explanation must be included with the agency's filing of the proposed rule.

The cost of professional services necessary to comply with a proposed rule must be taken into consideration when the agency evaluates the impact of the proposed rule on small business.

A "minor cost" is defined as the cost per business that is less than three-tenths of 1 percent of annual revenue or income, or \$100, whichever is greater, or 1 percent of annual payroll. For the DSHS a minimum cost is defined as less than \$50 per client.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes two changes: it requires agencies to provide an estimate of the number of jobs created or lost rather than the actual number; and, it returns the statute to its

original language requiring an agency to, whenever possible to appoint a committee to assist in the accurate assessment of the costs of the proposed rule rather requiring the agency to appoint a committee to engage in negotiated rule-making.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The Small Business Administration just released a new study that shows the most effective policy option for the state is to assist in the birth and creation of small business. Washington's economy is in fact dominated by \$220 billion of business done by small business. Locally owned and operated businesses are the driving force for job creation in the state's communities and the backbone of economic activity. These small businesses are the tax base for the state as well, as they receive very few tax incentives. This bill is a declaration by the Legislature that the state is committed to small business birth and creation and an acknowledgment that the state understands its economy. The Department of Social and Health Services (DSHS) rules pose some the most severe burdens on this regulation and this bill shows progress toward remedying that problem. The creation of the committee is important and it needs to have teeth. The committee should be able to make findings that would have standing for actions filed pursuant to the Administrative Procedures Act. This bill is only a small step in addressing the many problems the state regulatory system creates for small business. Pieces of this bill are incredibly important to enforcing the Regulatory Fairness Act (RFA). Included in the cost of professional services and providing a definition of minor cost are both measures that will help strengthen the RFA. This should also be strengthened to allow the Advocacy Committee to provide its recommendations to the Joint Administrative Rules Review Committee (JARRC) who does have the authority to review rules. This committee could be a resource to the JARRC in helping it understand the impact of rules and regulations on the small business community and in understanding whether the Small Business Economic Impact Statements have been done correctly. These measures are incredibly important when 96 percent of businesses in the state have 50 or fewer employees. Statistics show that small businesses pay over \$7,000 per employee to comply with federal regulations; state regulations are in addition to that impact. Regulatory flexibility is in fact a key economic development tool because it allows the state to devise less severe burdens on small businesses while still pursuing important state objectives on a broad scale.

(With concerns) The Governor's Office supports the bill in general, but wants to look carefully at every new bill creating a committee. The Governor would like to keep the number of new committees created to a minimum, but it is important they finally come together over a definition of minor cost. Ultimately, there needs to be a method for the small business community to reach into the executive branch of government for dialogue. Many aspects of this bill will assist the Office of Regulatory Assistance in working with small business. The

DSHS supports this bill and proposes a minor change that will address the minor cost definition and make it more relevant to the DSHS. The change will discuss minor cost on a per client basis. The DSHS believes this will require that it do a more rigorous analysis on the impact of its rules on small business.

(Opposed) None.

Persons Testifying: (In support) Representative Chase, prime sponsor; Carolyn Logue, National Federation of Independent Business; Connie Marshall, Office of Advocacy; and Gary Smith, Independent Business Association.

(With concerns) Faith Lunsden, Governor's Office on Regulatory Advocacy; and Loren Freeman, Freeman & Associates; Christine Swanson, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.