

HOUSE BILL REPORT

ESSB 5730

As Reported by House Committee On:
State Government Operations & Accountability

Title: An act relating to regulation of small businesses.

Brief Description: Reducing the impact of administrative rules on small businesses.

Sponsors: Senate Committee on International Trade & Economic Development (originally sponsored by Senators Doumit, Zarelli, Eide, Shin, Rasmussen and Mulliken).

Brief History:

Committee Activity:

State Government Operations & Accountability: 3/22/05, 4/1/05 [DP].

Brief Summary of Engrossed Substitute Bill

- Changes the processes and requirements for small business economic impact statements.
- Requires the Joint Administrative Rule Review Committee to establish a small business advisory board.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: Do pass. Signed by 6 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; McDermott and Miloscia.

Minority Report: Without recommendation. Signed by 1 member: Representative Hunt.

Staff: Jim Morishima (786-7191).

Background:

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 (JARRC). The RFA defines "industry" as all of the businesses in the state in any one four-digit standard industrial classification as published by the U.S. Department of Commerce, unless use of the four-digit classification

would violate state confidentiality laws, in which case all of the businesses in a three-digit standard industrial classification. The RFA does not define "minor costs."

An agency does not have to develop a SBEIS if a similar analysis was already conducted pursuant to the significant legislative rulemaking process or if the rule is:

- proposed for expedited adoption or repeal;
- an emergency rule;
- a rule relating only to internal governmental operations;
- a rule that incorporates by reference without material change federal statutes or regulations, state statutes, rules of other agencies, certain shoreline master programs, or certain national consensus codes;
- a rule that only corrects typographical errors, makes address or name changes, or clarifies language;
- a rule the content of which is specifically dictated by statute;
- a rule that sets or adjusts fees or rates pursuant to legislative standards; or
- a rule that adopts, amends, or repeals a procedure, practice, or requirement relating to agency hearings or a filing or related process for applying for a license or permit.

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;
- a 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; and
- a list of industries that will be required to comply with the rule.

If the SBEIS shows that a rule will have a disproportionate impact on small businesses, the agency must, where legal and feasible, reduce the costs imposed by the rule on small businesses. Methods the agency may use to do this include: reducing, modifying, or eliminating substantive requirements; simplifying, reducing, or eliminating recordkeeping and reporting requirements; reducing the frequency of inspections; or reducing or modifying the fine schedule for noncompliance. The SBEIS must list the steps taken to reduce the costs on small businesses or a reasonable justification for not doing so.

When any rule is proposed for which a SBEIS is required, the proposing agency must provide notice to small businesses using either of the following methods: direct notification or notification in publications likely to be obtained by small businesses affected by the rule.

Summary of Bill:

"Minor cost" is defined as a cost per business that is less than three-tenths of one percent of one hundred dollars in sales, or less than one-tenth of one percent of annual payroll. The definition of "industry" is expanded a four digit or three digit standard industrial classification as published by the North American Industry Classification System.

The analysis of compliance costs in a SBEIS must include the costs of professional services. Based on any disproportionate impact on small businesses, agencies are required to "maximally" reduce the costs imposed by a rule on small businesses. Agencies are required to consider all the methods for reducing the impact on small businesses that are listed in statute, including mitigation techniques suggested by small businesses or their advocates. If the agency determines that it cannot reduce the costs, the agency must provide a clear explanation of why it has made that determination in its filing for proposed rulemaking.

When any rule is proposed for which a SBEIS is required, the proposing agency must provide notice to small businesses using all three of the following methods: direct notification, notification in publications likely to be obtained by small businesses affected by the rule, and notification on the agency's web site.

The JARRC must establish a small business advisory board to ensure that small business concerns are reflected in the rules review process.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The cost and complexity of rules and regulations is a major burden on small businesses. There is much in this bill that would be helpful to small businesses. The small business economic impact statement process should be strengthened. Agencies must be required to reduce the adverse impacts of their rules on small businesses.

Testimony Against: None.

Persons Testifying: Gary Smith, Independent Businesses Association; and Carolyn Logue, National Federation of Independent Businesses.

Persons Signed In To Testify But Not Testifying: None.