

# Whidbey Seatac Shuttle

## Please Docket T-101661

April 6, 2011

Mr. David Gomez  
Lead Staff T-101661  
Washington Utilities and Transportation Commission  
1300 S Evergreen Park DR SW  
PO Box 47259  
Olympia, WA 98504-7250

Re: Small Business Impact Statement

Mr. Gomez:

This company has not been provided with a copy of the SBIS that your agency is required to file under the Regulatory Fairness Act as codified by RCW 19.85. A request for this information was made of Mr. David Danner, Executive Director, on March 30, 2011, more than a week ago to no avail. As the lead investigator on this docket you are the person responsible for developing the SBIS or other compliance documentation; therefore I ask you to provide this information forthwith. The non-responsiveness of Mr. Danner leaves us with little time before the April 14, 2011 Open Meeting to digest the information. Please provide it electronically today.

The ACT was created because:

RCW 19.85.11

The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's **small businesses** because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, **and threatens the very existence of some small businesses.** The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business.

One can look further at the code to see the legislature's specific intent:

#### RCW 1985.020

(2) "**Minor cost**" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. However, for the rules of the department of social and health services "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

(3) "**Small business**" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees

We meet the test of a "small business" and your agency's proposal does not meet the test of "minor cost", therefore an SBIS is required.

If your agency has created a determination of exemption under this chapter then RCW 34.05 compels you to provide and file certain information relative to the economic impact on the regulated and the necessity for the rule.

#### RCW 34.05.320

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

**(j) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement;**

Additionally, if an SBIS is not prepared, a specific list of information is required to be provided by statute including in part:

#### RCW 34.05.328

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

**(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;**

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

**(c) Provide notification in the notice of proposed rulemaking under RCW 34.05.320 that**

**a preliminary cost-benefit analysis is available.** The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW [34.05.340](#), the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW [34.05.360](#);

**(d) Determine that the probable benefits of the rule are greater than its probable costs,** taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, **that the rule being adopted is the least burdensome alternative for those required to comply with it** that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

**(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;**

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

**(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.**

**(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:**

**(a) Implement and enforce the rule, including a description of the resources the agency intends to use;**

**(b) Inform and educate affected persons about the rule;**

**(c) Promote and assist voluntary compliance; and**

**(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.**

Of significant note is that the information compelled by this statute is the very same information and justification that the industry has been asking of the Commission without satisfactory response. Therefore, we request at this time, a copy of the **SBIS** filed under this DOCKET. If one has not been produced then we require either a detailed explanation as to why or; all of the compliance documentation required under RCW 34.05.328. We will need this information in a timely fashion prior to April 14, 2011 so that it can be examined and integrated with our position which will be provided the Commissioners at the Open Meeting of that date.

Thank You,

Michael Lauver  
Seatac Shuttle, LLC