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HOUSE BILL 2852

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State of Washington

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By Representatives Backlund, Van Luven, Reams, Cooke, Foreman, Fuhrman, Stevens, Mielke, Padden, McMorris, Talcott, B. Thomas, Forner, Dyer, Brough, Brumsickle, Sheahan, Silver and Schoesler

Read first time 01/26/94. Referred to Committee on State Government.

1 AN ACT Relating to administrative rule making; adding a new section  
2 to chapter 34.05 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The purpose of this act is to:

5 (1) Strengthen the current rule-making process by addressing and  
6 articulating a response to public input;

7 (2) Establish a reasoned set of criteria for adopting rules so that  
8 agencies are accountable for rules;

9 (3) Enhance the quality of rules that are adopted by ensuring a  
10 consistent, well thought-out basis for every rule.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW  
12 to read as follows:

13 (1) In addition to other requirements imposed by law, an agency may  
14 not adopt a rule the violation of which subjects a person to a penalty  
15 or administrative sanction; that establishes, alters, or revokes a  
16 qualification or standard for the issuance, suspension, or revocation  
17 of a license to pursue a commercial activity, trade, or profession; or

1 that establishes, alters, or revokes a mandatory standard for a product  
2 or material that must be met before distribution or sale, unless:

3 (a) The rule-making file contains clear and convincing evidence  
4 that: (i) The particular rule is authorized by statute; (ii) the  
5 particular rule is necessary to fulfill the purpose and intent of a  
6 specific statute; (iii) the agency considered public comments and  
7 responded substantially and by categories to persons who have commented  
8 or requested a copy of the agency's response; (iv) the agency analyzed  
9 the costs and benefits and found that the probable benefits of the  
10 particular rule outweigh its probable costs; (v) the agency considered  
11 other less intrusive or less costly means to achieve the purpose of the  
12 rule, including any that were proposed in the rule-making hearing, but  
13 had reasonable justification for rejecting them in favor of the adopted  
14 rule; and (vi) any fee imposed by the rule will generate no more  
15 revenue than is necessary to fulfill the intent of the specific statute  
16 authorizing the fee;

17 (b) The rule is clearly and simply stated, so that it will be  
18 understood by any person required to comply;

19 (c) The agency has a written plan to (i) inform and educate  
20 affected persons about the rule; (ii) promote voluntary compliance;  
21 (iii) evaluate whether the rule achieves the purpose for which it was  
22 adopted; and (iv) where necessary, meet the requirements of subsection  
23 (2) or (3) of this section;

24 (d) The rule does not, without clear and specific statutory  
25 authorization to do so, exceed any provision of federal law regulating  
26 the same activity or subject matter;

27 (e) The rule does not differ in its application to or requirements  
28 for public and private entities unless the agency clearly describes the  
29 reasons for the variation and efforts to mitigate the differing  
30 impacts; and

31 (f) The rule does not, without clear and specific statutory  
32 authorization to do so, conflict with, overlap, or duplicate, any other  
33 provision of federal, state, or local law regulating the same activity  
34 or subject matter. The agency shall survey other federal, state, and  
35 local entities that have jurisdiction over the same or similar subject  
36 matter to determine whether such conflict, overlap, or duplication  
37 exists.

38 (2) Upon the adoption of a rule that conflicts with, overlaps, or  
39 duplicates any other provision of federal, state, or local law

1 regulating the same activity or subject matter, an agency shall: (a)  
2 File with the code reviser for publication in the Washington State  
3 Register a list citing by reference the other laws that the rule  
4 conflicts with, overlaps, or duplicates; (b) mitigate the adverse  
5 impact of the conflict, overlap, or duplication through coordination  
6 with the appropriate federal, state, or local entities; and (c) submit  
7 to the appropriate standing committee of the legislature before the  
8 next legislative session proposed legislation to mitigate the conflict,  
9 overlap, or duplication, and facilitate coordination with appropriate  
10 federal, state, or local entities.

11 (3) Upon the adoption of a rule that exceeds any provision of  
12 federal law regulating the same activity or subject matter, the agency  
13 shall coordinate implementation and enforcement with the appropriate  
14 federal entities.

15 (4) In adopting an emergency rule, the agency shall meet the same  
16 criteria as set forth in subsections (1) through (3) of this section or  
17 provide written justification for their failure to provide the  
18 information.

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