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**SUBSTITUTE HOUSE BILL 1076**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Government Reform & Land Use (originally sponsored by Representatives Reams, Poulsen, Mastin, Hatfield, Skinner, Linville, Dyer, Kessler, Sherstad, Grant, Pennington, Mielke, Thompson, Carlson, Boldt, Bush, Smith and D. Schmidt)

Read first time 02/11/97.

1 AN ACT Relating to state and local government; and amending RCW  
2 34.05.328 and 42.30.020.

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

4 **Sec. 1.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to  
5 read as follows:

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

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

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

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

18 (d) Determine, after considering alternative versions of the rule  
19 and the analysis required under (b) and (c) of this subsection, that

1 the rule being adopted is the least burdensome alternative for those  
2 required to comply with it that will achieve the general goals and  
3 specific objectives stated under (a) of this subsection;

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

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

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

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

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

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

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

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

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

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

32 (c) Promote and assist voluntary compliance; and

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

37 (4) After adopting a rule described in subsection (5) of this  
38 section regulating the same activity or subject matter as another

1 provision of federal or state law, an agency shall do all of the  
2 following:

3 (a) Provide to the business assistance center a list citing by  
4 reference the other federal and state laws that regulate the same  
5 activity or subject matter;

6 (b) Coordinate implementation and enforcement of the rule with the  
7 other federal and state entities regulating the same activity or  
8 subject matter by making every effort to do one or more of the  
9 following:

10 (i) Deferring to the other entity;

11 (ii) Designating a lead agency; or

12 (iii) Entering into an agreement with the other entities specifying  
13 how the agency and entities will coordinate implementation and  
14 enforcement.

15 If the agency is unable to comply with this subsection (4)(b), the  
16 agency shall report to the legislature pursuant to (c) of this  
17 subsection;

18 (c) Report to the joint administrative rules review committee:

19 (i) The existence of any overlap or duplication of other federal or  
20 state laws, any differences from federal law, and any known overlap,  
21 duplication, or conflict with local laws; and

22 (ii) Make recommendations for any legislation that may be necessary  
23 to eliminate or mitigate any adverse effects of such overlap,  
24 duplication, or difference.

25 (5)(a) Except as provided in (b) of this subsection, this section  
26 applies to:

27 (i) Significant legislative rules of the departments of ecology,  
28 labor and industries, health, revenue, social and health services, and  
29 natural resources, the employment security department, the forest  
30 practices board, the office of the insurance commissioner, and to the  
31 legislative rules of the department of fish and wildlife implementing  
32 chapter 75.20 RCW; and

33 (ii) Any rule of any agency, if this section is voluntarily made  
34 applicable to the rule by the agency, or is made applicable to the rule  
35 by a majority vote of the joint administrative rules review committee  
36 within forty-five days of receiving the notice of proposed rule making  
37 under RCW 34.05.320.

38 (b) This section does not apply to:

39 (i) Emergency rules adopted under RCW 34.05.350;

1 (ii) Rules relating only to internal governmental operations that  
2 are not subject to violation by a nongovernment party;

3 (iii) Rules adopting or incorporating by reference without material  
4 change federal statutes or regulations, Washington state statutes,  
5 rules of other Washington state agencies, shoreline master programs  
6 other than those programs governing shorelines of state-wide  
7 significance, or, as referenced by Washington state law, national  
8 consensus codes that generally establish industry standards, if the  
9 material adopted or incorporated regulates the same subject matter and  
10 conduct as the adopting or incorporating rule;

11 (iv) Rules that only correct typographical errors, make address or  
12 name changes, or clarify language of a rule without changing its  
13 effect;

14 (v) Rules the content of which is explicitly and specifically  
15 dictated by statute; or

16 (vi) Rules that set or adjust fees or rates pursuant to legislative  
17 standards.

18 (c) For purposes of this subsection:

19 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
20 (A) any procedure, practice, or requirement relating to any agency  
21 hearings; (B) any filing or related process requirement for making  
22 application to an agency for a license or permit; or (C) any policy  
23 statement pertaining to the consistent internal operations of an  
24 agency.

25 (ii) An "interpretive rule" is a rule, the violation of which does  
26 not subject a person to a penalty or sanction, that sets forth the  
27 agency's interpretation of statutory provisions it administers.

28 (iii) A "significant legislative rule" is a rule other than a  
29 procedural or interpretive rule that (A) adopts substantive provisions  
30 of law pursuant to delegated legislative authority, the violation of  
31 which subjects a violator of such rule to a penalty or sanction; (B)  
32 establishes, alters, or revokes any qualification or standard for the  
33 issuance, suspension, or revocation of a license or permit; or (C)  
34 adopts a new, or makes significant amendments to, a policy or  
35 regulatory program.

36 (d) In the notice of proposed rule making under RCW 34.05.320, an  
37 agency shall state whether this section applies to the proposed rule  
38 pursuant to (a)(i) of this subsection, or if the agency will apply this  
39 section voluntarily.

1 (6) By January 31, 1996, and by January 31st of each even-numbered  
2 year thereafter, the office of financial management, after consulting  
3 with state agencies, counties, and cities, and business, labor, and  
4 environmental organizations, shall report to the governor and the  
5 legislature regarding the effects of this section on the regulatory  
6 system in this state. The report shall document:

7 (a) The rules proposed to which this section applied and to the  
8 extent possible, how compliance with this section affected the  
9 substance of the rule, if any, that the agency ultimately adopted;

10 (b) The costs incurred by state agencies in complying with this  
11 section;

12 (c) Any legal action maintained based upon the alleged failure of  
13 any agency to comply with this section, the costs to the state of such  
14 action, and the result;

15 (d) The extent to which this section has adversely affected the  
16 capacity of agencies to fulfill their legislatively prescribed mission;

17 (e) The extent to which this section has improved the acceptability  
18 of state rules to those regulated; and

19 (f) Any other information considered by the office of financial  
20 management to be useful in evaluating the effect of this section.

21 **Sec. 2.** RCW 42.30.020 and 1985 c 366 s 1 are each amended to read  
22 as follows:

23 As used in this chapter unless the context indicates otherwise:

24 (1) "Public agency" means:

25 (a) Any state board, commission, committee, department, educational  
26 institution, or other state agency which is created by or pursuant to  
27 statute, other than courts and the legislature;

28 (b) Any county, city, school district, special purpose district, or  
29 other municipal corporation or political subdivision of the state of  
30 Washington;

31 (c) Any subagency of a public agency which is created by or  
32 pursuant to statute, ordinance, or other legislative act, including but  
33 not limited to planning commissions, library or park boards,  
34 commissions, and agencies;

35 (d) Any policy group whose membership includes representatives of  
36 publicly owned utilities formed by or pursuant to the laws of this  
37 state when meeting together as or on behalf of participants who have

1 contracted for the output of generating plants being planned or built  
2 by an operating agency.

3 (2) "Governing body" means ~~((the))~~ a multimember board, commission,  
4 committee, council, or other policy or rule-making body of a public  
5 agency, ~~((or any committee thereof when the))~~ regardless of whether the  
6 agency is governed by an individual or body of individuals. A  
7 committee or council that acts on behalf of the governing body, makes  
8 policy recommendations, conducts hearings, or takes testimony or public  
9 comment is subject to this chapter and chapter 42.32 RCW.

10 (3) "Action" means the transaction of the official business of a  
11 public agency by a governing body including but not limited to receipt  
12 of public testimony, deliberations, discussions, considerations,  
13 reviews, evaluations, and final actions. "Final action" means a  
14 collective positive or negative decision, or an actual vote by a  
15 majority of the members of a governing body when sitting as a body or  
16 entity, upon a motion, proposal, resolution, order, or ordinance.

17 (4) "Meeting" means meetings at which action is taken.

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