
ENGROSSED SUBSTITUTE SENATE BILL 5105

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Deccio, McCaslin, Hale, Goings, Johnson, Haugen, West, Winsley, Oke, Schow and Roach)

Read first time 02/24/97.

1 AN ACT Relating to administrative rule making; and amending RCW
2 34.05.328.

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+)~~) (6) of
7 this 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, with the exception of significant legislative rules
11 adopted under chapter 49.17 RCW, if the rule differs from any federal
12 regulation or statute applicable to the same activity or subject matter
13 and, if so, determine that the difference is justified by ~~((the~~
14 ~~following:~~

15 ~~(i))~~ a state statute that explicitly allows the agency to differ
16 from federal standards; ~~((or~~

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

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

23 (2) In making its determinations pursuant to subsection (1)(b)
24 through (g) of this section, the agency shall place in the rule-making
25 file documentation of sufficient quantity and quality so as to persuade
26 a reasonable person that the determinations are justified. Only those
27 rules that are determined to meet in the affirmative all requirements
28 of subsection (1) of this section may be adopted.

29 (3) Before adopting rules described in subsection ~~((5))~~ (6) of
30 this section, an agency shall place in the rule-making file a rule
31 implementation plan for rules filed under each adopting order. The
32 plan shall describe how the agency intends to:

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

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

36 (c) Promote and assist voluntary compliance; and

37 (d) Evaluate whether the rule achieves the purpose for which it was
38 adopted, including, to the maximum extent practicable, the use of

1 interim milestones to assess progress and the use of objectively
2 measurable outcomes.

3 (4) (~~(After adopting a)~~) For rules in effect on the effective date
4 of this act that are described in subsection ~~((+5))~~ (6) of this
5 section regulating the same activity or subject matter as another
6 provision of federal or state law, an agency shall do all of the
7 following:

8 (a) Provide to the (~~business assistance center~~) department of
9 community, trade, and economic development a list citing by reference
10 the other federal and state laws that regulate the same activity or
11 subject matter;

12 (b) Coordinate implementation and enforcement of the rule with the
13 other federal and state entities regulating the same activity or
14 subject matter by making every effort to do one or more of the
15 following:

16 (i) Deferring to the other entity;

17 (ii) Designating a lead agency; or

18 (iii) Entering into an agreement with the other entities specifying
19 how the agency and entities will coordinate implementation and
20 enforcement.

21 If the agency is unable to comply with this subsection (4)(b) by
22 July 1, 1998, with the exception of significant legislative rules
23 adopted under chapter 49.17 RCW by the department of labor and
24 industries, which shall have until July 1, 2000, the agency shall
25 report to the legislature pursuant to (c) of this subsection;

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

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

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

33 (5) By July 1, 1999, any rule, with the exception of significant
34 legislative rules adopted under chapter 49.17 RCW, that remains without
35 specific statutory authority to overlap or duplicate other federal or
36 state laws or to differ from federal law expires.

37 (6)(a) Except as provided in (b) of this subsection, this section
38 applies to:

1 (i) Significant legislative rules of the departments of ecology,
2 labor and industries, health, revenue, and natural resources, the
3 employment security department, the forest practices board, the office
4 of the insurance commissioner, and to the legislative rules of the
5 department of fish and wildlife implementing chapter 75.20 RCW; and

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

11 (b) This section does not apply to:

12 (i) Emergency rules adopted under RCW 34.05.350;

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

15 (iii) Rules adopting or incorporating by reference without material
16 change federal statutes or regulations, Washington state statutes,
17 rules of other Washington state agencies, shoreline master programs
18 other than those programs governing shorelines of state-wide
19 significance, or, as referenced by Washington state law, national
20 consensus codes that generally establish industry standards, if the
21 material adopted or incorporated regulates the same subject matter and
22 conduct as the adopting or incorporating rule;

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

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

28 (vi) Rules that set or adjust fees or rates pursuant to legislative
29 standards.

30 (c) For purposes of this subsection:

31 (i) A "procedural rule" is a rule that adopts, amends, or repeals
32 (A) any procedure, practice, or requirement relating to any agency
33 hearings; (B) any filing or related process requirement for making
34 application to an agency for a license or permit; or (C) any policy
35 statement pertaining to the consistent internal operations of an
36 agency.

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

1 (iii) A "significant legislative rule" is a rule other than a
2 procedural or interpretive rule that (A) adopts substantive provisions
3 of law pursuant to delegated legislative authority, the violation of
4 which subjects a violator of such rule to a penalty or sanction; (B)
5 establishes, alters, or revokes any qualification or standard for the
6 issuance, suspension, or revocation of a license or permit; or (C)
7 adopts a new, or makes significant amendments to, a policy or
8 regulatory program.

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

13 (~~(6)~~) (7) By January 31, 1996, and by January 31st of each even-
14 numbered year thereafter, the office of financial management, after
15 consulting with state agencies, counties, and cities, and business,
16 labor, and environmental organizations, shall report to the governor
17 and the legislature regarding the effects of this section on the
18 regulatory system in this state. The report shall document:

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

22 (b) The costs incurred by state agencies in complying with this
23 section;

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

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

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

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

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