
SUBSTITUTE SENATE BILL 5803

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on State & Local Government (originally sponsored by Senators Hale, Honeyford, McDonald, Oke, T. Sheldon, Hewitt, McCaslin, Hochstatter, Swecker, Parlette and Carlson)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to significant legislative rules; amending RCW
2 34.05.328; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The Constitution of the state of Washington
5 vests the power to make laws in the legislature. Over time, the
6 legislature has granted the power of rule making to state agencies.
7 The legislature finds that some forms of rule making result in imposing
8 significant new requirements on citizens of the state. In order for
9 the legislature to properly carry out its responsibility for
10 establishing new laws, this act revises rule-making requirements to
11 assure that the legislature can carefully review rules that impose
12 significant requirements on citizens before the rules take effect.

13 **Sec. 2.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
14 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (c) Promote and assist voluntary compliance; and

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

9 (4) The adoption of significant legislative rules described in
10 subsection (6) of this section by the department of labor and
11 industries or by the department of ecology must be made before December
12 1st of any year, and the rules may not take effect before the end of
13 the regular legislative session in the next year.

14 (5) After adopting a rule described in subsection ((+5)) (6) of
15 this section regulating the same activity or subject matter as another
16 provision of federal or state law, an agency shall do all of the
17 following:

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

22 (b) Coordinate implementation and enforcement of the rule with the
23 other federal and state entities regulating the same activity or
24 subject matter by making every effort to do one or more of the
25 following:

26 (i) Deferring to the other entity;

27 (ii) Designating a lead agency; or

28 (iii) Entering into an agreement with the other entities specifying
29 how the agency and entities will coordinate implementation and
30 enforcement.

31 If the agency is unable to comply with this subsection ((+4))
32 (5)(b), the agency shall report to the legislature pursuant to (c) of
33 this subsection;

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

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

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

4 (~~(5)~~) (6)(a) Except as provided in (b) of this subsection, this
5 section applies to:

6 (i) Significant legislative rules of the departments of ecology,
7 labor and industries, health, revenue, social and health services, and
8 natural resources, the employment security department, the forest
9 practices board, the office of the insurance commissioner, and to the
10 legislative rules of the department of fish and wildlife implementing
11 chapter (~~75.20~~) 77.55 RCW; and

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

17 (b) This section does not apply to:

18 (i) Emergency rules adopted under RCW 34.05.350;

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

21 (iii) Rules adopting or incorporating by reference without material
22 change federal statutes or regulations, Washington state statutes,
23 rules of other Washington state agencies, shoreline master programs
24 other than those programs governing shorelines of statewide
25 significance, or, as referenced by Washington state law, national
26 consensus codes that generally establish industry standards, if the
27 material adopted or incorporated regulates the same subject matter and
28 conduct as the adopting or incorporating rule;

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

32 (v) Rules the content of which is explicitly and specifically
33 dictated by statute;

34 (vi) Rules that set or adjust fees or rates pursuant to legislative
35 standards; or

36 (vii) Rules of the department of social and health services
37 relating only to client medical or financial eligibility and rules
38 concerning liability for care of dependents.

39 (c) For purposes of this subsection:

1 (i) A "procedural rule" is a rule that adopts, amends, or repeals
2 (A) any procedure, practice, or requirement relating to any agency
3 hearings; (B) any filing or related process requirement for making
4 application to an agency for a license or permit; or (C) any policy
5 statement pertaining to the consistent internal operations of an
6 agency.

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

10 (iii) A "significant legislative rule" is a rule other than a
11 procedural or interpretive rule that (A) adopts substantive provisions
12 of law pursuant to delegated legislative authority, the violation of
13 which subjects a violator of such rule to a penalty or sanction; (B)
14 establishes, alters, or revokes any qualification or standard for the
15 issuance, suspension, or revocation of a license or permit; or (C)
16 adopts a new, or makes significant amendments to, a policy or
17 regulatory program.

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

22 ((+6+)) (7) By January 31, 1996, and by January 31st of each even-
23 numbered year thereafter, the office of financial management, after
24 consulting with state agencies, counties, and cities, and business,
25 labor, and environmental organizations, shall report to the governor
26 and the legislature regarding the effects of this section on the
27 regulatory system in this state. The report shall document:

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

31 (b) The costs incurred by state agencies in complying with this
32 section;

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

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

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

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

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