

HOUSE BILL REPORT

HB 1334

As Reported by House Committee On:

State Government

Title: An act relating to requiring cost and benefit assessments early in the rule-making process.

Brief Description: Requiring cost and benefit assessments early in the rule-making process.

Sponsors: Representatives Haigh, Armstrong, Kristiansen, Tom, Anderson, Shabro, Hatfield, Nixon, Hunt, Roach, Holmquist, Grant, O'Brien, Kagi, Kessler, Upthegrove and Morris.

Brief History:

Committee Activity:

State Government: 2/6/03, 2/14/03 [DPS].

Brief Summary of Substitute Bill

- Requires agencies to include in the notice of rule-making a statement indicating that a copy of the preliminary cost-benefit analysis is available. Any supplemental notices must contain a statement that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis will be available when the rule is adopted.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

Staff: Marsha Reilly (786-7291).

Background:

The Administrative Procedure Act (APA) details procedures that state agencies are required to follow when adopting rules. First, an agency is required to prepare a "statement of intent" and solicit comments from the public on a subject of possible

rule-making. When the agency is ready to hold a hearing on a proposed rule, it publishes a notice in the state register. A hearing is held and comments are received. An agency is required to consider, summarize, and respond to the oral and written comments it receives. The agency may then withdraw the rule, modify it, or adopt the rule as proposed.

A ***procedural rule*** is a rule that adopts, amends, or repeals:

- any procedure, practice, or requirement relating to any agency hearings;
- any filing or related process requirement for making application to an agency for a license or permit;
- or any policy statement pertaining to the consistent internal operations of an agency.

An ***interpretive rule*** is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of the statutory provisions it administers.

A ***significant legislative rule*** is a rule that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which will result in a penalty or sanction;
- Establishes, alters, or revokes the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

The departments of Ecology, Labor and Industries, Health, Revenue, Social and Health Services, and Natural Resources, the Employment Security Department, the Forest Practices Board, the Office of the Insurance Commissioner, and the Department of Fish and Wildlife are subject to additional requirements when adopting significant rules. It must be determined that:

- The rule is needed to achieve statutory goals;
- Probable benefits are greater than probable costs;
- The rule is the least burdensome alternative for those required to comply to achieve the statutory objectives;
- The rule does not conflict with federal or state law;
- The rule does not treat public and private entities differently, unless required by law to do so; and
- Any differences from federal law are justified by explicit statutory authorization or to meet statutory objectives.

Before adopting significant legislative rules, an agency must file an implementation plan. The plan must detail how the agency plans to implement and enforce the rule, how the public will be informed about the rule, how the agency will promote and assist voluntary compliance with the rule, and how the agency will evaluate the effectiveness of the rule.

On January 31 of each even-numbered year, the Office of Financial Management is

required to report to the Governor and the Legislature regarding the effects of significant rules on the regulatory system in this state.

Summary of Substitute Bill:

For rules subject to the significant legislative rules process, the notice of rule-making must contain a statement indicating that a copy of the preliminary cost-benefit analysis is available. If a supplemental notice is filed, the notice shall include a statement that a revised preliminary cost-benefit analysis is available. Agencies must make available a final cost-benefit analysis when the rule is adopted.

Substitute Bill Compared to Original Bill:

Under the original bill, agencies are required to include a statement describing the methodology used to determine the probable costs and benefits of a rule or that a preliminary analysis of the probable costs and benefits is available upon request. The substitute bill does not require a description of the methodology used in the cost-benefit analysis. The substitute bill added the requirements that: 1) if an agency files a supplemental notice it should include notification that a revised preliminary cost-benefit analysis is available; and 2) a final cost-benefit analysis be available when the rule is adopted.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The public should be provided a meaningful opportunity to participate in the rule-making process, and has a right to know the cost and benefit of a rule.

(In support with concerns) Agencies have been making greater efforts to consult with the public about rules and many times, because of that consultation, the rule is modified. As the bill reads now, should an agency decide that the methodology for the cost-benefit analysis be changed, it could become grounds for overturning the rule on appeal. It is suggested that the language be changed from methodology "used" to methodology "proposed." The concept is good, but it should focus more on outcomes as a cost-benefit analysis can be very difficult to understand. The cost and benefit should be clearly delineated. While it is important to let people know how the cost-benefit analysis is done, many times the rule will be changed based on input and, as a result, the cost-benefit analysis is revised. It would be most useful to be done at the point the rule is

open for public comment.

Testimony Against: None.

Testified: (In support) Ivy Sager Rosenthal, Washington Public Interest Research Group; Amber Balch, Association of Washington Business; Carolyn Logue, National Federation of Independent Business; and Gary Smith, Independent Business Association.

(In support with concerns) Carol Jolly, Governor's Office; and Loren Mike Freeman, Citizen Advocate.