

# HOUSE BILL REPORT

## ESB 5256

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### As Reported by House Committee On:

State Government

**Title:** An act relating to rule-making procedures.

**Brief Description:** Revising rule-making procedures.

**Sponsors:** Senators Roach, Doumit, Hale, Kastama, Mulliken, T. Sheldon, Haugen, Hewitt, Stevens, Zarelli, Parlette, Horn, Rossi and Johnson.

### Brief History:

#### Committee Activity:

State Government: 3/20/03, 3/28/03 [DP].

#### Brief Summary of Engrossed 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.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** 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 (786-7135).

### 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:

1. Any procedure, practice, or requirement relating to any agency hearings;
2. Any filing or related process requirement for making application to an agency for a license or permit; or
3. 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:

1. Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which will result in a penalty or sanction;
2. Establishes, alters, or revokes the issuance, suspension, or revocation of a license or permit; or
3. 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:

1. The rule is needed to achieve statutory goals;
2. Probable benefits are greater than probable costs;
3. The rule is the least burdensome alternative for those required to comply that will achieve the statutory objectives;
4. The rule does not conflict with federal or state law;
5. The rule does not treat public and private entities differently, unless required by law to do so; and
6. 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.

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**Summary of 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The Governor's Office supports the bill and worked with sponsors to have the preliminary cost-benefit analysis available at the same time the rule is introduced. Then agencies make new cost-benefit analyses available for any supplemental and final cost-benefit analyses. The Association of Washington Business supports the bill. It reaffirms the 1995 regulatory reform act that gives the public the opportunity to participate in the rule-making process. It is an incremental step.

**Testimony Against:** None.

**Testified:** Senator Roach, prime sponsor; Carol Jolly, Governor's Policy Office; Amber Balch, Association of Washington Business; Mark Johnson, National Federation of Independent Business; and Gary Smith, Independent Business Association.