
ENGROSSED SENATE BILL 5256

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

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1 AN ACT Relating to rule-making procedures; and amending RCW
2 34.05.320, 34.05.328, and 50.13.060.

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

4 **Sec. 1.** RCW 34.05.320 and 1995 c 403 s 302 are each amended to
5 read as follows:

6 (1) At least twenty days before the rule-making hearing at which
7 the agency receives public comment regarding adoption of a rule, the
8 agency shall cause notice of the hearing to be published in the state
9 register. The publication constitutes the proposal of a rule. The
10 notice shall include all of the following:

11 (a) A title, a description of the rule's purpose, and any other
12 information which may be of assistance in identifying the rule or its
13 purpose;

14 (b) Citations of the statutory authority for adopting the rule and
15 the specific statute the rule is intended to implement;

16 (c) A summary of the rule and a statement of the reasons supporting
17 the proposed action;

1 (d) The agency personnel, with their office location and telephone
2 number, who are responsible for the drafting, implementation, and
3 enforcement of the rule;

4 (e) The name of the person or organization, whether private,
5 public, or governmental, proposing the rule;

6 (f) Agency comments or recommendations, if any, regarding statutory
7 language, implementation, enforcement, and fiscal matters pertaining to
8 the rule;

9 (g) Whether the rule is necessary as the result of federal law or
10 federal or state court action, and if so, a copy of such law or court
11 decision shall be attached to the purpose statement;

12 (h) When, where, and how persons may present their views on the
13 proposed rule;

14 (i) The date on which the agency intends to adopt the rule;

15 (j) A short explanation of the rule, its purpose, and anticipated
16 effects, including in the case of a proposal that would modify existing
17 rules, a short description of the changes the proposal would make;

18 (k) A copy of the small business economic impact statement prepared
19 under chapter 19.85 RCW, or an explanation for why the agency did not
20 prepare the statement; ~~((and))~~

21 (l) A statement indicating whether RCW 34.05.328 applies to the
22 rule adoption; and

23 (m) If RCW 34.05.328 does apply, a statement indicating that a copy
24 of the preliminary cost-benefit analysis described in RCW
25 34.05.328(1)(c) is available.

26 (2) Upon filing notice of the proposed rule with the code reviser,
27 the adopting agency shall have copies of the notice on file and
28 available for public inspection and shall forward three copies of the
29 notice to the rules review committee.

30 (3) No later than three days after its publication in the state
31 register, the agency shall cause a copy of the notice of proposed rule
32 adoption to be mailed to each person, city, and county that has made a
33 request to the agency for a mailed copy of such notices. An agency may
34 charge for the actual cost of providing a requesting party mailed
35 copies of these notices.

36 (4) In addition to the notice required by subsections (1) and (2)
37 of this section, an institution of higher education shall cause the

1 notice to be published in the campus or standard newspaper of the
2 institution at least seven days before the rule-making hearing.

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

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

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

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

13 (c) Provide notification in the notice of proposed rule making
14 under RCW 34.05.320 that a preliminary cost-benefit analysis is
15 available. The preliminary cost-benefit analysis must fulfill the
16 requirements of the cost-benefit analysis under (d) of this subsection.
17 If the agency files a supplemental notice under RCW 34.05.340, the
18 supplemental notice shall include notification that a revised
19 preliminary cost-benefit analysis is available. A final cost-benefit
20 analysis shall be available when the rule is adopted under RCW
21 34.05.360;

22 (d) Determine that the probable benefits of the rule are greater
23 than its probable costs, taking into account both the qualitative and
24 quantitative benefits and costs and the specific directives of the
25 statute being implemented;

26 ~~((d))~~ (e) Determine, after considering alternative versions of
27 the rule and the analysis required under (b) ~~((and))~~, (c), and (d) of
28 this subsection, that the rule being adopted is the least burdensome
29 alternative for those required to comply with it that will achieve the
30 general goals and specific objectives stated under (a) of this
31 subsection;

32 ~~((e))~~ (f) Determine that the rule does not require those to whom
33 it applies to take an action that violates requirements of another
34 federal or state law;

35 ~~((f))~~ (g) Determine that the rule does not impose more stringent
36 performance requirements on private entities than on public entities
37 unless required to do so by federal or state law;

1 (~~(g)~~) (h) Determine if the rule differs from any federal
2 regulation or statute applicable to the same activity or subject matter
3 and, if so, determine that the difference is justified by the
4 following:

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

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

10 (~~(h)~~) (i) Coordinate the rule, to the maximum extent practicable,
11 with other federal, state, and local laws applicable to the same
12 activity or subject matter.

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

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

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

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

24 (c) Promote and assist voluntary compliance; and

25 (d) Evaluate whether the rule achieves the purpose for which it was
26 adopted, including, to the maximum extent practicable, the use of
27 interim milestones to assess progress and the use of objectively
28 measurable outcomes.

29 (4) After adopting a rule described in subsection (5) of this
30 section regulating the same activity or subject matter as another
31 provision of federal or state law, an agency shall do all of the
32 following:

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

36 (b) Coordinate implementation and enforcement of the rule with the
37 other federal and state entities regulating the same activity or

1 subject matter by making every effort to do one or more of the
2 following:

- 3 (i) Deferring to the other entity;
- 4 (ii) Designating a lead agency; or
- 5 (iii) Entering into an agreement with the other entities specifying
6 how the agency and entities will coordinate implementation and
7 enforcement.

8 If the agency is unable to comply with this subsection (4)(b), the
9 agency shall report to the legislature pursuant to (c) of this
10 subsection;

- 11 (c) Report to the joint administrative rules review committee:
 - 12 (i) The existence of any overlap or duplication of other federal or
13 state laws, any differences from federal law, and any known overlap,
14 duplication, or conflict with local laws; and
 - 15 (ii) Make recommendations for any legislation that may be necessary
16 to eliminate or mitigate any adverse effects of such overlap,
17 duplication, or difference.

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

- 20 (i) Significant legislative rules of the departments of ecology,
21 labor and industries, health, revenue, social and health services, and
22 natural resources, the employment security department, the forest
23 practices board, the office of the insurance commissioner, and to the
24 legislative rules of the department of fish and wildlife implementing
25 chapter ((75.20)) 77.55 RCW; and
- 26 (ii) Any rule of any agency, if this section is voluntarily made
27 applicable to the rule by the agency, or is made applicable to the rule
28 by a majority vote of the joint administrative rules review committee
29 within forty-five days of receiving the notice of proposed rule making
30 under RCW 34.05.320.

- 31 (b) This section does not apply to:
 - 32 (i) Emergency rules adopted under RCW 34.05.350;
 - 33 (ii) Rules relating only to internal governmental operations that
34 are not subject to violation by a nongovernment party;
 - 35 (iii) Rules adopting or incorporating by reference without material
36 change federal statutes or regulations, Washington state statutes,
37 rules of other Washington state agencies, shoreline master programs
38 other than those programs governing shorelines of statewide

1 significance, or, as referenced by Washington state law, national
2 consensus codes that generally establish industry standards, if the
3 material adopted or incorporated regulates the same subject matter and
4 conduct as the adopting or incorporating rule;

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

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

10 (vi) Rules that set or adjust fees or rates pursuant to legislative
11 standards; or

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

15 (c) For purposes of this subsection:

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

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

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

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

37 (6) By January 31, 1996, and by January 31st of each even-numbered
38 year thereafter, the office of financial management, after consulting

1 with state agencies, counties, and cities, and business, labor, and
2 environmental organizations, shall report to the governor and the
3 legislature regarding the effects of this section on the regulatory
4 system in this state. The report shall document:

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

8 (b) The costs incurred by state agencies in complying with this
9 section;

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

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

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

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

19 **Sec. 3.** RCW 50.13.060 and 2000 c 134 s 2 are each amended to read
20 as follows:

21 (1) Governmental agencies, including law enforcement agencies,
22 prosecuting agencies, and the executive branch, whether state, local,
23 or federal shall have access to information or records deemed private
24 and confidential under this chapter if the information or records are
25 needed by the agency for official purposes and:

26 (a) The agency submits an application in writing to the employment
27 security department for the records or information containing a
28 statement of the official purposes for which the information or records
29 are needed and specific identification of the records or information
30 sought from the department; and

31 (b) The director, commissioner, chief executive, or other official
32 of the agency has verified the need for the specific information in
33 writing either on the application or on a separate document; and

34 (c) The agency requesting access has served a copy of the
35 application for records or information on the individual or employing
36 unit whose records or information are sought and has provided the
37 department with proof of service. Service shall be made in a manner

1 which conforms to the civil rules for superior court. The requesting
2 agency shall include with the copy of the application a statement to
3 the effect that the individual or employing unit may contact the public
4 records officer of the employment security department to state any
5 objections to the release of the records or information. The
6 employment security department shall not act upon the application of
7 the requesting agency until at least five days after service on the
8 concerned individual or employing unit. The employment security
9 department shall consider any objections raised by the concerned
10 individual or employing unit in deciding whether the requesting agency
11 needs the information or records for official purposes.

12 (2) The requirements of subsections (1) and (9) of this section
13 shall not apply to the state legislative branch. The state legislature
14 shall have access to information or records deemed private and
15 confidential under this chapter, if the legislature or a legislative
16 committee finds that the information or records are necessary and for
17 official purposes. If the employment security department does not make
18 information or records available as provided in this subsection, the
19 legislature may exercise its authority granted by chapter 44.16 RCW.

20 (3) In cases of emergency the governmental agency requesting access
21 shall not be required to formally comply with the provisions of
22 subsection (1) of this section at the time of the request if the
23 procedures required by subsection (1) of this section are complied with
24 by the requesting agency following the receipt of any records or
25 information deemed private and confidential under this chapter. An
26 emergency is defined as a situation in which irreparable harm or damage
27 could occur if records or information are not released immediately.

28 (4) The requirements of subsection (1)(c) of this section shall not
29 apply to governmental agencies where the procedures would frustrate the
30 investigation of possible violations of criminal laws or to the release
31 of employing unit names, addresses, number of employees, and aggregate
32 employer wage data for the purpose of state governmental agencies
33 preparing small business economic impact statements under chapter 19.85
34 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and
35 (d). Information provided by the department and held to be private and
36 confidential under state or federal laws must not be misused or
37 released to unauthorized parties. A person who misuses such

1 information or releases such information to unauthorized parties is
2 subject to the sanctions in RCW 50.13.080.

3 (5) Governmental agencies shall have access to certain records or
4 information, limited to such items as names, addresses, social security
5 numbers, and general information about benefit entitlement or employer
6 information possessed by the department, for comparison purposes with
7 records or information possessed by the requesting agency to detect
8 improper or fraudulent claims, or to determine potential tax liability
9 or employer compliance with registration and licensing requirements.
10 In those cases the governmental agency shall not be required to comply
11 with subsection (1)(c) of this section, but the requirements of the
12 remainder of subsection (1) of this section must be satisfied.

13 (6) Governmental agencies may have access to certain records and
14 information, limited to employer information possessed by the
15 department for purposes authorized in chapter 50.38 RCW. Access to
16 these records and information is limited to only those individuals
17 conducting authorized statistical analysis, research, and evaluation
18 studies. Only in cases consistent with the purposes of chapter 50.38
19 RCW are government agencies not required to comply with subsection
20 (1)(c) of this section, but the requirements of the remainder of
21 subsection (1) of this section must be satisfied. Information provided
22 by the department and held to be private and confidential under state
23 or federal laws shall not be misused or released to unauthorized
24 parties subject to the sanctions in RCW 50.13.080.

25 (7) Disclosure to governmental agencies of information or records
26 obtained by the employment security department from the federal
27 government shall be governed by any applicable federal law or any
28 agreement between the federal government and the employment security
29 department where so required by federal law. When federal law does not
30 apply to the records or information state law shall control.

31 (8) The department may provide information for purposes of
32 statistical analysis and evaluation of the WorkFirst program or any
33 successor state welfare program to the department of social and health
34 services, the office of financial management, and other governmental
35 entities with oversight or evaluation responsibilities for the program
36 in accordance with RCW 43.20A.080. The confidential information
37 provided by the department shall remain the property of the department
38 and may be used by the authorized requesting agencies only for

1 statistical analysis, research, and evaluation purposes as provided in
2 RCW 74.08A.410 and 74.08A.420. The department of social and health
3 services, the office of financial management, or other governmental
4 entities with oversight or evaluation responsibilities for the program
5 are not required to comply with subsection (1)(c) of this section, but
6 the requirements of the remainder of subsection (1) of this section and
7 applicable federal laws and regulations must be satisfied. The
8 confidential information used for evaluation and analysis of welfare
9 reform supplied to the authorized requesting entities with regard to
10 the WorkFirst program or any successor state welfare program are exempt
11 from public inspection and copying under RCW 42.17.310.

12 (9) The disclosure of any records or information by a governmental
13 agency which has obtained the records or information under this section
14 is prohibited unless the disclosure is directly connected to the
15 official purpose for which the records or information were obtained.

16 (10) In conducting periodic salary or fringe benefit studies
17 pursuant to law, the department of personnel shall have access to
18 records of the employment security department as may be required for
19 such studies. For such purposes, the requirements of subsection (1)(c)
20 of this section need not apply.

21 (11)(a) To promote the reemployment of job seekers, the
22 commissioner may enter into data-sharing contracts with partners of the
23 one-stop career development system. The contracts shall provide for
24 the transfer of data only to the extent that the transfer is necessary
25 for the efficient provisions of work force programs, including but not
26 limited to public labor exchange, unemployment insurance, worker
27 training and retraining, vocational rehabilitation, vocational
28 education, adult education, transition from public assistance, and
29 support services. The transfer of information under contracts with
30 one-stop partners is exempt from subsection (1)(c) of this section.

31 (b) An individual who applies for services from the department and
32 whose information will be shared under (a) of this subsection (11) must
33 be notified that his or her private and confidential information in the
34 department's records will be shared among the one-stop partners to
35 facilitate the delivery of one-stop services to the individual. The
36 notice must advise the individual that he or she may request that
37 private and confidential information not be shared among the one-stop

1 partners and the department must honor the request. In addition, the
2 notice must:

3 (i) Advise the individual that if he or she requests that private
4 and confidential information not be shared among one-stop partners, the
5 request will in no way affect eligibility for services;

6 (ii) Describe the nature of the information to be shared, the
7 general use of the information by one-stop partner representatives, and
8 among whom the information will be shared;

9 (iii) Inform the individual that shared information will be used
10 only for the purpose of delivering one-stop services and that further
11 disclosure of the information is prohibited under contract and is not
12 subject to disclosure under RCW 42.17.310; and

13 (iv) Be provided in English and an alternative language selected by
14 the one-stop center or job service center as appropriate for the
15 community where the center is located.

16 If the notice is provided in-person, the individual who does not
17 want private and confidential information shared among the one-stop
18 partners must immediately advise the one-stop partner representative of
19 that decision. The notice must be provided to an individual who
20 applies for services telephonically, electronically, or by mail, in a
21 suitable format and within a reasonable time after applying for
22 services, which shall be no later than ten working days from the
23 department's receipt of the application for services. A one-stop
24 representative must be available to answer specific questions regarding
25 the nature, extent, and purpose for which the information may be
26 shared.

27 (12) To facilitate improved operation and evaluation of state
28 programs, the commissioner may enter into data-sharing contracts with
29 other state agencies only to the extent that such transfer is necessary
30 for the efficient operation or evaluation of outcomes for those
31 programs. The transfer of information by contract under this
32 subsection is exempt from subsection (1)(c) of this section.

33 (13) The misuse or unauthorized release of records or information
34 by any person or organization to which access is permitted by this
35 chapter subjects the person or organization to a civil penalty of five
36 thousand dollars and other applicable sanctions under state and federal
37 law. Suit to enforce this section shall be brought by the attorney
38 general and the amount of any penalties collected shall be paid into

1 the employment security department administrative contingency fund.
2 The attorney general may recover reasonable attorneys' fees for any
3 action brought to enforce this section.

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