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**SUBSTITUTE SENATE BILL 5318**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Economic Development, Trade & Innovation (originally sponsored by Senators Eide, Kastama, Rockefeller, and Shin; by request of Office of Regulatory Assistance)

READ FIRST TIME 02/18/11.

1 AN ACT Relating to the office of regulatory assistance; amending  
2 RCW 34.05.328 and 43.42.010; repealing RCW 43.131.401 and 43.131.402;  
3 providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 34.05.328 and 2010 c 112 s 15 are each amended to read  
6 as follows:

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

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

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

15 (c) Provide notification in the notice of proposed rule making  
16 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
17 available. The preliminary cost-benefit analysis must fulfill the  
18 requirements of the cost-benefit analysis under (d) of this subsection.  
19 If the agency files a supplemental notice under RCW 34.05.340, the

1 supplemental notice shall include notification that a revised  
2 preliminary cost-benefit analysis is available. A final cost-benefit  
3 analysis shall be available when the rule is adopted under RCW  
4 34.05.360;

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

14 (f) 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 (g) 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 (h) 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 (i) 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 (h) 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) of this  
36 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) After adopting a rule described in subsection (5) of this  
10 section regulating the same activity or subject matter as another  
11 provision of federal or state law, an agency shall do all of the  
12 following:

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

17 (i) Deferring to the other entity;

18 (ii) Designating a lead agency; or

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

22 If the agency is unable to comply with this subsection (4)(a), the  
23 agency shall report to the legislature pursuant to (b) of this  
24 subsection;

25 (b) Report to the joint administrative rules review committee:

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

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

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

34 (i) Significant legislative rules of the departments of ecology,  
35 labor and industries, health, revenue, social and health services, and  
36 natural resources, the employment security department, the forest  
37 practices board, the office of the insurance commissioner, and to the

1 legislative rules of the department of fish and wildlife implementing  
2 chapter 77.55 RCW; and

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

8 (b) This section does not apply to:

9 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

25 (vi) Rules that set or adjust fees or rates pursuant to legislative  
26 standards;

27 (vii) Rules of the department of social and health services  
28 relating only to client medical or financial eligibility and rules  
29 concerning liability for care of dependents; or

30 (viii) Rules of the department of revenue that adopt a uniform  
31 expiration date for reseller permits as authorized in RCW 82.32.780 and  
32 82.32.783.

33 (c) For purposes of this subsection:

34 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
35 (A) any procedure, practice, or requirement relating to any agency  
36 hearings; (B) any filing or related process requirement for making  
37 application to an agency for a license or permit; or (C) any policy

1 statement pertaining to the consistent internal operations of an  
2 agency.

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

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

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

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

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

27 (b) The costs incurred by state agencies in complying with this  
28 section;

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

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

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

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

1       **Sec. 2.** RCW 43.42.010 and 2009 c 97 s 4 are each amended to read  
2 as follows:

3       (1) The office of regulatory assistance is created in the office of  
4 financial management and (~~shall~~) must be administered by the office  
5 of the governor to help improve the regulatory system and assist  
6 citizens, businesses, and project proponents.

7       (2) The governor (~~shall~~) must appoint a director. The director  
8 may employ a deputy director and a confidential secretary and such  
9 staff as are necessary, or contract with another state agency pursuant  
10 to chapter 39.34 RCW for support in carrying out the purposes of this  
11 chapter.

12       (3) The office (~~shall~~) must offer to:

13       (a) Act as the central point of contact for the project proponent  
14 in communicating about defined issues;

15       (b) Conduct project scoping as provided in RCW 43.42.050;

16       (c) Verify that the project proponent has all the information  
17 needed to correctly apply for all necessary permits;

18       (d) Provide general coordination services;

19       (e) Coordinate the efficient completion among participating  
20 agencies of administrative procedures, such as collecting fees or  
21 providing public notice;

22       (f) Maintain contact with the project proponent and the permit  
23 agencies to promote adherence to agreed schedules;

24       (g) Assist in resolving any conflict or inconsistency among permit  
25 requirements and conditions;

26       (h) Coordinate, to the extent practicable, with relevant federal  
27 permit agencies and tribal governments;

28       (i) Facilitate meetings;

29       (j) Manage a fully coordinated permit process, as provided in RCW  
30 43.42.060;

31       (k) Help local jurisdictions comply with the requirements of  
32 chapter 36.70B RCW by providing information about best permitting  
33 practices methods to improve communication with, and solicit early  
34 involvement of, state agencies when needed; and

35       (1) Maintain and furnish information as provided in RCW 43.42.040.

36       (4) The office (~~shall~~) must provide the following by September 1,  
37 2009, and biennially thereafter, to the governor and the appropriate  
38 committees of the legislature:

- 1 (a) A performance report including:
- 2 (i) Information regarding use of the office's voluntary cost-
- 3 reimbursement services as provided in RCW 43.42.070;
- 4 (ii) The number and type of projects where the office provided
- 5 services and the resolution provided by the office on any conflicts
- 6 that arose on such projects; (~~and~~)
- 7 (iii) The agencies involved on specific projects;
- 8 (iv) Specific information on any difficulty encountered in
- 9 provision of services, implementation of programs or processes, or use
- 10 of tools; and
- 11 (v) Trend reporting that allows comparisons between statements of
- 12 goals and performance targets and the achievement of those goals and
- 13 targets; and
- 14 (b) Recommendations on system improvements including
- 15 recommendations regarding:
- 16 (i) Measurement of overall system performance; (~~and~~)
- 17 (ii) Changes needed to make cost reimbursement, a fully coordinated
- 18 permit process, multiagency permitting teams, and other processes
- 19 effective; and
- 20 (iii) Resolving any conflicts or inconsistencies arising from
- 21 differing statutory or regulatory authorities, roles and missions of
- 22 agencies, timing and sequencing of permitting and procedural
- 23 requirements as identified by the office in the course of its duties.

24 NEW SECTION. Sec. 3. The following acts or parts of acts are each

25 repealed:

- 26 (1) RCW 43.131.401 (Office of regulatory assistance--Termination)
- 27 and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13;
- 28 and
- 29 (2) RCW 43.131.402 (Office of regulatory assistance--Repeal) and
- 30 2010 c 162 s 7.

31 NEW SECTION. Sec. 4. This act is necessary for the immediate

32 preservation of the public peace, health, or safety, or support of the

33 state government and its existing public institutions, and takes effect

34 June 29, 2011.

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