
SUBSTITUTE SENATE BILL 5794

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Moore, Amondson and Jesernig)

Read first time 03/02/93.

1 AN ACT Relating to administrative law; amending RCW 34.05.620,
2 34.05.630, 34.05.640, and 34.05.370; adding new sections to chapter
3 34.05 RCW; and repealing RCW 34.05.660, 34.05.670, and 34.05.680.

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

5 **Sec. 1.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
6 read as follows:

7 Whenever a majority of the members of the rules review committee
8 determines that a proposed rule is not within the intent of the
9 legislature as expressed in the statute which the rule implements, or
10 that an agency may not be adopting a proposed rule in accordance with
11 all applicable provisions of law, including section 6 of this act and
12 chapter 19.85 RCW, the committee shall give the affected agency written
13 notice of its decision. The notice shall be given at least seven days
14 prior to any hearing scheduled for consideration of or adoption of the
15 proposed rule pursuant to RCW 34.05.320. The notice shall include a
16 statement of the review committee's findings and the reasons therefor.
17 When the agency holds a hearing on the proposed rule, the agency shall
18 consider the review committee's decision.

1 **Sec. 2.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to
2 read as follows:

3 (1) All rules required to be filed pursuant to RCW 34.05.380, and
4 emergency rules adopted pursuant to RCW 34.05.350, are subject to
5 selective review by the legislature.

6 (2) The rules review committee may review an agency's use of policy
7 statements, guidelines, and issuances that are of general
8 applicability, or their equivalents to determine whether or not an
9 agency has failed to adopt a rule.

10 (3) If the rules review committee finds by a majority vote of its
11 members: (a) That an existing rule is not within the intent of the
12 legislature as expressed by the statute which the rule implements, (b)
13 that the rule has not been adopted in accordance with all applicable
14 provisions of law, including section 6 of this act and chapter 19.85
15 RCW, or (c) that an agency is using a policy statement, guideline, or
16 issuance in place of a rule, the agency affected shall be notified of
17 such finding and the reasons therefor. Within thirty days of the
18 receipt of the rules review committee's notice, the agency shall file
19 notice of a hearing on the rules review committee's finding with the
20 code reviser and mail notice to all persons who have made timely
21 request of the agency for advance notice of its rule-making proceedings
22 as provided in RCW 34.05.320. The agency's notice shall include the
23 rules review committee's findings and reasons therefor, and shall be
24 published in the Washington state register in accordance with the
25 provisions of chapter 34.08 RCW.

26 (4) The agency shall consider fully all written and oral
27 submissions regarding (a) whether the rule in question is within the
28 intent of the legislature as expressed by the statute which the rule
29 implements, (b) whether the rule was adopted in accordance with all
30 applicable provisions of law, including section 6 of this act and
31 chapter 19.85 RCW, or (c) whether the agency is using a policy
32 statement, guideline, or issuance in place of a rule.

33 **Sec. 3.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to
34 read as follows:

35 (1) Within seven days of an agency hearing held after notification
36 of the agency by the rules review committee pursuant to RCW 34.05.620
37 or 34.05.630, the affected agency shall notify the committee of its
38 action on a proposed or existing rule to which the committee objected

1 or on a committee finding of the agency's failure to adopt rules. If
2 the rules review committee determines, by a majority vote of its
3 members, that the agency has failed to provide for the required
4 hearings or notice of its action to the committee, the committee may
5 file notice of its objections, together with a concise statement of the
6 reasons therefor, with the code reviser within thirty days of such
7 determination.

8 (2) If the rules review committee finds, by a majority vote of its
9 members: (a) That the proposed or existing rule in question has not
10 been modified, amended, withdrawn, or repealed by the agency so as to
11 conform with the intent of the legislature, or (b) that an existing
12 rule was not adopted in accordance with all applicable provisions of
13 law, including section 6 of this act and chapter 19.85 RCW, or (c) that
14 the agency is using a policy statement, guideline, or issuance in place
15 of a rule, the rules review committee may, within thirty days from
16 notification by the agency of its action, file with the code reviser
17 notice of its objections together with a concise statement of the
18 reasons therefor. Such notice and statement shall also be provided to
19 the agency by the rules review committee.

20 (3) If the rules review committee makes an adverse finding under
21 subsection (2) of this section, the committee may, by a (~~two-thirds~~)
22 majority vote of its members, recommend suspension of an existing rule.
23 Within seven days of such vote the committee shall transmit to the
24 appropriate standing committees of the legislature, the governor, the
25 code reviser, and the agency written notice of its objection and
26 recommended suspension and the concise reasons therefor. Within thirty
27 days of receipt of the notice, the governor shall transmit to the
28 committee, the code reviser, and the agency written approval or
29 disapproval of the recommended suspension. If the suspension is
30 approved by the governor, it is effective from the date of that
31 approval and continues until ninety days after the expiration of the
32 next regular legislative session.

33 (4) The code reviser shall publish transmittals from the rules
34 review committee or the governor issued pursuant to subsection (1),
35 (2), or (3) of this section in the Washington state register and shall
36 publish in the next supplement and compilation of the Washington
37 Administrative Code a reference to the committee's objection or
38 recommended suspension and the governor's action on it and to the issue

1 of the Washington state register in which the full text thereof
2 appears.

3 (5) The reference shall be removed from a rule published in the
4 Washington Administrative Code if a subsequent adjudicatory proceeding
5 determines that the rule is within the intent of the legislature or was
6 adopted in accordance with all applicable laws, whichever was the
7 objection of the rules review committee.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 34.05 RCW
9 to read as follows:

10 Notwithstanding any other provision of law, an election by the
11 rules review committee under RCW 34.05.640 to recommend suspension of
12 a rule, regardless of whether the suspension is approved by the
13 governor, establishes a presumption in any subsequent judicial review
14 of the rule that it is invalid. The burden of demonstrating the rule's
15 validity is then on the adopting agency. The court shall declare the
16 rule valid only if it finds that the rule does not violate
17 constitutional provisions, does not exceed the statutory authority of
18 the agency, that it was adopted in compliance with statutory rule-
19 making procedures, and that it could conceivably have been the product
20 of a rational decision maker.

21 **Sec. 5.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
22 read as follows:

23 (1) Each agency shall maintain an official rule-making file for
24 each rule that it (a) proposes by publication in the state register, or
25 (b) adopts. The file and materials incorporated by reference shall be
26 available for public inspection.

27 (2) The agency rule-making file shall contain all of the following:

28 (a) Copies of all publications in the state register with respect
29 to the rule or the proceeding upon which the rule is based;

30 (b) Copies of any portions of the agency's public rule-making
31 docket containing entries relating to the rule or the proceeding on
32 which the rule is based;

33 (c) All written petitions, requests, submissions, and comments
34 received by the agency and all other written material regarded by the
35 agency as important to adoption of the rule or the proceeding on which
36 the rule is based;

1 (d) Any official transcript of oral presentations made in the
2 proceeding on which the rule is based or, if not transcribed, any tape
3 recording or stenographic record of them, and any memorandum prepared
4 by a presiding official summarizing the contents of those
5 presentations;

6 (e) The concise explanatory statement required by RCW 34.05.355;

7 (f) All petitions for exceptions to, amendment of, or repeal or
8 suspension of, the rule; (~~and~~)

9 (g) All data and other factual information, technical, theoretical,
10 and empirical studies or reports, if any, on which the agency relies in
11 the adoption of the rule; and

12 (h) Any other material placed in the file by the agency.

13 (3) Internal agency documents are exempt from inclusion in the
14 rule-making file under subsection (2) of this section to the extent
15 they constitute preliminary drafts, notes, recommendations, and intra-
16 agency memoranda in which opinions are expressed or policies formulated
17 or recommended, except that a specific document is not exempt from
18 inclusion when it is publicly cited by an agency in connection with its
19 decision.

20 (4) Upon judicial review, the file required by this section
21 constitutes the official agency rule-making file with respect to that
22 rule. Unless otherwise required by another provision of law, the
23 official agency rule-making file need not be the exclusive basis for
24 agency action on that rule.

25 NEW SECTION. Sec. 6. A new section is added to chapter 34.05 RCW
26 to read as follows:

27 (1) In addition to other requirements imposed by law, an agency may
28 not adopt a rule the violation of which subjects a person to a penalty
29 or administrative sanction; that establishes, alters, or revokes a
30 qualification or standard for the issuance, suspension, or revocation
31 of a license to pursue a commercial activity, trade, or profession; or
32 that establishes, alters, or revokes a mandatory standard for a product
33 or material that must be met before distribution or sale, unless:

34 (a) The rule-making file provides substantial evidence that: (i)
35 The particular rule is necessary to fulfill the purpose and intent of
36 a specific statute; (ii) the agency considered the probable benefits of
37 the particular rule relative to its probable costs; (iii) the agency
38 considered other less intrusive or less costly means to achieve the

1 purpose of the rule, including any that were proposed in the rule-
2 making hearing, but had reasonable justification for rejecting them in
3 favor of the adopted rule; and (iv) any fee imposed by the rule will
4 generate no more revenue than is necessary to fulfill the intent of the
5 specific statute authorizing the fee;

6 (b) The rule is clearly and simply stated, so that it will be
7 understood by any person required to comply;

8 (c) The agency has a written plan to (i) inform and educate
9 affected persons about the rule; (ii) promote voluntary compliance;
10 (iii) evaluate whether the rule achieves the purpose for which it was
11 adopted; and (iv) where necessary, meet the requirements of subsection
12 (2) or (3) of this section;

13 (d) The rule does not, without clear and specific statutory
14 authorization to do so, exceed any provision of federal law regulating
15 the same activity or subject matter; and

16 (e) The rule does not, without clear and specific statutory
17 authorization to do so, conflict with, overlap, or duplicate, any other
18 provision of federal, state, or local law regulating the same activity
19 or subject matter. The agency shall survey other federal, state, and
20 local entities that have jurisdiction over the same or similar subject
21 matter to determine whether such conflict, overlap, or duplication
22 exists.

23 (2) Upon the adoption of a rule that conflicts with, overlaps, or
24 duplicates any other provision of federal, state, or local law
25 regulating the same activity or subject matter, an agency shall: (a)
26 File with the code reviser for publication in the Washington State
27 Register a list citing by reference the other laws that the rule
28 conflicts with, overlaps, or duplicates; (b) mitigate the adverse
29 impact of the conflict, overlap, or duplication through coordination
30 with the appropriate federal, state, or local entities; and (c) submit
31 to the appropriate standing committee of the legislature before the
32 next legislative session proposed legislation to mitigate the conflict,
33 overlap, or duplication, and facilitate coordination with appropriate
34 federal, state, or local entities.

35 (3) Upon the adoption of a rule that exceeds any provision of
36 federal law regulating the same activity or subject matter, the agency
37 shall, to the extent practicable, coordinate implementation and
38 enforcement with the appropriate federal entities.

1 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
2 repealed:

3 (1) RCW 34.05.660 and 1988 c 288 s 606 & 1981 c 324 s 10;

4 (2) RCW 34.05.670 and 1992 c 197 s 3; and

5 (3) RCW 34.05.680 and 1992 c 197 s 4.

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