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**SENATE BILL 5867**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By Senator Moore**

Read first time 02/18/93. Referred to Committee on Government Operations.

1 AN ACT Relating to executive branch review of administrative rules;  
2 and creating a new chapter in Title 34 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) There has been an unprecedented growth in the number of  
6 administrative rules in recent years;

7 (2) The language of many administrative rules is frequently unclear  
8 and unnecessarily complex, even when the complicated and technical  
9 nature of the subject matter is taken into account. The language is  
10 often confusing to the persons who must comply with the rules;

11 (3) Substantial time and public funds have been spent in adopting  
12 administrative rules, the necessity for which has not been established;

13 (4) The imposition of prescriptive standards upon private persons  
14 and entities through administrative rules where the establishment of  
15 performance standards could reasonably be expected to produce the same  
16 result has placed an unnecessary burden on Washington citizens and  
17 discouraged innovation, research, and development of improved means of  
18 achieving desirable social goals;

1 (5) There exists no central office in state government with the  
2 power and duty to review administrative rules to ensure they are  
3 written in a comprehensible manner, are authorized by statute, and are  
4 consistent with other law; and

5 (6) Correcting the problems that have been caused by the  
6 unprecedented growth of administrative rules in Washington requires the  
7 direct involvement of the legislature as well as that of the executive  
8 branch of state government.

9 The legislature therefore declares that it is in the public  
10 interest to establish an office of administrative law charged with the  
11 orderly review of administrative rules. It is the intent of the  
12 legislature that the purpose of the review is to reduce the number of  
13 administrative rules and to improve the quality of those rules that are  
14 adopted. It is the intent of the legislature that agencies shall  
15 actively seek to reduce the unnecessary regulatory burden on private  
16 individuals and entities by substituting performance standards for  
17 prescriptive standards wherever performance standards can reasonably be  
18 expected to be as effective and less burdensome, and that agencies  
19 shall consider this substitution during the course of the agency rule-  
20 making process. It is the intent of the legislature that neither the  
21 office of administrative law nor the court should substitute its  
22 judgment for that of the rule-making agency as expressed in the  
23 substantive content of the adopted rule. It is the intent of the  
24 legislature that while the office of administrative law will be part of  
25 the executive branch of state government, that the office work closely  
26 with, and upon request report directly to, the legislature in order to  
27 accomplish regulatory reform in Washington.

28 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
29 otherwise, the definitions in this section apply throughout this  
30 chapter.

31 (1) "Agency" has the same meaning as in RCW 34.05.010.

32 (2) "Authority" means the provision of law that permits or  
33 obligates the agency to adopt, amend, or repeal a rule.

34 (3) "Clarity" means written or displayed so that the meaning of the  
35 rules will be easily understood by those persons directly affected by  
36 them.

1 (4) "Consistency" means being in harmony with, and not in conflict  
2 with or contradictory to, existing statutes, court decisions, or other  
3 provisions of law.

4 (5) "Necessity" means that the record of the rule making  
5 demonstrates by substantial evidence the need for a rule. For purposes  
6 of this standard, evidence includes, but is not limited to facts,  
7 studies, and expert opinion.

8 (6) "Nonduplication" means a rule does not serve the same purpose  
9 as a state or federal statute or another rule.

10 (7) "Office" means the office of administrative law.

11 (8) "Reference" means the statute, court decision, or other  
12 provision of law that the agency implements, interprets, or makes  
13 specific by adopting, amending, or repealing a rule.

14 NEW SECTION. **Sec. 3.** The office of administrative law is created  
15 as an agency of state government, responsible to the governor and the  
16 legislature for carrying out the purposes of this chapter. The  
17 governor shall appoint the director with the consent of the senate.  
18 The director serves at the pleasure of the governor. The salary of the  
19 director is determined under RCW 43.03.040. In accordance with chapter  
20 41.06 RCW, the director shall employ such personnel as are necessary to  
21 implement this chapter.

22 NEW SECTION. **Sec. 4.** Each agency shall:

23 (1) Deliver to the office, no later than the day of its publication  
24 in the Washington State Register, a copy of the notice of a proposed  
25 rule published under RCW 34.05.320;

26 (2) Deliver to the office for filing with the office of the code  
27 reviser a certified copy of all rules it adopts, except for rules  
28 contained in tariffs filed with or published by the Washington  
29 utilities and transportation commission.

30 NEW SECTION. **Sec. 5.** (1) All rules delivered to the office of  
31 administrative law for filing with the office of the code reviser must  
32 conform to the style prescribed by that office under RCW 34.05.385.

33 (2) All rules must include a notation indicating a reference to the  
34 authority under which the rule is being adopted and the reference to  
35 the specific statute or other provision being implemented, interpreted,  
36 or made specific.

1 (3) Rules approved by the office must bear an endorsement by the  
2 office affixed to the certified copy that is filed with the office of  
3 the code reviser.

4 NEW SECTION. **Sec. 6.** (1) The office shall review all  
5 administrative rules delivered to it for filing with the office of the  
6 code reviser using the following criteria: (a) Necessity; (b)  
7 authority; (c) clarity; (d) consistency; (e) reference; and (f)  
8 nonduplication. In reviewing rules under this section, the office  
9 shall restrict its review to the rule and the record of the rule-making  
10 proceeding. The office shall approve the rule if it complies with the  
11 standards set forth in this section and with this chapter.

12 (2) In reviewing rules under subsection (1) of this section, the  
13 office may consider the clarity of the rule in the context of existing  
14 related rules.

15 (3) The standard for nonduplication requires that an agency  
16 proposing to amend or adopt a rule must identify a state or federal  
17 statute or rule that is overlapped or duplicated by the proposed rule  
18 and justify any overlap or duplication. This standard is not intended  
19 to prohibit state agencies from printing relevant portions of enabling  
20 legislation in rules when the duplication is necessary to satisfy the  
21 clarity standard of this chapter. This standard is intended to prevent  
22 the indiscriminate incorporation of statutory language in a rule.

23 (4) The office shall adopt rules governing the procedures it uses  
24 in reviewing rules submitted to it. The rules must provide for an  
25 orderly review and specify the methods, standards, presumptions, and  
26 principles the office uses, and the limitations it observes, in  
27 reviewing rules for compliance with the standards in subsection (1) of  
28 this section. The rules adopted by the office must ensure that it does  
29 not substitute its judgment for that of the rule-making agency as  
30 expressed in the substantive content of adopted rules.

31 (5) The office shall return any rule subject to this chapter to the  
32 adopting agency if any of the following occur:

33 (a) The rule conflicts with existing statutes, court decisions, or  
34 other provisions of law;

35 (b) The adopting agency has not complied with chapter 19.85 RCW;

36 (c) The rule does not satisfy the criteria of subsection (1) of  
37 this section.

1 (6) The office shall return a rule-making file to a submitting  
2 agency if the file does not comply with RCW 34.05.370. Within three  
3 working days of the receipt of a rule-making file, the office shall  
4 notify the submitting agency of any deficiency identified. If no  
5 notice of deficiency is mailed to the adopting agency within that time,  
6 a rule-making file is deemed submitted as of the date of its original  
7 receipt by the office. A rule-making file may not be deemed submitted  
8 until each deficiency identified under this subsection has been  
9 corrected.

10 (7) This section does not limit the review of rules under this  
11 title, including, but not limited to, the conformity of rule-making  
12 files to RCW 34.05.370.

13 NEW SECTION. **Sec. 7.** (1) The office shall either approve a rule  
14 submitted to it for review, and transmit it to the office of the code  
15 reviser for filing, or disapprove it within thirty working days after  
16 the rule has been submitted to the office for review. If the office  
17 fails to act within thirty days, the rule is deemed to have been  
18 approved and the office shall transmit it to the office of the code  
19 reviser for filing.

20 (2) If the office disapproves a rule, it shall return it to the  
21 adopting agency within the thirty-day period specified in subsection  
22 (1) of this section, accompanied by a notice specifying the reasons for  
23 disapproval. Within seven days of the issuance of the notice, the  
24 office shall provide the adopting agency with a written decision  
25 detailing the reasons for disapproval. The office may not disapprove  
26 a rule except for failure to comply with the standards set forth in  
27 this chapter.

28 (3) If an agency determines on its own that a rule submitted under  
29 subsection (1) of this section should be returned by the office before  
30 the completion of the office's review, it may request the return of the  
31 rule. The submitting agency shall memorialize in writing all requests  
32 for the return of a rule no later than seven days after the request.  
33 The agency shall resubmit to the office for review within one hundred  
34 eighty days specified in RCW 34.05.335, or refile in accordance with  
35 RCW 34.05.320, a rule returned under this subsection.

36 (4) The office shall not initiate the return of a rule under  
37 subsection (3) of this section as an alternative to disapproval under  
38 subsection (2) of this section.

1        NEW SECTION.    **Sec. 8.**    (1) Within one hundred twenty days of an  
2 agency's receipt of the written opinion required by section 7(2) of  
3 this act, the agency may rewrite and resubmit a rule returned to it  
4 under that provision without complying with the notice and hearing  
5 requirements of RCW 34.05.320, unless the substantive provisions of the  
6 rule are significantly changed. If the rule is significantly changed  
7 or is not submitted within one hundred twenty days of receipt of the  
8 written opinion, the agency shall, in compliance with chapter 34.05  
9 RCW, readopt the rule. The director of the office may, upon a showing  
10 of good cause, grant an extension to the one hundred twenty-day period  
11 specified in this subsection.

12        (2) Upon resubmission of a previously disapproved rule to the  
13 office under subsection (1) of this section, the office shall review  
14 the resubmitted rule only for those reasons expressly identified in the  
15 written opinion required by section 7(2) of this act, or for those  
16 issues arising as a result of a significant change to a provision of  
17 the resubmitted rule or as a result of intervening statutory changes or  
18 intervening court orders or decisions.

19        (3) When an agency resubmits a withdrawn or disapproved rule to the  
20 office, it shall identify the prior withdrawn or disapproved rule by  
21 date of submission to the office, shall specify the portion of the  
22 prior rule-making record that should be included in the resubmission,  
23 and shall submit to the office a copy of the prior rule-making record  
24 if that record has been returned to the agency by the office.

25        (4) The office shall expedite the review of a rule resubmitted  
26 without significant substantive changes.

27        NEW SECTION.    **Sec. 9.**    (1) To initiate a review of a decision by  
28 the office, the agency shall file a written request for review with the  
29 governor's office within ten days of the receipt of the written opinion  
30 provided by the office under section 7(2) of this act. The request for  
31 review must include a complete statement as to why the agency believes  
32 the decision is incorrect and should be overruled. Along with the  
33 request for review, the agency shall submit the following:

34        (a) The office's written decision detailing the reasons for  
35 disapproval required by section 7(2) of this act; and

36        (b) Copies of all rules, notices, statements, and other documents  
37 that were submitted to the office.

1 (2) The agency shall deliver a copy of its request for review to  
2 the office on the same day it is delivered to the governor's office.  
3 The office shall file its written response to the agency's request with  
4 the governor's office within ten days and deliver a copy of its  
5 response to the agency on the same day it is delivered to the  
6 governor's office.

7 (3) The governor's office shall provide the requesting agency, the  
8 office, and the code reviser's office with a written statement either  
9 affirming or overruling the decision of the office within fifteen days  
10 of receipt of the response by the office to the agency's request for  
11 review. Upon receipt of the statement, the code reviser shall publish  
12 the agency's request for review, the office's response thereto, and the  
13 governor's statement in the Washington State Register.

14 (4) Upon overruling the decision of the office, the governor shall  
15 immediately transmit to both houses of the legislature a statement of  
16 his or her reasons for so doing.

17 NEW SECTION. **Sec. 10.** (1) If the office becomes aware of an  
18 existing rule in the Washington Administrative Code for which the  
19 statutory authority has been repealed or become ineffective or  
20 inoperative by its own terms, the office shall order the adopting  
21 agency to show cause why the rule should not be repealed for lack of  
22 statutory authority and shall notify the legislature in writing of this  
23 order. In issuing the order, the office shall specify in writing the  
24 reasons for issuance of the order.

25 (2) The agency may, within thirty days after receipt of the written  
26 notification, submit in writing to the office any citations, legal  
27 arguments, or other information opposing the repeal, including public  
28 comments received during this period. This section does not apply  
29 where the agency demonstrates in its response that any of the following  
30 conditions exist:

31 (a) The statute or section thereof is simultaneously repealed and  
32 substantially reenacted through a single piece of legislation, or where  
33 subsequent legislation evinces a specific legislative attempt to  
34 reenact the substance of the statute or section. When a rule cites  
35 more than one specific statute or section as reference or authority for  
36 the adoption of a rule, and one or more of the statutes or sections are  
37 repealed or become ineffective or inoperative, then the only provisions

1 of the rule that remain in effect are those for which the remaining  
2 statutes or sections provide specific or general authority.

3 (b) The statute is temporarily repealed, or rendered ineffective or  
4 inoperative by a provision of law that is effective only for a limited  
5 period, in which case a rule described in subsection (1) of this  
6 section is thereby also temporarily repealed, rendered ineffective, or  
7 inoperative during that limited period. A rule so affected has the  
8 same force and effect upon the expiration of the limited period during  
9 which the provision of law was effective as if that temporary provision  
10 had not been enacted.

11 (c) The statute or section of a statute being repealed, or becoming  
12 ineffective or inoperative by its own terms, is to remain in full force  
13 and effect as regards events occurring before the date of repeal or  
14 ineffectiveness, in which case a rule adopted to implement or interpret  
15 that statute likewise remains in full force and effect in regards to  
16 those same events.

17 (3) This section does not be deprive a person or public agency of  
18 a substantial right that would have existed before, or hereafter exists  
19 after, the effective date of this act.

20 (4) At least thirty days after receipt of the agency's opposition  
21 material, or the close of the thirty-day agency and public response  
22 period if no response is submitted, the office shall do one of the  
23 following:

24 (a) Inform the agency and the legislature in writing that the  
25 office has withdrawn its order to show cause; or

26 (b) Issue a written notice to the agency specifying the reason for  
27 the repeal and its intent to file a notice of repeal of the invalid  
28 rule with the office of the code reviser. Within seven calendar days  
29 of the filing of the notice of repeal, the office shall provide the  
30 agency, the governor, the code reviser, and the legislature with a  
31 written decision detailing the reasons for the repeal and a copy of the  
32 notice of repeal. The code reviser shall publish the office's written  
33 decision in the Washington State Register.

34 (5) The office shall order the removal of the repealed rule from  
35 the Washington Administrative Code within thirty days after filing the  
36 notice of repeal, if the agency has not appealed the office's decision,  
37 or upon receipt of notification of the governor's decision upholding  
38 the office's decision, if an appeal has been filed under section 11 of  
39 this act.

1        NEW SECTION.    **Sec. 11.**    (1) To initiate a review of the office's  
2 notice of repeal under section 10 of this act, the agency shall appeal  
3 the office's decision by filing a written request for review with the  
4 governor's office within ten days of receipt of the notice of repeal  
5 and written decision provided for by section 10(4)(b) of this act. The  
6 request for review must include a complete statement as to why the  
7 agency believes the decision is incorrect and should be overruled.  
8 Along with the request for review, the agency shall submit the  
9 following:

10        (a) The office's written opinion detailing the reasons for repeal  
11 required by section 10(4)(b) of this act;

12        (b) Copies of all statements and other documents that were  
13 submitted to the office.

14        (2) The agency shall deliver a copy of its request for review to  
15 the office on the same day it is delivered to the governor's office.  
16 The office shall file its written response to the agency's request with  
17 the governor's office within ten days, and deliver a copy of its  
18 response to the agency on the same day it is delivered to the  
19 governor's office.

20        (3) The governor's office shall provide the requesting agency, the  
21 office, and the code reviser's office with a written decision within  
22 fifteen days of the receipt of the response by the office to the  
23 agency's request for review. Upon receipt of the decision, the code  
24 reviser shall publish in the Washington State Register the agency's  
25 request for review, the office's response thereto, and the decision of  
26 the governor's office.

27        (4) The governor's office may shorten the time requirements set by  
28 subsections (1) and (2) of this section for good cause.

29        (5) If the governor overrules the decision of the office, the  
30 office shall immediately transmit the rule to the office of the code  
31 reviser for filing.

32        (6) Upon overruling the decisions of the office, the governor shall  
33 transmit to both houses of the legislature a statement of the reasons  
34 for overruling the decisions of the office.

35        NEW SECTION.    **Sec. 12.**    Sections 1 through 11 of this act  
36 constitute a new chapter in Title 34 RCW.

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