
HOUSE BILL 1105

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54th Legislature

1995 Regular Session

By Representatives Reams, Rust, L. Thomas, Wolfe, R. Fisher, Chopp and Scott; by request of Governor Lowry

Read first time 01/12/95. Referred to Committee on Government Operations.

1 AN ACT Relating to the rule-making process; amending RCW 34.05.310,
2 34.05.313, 34.05.325, 34.05.330, 34.05.375, and 19.85.030; adding new
3 sections to chapter 34.05 RCW; adding a new section to chapter 19.85
4 RCW; and repealing RCW 34.05.355.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW
7 under the subchapter heading Part III to read as follows:

8 (1) Before adopting a rule described in subsection (4) of this
9 section, an agency shall:

10 (a) Clearly state in detail the general goals and specific
11 objectives of the statute that the rule implements and the specific
12 objectives the agency seeks to achieve;

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

17 (c) Determine that the probable benefits of the rule are greater
18 than its probable costs, taking into account both the qualitative and

1 quantitative benefits and costs and the specific directives of the
2 statute being implemented;

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

8 (e) Determine that the rule does not require those to whom it
9 applies to take an action that violates requirements of another federal
10 or state law;

11 (f) Coordinate the rule, to the maximum extent practicable, with
12 other federal, state, and local laws applicable to the same
13 circumstances and list, by citation, duplicative, inconsistent, or
14 conflicting laws;

15 (g) Determine that the rule does not impose more stringent
16 performance requirements on private entities than on public entities
17 unless required to do so by federal or state law;

18 (h) Determine if the rule differs from any applicable federal
19 regulation or statute and, if so, determine that the difference is
20 justified by the following:

21 (i) State statutory authority that explicitly allows the agency to
22 differ from federal standards; or

23 (ii) Substantial evidence that the difference is necessary to
24 achieve the specific objectives of the authorizing state statute;

25 (i) Describe how the agency will monitor and evaluate on an ongoing
26 basis whether the rule in fact achieves the general goals and specific
27 objectives stated under (a) of this subsection, including, to the
28 maximum extent practicable, the use of interim milestones to assess
29 progress and the use of objectively measurable outcomes;

30 (j) Describe how the agency will implement and enforce the rule and
31 encourage voluntary compliance with the rule;

32 (k) Describe which resources the agency intends to use to implement
33 the rule; and

34 (l) Document compliance with the requirements of this section in
35 the rule-making file.

36 (2) Before adopting a rule described in subsection (4) of this
37 section, an agency shall include in the rule-making file a written plan
38 that describes:

1 (a) The methods the agency will use in making a reasonable attempt
2 to notify those to whom the rule applies of the adoption of the rule
3 and how they may get more information on how to comply with the rule;
4 and

5 (b) How the agency will provide adequate sources of information and
6 technical assistance to those to whom the rule applies to assist them
7 in voluntarily complying with the rule.

8 (3) For rules implementing statutes enacted after the effective
9 date of this section, except emergency rules adopted pursuant to RCW
10 34.05.350, an agency may not rely solely on the statute's statement of
11 intent or purpose, or on the enabling provisions of the statute
12 establishing the agency, or on any combination of such provisions, for
13 its statutory authority to adopt the rule. An agency may use the
14 statement of intent or purpose or the agency enabling provisions to
15 interpret ambiguities in a statute's other provisions.

16 (4)(a) Subsections (1) and (2) of this section shall apply only to:

17 (i) Significant legislative rules of the departments of ecology,
18 labor and industries, and revenue, and the employment security
19 department, and to significant legislative rules of the department of
20 fish and wildlife implementing chapter 75.20 RCW; and

21 (ii) Legislative rules of any agency, if such rules are designated
22 as significant by the joint administrative rules review committee
23 pursuant to (d) of this subsection.

24 (b) Notwithstanding (a) of this subsection, subsections (1) and (2)
25 of this section shall not apply to:

26 (i) Emergency rules adopted pursuant to RCW 34.05.350;

27 (ii) Rules relating to internal governmental operations;

28 (iii) Rules adopting or incorporating by reference without material
29 change federal statutes or rules, rules of other Washington state
30 agencies, shoreline master programs, or, as referenced by Washington
31 state law, national consensus codes that generally establish industry
32 standards, as long as the material adopted or incorporated regulates
33 the same subject matter and conduct as the adopting or incorporating
34 rule;

35 (iv) Rules that simply correct typographical errors, make address
36 or name changes, clarify language without changing intent, or conform
37 language in the rule to mandated statutory changes or judicial
38 decisions, as long as the need for conformance is specific; or

1 (v) Rules that set or adjust fees or rates pursuant to legislative
2 standards.

3 (c) For purposes of this subsection:

4 (i) A "procedural rule" is a rule that establishes, alters, or
5 revokes (A) any procedure, practice, or requirement relating to any
6 agency hearings, or (B) any filing or related process requirement for
7 making application to an agency for a license.

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

11 (iii) A "legislative rule" includes a rule other than a procedural
12 or interpretive rule that (A) adopts substantive provisions of law
13 pursuant to delegated legislative authority, the violation of which
14 subjects a violator of such rule to a penalty or sanction, or (B)
15 establishes, alters, or revokes any qualification or standard for the
16 issuance, suspension, or revocation of a license.

17 (iv) A legislative rule is "significant" if it (A) adopts a new
18 policy or regulatory program, (B) establishes a new set of
19 qualifications or standards for the issuance, suspension, or revocation
20 of a license, (C) makes significant amendments to an existing policy or
21 regulatory program or existing qualification or standard for the
22 issuance, suspension, or revocation of a license that likely are to
23 generate controversy, (D) is designated as such by the agency, or (E)
24 is designated as such by the joint administrative rules review
25 committee pursuant to (d) of this subsection.

26 (d) At the time of filing a notice of proposed rule making pursuant
27 to RCW 34.05.320, an agency shall designate whether it considers the
28 rule contemplated to be developed a significant legislative rule and
29 shall so inform the joint administrative rules review committee of that
30 designation by providing to that committee a copy of that notice. The
31 joint administrative rules review committee by a majority vote within
32 thirty days of receipt of the notice may designate the contemplated
33 rule as significant and so inform the agency.

34 (e) An agency may voluntarily adopt a rule other than a significant
35 legislative rule under the factors listed in subsection (1) of this
36 section. Such a decision by the agency shall be included in the filing
37 of the notice of proposed rule making made pursuant to RCW 34.05.320.

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

1 with state agencies, and business, labor, and environmental
2 organizations, shall report to the governor and the legislature
3 regarding the effects of this section on the regulatory system in this
4 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 resulted in the increased
14 inappropriate use by the agencies of policy statements and guidelines
15 in place of rules;

16 (e) The extent to which this section has adversely affected the
17 capacity of agencies to fulfill their legislatively prescribed mission;

18 (f) The extent to which this section has improved the acceptability
19 of state rules to those regulated; and

20 (g) Any other information considered by the office of financial
21 management to be useful in evaluating the effect of this section.

22 (6) This section expires June 30, 2000.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW
24 under the subchapter heading Part III to read as follows:

25 (1) Not later than June 30th of each year, each agency shall submit
26 to the code reviser, according to procedures and time lines established
27 by the code reviser, rules that it determines should be repealed by the
28 expedited repeal procedures provided for in this section. An agency
29 shall file a copy of a preproposal notice of intent, as provided in RCW
30 34.05.310(1), that identifies the rule as one that is proposed for
31 expedited repeal.

32 (2) An agency may propose the expedited repeal of rules meeting one
33 or more of the following criteria:

34 (a) The statute on which the rule is based has been repealed and
35 has not been replaced by another statute providing statutory authority
36 for the rule;

37 (b) The statute on which the rule is based has been declared
38 unconstitutional by a court with jurisdiction, there is a final

1 judgment, and no statute has been enacted to replace the
2 unconstitutional statute;

3 (c) The rule is no longer necessary because of changed
4 circumstances; or

5 (d) Other rules of the agency or of another agency govern the same
6 activity as the rule, making the rule redundant.

7 (3) The agency shall also send a copy of the preproposal notice of
8 intent to any person who has requested notification of copies of
9 proposals for the expedited repeal of rules or of agency rule making.
10 The preproposal notice of intent shall include a statement that any
11 person who objects to the repeal of the rule must file a written
12 objection to the repeal within thirty days after the preproposal notice
13 of intent is published. The notice of intent shall also include an
14 explanation of the reasons the agency believes the expedited repeal of
15 the rule is appropriate.

16 (4) The code reviser shall publish all rules proposed for expedited
17 repeal in a separate section of a regular edition of the Washington
18 state register or in a special edition of the Washington state
19 register. The publication shall be not later than July 31st, or in the
20 first register published after that date.

21 (5) Any person may file a written objection to the expedited repeal
22 of a rule. The notice shall be filed with the agency rules coordinator
23 within thirty days after the notice of intent has been published in the
24 Washington state register. The written objection need not state any
25 reason for objecting to the expedited repeal of the rule.

26 (6) If no written objections to the expedited repeal of a rule are
27 filed with the agency within thirty days after the preproposal notice
28 of intent is published, the agency may enter an order repealing the
29 rule without further notice or an opportunity for a public hearing.
30 The order shall be published in the manner required by this chapter for
31 any other order of the agency adopting, amending, or repealing a rule.
32 If a written objection to the expedited repeal of the rule is filed
33 with the agency within thirty days after the notice of intent has been
34 published, the preproposal notice of intent published pursuant to this
35 section shall be considered a preproposal notice of intent for the
36 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
37 proceedings in accordance with the provisions of this chapter.

1 **Sec. 3.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to read
2 as follows:

3 (1) Unless an agency makes a determination pursuant to subsection
4 (3) of this section, to meet the intent of providing greater public
5 access to administrative rule making and to promote consensus among
6 interested parties, ((agencies)) it shall solicit comments from the
7 public on a subject of possible rule making before publication of a
8 notice of proposed rule adoption under RCW 34.05.320. The agency shall
9 prepare a statement of intent that:

10 (a) States the specific statutory authority for the new rule;

11 (b) Identifies the reasons the new rule is needed or the issue the
12 agency is exploring to determine if a new rule is needed;

13 (c) Identifies the goals of the new rule;

14 (d) Describes the process by which the rule will be developed,
15 including, but not limited to, negotiated rule making((~~7~~)) or pilot
16 rule making(~~(, or agency study)~~); and

17 (e) Specifies the process by which interested parties can
18 effectively participate in the formulation of the new rule.

19 The statement of intent shall be filed with the code reviser for
20 publication in the state register and shall be ((~~sent~~)) provided to any
21 party that has requested receipt of the agency's statements of intent.

22 (2) Agencies are encouraged to develop and use new procedures for
23 reaching agreement among interested parties before publication of
24 notice and the adoption hearing on a proposed rule. Examples of new
25 procedures include, but are not limited to:

26 (a) Negotiated rule making which ((~~includes:~~

27 *(i)* ~~Identifying individuals and organizations that have a~~
28 ~~recognized interest in or will be significantly affected by the~~
29 ~~adoption of the proposed rule;~~

30 *(ii)* ~~Soliciting participation by persons who are capable, willing,~~
31 ~~and appropriately authorized to enter into such negotiations;~~

32 *(iii)* ~~Assuring that participants fully recognize the consequences~~
33 ~~of not participating in the process, are committed to negotiate in good~~
34 ~~faith, and recognize the alternatives available to other parties;~~

35 *(iv)* ~~Establishing guidelines to encourage consideration of all~~
36 ~~pertinent issues, to set reasonable completion deadlines, and to~~
37 ~~provide fair and objective settlement of disputes that may arise;~~

1 ~~(v) Agreeing on a reasonable time period during which the agency~~
2 ~~will be bound to the rule resulting from the negotiations without~~
3 ~~substantive amendment; and~~

4 ~~(vi) Providing a mechanism by which one or more parties may~~
5 ~~withdraw from the process or the negotiations may be terminated if it~~
6 ~~appears that consensus cannot be reached on a draft rule that~~
7 ~~accommodates the needs of the agency, interested parties, and the~~
8 ~~general public and conforms to the legislative intent of the statute~~
9 ~~that the rule is intended to implement)) means a process by which~~
10 ~~representatives of an agency and of the interests who are affected by~~
11 ~~a subject of rule making seek to reach consensus on the terms of the~~
12 ~~proposed rule and on the process by which it is negotiated; and~~

13 (b) Pilot rule making which includes testing the ~~((draft of a~~
14 ~~proposed rule)) feasibility of complying with or administering new~~
15 ~~draft rules or draft revisions to adopted rules through the use of~~
16 ~~volunteer pilot ~~((study))~~ groups in various areas and circumstances, as~~
17 ~~provided in RCW 34.05.313.~~

18 (3)~~((a) An agency must make a determination whether negotiated~~
19 ~~rule making, pilot rule making, or another process for generating~~
20 ~~participation from interested parties prior to development of the rule~~
21 ~~is appropriate.~~

22 ~~(b) An agency must)) If the agency determines that an opportunity~~
23 ~~for interested parties to participate in the rule-making process before~~
24 ~~publication of the proposed rule is not necessary to achieve the~~
25 ~~objectives of subsection (1) of this section, not later than the date~~
26 ~~it publishes the proposed rule for comment pursuant to RCW 34.05.320 it~~
27 ~~shall include ~~((a written justification))~~ in the rule-making file ~~((if~~~~
28 ~~an opportunity for interested parties to participate in the rule-making~~
29 ~~process prior to publication of the proposed rule has not been~~
30 ~~provided)) a written statement explaining the reasons for not providing~~
31 ~~such an opportunity and shall mail the statement to any person who has~~
32 ~~requested copies of the agency's statements of intent.~~

33 (4) The provisions of this section do not apply to:

34 (a) The adoption of an emergency rule pursuant to RCW 34.05.350;

35 (b) The adoption of a rule relating to internal governmental
36 operations;

37 (c) The amendment of a rule that had adopted or incorporated by
38 reference without material change federal statutes or rules, rules of
39 other Washington state agencies, laws or rules of local governments, or

1 national consensus codes that generally establish industry standards,
2 and that simply revise the version of such adopted or incorporated
3 material; or

4 (d) The adoption of a rule that simply corrects typographical
5 errors, makes address or name changes, clarifies language without
6 changing intent, or conforms language in the rule to statutory changes
7 or judicial decisions.

8 **Sec. 4.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to read
9 as follows:

10 ~~((If,))~~ (1) During the development of a rule or after its adoption,
11 an agency ~~((determines that implementation may produce unreasonable~~
12 economic, procedural, or technical burdens, agencies are encouraged
13 to)) may develop methods for measuring or testing the feasibility of
14 ~~((compliance))~~ complying with or administering the rule~~((, including~~
15 the use of voluntary pilot study groups)) and for identifying simple,
16 efficient, and economical alternatives for achieving the goal of the
17 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot
18 project shall include public notice, participation by ~~((persons who~~
19 have a recognized interest in or are significantly affected by the
20 adoption of the proposed rule)) volunteers who are or will be subject
21 to the rule, a high level of involvement from agency management,
22 ~~((consensus on issues and procedures among participants in the pilot~~
23 group, assurance of fairness, and)) reasonable completion dates, and a
24 process by which one or more parties may withdraw from the process or
25 the process may be terminated ~~((if consensus cannot be reached on the~~
26 rule)). Volunteers who agree to test a rule and attempt to meet the
27 requirements of the draft rule, to report periodically to the proposing
28 agency on the extent of their ability to meet the requirements of the
29 draft rule, and to make recommendations for improving the draft rule
30 shall not be obligated to comply fully with the rule being tested nor
31 be subject to any enforcement action or other sanction for failing to
32 comply with the requirements of the draft rule.

33 (2) An agency conducting a pilot rule project authorized under
34 subsection (1) of this section may waive one or more provisions of
35 agency rules otherwise applicable to participants in such a pilot
36 project if the agency first determines that such a waiver is in the
37 public interest and necessary to conduct the project. Such a waiver

1 may be only for a stated period of time, not to exceed the duration of
2 the project.

3 (3) The findings of the pilot project should be widely shared and,
4 where appropriate, adopted as amendments to the rule.

5 (4) If an agency conducts a pilot rule project in lieu of meeting
6 the requirements of the regulatory fairness act, chapter 19.85 RCW, the
7 agency shall ensure the following conditions are met:

8 (a) If over ten small businesses are affected, there shall be at
9 least ten small businesses in the test group and at least one-half of
10 the volunteers participating in the pilot test group shall be small
11 businesses.

12 (b)(i) If there are at least one hundred businesses affected, the
13 participation by small businesses in the test group shall be as
14 follows:

15 (A) Not less than twenty percent of the small businesses must
16 employ twenty-six to fifty employees;

17 (B) Not less than twenty percent of the small businesses must
18 employ eleven to twenty-six employees, and

19 (C) Not less than twenty percent of the small businesses must
20 employ zero to ten employees.

21 (ii) If there do not exist a sufficient number of small businesses
22 in each size category set forth in (b)(i) of this subsection willing to
23 participate in the pilot project to meet the minimum requirements of
24 that subsection, then the agency must comply with this section to the
25 maximum extent practicable.

26 (c) The agency may not terminate the pilot project before
27 completion.

28 (d) Before filing the notice of proposed rule making pursuant to
29 RCW 34.05.320, the agency must prepare a report of the pilot rule
30 project that includes:

31 (i) A description of the difficulties small businesses had in
32 complying with the pilot rule;

33 (ii) A list of the recommended revisions to the rule to make
34 compliance with the rule easier or to reduce the cost of compliance
35 with the rule by the small businesses participating in the pilot rule
36 project; and

37 (iii) A written statement explaining the options it considered to
38 resolve each of the difficulties described and a statement explaining

1 its reasons for not including a recommendation by the pilot test group
2 to revise the rule.

3 **Sec. 5.** RCW 34.05.325 and 1994 c 249 s 7 are each amended to read
4 as follows:

5 (1) The agency shall make a good faith effort to insure that the
6 information on the proposed rule published pursuant to RCW 34.05.320
7 accurately reflects the rule to be presented and considered at the oral
8 hearing on the rule. Written comment about a proposed rule, including
9 supporting data, shall be accepted by an agency if received no later
10 than the time and date specified in the notice, or such later time and
11 date established at the rule-making hearing.

12 (2) The agency shall provide an opportunity for oral comment to be
13 received by the agency in a rule-making hearing.

14 (3) If the agency possesses equipment capable of receiving
15 telefacsimile transmissions or recorded telephonic communications, the
16 agency may provide in its notice of hearing filed under RCW 34.05.320
17 that interested parties may comment on proposed rules by these means.
18 If the agency chooses to receive comments by these means, the notice of
19 hearing shall provide instructions for making such comments, including,
20 but not limited to, appropriate telephone numbers to be used; the date
21 and time by which comments must be received; required methods to verify
22 the receipt and authenticity of the comments; and any limitations on
23 the number of pages for telefacsimile transmission comments and on the
24 minutes of tape recorded comments. The agency shall accept comments
25 received by these means for inclusion in the official record if the
26 comments are made in accordance with the agency's instructions.

27 (4) The agency head, a member of the agency head, or a presiding
28 officer designated by the agency head shall preside at the rule-making
29 hearing. Rule-making hearings shall be open to the public. The agency
30 shall cause a record to be made of the hearing by stenographic,
31 mechanical, or electronic means. Unless the agency head presides or is
32 present at substantially all the hearings, the presiding official shall
33 prepare a memorandum for consideration by the agency head, summarizing
34 the contents of the presentations made at the rule-making hearing. The
35 summarizing memorandum is a public document and shall be made available
36 to any person in accordance with chapter 42.17 RCW.

37 (5) Rule-making hearings are legislative in character and shall be
38 reasonably conducted by the presiding official to afford interested

1 persons the opportunity to present comment. Rule-making hearings may
2 be continued to a later time and place established on the record
3 without publication of further notice under RCW 34.05.320.

4 ~~(6) ((Before the adoption of a final rule))~~ (a) Except as otherwise
5 provided in (c) of this subsection, at the time it files an adopted
6 rule with the code reviser, or within thirty days thereafter, an agency
7 shall prepare a ((written summary of)) concise explanatory statement of
8 the rule:

9 (i) Identifying the agency's reasons for adopting the rule;

10 (ii) Describing differences between the text of the proposed rule
11 as published in the register and the text of the rule as adopted, other
12 than editing changes, stating the reasons for differences; and

13 (iii) Summarizing all comments received regarding the proposed
14 rule, and ((a substantive response)) responding to the comments by
15 category or subject matter, indicating how the final rule reflects
16 agency consideration of the comments, or why it fails to do so.

17 (b) The agency shall provide the ((written summary and response))
18 concise explanatory statement to any person upon request or from whom
19 the agency received comment.

20 (c) This subsection does not apply to rules described in RCW
21 34.05.310(4).

22 **Sec. 6.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
23 read as follows:

24 (1) Any person may petition an agency requesting the adoption,
25 amendment, or repeal of any rule. ((Each agency may)) The office of
26 financial management shall prescribe by rule the ((form)) format for
27 such petitions and the procedure for their submission, consideration,
28 and disposition and provide a standard form that may be used to
29 petition any agency. Within sixty days after submission of a petition,
30 the agency shall ((+1)) either (a) deny the petition in writing,
31 stating (i) its reasons for the denial, specifically addressing the
32 concerns raised by the petitioner, and, where appropriate, (ii) the
33 alternative means by which it will address the concerns raised by the
34 petitioner, or ((+2)) (b) initiate rule-making proceedings in
35 accordance with this chapter.

36 (2) If an agency denies a petition to repeal or amend a rule
37 submitted under subsection (1) of this section, the petitioner, within
38 thirty days of the denial, may appeal the denial to the governor. The

1 governor shall immediately file notice of the appeal with the code
2 reviser for publication in the Washington state register. Within
3 forty-five days after receiving the appeal, the governor shall either
4 (a) deny the petition in writing, stating (i) his or her reasons for
5 the denial, specifically addressing the concerns raised by the
6 petitioner, and, (ii) where appropriate, the alternative means by which
7 he or she will address the concerns raised by the petitioner; (b) for
8 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
9 making proceedings in accordance with this chapter; or (c) for agencies
10 not listed in RCW 43.17.010, recommend that the agency initiate rule-
11 making proceedings in accordance with this chapter. The governor's
12 response to the appeal shall be published in the Washington state
13 register and copies shall be submitted to the chief clerk of the house
14 of representatives and the secretary of the senate.

15 (3) In petitioning for repeal or amendment of a rule under this
16 section, a person is encouraged to address, among other concerns:

17 (a) Whether the rule is authorized;

18 (b) Whether the rule is needed;

19 (c) Whether the rule conflicts with or duplicates other federal,
20 state, or local laws;

21 (d) Whether alternatives to the rule exist that will serve the same
22 purpose at less cost;

23 (e) Whether the rule applies differently to public and private
24 entities;

25 (f) Whether the rule serves the purposes for which it was adopted;

26 (g) Whether the costs imposed by the rule are unreasonable; and

27 (h) Whether the rule is clearly and simply stated.

28 (4) The business assistance center and the office of financial
29 management shall coordinate efforts among agencies to inform the public
30 about the existence of this rules review process.

31 (5) The office of financial management shall initiate the rule
32 making required by subsection (1) of this section by September 1, 1995.

33 **Sec. 7.** RCW 34.05.375 and 1988 c 288 s 314 are each amended to
34 read as follows:

35 (1) No rule proposed after July 1, 1989, is valid unless it is
36 adopted in substantial compliance with RCW 34.05.310 through 34.05.395.
37 Inadvertent failure to mail notice of a proposed rule adoption to any
38 person as required by RCW 34.05.320(3) does not invalidate a rule.

1 (~~(No action based upon this section may be maintained to contest the~~
2 ~~validity of any rule unless it is commenced within two years after the~~
3 ~~effective date of the rule.)~~)

4 (2)(a) Except as otherwise provided in (b) of this subsection, an
5 action based upon this section to contest the validity of a rule shall
6 be commenced within two years after the effective date of the rule.

7 (b) An action based upon a claim that an agency failed to comply
8 with section 1 of this act shall be commenced within ninety days after
9 the effective date of the rule being contested. Nothing in this
10 subsection limits the authority of a court to review a rule under RCW
11 34.05.570(2).

12 NEW SECTION. Sec. 8. A new section is added to chapter 19.85 RCW
13 to read as follows:

14 (1) Unless an agency receives a written objection to the expedited
15 repeal of a rule, this chapter does not apply to a rule proposed for
16 expedited repeal pursuant to section 2 of this act. If an agency
17 receives a written objection to expedited repeal of the rule, this
18 chapter applies to the rule-making proceeding.

19 (2) This chapter does not apply to the adoption of a rule described
20 in RCW 34.05.310(4).

21 (3) An agency is not required to prepare a separate statement under
22 this chapter if it prepared an analysis under section 1(1) of this act
23 that makes the findings required and includes the mitigation required
24 by this chapter and designates that part of the analysis that meets the
25 requirements of this chapter.

26 Sec. 9. RCW 19.85.030 and 1994 c 249 s 11 are each amended to read
27 as follows:

28 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will
29 impose more than minor costs on more than twenty percent of all
30 industries, or more than ten percent of any one industry, the adopting
31 agency:

32 (a) Shall reduce the economic impact of the rule on small business
33 by doing one or more of the following when it is legal and feasible in
34 meeting the stated objective of the statutes which are the basis of the
35 proposed rule:

36 (i) Establish differing compliance or reporting requirements or
37 timetables for small businesses;

1 (ii) Clarify, consolidate, or simplify the compliance and reporting
2 requirements under the rule for small businesses;

3 (iii) Establish performance rather than design standards;

4 (iv) Exempt small businesses from any or all requirements of the
5 rule;

6 (v) Reduce or modify fine schedules for noncompliance; and

7 (vi) Other mitigation techniques;

8 (b) Before filing notice of a proposed rule, shall either:

9 (i) Prepare a small business economic impact statement in
10 accordance with RCW 19.85.040 and file notice of how the person can
11 obtain the statement with the code reviser as part of the notice
12 required under RCW 34.05.320; or

13 (ii) Complete the pilot rule process as defined by RCW 34.05.313
14 before filing the notice of a proposed rule.

15 (2) If requested to do so by a majority vote of the joint
16 administrative rules review committee within thirty days after notice
17 of the proposed rule is published in the state register, an agency
18 shall prepare a small business economic impact statement on the
19 proposed rule before adoption of the rule. Upon completion, an agency
20 shall provide a copy of the small business economic impact statement to
21 any person requesting it.

22 (3) An agency may request assistance from the business assistance
23 center in the preparation of the small business economic impact
24 statement.

25 (4) The business assistance center shall develop guidelines to
26 assist agencies in determining whether a proposed rule will impose more
27 than minor costs on businesses in an industry and therefore require
28 preparation of a small business economic impact statement. The
29 business assistance center may review an agency determination that a
30 proposed rule will not impose such costs, and shall advise the joint
31 administrative rules review committee on disputes involving agency
32 determinations under this section.

33 NEW SECTION. Sec. 10. RCW 34.05.355 and 1994 c 249 s 8 & 1988 c
34 288 s 310 are each repealed.

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