
SENATE BILL 5061

State of Washington

55th Legislature

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By Senators Hale, Anderson, Haugen, McCaslin, Goings, West, Johnson and Oke

Read first time 01/13/97. Referred to Committee on Government Operations.

1 AN ACT Relating to state and local government; and amending RCW
2 34.05.310, 34.05.328, and 42.30.020.

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

4 **Sec. 1.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to
5 read as follows:

6 (1) To meet the intent of providing greater public access to
7 administrative rule making and to promote consensus among interested
8 parties, agencies shall solicit comments from the public on a subject
9 of possible rule making before filing with the code reviser a notice of
10 proposed rule making under RCW 34.05.320. The agency shall prepare a
11 statement of inquiry that:

12 (a) Identifies the specific statute or statutes authorizing the
13 agency to adopt rules on this subject;

14 (b) Discusses why rules on this subject may be needed and what they
15 might accomplish;

16 (c) Identifies other federal and state agencies that regulate this
17 subject, and describes the process whereby the agency would coordinate
18 the contemplated rule with these agencies;

1 (d) Discusses the process by which the rule might be developed,
2 including, but not limited to, negotiated rule making, pilot rule
3 making, or agency study;

4 (e) Specifies the process by which interested parties can
5 effectively participate in the decision to adopt a new rule and
6 formulation of a proposed rule before its publication.

7 The statement of inquiry shall be filed with the code reviser for
8 publication in the state register at least thirty days before the date
9 the agency files notice of proposed rule making under RCW 34.05.320 and
10 shall be sent to any party that has requested receipt of the agency's
11 statements of inquiry.

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

16 (a) Negotiated rule making by which representatives of an agency
17 and of the interests that are affected by a subject of rule making,
18 including, where appropriate, county and city representatives, seek to
19 reach consensus on the terms of the proposed rule and on the process by
20 which it is negotiated; (~~and~~) or

21 (b) Pilot rule making which includes testing the feasibility of
22 complying with or administering draft new rules or draft amendments to
23 existing rules through the use of volunteer pilot groups in various
24 areas and circumstances, as provided in RCW 34.05.313 or as otherwise
25 provided by the agency.

26 (3)(a) An agency must make a determination whether negotiated rule
27 making, pilot rule making, or another process for generating
28 participation from interested parties prior to development of the rule
29 is appropriate.

30 (b) An agency must include a written justification in the rule-
31 making file if an opportunity for interested parties to participate in
32 the rule-making process prior to publication of the proposed rule has
33 not been provided.

34 (4) This section does not apply to:

35 (a) Emergency rules adopted under RCW 34.05.350;

36 (b) Rules relating only to internal governmental operations that
37 are not subject to violation by a nongovernment party;

38 (c) Rules adopting or incorporating by reference without material
39 change federal statutes or regulations, Washington state statutes,

1 rules of other Washington state agencies, shoreline master programs
2 other than those programs governing shorelines of state-wide
3 significance, or, as referenced by Washington state law, national
4 consensus codes that generally establish industry standards, if the
5 material adopted or incorporated regulates the same subject matter and
6 conduct as the adopting or incorporating rule;

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

10 (e) Rules the content of which is explicitly and specifically
11 dictated by statute;

12 (f) Rules that set or adjust fees or rates pursuant to legislative
13 standards, except rules relating to reimbursements under Title XVIII or
14 Title XIX of the Social Security Act; or

15 (g) Rules that adopt, amend, or repeal:

16 (i) A procedure, practice, or requirement relating to agency
17 hearings; or

18 (ii) A filing or related process requirement for applying to an
19 agency for a license or permit.

20 **Sec. 2.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
21 read as follows:

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

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

26 (b) Determine that the rule is needed to achieve the general goals
27 and specific objectives stated under (a) of this subsection, and
28 analyze alternatives to rule making and the consequences of not
29 adopting the rule;

30 (c) Determine that the probable benefits of the rule are greater
31 than its probable costs, taking into account both the qualitative and
32 quantitative benefits and costs and the specific directives of the
33 statute being implemented;

34 (d) Determine, after considering alternative versions of the rule
35 and the analysis required under (b) and (c) of this subsection, that
36 the rule being adopted is the least burdensome alternative for those
37 required to comply with it that will achieve the general goals and
38 specific objectives stated under (a) of this subsection;

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

4 (f) Determine that the rule does not impose more stringent
5 performance requirements on private entities than on public entities
6 unless required to do so by federal or state law;

7 (g) Determine if the rule differs from any federal regulation or
8 statute applicable to the same activity or subject matter and, if so,
9 determine that the difference is justified by the following:

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

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

15 (h) Coordinate the rule, to the maximum extent practicable, with
16 other federal, state, and local laws applicable to the same activity or
17 subject matter.

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

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

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

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

29 (c) Promote and assist voluntary compliance; and

30 (d) Evaluate whether the rule achieves the purpose for which it was
31 adopted, including, to the maximum extent practicable, the use of
32 interim milestones to assess progress and the use of objectively
33 measurable outcomes.

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

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

4 (b) Coordinate implementation and enforcement of the rule with the
5 other federal and state entities regulating the same activity or
6 subject matter by making every effort to do one or more of the
7 following:

8 (i) Deferring to the other entity;

9 (ii) Designating a lead agency; or

10 (iii) Entering into an agreement with the other entities specifying
11 how the agency and entities will coordinate implementation and
12 enforcement.

13 If the agency is unable to comply with this subsection (4)(b), the
14 agency shall report to the legislature pursuant to (c) of this
15 subsection;

16 (c) Report to the joint administrative rules review committee:

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

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

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

25 (i) Significant legislative rules of the departments of ecology,
26 labor and industries, health, revenue, social and health services, and
27 natural resources, the employment security department, the forest
28 practices board, the office of the insurance commissioner, and to the
29 legislative rules of the department of fish and wildlife implementing
30 chapter 75.20 RCW; and

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

36 (b) This section does not apply to:

37 (i) Emergency rules adopted under RCW 34.05.350;

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

1 (iii) Rules adopting or incorporating by reference without material
2 change federal statutes or regulations, Washington state statutes,
3 rules of other Washington state agencies, shoreline master programs
4 other than those programs governing shorelines of state-wide
5 significance, or, as referenced by Washington state law, national
6 consensus codes that generally establish industry standards, if the
7 material adopted or incorporated regulates the same subject matter and
8 conduct as the adopting or incorporating rule;

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

12 (v) Rules the content of which is explicitly and specifically
13 dictated by statute; or

14 (vi) Rules that set or adjust fees or rates pursuant to legislative
15 standards, except rules relating to reimbursements under Title XVIII or
16 Title XIX of the Social Security Act.

17 (c) For purposes of this subsection:

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

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

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

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

1 (6) By January 31, 1996, and by January 31st of each even-numbered
2 year thereafter, the office of financial management, after consulting
3 with state agencies, counties, and cities, and business, labor, and
4 environmental organizations, shall report to the governor and the
5 legislature regarding the effects of this section on the regulatory
6 system in this state. The report shall document:

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

10 (b) The costs incurred by state agencies in complying with this
11 section;

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

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

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

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

21 **Sec. 3.** RCW 42.30.020 and 1985 c 366 s 1 are each amended to read
22 as follows:

23 As used in this chapter unless the context indicates otherwise:

24 (1) "Public agency" means:

25 (a) Any state board, commission, committee, department, educational
26 institution, or other state agency which is created by or pursuant to
27 statute, other than courts and the legislature;

28 (b) Any county, city, school district, special purpose district, or
29 other municipal corporation or political subdivision of the state of
30 Washington;

31 (c) Any subagency of a public agency which is created by or
32 pursuant to statute, ordinance, or other legislative act, including but
33 not limited to planning commissions, library or park boards,
34 commissions, and agencies;

35 (d) Any policy group whose membership includes representatives of
36 publicly owned utilities formed by or pursuant to the laws of this
37 state when meeting together as or on behalf of participants who have

1 contracted for the output of generating plants being planned or built
2 by an operating agency.

3 (2) "Governing body" means the (~~((multimember board, commission,~~
4 ~~committee, council, or other policy or rule-making body of a public~~
5 ~~agency, or any committee thereof when the))~~ individual or body of
6 individuals in whom the ultimate legal authority of the public agency
7 is vested by any provisions of law. If the governing body is a body of
8 individuals, a majority of those individuals constitutes the governing
9 body. A committee or council that acts on behalf of the governing
10 body, conducts hearings, or takes testimony or public comment is
11 subject to this chapter.

12 (3) "Action" means the transaction of the official business of a
13 public agency by a governing body including but not limited to receipt
14 of public testimony, deliberations, discussions, considerations,
15 reviews, evaluations, and final actions. "Final action" means a
16 collective positive or negative decision, or an actual vote by a
17 majority of the members of a governing body when sitting as a body or
18 entity, upon a motion, proposal, resolution, order, or ordinance.

19 (4) "Meeting" means meetings at which action is taken.

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