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HOUSE BILL 1763

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Schindler, B. Chandler and McMorris

Read first time . Referred to Committee on .

1            AN ACT Relating to correction of obsolete internal references in  
2 the Administrative Procedure Act; and amending RCW 34.05.210,  
3 34.05.328, 34.05.350, and 34.05.660.

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

5            **Sec. 1.** RCW 34.05.210 and 1988 c 288 s 201 are each amended to  
6 read as follows:

7            (1) The code reviser shall cause the Washington Administrative Code  
8 to be compiled, indexed by subject, and published. All current,  
9 permanently effective rules of each agency shall be published in the  
10 Washington Administrative Code. Compilations shall be supplemented or  
11 revised as often as necessary and at least annually in a form  
12 compatible with the main compilation.

13            (2) Subject to the provisions of this chapter, the code reviser  
14 shall prescribe a uniform numbering system, form, and style for all  
15 proposed and adopted rules.

16            (3) The code reviser shall publish a register setting forth the  
17 text of all rules filed during the appropriate register publication  
18 period.

1 (4) The code reviser may omit from the register or the compilation,  
2 rules that would be unduly cumbersome, expensive, or otherwise  
3 inexpedient to publish, if such rules are made available in printed or  
4 processed form on application to the adopting agency, and if the  
5 register or compilation contains a notice stating the general subject  
6 matter of the rules so omitted and stating how copies thereof may be  
7 obtained.

8 (5) The code reviser may edit and revise rules for publication,  
9 codification, and compilation, without changing the meaning of any such  
10 rule.

11 (6) When a rule, in whole or in part, is declared invalid and  
12 unconstitutional by a court of final appeal, the adopting agency shall  
13 give notice to that effect in the register. With the consent of the  
14 attorney general, the code reviser may remove obsolete rules or parts  
15 of rules from the Washington Administrative Code when:

16 (a) The rules are declared unconstitutional by a court of final  
17 appeal; or

18 (b) The adopting agency ceases to exist and the rules are not  
19 transferred by statute to a successor agency.

20 (7) Registers and compilations shall be made available, in written  
21 form to (a) state elected officials whose offices are created by  
22 Article II or III of the state Constitution or by RCW 48.02.010, upon  
23 request, (b) to the secretary of the senate and the chief clerk of the  
24 house for committee use, as required, but not to exceed the number of  
25 standing committees in each body, (c) to county boards of law library  
26 trustees and to the Olympia representatives of the Associated Press and  
27 the United Press International without request, free of charge, and (d)  
28 to other persons at a price fixed by the code reviser.

29 (8) The board of law library trustees of each county shall keep and  
30 maintain a complete and current set of registers and compilations for  
31 use and inspection as provided in chapter 27.24 RCW (~~(27.24.060)~~).

32 (9) Judicial notice shall be taken of rules filed and published as  
33 provided in RCW 34.05.380 and this section.

34 **Sec. 2.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read  
35 as follows:

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

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

3 (b) Determine that the rule is needed to achieve the general goals  
4 and specific objectives stated under (a) of this subsection, and  
5 analyze alternatives to rule making and the consequences of not  
6 adopting the rule;

7 (c) Determine that the probable benefits of the rule are greater  
8 than its probable costs, taking into account both the qualitative and  
9 quantitative benefits and costs and the specific directives of the  
10 statute being implemented;

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

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

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

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

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

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

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

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

37 (3) Before adopting rules described in subsection (5) of this  
38 section, an agency shall place in the rule-making file a rule

1 implementation plan for rules filed under each adopting order. The  
2 plan shall describe how the agency intends to:

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

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

6 (c) Promote and assist voluntary compliance; and

7 (d) Evaluate whether the rule achieves the purpose for which it was  
8 adopted, including, to the maximum extent practicable, the use of  
9 interim milestones to assess progress and the use of objectively  
10 measurable outcomes.

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

15 (a) Provide to the (~~business assistance center~~) department of  
16 community, trade, and economic development a list citing by reference  
17 the other federal and state laws that regulate the same activity or  
18 subject matter;

19 (b) Coordinate implementation and enforcement of the rule with the  
20 other federal and state entities regulating the same activity or  
21 subject matter by making every effort to do one or more of the  
22 following:

23 (i) Deferring to the other entity;

24 (ii) Designating a lead agency; or

25 (iii) Entering into an agreement with the other entities specifying  
26 how the agency and entities will coordinate implementation and  
27 enforcement.

28 If the agency is unable to comply with this subsection (4)(b), the  
29 agency shall report to the legislature pursuant to (c) of this  
30 subsection;

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

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

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

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

1 (i) Significant legislative rules of the departments of ecology,  
2 labor and industries, health, revenue, social and health services, and  
3 natural resources, the employment security department, the forest  
4 practices board, the office of the insurance commissioner, and to the  
5 legislative rules of the department of fish and wildlife implementing  
6 chapter 75.20 RCW; and

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

12 (b) This section does not apply to:

13 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

29 (vi) Rules that set or adjust fees or rates pursuant to legislative  
30 standards; or

31 (vii) Rules of the department of social and health services  
32 relating only to client medical or financial eligibility and rules  
33 concerning liability for care of dependents.

34 (c) For purposes of this subsection:

35 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
36 (A) any procedure, practice, or requirement relating to any agency  
37 hearings; (B) any filing or related process requirement for making  
38 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, after consulting  
20 with state agencies, counties, and cities, and business, labor, and  
21 environmental organizations, shall report to the governor and the  
22 legislature regarding the effects of this section on the regulatory  
23 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. 3.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read  
2 as follows:

3       (1) If an agency for good cause finds:

4       (a) That immediate adoption, amendment, or repeal of a rule is  
5 necessary for the preservation of the public health, safety, or general  
6 welfare, and that observing the time requirements of notice and  
7 opportunity to comment upon adoption of a permanent rule would be  
8 contrary to the public interest; or

9       (b) That state or federal law or federal rule or a federal deadline  
10 for state receipt of federal funds requires immediate adoption of a  
11 rule,

12 the agency may dispense with those requirements and adopt, amend, or  
13 repeal the rule on an emergency basis. The agency's finding and a  
14 concise statement of the reasons for its finding shall be incorporated  
15 in the order for adoption of the emergency rule or amendment filed with  
16 the office of the code reviser under RCW 34.05.380 and with the rules  
17 review committee.

18       (2) An emergency rule adopted under this section takes effect upon  
19 filing with the code reviser, unless a later date is specified in the  
20 order of adoption, and may not remain in effect for longer than one  
21 hundred twenty days after filing. Identical or substantially similar  
22 emergency rules may not be adopted in sequence unless conditions have  
23 changed or the agency has filed notice of its intent to adopt the rule  
24 as a permanent rule, and is actively undertaking the appropriate  
25 procedures to adopt the rule as a permanent rule. This section does  
26 not relieve any agency from compliance with any law requiring that its  
27 permanent rules be approved by designated persons or bodies before they  
28 become effective.

29       (3) Within seven days after the rule is adopted, any person may  
30 petition the governor requesting the immediate repeal of a rule adopted  
31 on an emergency basis by any department listed in RCW 43.17.010.  
32 Within seven days after submission of the petition, the governor shall  
33 either deny the petition in writing, stating his or her reasons for the  
34 denial, or order the immediate repeal of the rule. In ruling on the  
35 petition, the governor shall consider only whether the conditions in  
36 subsection (1) of this section were met such that adoption of the rule  
37 on an emergency basis was necessary. If the governor orders the repeal  
38 of the emergency rule, any sanction imposed based on that rule is void.

1 This subsection shall not be construed to prohibit adoption of any rule  
2 as a permanent rule.

3 ~~((4) In adopting an emergency rule, the agency shall comply with  
4 section 4 of this act or provide a written explanation for its failure  
5 to do so.))~~

6 **Sec. 4.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
7 read as follows:

8 It is the express policy of the legislature that establishment of  
9 procedures for review of administrative rules by the legislature and  
10 the notice of objection required by RCW 34.05.630(~~(+2)~~) (3) and  
11 34.05.640(2) in no way serves to establish a presumption as to the  
12 legality or constitutionality of a rule in any subsequent judicial  
13 proceedings interpreting such rules.

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