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By Representatives Roach, Quall, Bush, G. Chandler, Hatfield, McMorris, Grant, Kessler and Woods

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1 AN ACT Relating to rule-making procedures; and amending RCW
2 34.05.310, 34.05.320, and 34.05.328.

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

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) Statements issued by an agency under this section and filed
35 with the code reviser are regarded as withdrawn if the agency has not
36 proposed a rule as provided by RCW 34.05.320 within one hundred eighty
37 days after publication of the statement in the register.

38 (5) This section does not apply to:

39 (a) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

16 (f) Rules that set or adjust fees or rates pursuant to legislative
17 standards; or

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

19 (i) A procedure, practice, or requirement relating to agency
20 hearings; or

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

23 **Sec. 2.** RCW 34.05.320 and 1995 c 403 s 302 are each amended to
24 read as follows:

25 (1) At least twenty days before the rule-making hearing at which
26 the agency receives public comment regarding adoption of a rule, the
27 agency shall cause notice of the hearing to be published in the state
28 register. The publication constitutes the proposal of a rule. The
29 notice shall include all of the following:

30 (a) A title, a description of the rule's purpose, and any other
31 information which may be of assistance in identifying the rule or its
32 purpose;

33 (b) Citations of the statutory authority for adopting the rule and
34 the specific statute the rule is intended to implement;

35 (c) A summary of the rule and a statement of the reasons supporting
36 the proposed action;

1 (d) The agency personnel, with their office location and telephone
2 number, who are responsible for the drafting, implementation, and
3 enforcement of the rule;

4 (e) The name of the person or organization, whether private,
5 public, or governmental, proposing the rule;

6 (f) Agency comments or recommendations, if any, regarding statutory
7 language, implementation, enforcement, and fiscal matters pertaining to
8 the rule;

9 (g) Whether the rule is necessary as the result of federal law or
10 federal or state court action, and if so, a copy of such law or court
11 decision shall be attached to the purpose statement;

12 (h) When, where, and how persons may present their views on the
13 proposed rule;

14 (i) The date on which the agency intends to adopt the rule;

15 (j) A short explanation of the rule, its purpose, and anticipated
16 effects, including in the case of a proposal that would modify existing
17 rules, a short description of the changes the proposal would make;

18 (k) A copy of the small business economic impact statement prepared
19 under chapter 19.85 RCW, or an explanation for why the agency did not
20 prepare the statement; and

21 (l) A statement indicating whether RCW 34.05.328 applies to the
22 rule adoption, and if that section is applicable, a preliminary
23 analysis of the probable benefits of the rule versus its probable
24 costs, taking into account both the qualitative and quantitative
25 benefits and costs and the consequences of not adopting the proposed
26 rule.

27 (2) Upon filing notice of the proposed rule with the code reviser,
28 the adopting agency shall have copies of the notice on file and
29 available for public inspection and shall forward three copies of the
30 notice to the rules review committee.

31 (3) No later than three days after its publication in the state
32 register, the agency shall cause a copy of the notice of proposed rule
33 adoption to be mailed to each person, city, and county that has made a
34 request to the agency for a mailed copy of such notices. An agency may
35 charge for the actual cost of providing a requesting party mailed
36 copies of these notices.

37 (4) In addition to the notice required by subsections (1) and (2)
38 of this section, an institution of higher education shall cause the

1 notice to be published in the campus or standard newspaper of the
2 institution at least seven days before the rule-making hearing.

3 **Sec. 3.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
4 as follows:

5 (1) Before (~~adopting~~) proposing a rule described in subsection
6 (5) of this section, an agency shall:

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

9 (b) Determine that the rule is needed to achieve the general goals
10 and specific objectives stated under (a) of this subsection, and
11 analyze alternatives to rule making and the consequences of not
12 adopting the rule;

13 (c) Determine that the probable benefits of the rule are greater
14 than its probable costs, taking into account both the qualitative and
15 quantitative benefits and costs and the specific directives of the
16 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

12 (c) Promote and assist voluntary compliance; and

13 (d) Evaluate whether the rule achieves the purpose for which it was
14 adopted, including, to the maximum extent practicable, the use of
15 interim milestones to assess progress and the use of objectively
16 measurable outcomes.

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

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

25 (b) Coordinate implementation and enforcement of the rule with the
26 other federal and state entities regulating the same activity or
27 subject matter by making every effort to do one or more of the
28 following:

29 (i) Deferring to the other entity;

30 (ii) Designating a lead agency; or

31 (iii) Entering into an agreement with the other entities specifying
32 how the agency and entities will coordinate implementation and
33 enforcement.

34 If the agency is unable to comply with this subsection (4)(b), the
35 agency shall report to the legislature pursuant to (c) of this
36 subsection;

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

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

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

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

9 (i) Significant legislative rules of the departments of ecology,
10 labor and industries, health, revenue, social and health services, and
11 natural resources, the employment security department, the forest
12 practices board, the office of the insurance commissioner, and to the
13 legislative rules of the department of fish and wildlife implementing
14 chapter ((75.20)) 77.55 RCW; and

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

20 (b) This section does not apply to:

21 (i) Emergency rules adopted under RCW 34.05.350;

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

24 (iii) Rules adopting or incorporating by reference without material
25 change federal statutes or regulations, Washington state statutes,
26 rules of other Washington state agencies, shoreline master programs
27 other than those programs governing shorelines of statewide
28 significance, or, as referenced by Washington state law, national
29 consensus codes that generally establish industry standards, if the
30 material adopted or incorporated regulates the same subject matter and
31 conduct as the adopting or incorporating rule;

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

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

37 (vi) Rules that set or adjust fees or rates pursuant to legislative
38 standards; or

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

4 (c) For purposes of this subsection:

5 (i) A "procedural rule" is a rule that adopts, amends, or repeals
6 (A) any procedure, practice, or requirement relating to any agency
7 hearings; (B) any filing or related process requirement for making
8 application to an agency for a license or permit; or (C) any policy
9 statement pertaining to the consistent internal operations of an
10 agency.

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

14 (iii) A "significant legislative rule" is a rule other than a
15 procedural or interpretive rule that (A) adopts substantive provisions
16 of law pursuant to delegated legislative authority, the violation of
17 which subjects a violator of such rule to a penalty or sanction; (B)
18 establishes, alters, or revokes any qualification or standard for the
19 issuance, suspension, or revocation of a license or permit; or (C)
20 adopts a new, or makes significant amendments to, a policy or
21 regulatory program.

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

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

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

35 (b) The costs incurred by state agencies in complying with this
36 section;

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

1 (d) The extent to which this section has adversely affected the
2 capacity of agencies to fulfill their legislatively prescribed mission;
3 (e) The extent to which this section has improved the acceptability
4 of state rules to those regulated; and
5 (f) Any other information considered by the office of financial
6 management to be useful in evaluating the effect of this section.

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