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ENGROSSED SENATE BILL 6564

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State of Washington 57th Legislature

2002 Regular Session

By Senators Hale, Rasmussen, Hewitt, Haugen, Oke, T. Sheldon, Honeyford, Morton, Sheahan, Zarelli, Deccio, Rossi, Horn, Benton, Hochstatter, Swecker, McCaslin, West and Parlette

Read first time 01/21/2002. Referred to Committee on State & Local Government.

1 AN ACT Relating to significant legislative rules; amending RCW  
2 34.05.328; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The Constitution of the state of Washington  
5 vests the power to make laws in the legislature. In order for the  
6 legislature to properly carry out its responsibility for establishing  
7 new laws, this act revises rule-making requirements to assure that the  
8 legislature can carefully review rules that impose significant  
9 requirements on citizens before the rules take effect.

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

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

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

16 (b) Determine that the rule is needed to achieve the general goals  
17 and specific objectives stated under (a) of this subsection, and

1 analyze alternatives to rule making and the consequences of not  
2 adopting the rule;

3 (c) Determine that the probable benefits of the rule are greater  
4 than its probable costs, taking into account both the qualitative and  
5 quantitative benefits and costs and the specific directives of the  
6 statute being implemented;

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

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

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

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

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

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

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

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

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

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

1 (c) Promote and assist voluntary compliance; and  
2 (d) Evaluate whether the rule achieves the purpose for which it was  
3 adopted, including, to the maximum extent practicable, the use of  
4 interim milestones to assess progress and the use of objectively  
5 measurable outcomes.

6 (4) The adoption of rules described in subsection (6) of this  
7 section must be made before December 1st of any year, and the rules may  
8 not take effect before the end of the regular legislative session in  
9 the next year.

10 (5) After adopting a rule described in subsection ~~((5))~~ (6) of  
11 this section regulating the same activity or subject matter as another  
12 provision of federal or state law, an agency shall do all of the  
13 following:

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

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

22 (i) Deferring to the other entity;

23 (ii) Designating a lead agency; or

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

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

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

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

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

37 ~~((5))~~ (6)(a) Except as provided in (b) of this subsection, this  
38 section 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)) 77.55 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 statewide  
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))~~ (7) By January 31, 1996, and by January 31st of each even-  
19 numbered year thereafter, the office of financial management, after  
20 consulting with state agencies, counties, and cities, and business,  
21 labor, and environmental organizations, shall report to the governor  
22 and the legislature regarding the effects of this section on the  
23 regulatory 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.

38 (8) Within two hundred days of the effective date of a rule of the  
39 type described in subsection (6) of this section, an agency shall make

1 a good faith effort to notify businesses affected by the rule of the  
2 requirements of the rule and how to obtain technical assistance to  
3 comply. For purposes of this section, "good faith" means: (a) The  
4 agency at least notifies businesses in the standard industrial  
5 classifications or their successor identified in the rule-making file  
6 as businesses affected by the rule that are registered with the  
7 department of revenue; or (b) for rules imposing additional  
8 requirements on persons or firms licensed, registered, or operating  
9 under a permit, the agency notifies those persons or firms holding the  
10 license, registration, or permit. The notification shall announce the  
11 rule change, briefly summarize the rule change, and include a contact  
12 for more information. Notification may be by individual notice, agency  
13 bulletins or newsletters, or any other means that will reasonably  
14 inform affected businesses. Failure to notify a specific business  
15 under this section does not invalidate a rule or waive the requirement  
16 to comply with the rule.

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