CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5256

Chapter 165, Laws of 2003

58th Legislature
2003 Regular Session

RULE-MAKING PROCEDURES

EFFECTIVE DATE: 7/27/03

Passed by the Senate February 11, 2003
YEAS 48  NAYS 1

BRAD OWEN
President of the Senate

Passed by the House April 14, 2003
YEAS 93  NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

Approved May 9, 2003.

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SENATE BILL 5256 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.
Secretary

FILED
May 9, 2003 - 3:21 p.m.

GARY LOCKE
Secretary of State
State of Washington
ENGROSSED SENATE BILL 5256

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators Roach, Doumit, Hale, Kastama, Mulliken, T. Sheldon, Haugen, Hewitt, Stevens, Zarelli, Parlette, Horn, Rossi and Johnson

Read first time 01/20/2003. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to rule-making procedures; and amending RCW
2 34.05.320, 34.05.328, and 50.13.060.

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

Sec. 1. RCW 34.05.320 and 1995 c 403 s 302 are each amended to
read as follows:

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

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

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

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

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(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;
(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;
(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;
(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement;
(h) When, where, and how persons may present their views on the proposed rule;
(i) The date on which the agency intends to adopt the rule;
(j) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make;
(k) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement; ((and))
(l) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and
(m) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.
(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection and shall forward three copies of the notice to the rules review committee.
(3) No later than three days after its publication in the state register, the agency shall cause a copy of the notice of proposed rule adoption to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.
(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the
notice to be published in the campus or standard newspaper of the
institution at least seven days before the rule-making hearing.

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

(1) Before adopting a rule described in subsection (5) of this
section, an agency shall:
(a) Clearly state in detail the general goals and specific
objectives of the statute that the rule implements;
(b) Determine that the rule is needed to achieve the general goals
and specific objectives stated under (a) of this subsection, and
analyze alternatives to rule making and the consequences of not
adopting the rule;
(c) **Provide notification in the notice of proposed rule making**
under RCW 34.05.320 that a preliminary cost-benefit analysis is
available. The preliminary cost-benefit analysis must fulfill the
requirements of the cost-benefit analysis under (d) of this subsection.
If the agency files a supplemental notice under RCW 34.05.340, the
supplemental notice shall include notification that a revised
preliminary cost-benefit analysis is available. A final cost-benefit
analysis shall be available when the rule is adopted under RCW
34.05.360;
(d) Determine that the probable benefits of the rule are greater
than its probable costs, taking into account both the qualitative and
quantitative benefits and costs and the specific directives of the
statute being implemented;
((d)) (e) Determine, after considering alternative versions of
the rule and the analysis required under (b) ((and)) (c), and (d) of
this subsection, that the rule being adopted is the least burdensome
alternative for those required to comply with it that will achieve the
general goals and specific objectives stated under (a) of this
subsection;
((e)) (f) Determine that the rule does not require those to whom
it applies to take an action that violates requirements of another
federal or state law;
((f)) (g) Determine that the rule does not impose more stringent
performance requirements on private entities than on public entities
unless required to do so by federal or state law;
Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

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

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

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

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

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

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

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

(c) Promote and assist voluntary compliance; and

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

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

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

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or
subject matter by making every effort to do one or more of the
following:
  (i) Deferring to the other entity;
  (ii) Designating a lead agency; or
  (iii) Entering into an agreement with the other entities specifying
how the agency and entities will coordinate implementation and
enforcement.

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

(c) Report to the joint administrative rules review committee:
  (i) The existence of any overlap or duplication of other federal or
state laws, any differences from federal law, and any known overlap,
duplication, or conflict with local laws; and
  (ii) Make recommendations for any legislation that may be necessary
to eliminate or mitigate any adverse effects of such overlap,
duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section
applies to:
  (i) Significant legislative rules of the departments of ecology,
labor and industries, health, revenue, social and health services, and
natural resources, the employment security department, the forest
practices board, the office of the insurance commissioner, and to the
legislative rules of the department of fish and wildlife implementing
chapter ((75.20)) 77.55 RCW; and
  (ii) Any rule of any agency, if this section is voluntarily made
applicable to the rule by the agency, or is made applicable to the rule
by a majority vote of the joint administrative rules review committee
within forty-five days of receiving the notice of proposed rule making
under RCW 34.05.320.

(b) This section does not apply to:
  (i) Emergency rules adopted under RCW 34.05.350;
  (ii) Rules relating only to internal governmental operations that
are not subject to violation by a nongovernment party;
  (iii) Rules adopting or incorporating by reference without material
change federal statutes or regulations, Washington state statutes,
rules of other Washington state agencies, shoreline master programs
other than those programs governing shorelines of statewide
significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

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

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

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

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

(c) For purposes of this subsection:

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

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

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

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

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

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;
(b) The costs incurred by state agencies in complying with this section;
(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;
(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;
(e) The extent to which this section has improved the acceptability of state rules to those regulated; and
(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

Sec. 3. RCW 50.13.060 and 2000 c 134 s 2 are each amended to read as follows:
(1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:
(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and
(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and
(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner
which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such
information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for
statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under RCW 42.17.310.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of work force programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop
partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under RCW 42.17.310; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into
the employment security department administrative contingency fund.
The attorney general may recover reasonable attorneys' fees for any
action brought to enforce this section.

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