CERTIFICATION OF ENROLLMENT

HOUSE BILL 1178

Chapter 149, Laws of 2011

62nd Legislature
2011 Regular Session

OFFICE OF REGULATORY ASSISTANCE

EFFECTIVE DATE: 06/29/11

Passed by the House April 14, 2011
Yeas 71  Nays 26

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 6, 2011
Yeas 43  Nays 5

BRAD OWEN
President of the Senate

Approved April 22, 2011, 1:50 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 1178 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
April 22, 2011

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to the office of regulatory assistance; amending RCW 34.05.328 and 43.42.010; repealing RCW 43.131.401 and 43.131.402; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 34.05.328 and 2010 c 112 s 15 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;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (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;

(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;

(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;

(h) 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 (h) 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) 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)(a), the agency shall report to the legislature pursuant to (b) of this subsection;

   (b) 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 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;
(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; or
(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(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 regulatory assistance, 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. 2. RCW 43.42.010 and 2009 c 97 s 4 are each amended to read as follows:

(1) The office of regulatory assistance is created in the office of financial management and ((shall)) must be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor ((shall)) must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office ((shall)) must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office ((shall)) must provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:
(a) A performance report including:

(i) Information regarding use of the office's voluntary cost-
7 reimbursement services as provided in RCW 43.42.070;
(ii) The number and type of projects where the office provided
5 services and the resolution provided by the office on any conflicts
6 that arose on such projects; (and)
(iii) The agencies involved on specific projects;
(iv) Specific information on any difficulty encountered in
3 provision of services, implementation of programs or processes, or use
4 of tools; and
(v) Trend reporting that allows comparisons between statements of
goals and performance targets and the achievement of those goals and
targets; and

(b) Recommendations on system improvements including
recommended recommendations regarding:

(i) Measurement of overall system performance; (and)
(ii) Changes needed to make cost reimbursement, a fully coordinated
8 permit process, multiagency permitting teams, and other processes
effective; and
(iii) Resolving any conflicts or inconsistencies arising from
2 differing statutory or regulatory authorities, roles and missions of
agencies, timing and sequencing of permitting and procedural
3 requirements as identified by the office in the course of its duties.

NEW SECTION. Sec. 3. The following acts or parts of acts are each
2 repealed:
(1) RCW 43.131.401 (Office of regulatory assistance--Termination)
and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13; and
(2) RCW 43.131.402 (Office of regulatory assistance--Repeal) and
2010 c 162 s 7.

NEW SECTION. Sec. 4. This act is necessary for the immediate
3 preservation of the public peace, health, or safety, or support of the
state government and its existing public institutions, and takes effect
June 29, 2011.
Passed by the House April 14, 2011.
Passed by the Senate April 6, 2011.
Approved by the Governor April 22, 2011.
Filed in Office of Secretary of State April 22, 2011.