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**SUBSTITUTE SENATE BILL 5568**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Jesernig, Amondson, Bauer, Roach, Moore, McDonald, Owen, Skratek, Snyder, Hargrove, M. Rasmussen, West, Hochstatter, Loveland, Vognild, Pelz, McAuliffe, Winsley, Deccio, Anderson, Erwin, Barr, Drew, Oke, Sheldon, Cantu, Bluechel, von Reichbauer and Quigley)

Read first time 03/02/93.

1 AN ACT Relating to administrative rule making; amending RCW  
2 34.05.380, 34.05.620, 34.05.630, 34.05.640, and 34.05.370; adding new  
3 sections to chapter 34.05 RCW; and repealing RCW 34.05.660, 34.05.670,  
4 and 34.05.680.

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

6 **Sec. 1.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to read  
7 as follows:

8 (1) Each agency shall file in the office of the code reviser a  
9 certified copy of all rules it adopts, except for rules contained in  
10 tariffs filed with or published by the Washington utilities and  
11 transportation commission. The code reviser shall place upon each rule  
12 a notation of the time and date of filing and shall keep a permanent  
13 register of filed rules open to public inspection. In filing a rule,  
14 each agency shall use the standard form prescribed for this purpose by  
15 the code reviser.

16 (2) Emergency rules adopted under RCW 34.05.350 become effective  
17 upon filing unless a later date is specified in the order of adoption.  
18 All other rules become effective upon the expiration of thirty days

1 after the date of filing, unless a later date is required by statute or  
2 specified in the order of adoption.

3 (3) A rule may become effective immediately upon its filing with  
4 the code reviser or on any subsequent date earlier than that  
5 established by subsection (2) of this section, if the agency  
6 establishes that effective date in the adopting order and finds that:

7 (a) Such action is required by the state or federal Constitution,  
8 a statute, or court order;

9 (b) The rule only delays the effective date of another rule that is  
10 not yet effective; or

11 (c) The earlier effective date is necessary because of imminent  
12 peril to the public health, safety, or welfare.

13 The finding and a brief statement of the reasons therefor required  
14 by this subsection shall be made a part of the order adopting the rule.

15 (4) With respect to a rule made effective pursuant to subsection  
16 (3) of this section, each agency shall make reasonable efforts to make  
17 the effective date known to persons who may be affected by it.

18 (5) No rule, the violation of which subjects a person to a penalty  
19 or administrative sanction, adopted by any of the following agencies,  
20 is effective for more than five years after its adoption: Department  
21 of ecology, employment security department, department of labor and  
22 industries, department of revenue, department of licensing, or  
23 department of health. A rule made ineffective under this subsection  
24 may be readopted according to the procedures established in this  
25 chapter.

26 NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW  
27 to read as follows:

28 No rule may be effective for more than five years after the  
29 effective date of this act unless readopted according to the procedures  
30 established in this chapter if:

31 (1) The rule is in effect on the effective date of this act;

32 (2) The violation of the rule subjects a person to a penalty or  
33 administrative sanction; and

34 (3) The rule was adopted by any of the following agencies:  
35 Department of ecology, employment security department, department of  
36 labor and industries, department of revenue, department of licensing,  
37 or department of health.

1       **Sec. 3.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to  
2 read as follows:

3       Whenever a majority of the members of the rules review committee  
4 determines that a proposed rule is not within the intent of the  
5 legislature as expressed in the statute which the rule implements, or  
6 that an agency may not be adopting a proposed rule in accordance with  
7 all applicable provisions of law, including section 8 of this act and  
8 chapter 19.85 RCW, the committee shall give the affected agency written  
9 notice of its decision. The notice shall be given at least seven days  
10 prior to any hearing scheduled for consideration of or adoption of the  
11 proposed rule pursuant to RCW 34.05.320. The notice shall include a  
12 statement of the review committee's findings and the reasons therefor.  
13 When the agency holds a hearing on the proposed rule, the agency shall  
14 consider the review committee's decision.

15       **Sec. 4.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to  
16 read as follows:

17       (1) All rules required to be filed pursuant to RCW 34.05.380, and  
18 emergency rules adopted pursuant to RCW 34.05.350, are subject to  
19 selective review by the legislature.

20       (2) The rules review committee may review an agency's use of policy  
21 statements, guidelines, and issuances that are of general  
22 applicability, or their equivalents to determine whether or not an  
23 agency has failed to adopt a rule.

24       (3) If the rules review committee finds by a majority vote of its  
25 members: (a) That an existing rule is not within the intent of the  
26 legislature as expressed by the statute which the rule implements, (b)  
27 that the rule has not been adopted in accordance with all applicable  
28 provisions of law, including section 8 of this act and chapter 19.85  
29 RCW, or (c) that an agency is using a policy statement, guideline, or  
30 issuance in place of a rule, the agency affected shall be notified of  
31 such finding and the reasons therefor. Within thirty days of the  
32 receipt of the rules review committee's notice, the agency shall file  
33 notice of a hearing on the rules review committee's finding with the  
34 code reviser and mail notice to all persons who have made timely  
35 request of the agency for advance notice of its rule-making proceedings  
36 as provided in RCW 34.05.320. The agency's notice shall include the  
37 rules review committee's findings and reasons therefor, and shall be

1 published in the Washington state register in accordance with the  
2 provisions of chapter 34.08 RCW.

3 (4) The agency shall consider fully all written and oral  
4 submissions regarding (a) whether the rule in question is within the  
5 intent of the legislature as expressed by the statute which the rule  
6 implements, (b) whether the rule was adopted in accordance with all  
7 applicable provisions of law, including section 8 of this act and  
8 chapter 19.85 RCW, or (c) whether the agency is using a policy  
9 statement, guideline, or issuance in place of a rule.

10 **Sec. 5.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to  
11 read as follows:

12 (1) Within seven days of an agency hearing held after notification  
13 of the agency by the rules review committee pursuant to RCW 34.05.620  
14 or 34.05.630, the affected agency shall notify the committee of its  
15 action on a proposed or existing rule to which the committee objected  
16 or on a committee finding of the agency's failure to adopt rules. If  
17 the rules review committee determines, by a majority vote of its  
18 members, that the agency has failed to provide for the required  
19 hearings or notice of its action to the committee, the committee may  
20 file notice of its objections, together with a concise statement of the  
21 reasons therefor, with the code reviser within thirty days of such  
22 determination.

23 (2) If the rules review committee finds, by a majority vote of its  
24 members: (a) That the proposed or existing rule in question has not  
25 been modified, amended, withdrawn, or repealed by the agency so as to  
26 conform with the intent of the legislature, or (b) that an existing  
27 rule was not adopted in accordance with all applicable provisions of  
28 law, including section 8 of this act and chapter 19.85 RCW, or (c) that  
29 the agency is using a policy statement, guideline, or issuance in place  
30 of a rule, the rules review committee may, within thirty days from  
31 notification by the agency of its action, file with the code reviser  
32 notice of its objections together with a concise statement of the  
33 reasons therefor. Such notice and statement shall also be provided to  
34 the agency by the rules review committee.

35 (3) If the rules review committee makes an adverse finding under  
36 subsection (2) of this section, the committee may, by a (~~two-thirds~~)  
37 majority vote of its members, recommend suspension of an existing rule.  
38 Within seven days of such vote the committee shall transmit to the

1 appropriate standing committees of the legislature, the governor, the  
2 code reviser, and the agency written notice of its objection and  
3 recommended suspension and the concise reasons therefor. Within thirty  
4 days of receipt of the notice, the governor shall transmit to the  
5 committee, the code reviser, and the agency written approval or  
6 disapproval of the recommended suspension. If the suspension is  
7 approved by the governor, it is effective from the date of that  
8 approval and continues until ninety days after the expiration of the  
9 next regular legislative session.

10 (4) The code reviser shall publish transmittals from the rules  
11 review committee or the governor issued pursuant to subsection (1),  
12 (2), or (3) of this section in the Washington state register and shall  
13 publish in the next supplement and compilation of the Washington  
14 Administrative Code a reference to the committee's objection or  
15 recommended suspension and the governor's action on it and to the issue  
16 of the Washington state register in which the full text thereof  
17 appears.

18 (5) The reference shall be removed from a rule published in the  
19 Washington Administrative Code if a subsequent adjudicatory proceeding  
20 determines that the rule is within the intent of the legislature or was  
21 adopted in accordance with all applicable laws, whichever was the  
22 objection of the rules review committee.

23 NEW SECTION. Sec. 6. A new section is added to chapter 34.05 RCW  
24 to read as follows:

25 Notwithstanding any other provision of law, an election by the  
26 rules review committee under RCW 34.05.640 to recommend suspension of  
27 a rule, regardless of whether the suspension is approved by the  
28 governor, establishes a presumption in any subsequent judicial review  
29 of the rule that it is invalid. The burden of demonstrating the rule's  
30 validity is on the adopting agency. The court shall declare the rule  
31 valid only if it finds that the rule does not violate constitutional  
32 provisions, does not exceed the statutory authority of the agency, and  
33 that it was adopted in compliance with statutory rule-making  
34 procedures, including section 8 of this act and chapter 19.85 RCW.

35 **Sec. 7.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to  
36 read as follows:

1 (1) Each agency shall maintain an official rule-making file for  
2 each rule that it (a) proposes by publication in the state register, or  
3 (b) adopts. The file and materials incorporated by reference shall be  
4 available for public inspection.

5 (2) The agency rule-making file shall contain all of the following:

6 (a) Copies of all publications in the state register with respect  
7 to the rule or the proceeding upon which the rule is based;

8 (b) Copies of any portions of the agency's public rule-making  
9 docket containing entries relating to the rule or the proceeding on  
10 which the rule is based;

11 (c) All written petitions, requests, submissions, and comments  
12 received by the agency and all other written material regarded by the  
13 agency as important to adoption of the rule or the proceeding on which  
14 the rule is based;

15 (d) Any official transcript of oral presentations made in the  
16 proceeding on which the rule is based or, if not transcribed, any tape  
17 recording or stenographic record of them, and any memorandum prepared  
18 by a presiding official summarizing the contents of those  
19 presentations;

20 (e) The concise explanatory statement required by RCW 34.05.355;

21 (f) All petitions for exceptions to, amendment of, or repeal or  
22 suspension of, the rule; (~~and~~)

23 (g) All data and other factual information, technical, theoretical,  
24 and empirical studies or reports, if any, on which the agency relies in  
25 the adoption of the rule; and

26 (h) Any other material placed in the file by the agency.

27 (3) Internal agency documents are exempt from inclusion in the  
28 rule-making file under subsection (2) of this section to the extent  
29 they constitute preliminary drafts, notes, recommendations, and intra-  
30 agency memoranda in which opinions are expressed or policies formulated  
31 or recommended, except that a specific document is not exempt from  
32 inclusion when it is publicly cited by an agency in connection with its  
33 decision.

34 (4) Upon judicial review, the file required by this section  
35 constitutes the official agency rule-making file with respect to that  
36 rule. Unless otherwise required by another provision of law, the  
37 official agency rule-making file need not be the exclusive basis for  
38 agency action on that rule.

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 34.05 RCW  
2 to read as follows:

3        (1) In addition to other requirements imposed by law, an agency may  
4 not adopt or amend a rule the violation of which subjects a person to  
5 a penalty or administrative sanction, or establishes, alters, or  
6 revokes a qualification or standard for the issuance, suspension, or  
7 revocation of a license to pursue a commercial trade or profession  
8 unless:

9        (a) The rule-making file provides substantial evidence that: (i)  
10 The particular rule is needed to fulfill the purpose and intent of a  
11 specific statute; (ii) the agency considered less intrusive or less  
12 costly means to achieve its purpose that were proposed in the rule-  
13 making hearing, but had reasonable justification for rejecting them in  
14 favor of the adopted rule; and (iii) any fee imposed by the rule is  
15 reasonable and directly related to the cost of program administration;

16        (b) The rule is clearly and simply stated so that it will be  
17 understood by any party required to comply;

18        (c) The agency has a written plan to inform and educate affected  
19 parties about the rule, to promote voluntary compliance, and to  
20 evaluate whether the rule achieves the purpose for which it was  
21 adopted;

22        (d) The agency has surveyed other regulatory entities at the state,  
23 federal, and local level, and made a determination of the appropriate  
24 situs, and determined whether the rule conflicts with, duplicates, or  
25 overlaps any other provision of law;

26        (e) The rule does not conflict with, overlap, or duplicate any  
27 other provision of law unless the legislation clearly so requires.

28        (2) If the legislation clearly requires adoption of the rule, and  
29 the rule conflicts with, overlaps, or duplicates any other provision of  
30 state, federal, or local law, the agency shall inform and transmit a  
31 resolution to the rules review committee and request legislation that  
32 delegates responsibility to:

33        (a) Appoint a lead agency; or

34        (b) Defer to an agency that has conflicting, overlapping, or  
35 duplicating rules; or

36        (c) Arrange for the other agency or agencies to defer to it; or

37        (d) Contract out to the other agency; or

38        (e) Coordinate regulation with the other agency or agencies so that  
39 conflict, overlap, and duplication are eliminated; or

1 (f) Any combination of (a) through (e) of this subsection; and  
2 (g) Inform and make a recommendation of resolution to the rules  
3 review committee, and request legislation that delegates responsibility  
4 to regulate the subject of the rule to only one agency.

5 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each  
6 repealed:

- 7 (1) RCW 34.05.660 and 1988 c 288 s 606 & 1981 c 324 s 10;  
8 (2) RCW 34.05.670 and 1992 c 197 s 3; and  
9 (3) RCW 34.05.680 and 1992 c 197 s 4.

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