
ENGROSSED SUBSTITUTE SENATE BILL 5794

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by
Senators Moore, Amondson and Jesernig)

Read first time 03/02/93.

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

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

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

7 (1) The rules review committee shall maintain a continuous review
8 of all rules proposed under RCW 34.05.320 to determine whether:

9 (a) The rule is within the intent of the legislature as expressed
10 in the statute that the rule implements;

11 (b) The rule has been adopted in accordance with all applicable
12 provisions of law, including section 6 of this act and chapter 19.85
13 RCW; and

14 (c) The statute that the rule purports to implement has been
15 repealed or ruled invalid by the courts.

16 (2) Whenever a majority of the members of the rules review
17 committee determines that a proposed rule is not within the intent of
18 the legislature as expressed in the statute which the rule implements,
19 or that an agency may not be adopting a proposed rule in accordance

1 with all applicable provisions of law, including section 6 of this act
2 and chapter 19.85 RCW, the committee shall give the affected agency and
3 the governor written notice of its decision. The notice shall be given
4 at least seven days prior to any hearing scheduled for consideration of
5 or adoption of the proposed rule pursuant to RCW 34.05.320. The notice
6 shall include a statement of the review committee's findings and the
7 reasons therefor. When the agency holds a hearing on the proposed
8 rule, the agency shall consider the review committee's decision.

9 (3) The rules review committee shall use existing legislative staff
10 for the purposes of assisting the committee's reviewing of rules under
11 this section.

12 **Sec. 2.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to
13 read as follows:

14 (1) All rules required to be filed pursuant to RCW 34.05.380, and
15 emergency rules adopted pursuant to RCW 34.05.350, are subject to
16 (~~selective~~) review by the legislature.

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

21 (3) If the rules review committee finds by a majority vote of its
22 members: (a) That an existing rule is not within the intent of the
23 legislature as expressed by the statute which the rule implements, (b)
24 that the rule has not been adopted in accordance with all applicable
25 provisions of law, (~~or~~) including section 6 of this act and chapter
26 19.85 RCW, (c) that the statute that the rule purports to implement has
27 been repealed or ruled invalid by the courts, or (d) that an agency is
28 using a policy statement, guideline, or issuance in place of a rule,
29 the agency affected shall be notified of such finding and the reasons
30 therefor. Within thirty days of the receipt of the rules review
31 committee's notice, the agency shall file notice of a hearing on the
32 rules review committee's finding with the code reviser and mail notice
33 to all persons who have made timely request of the agency for advance
34 notice of its rule-making proceedings as provided in RCW 34.05.320.
35 The agency's notice shall include the rules review committee's findings
36 and reasons therefor, and shall be published in the Washington state
37 register in accordance with the provisions of chapter 34.08 RCW.

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

9 **Sec. 3.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to
10 read as follows:

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

22 (2) If the rules review committee finds, by a majority vote of its
23 members: (a) That the proposed or existing rule in question has not
24 been modified, amended, withdrawn, or repealed by the agency so as to
25 conform with the intent of the legislature, or (b) that an existing
26 rule was not adopted in accordance with all applicable provisions of
27 law, including section 5 of this act and chapter 19.85 RCW, or (c) that
28 the agency is using a policy statement, guideline, or issuance in place
29 of a rule, the rules review committee may, within thirty days from
30 notification by the agency of its action, file with the code reviser
31 notice of its objections together with a concise statement of the
32 reasons therefor. Such notice and statement shall also be provided to
33 the agency by the rules review committee.

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

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

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

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

22 **Sec. 4.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
23 read as follows:

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

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

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

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

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

1 (d) Any official transcript of oral presentations made in the
2 proceeding on which the rule is based or, if not transcribed, any tape
3 recording or stenographic record of them, and any memorandum prepared
4 by a presiding official summarizing the contents of those
5 presentations;

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

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

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

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

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

20 (4) Upon judicial review, the file required by this section
21 constitutes the official agency rule-making file with respect to that
22 rule. Unless otherwise required by another provision of law, the
23 official agency rule-making file need not be the exclusive basis for
24 agency action on that rule.

25 NEW SECTION. Sec. 5. A new section is added to chapter 34.05 RCW
26 to read as follows:

27 (1) In addition to other requirements imposed by law, an agency may
28 not adopt a rule the violation of which subjects a person to a penalty
29 or administrative sanction; that establishes, alters, or revokes a
30 qualification or standard for the issuance, suspension, or revocation
31 of a license to pursue a commercial activity, trade, or profession; or
32 that establishes, alters, or revokes a mandatory standard for a product
33 or material that must be met before distribution or sale, unless:

34 (a) The rule-making file provides substantial evidence that: (i)
35 The particular rule is necessary to fulfill the purpose and intent of
36 a specific statute; (ii) the agency considered the probable benefits of
37 the particular rule relative to its probable costs; (iii) the agency
38 considered other less intrusive or less costly means to achieve the

1 purpose of the rule, including any that were proposed in the rule-
2 making hearing, but had reasonable justification for rejecting them in
3 favor of the adopted rule; and (iv) any fee imposed by the rule will
4 generate no more revenue than is necessary to fulfill the intent of the
5 specific statute authorizing the fee, by providing an opportunity for
6 public review and comment on the program budget and instituting cost
7 accounting measures to track revenues and expenditures;

8 (b) The rule is clearly and simply stated, so that it will be
9 understood by any person required to comply;

10 (c) The agency has a written plan to (i) inform and educate
11 affected persons about the rule; (ii) promote voluntary compliance;
12 (iii) evaluate whether the rule achieves the purpose for which it was
13 adopted; and (iv) where necessary, meet the requirements of subsection
14 (2) or (3) of this section;

15 (d) The rule does not, without clear and specific statutory
16 authorization to do so, exceed any provision of federal law regulating
17 the same activity or subject matter; and

18 (e) The rule does not, without clear and specific statutory
19 authorization to do so, conflict with, overlap, or duplicate, any other
20 provision of federal, state, or local law regulating the same activity
21 or subject matter. The agency shall survey other federal, state, and
22 local entities that have jurisdiction over the same or similar subject
23 matter to determine whether such conflict, overlap, or duplication
24 exists.

25 (2) Upon the adoption of a rule that conflicts with, overlaps, or
26 duplicates any other provision of federal, state, or local law
27 regulating the same activity or subject matter, an agency shall: (a)
28 File with the code reviser for publication in the Washington State
29 Register a list citing by reference the other laws that the rule
30 conflicts with, overlaps, or duplicates; (b) mitigate the adverse
31 impact of the conflict, overlap, or duplication through coordination
32 with the appropriate federal, state, or local entities; and (c) submit
33 to the appropriate standing committee of the legislature before the
34 next legislative session proposed legislation to mitigate the conflict,
35 overlap, or duplication, and facilitate coordination with appropriate
36 federal, state, or local entities.

37 (3) Upon the adoption of a rule that exceeds any provision of
38 federal law regulating the same activity or subject matter, the agency

1 shall, to the extent practicable, coordinate implementation and
2 enforcement with the appropriate federal entities.

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

5 (1) RCW 34.05.670 and 1992 c 197 s 3; and

6 (2) RCW 34.05.680 and 1992 c 197 s 4.

7 NEW SECTION. **Sec. 7.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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