
SENATE BILL 6361

State of Washington

59th Legislature

2006 Regular Session

By Senator Honeyford

Read first time 01/11/2006. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to requiring the office of financial management to
2 report to the governor when the credibility of documents an agency uses
3 in developing a rule is questioned; and reenacting and amending RCW
4 34.05.328.

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

6 **Sec. 1.** RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are
7 each reenacted and amended to read as follows:

8 (1) Before adopting a rule described in subsection (5) of this
9 section, an agency shall:

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

12 (b) Determine that the rule is needed to achieve the general goals
13 and specific objectives stated under (a) of this subsection, and
14 analyze alternatives to rule making and the consequences of not
15 adopting the rule;

16 (c) Provide notification in the notice of proposed rule making
17 under RCW 34.05.320 that a preliminary cost-benefit analysis is
18 available. The preliminary cost-benefit analysis must fulfill the
19 requirements of the cost-benefit analysis under (d) of this subsection.

1 If the agency files a supplemental notice under RCW 34.05.340, the
2 supplemental notice shall include notification that a revised
3 preliminary cost-benefit analysis is available. A final cost-benefit
4 analysis shall be available when the rule is adopted under RCW
5 34.05.360;

6 (d) Determine that the probable benefits of the rule are greater
7 than its probable costs, taking into account both the qualitative and
8 quantitative benefits and costs and the specific directives of the
9 statute being implemented;

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

15 (f) Determine that the rule does not require those to whom it
16 applies to take an action that violates requirements of another federal
17 or state law;

18 (g) Determine that the rule does not impose more stringent
19 performance requirements on private entities than on public entities
20 unless required to do so by federal or state law;

21 (h) Determine if the rule differs from any federal regulation or
22 statute applicable to the same activity or subject matter and, if so,
23 determine that the difference is justified by the following:

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

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

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

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

36 (3) Before adopting rules described in subsection (5) of this
37 section, an agency shall place in the rule-making file a rule

1 implementation plan for rules filed under each adopting order. The
2 plan shall describe how the agency intends to:

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

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

6 (c) Promote and assist voluntary compliance; and

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

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

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

18 ~~(b))~~ Coordinate implementation and enforcement of the rule with
19 the 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)~~((b))~~
28 (a), the agency shall report to the legislature pursuant to ~~((e))~~ (b)
29 of this subsection;

30 ~~((e))~~ (b) Report to the joint administrative rules review
31 committee:

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

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

1 (5)(a) Except as provided in (b) of this subsection, this section
2 applies to:

3 (i) Significant legislative rules of the departments of ecology,
4 labor and industries, health, revenue, social and health services, and
5 natural resources, the employment security department, the forest
6 practices board, the office of the insurance commissioner, and to the
7 legislative rules of the department of fish and wildlife implementing
8 chapter 77.55 RCW; and

9 (ii) Any rule of any agency, if this section is voluntarily made
10 applicable to the rule by the agency, or is made applicable to the rule
11 by a majority vote of the joint administrative rules review committee
12 within forty-five days of receiving the notice of proposed rule making
13 under RCW 34.05.320.

14 (b) This section does not apply to:

15 (i) Emergency rules adopted under RCW 34.05.350;

16 (ii) Rules relating only to internal governmental operations that
17 are not subject to violation by a nongovernment party;

18 (iii) Rules adopting or incorporating by reference without material
19 change federal statutes or regulations, Washington state statutes,
20 rules of other Washington state agencies, shoreline master programs
21 other than those programs governing shorelines of statewide
22 significance, or, as referenced by Washington state law, national
23 consensus codes that generally establish industry standards, if the
24 material adopted or incorporated regulates the same subject matter and
25 conduct as the adopting or incorporating rule;

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

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

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

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

36 (c) For purposes of this subsection:

37 (i) A "procedural rule" is a rule that adopts, amends, or repeals
38 (A) any procedure, practice, or requirement relating to any agency

1 hearings; (B) any filing or related process requirement for making
2 application to an agency for a license or permit; or (C) any policy
3 statement pertaining to the consistent internal operations of an
4 agency.

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

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

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

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

26 (a) The rules proposed to which this section applied and to the
27 extent possible, how compliance with this section affected the
28 substance of the rule, if any, that the agency ultimately adopted;

29 (b) The frequency with which the public raises an issue of
30 credibility as to the documents an agency uses in developing a rule;

31 (c) The costs incurred by state agencies in complying with this
32 section;

33 (~~(e)~~) (d) Any legal action maintained based upon the alleged
34 failure of any agency to comply with this section, the costs to the
35 state of such action, and the result;

36 (~~(d)~~) (e) The extent to which this section has adversely affected
37 the capacity of agencies to fulfill their legislatively prescribed
38 mission;

1 (~~(e)~~) (f) The extent to which this section has improved the
2 acceptability of state rules to those regulated; and

3 (~~(f)~~) (g) Any other information considered by the office of
4 financial management to be useful in evaluating the effect of this
5 section.

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