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HOUSE BILL 1328

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Shea, Taylor, Holy, Short, Pike, Hargrove, and  
Koster

Read first time 01/17/17. Referred to Committee on State Government.

1 AN ACT Relating to directing the department of ecology to  
2 consider alternatives to rule making; and reenacting and amending RCW  
3 34.05.328.

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

5 **Sec. 1.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are  
6 each reenacted and amended to read as follows:

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

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

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

15 (i) For rules adopted by the department of ecology, the  
16 determination of rule necessity under (b) of this subsection must be  
17 accompanied by an analysis of whether the general goals and specific  
18 objectives of the rule making could be accomplished with comparable  
19 efficacy and at lower administrative cost through any combination of  
20 the following alternative strategies to rule making: (A) Increasing  
21 or targeting enforcement that relies on existing authority; (B)

1 providing additional technical assistance to regulated persons; or  
2 (C) the establishment of regulatory or financial incentives to  
3 encourage compliance by regulated persons;

4 (ii) The analysis required in (b)(i) of this subsection must  
5 include specific administrative cost estimates of each alternative  
6 strategy;

7 (c) Provide notification in the notice of proposed rule making  
8 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
9 available. The preliminary cost-benefit analysis must fulfill the  
10 requirements of the cost-benefit analysis under (d) of this  
11 subsection. If the agency files a supplemental notice under RCW  
12 34.05.340, the supplemental notice must include notification that a  
13 revised preliminary cost-benefit analysis is available. A final cost-  
14 benefit analysis must be available when the rule is adopted under RCW  
15 34.05.360;

16 (d) Determine that the probable benefits of the rule are greater  
17 than its probable costs, taking into account both the qualitative and  
18 quantitative benefits and costs and the specific directives of the  
19 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

15 (c) Promote and assist voluntary compliance; and

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

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

24 (a) Coordinate implementation and enforcement of the rule with  
25 the other federal and state entities regulating the same activity or  
26 subject matter by making every effort to do one or more of the  
27 following:

28 (i) Deferring to the other entity;

29 (ii) Designating a lead agency; or

30 (iii) Entering into an agreement with the other entities  
31 specifying how the agency and entities will coordinate implementation  
32 and enforcement.

33 If the agency is unable to comply with this subsection (4)(a),  
34 the agency must report to the legislature pursuant to (b) of this  
35 subsection;

36 (b) Report to the joint administrative rules review committee:

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

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

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

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

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

17 (b) This section does not apply to:

18 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

34 (vi) Rules that set or adjust fees under the authority of RCW  
35 19.02.075 or that set or adjust fees or rates pursuant to legislative  
36 standards, including fees set or adjusted under the authority of RCW  
37 19.80.045;

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

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

4 (c) For purposes of this subsection:

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

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

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

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

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

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

35 (b) The costs incurred by state agencies in complying with this  
36 section;

37 (c) Any legal action maintained based upon the alleged failure of  
38 any agency to comply with this section, the costs to the state of  
39 such action, and the result;

1           (d) The extent to which this section has adversely affected the  
2 capacity of agencies to fulfill their legislatively prescribed  
3 mission;

4           (e) The extent to which this section has improved the  
5 acceptability of state rules to those regulated; and

6           (f) Any other information considered by the office of financial  
7 management to be useful in evaluating the effect of this section.

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