

2 **ESSB 5794** - H COMM AMD
3 By Committee on State Government

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that overlapping,
8 conflicting, and duplicating provisions of federal, state, and local
9 laws, ordinances, and rules create tremendous burdens for the citizens
10 and businesses of the state of Washington. The legislature therefore
11 encourages agencies to address overlapping, conflicting, and
12 duplicative provisions in the rule-making process, and to attempt to
13 mitigate the adverse impact of overlapping, conflicting, and
14 duplicating provisions whenever it is within the agency's authority to
15 do so. However, agency use of the procedures in section 5 of this act
16 is discretionary, and agencies are not required to use these procedures
17 in any particular instance of rule making.

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

20 Whenever a majority of the members of the rules review committee
21 determines that a proposed rule is not within the intent of the
22 legislature as expressed in the statute which the rule implements, or
23 that an agency may not be adopting a proposed rule in accordance with
24 all applicable provisions of law, including chapter 19.85 RCW, the
25 committee shall give the affected agency and the governor written
26 notice of its decision. The notice shall be given at least seven days
27 prior to any hearing scheduled for consideration of or adoption of the
28 proposed rule pursuant to RCW 34.05.320. The notice shall include a
29 statement of the review committee's findings and the reasons therefor.
30 When the agency holds a hearing on the proposed rule, the agency shall
31 consider the review committee's decision.

32 **Sec. 3.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to
33 read as follows:

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

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

8 (3) If the rules review committee finds by a majority vote of its
9 members: (a) That an existing rule is not within the intent of the
10 legislature as expressed by the statute which the rule implements, (b)
11 that the rule has not been adopted in accordance with all applicable
12 provisions of law, (~~(or)~~) including chapter 19.85 RCW, (c) that the
13 statute that the rule purports to implement has been repealed or ruled
14 invalid by the courts, or (d) that an agency is using a policy
15 statement, guideline, or issuance in place of a rule, the agency
16 affected shall be notified of such finding and the reasons therefor.
17 Within thirty days of the receipt of the rules review committee's
18 notice, the agency shall file notice of a hearing on the rules review
19 committee's finding with the code reviser and mail notice to all
20 persons who have made timely request of the agency for advance notice
21 of its rule-making proceedings as provided in RCW 34.05.320. The
22 agency's notice shall include the rules review committee's findings and
23 reasons therefor, and shall be published in the Washington state
24 register in accordance with the provisions of chapter 34.08 RCW.

25 (4) The agency shall consider fully all written and oral
26 submissions regarding (a) whether the rule in question is within the
27 intent of the legislature as expressed by the statute which the rule
28 implements, (b) whether the rule was adopted in accordance with all
29 applicable provisions of law, including chapter 19.85 RCW, or (c)
30 whether the agency is using a policy statement, guideline, or issuance
31 in place of a rule.

32 **Sec. 4.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to
33 read as follows:

34 (1) Within seven days of an agency hearing held after notification
35 of the agency by the rules review committee pursuant to RCW 34.05.620
36 or 34.05.630, the affected agency shall notify the committee of its
37 action on a proposed or existing rule to which the committee objected
38 or on a committee finding of the agency's failure to adopt rules. If

1 the rules review committee determines, by a majority vote of its
2 members, that the agency has failed to provide for the required
3 hearings or notice of its action to the committee, the committee may
4 file notice of its objections, together with a concise statement of the
5 reasons therefor, with the code reviser within thirty days of such
6 determination.

7 (2) If the rules review committee finds, by a majority vote of its
8 members: (a) That the proposed or existing rule in question has not
9 been modified, amended, withdrawn, or repealed by the agency so as to
10 conform with the intent of the legislature, or (b) that an existing
11 rule was not adopted in accordance with all applicable provisions of
12 law, including chapter 19.85 RCW, or (c) that the agency is using a
13 policy statement, guideline, or issuance in place of a rule, the rules
14 review committee may, within thirty days from notification by the
15 agency of its action, file with the code reviser notice of its
16 objections together with a concise statement of the reasons therefor.
17 Such notice and statement shall also be provided to the agency by the
18 rules review committee.

19 (3) If the rules review committee makes an adverse finding under
20 subsection (2) of this section, the committee may, by a (~~two-thirds~~)
21 majority vote of its members, recommend suspension of an existing rule.
22 Within seven days of such vote the committee shall transmit to the
23 appropriate standing committees of the legislature, the governor, the
24 code reviser, and the agency written notice of its objection and
25 recommended suspension and the concise reasons therefor. Within thirty
26 days of receipt of the notice, the governor shall transmit to the
27 committee, the code reviser, and the agency written approval or
28 disapproval of the recommended suspension. If the suspension is
29 approved by the governor, it is effective from the date of that
30 approval and continues until ninety days after the expiration of the
31 next regular legislative session.

32 (4) The code reviser shall publish transmittals from the rules
33 review committee or the governor issued pursuant to subsection (1),
34 (2), or (3) of this section in the Washington state register and shall
35 publish in the next supplement and compilation of the Washington
36 Administrative Code a reference to the committee's objection or
37 recommended suspension and the governor's action on it and to the issue
38 of the Washington state register in which the full text thereof
39 appears.

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

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 34.05 RCW
7 under the subchapter heading "rule-making procedures" to read as
8 follows:

9 Prior to or during the rule-making process, agencies are encouraged
10 to survey other federal, state, and local entities that have
11 jurisdiction over the subject matter of a proposed rule to determine
12 whether conflict, overlap, or duplication exists. Agencies are
13 encouraged to address these issues during the rule-making process and
14 to mitigate the adverse impact of conflict, overlap, or duplication
15 whenever it is within the agency's authority to do so. Agencies are
16 encouraged to place information on conflict, overlap, or duplication in
17 the rule-making file.

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

- 20 (1) RCW 34.05.670 and 1992 c 197 s 3; and
21 (2) RCW 34.05.680 and 1992 c 197 s 4.

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

26 NEW SECTION. **Sec. 8.** This act shall take effect July 1, 1994."

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