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SENATE BILL 5506

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Moore, Anderson, Jesernig, Amondson, Haugen, Barr, Snyder, Cantu, Owen, Vognild, Deccio and Hochstatter

Read first time 02/01/93. Referred to Committee on Labor & Commerce.

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)(a) 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 (b) The effective date for any nonemergency rule, the violation of  
19 which subjects a person to a penalty or administrative sanction, is as

1 follows: (i) Those filed on or between January 1st and November 30th  
2 of a year take effect at the end of the regular legislative session  
3 held in the following calendar year; (ii) those filed during the month  
4 of December of a year take effect at the end of the second subsequent  
5 regular legislative session.

6 (c) All other rules not covered under (a) or (b) of this subsection  
7 become effective upon the expiration of thirty days after the date of  
8 filing, unless a later date is required by statute or specified in the  
9 order of adoption.

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

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

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

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

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

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

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

27 Whenever a majority of the members of the rules review committee  
28 determines that a proposed rule is not within the intent of the  
29 legislature as expressed in the statute which the rule implements, or  
30 that an agency may not be adopting a proposed rule in accordance with  
31 all applicable provisions of law, including section 7 of this act and  
32 chapter 19.85 RCW, the committee shall give the affected agency written  
33 notice of its decision. The notice shall be given at least seven days  
34 prior to any hearing scheduled for consideration of or adoption of the  
35 proposed rule pursuant to RCW 34.05.320. The notice shall include a  
36 statement of the review committee's findings and the reasons therefor.  
37 When the agency holds a hearing on the proposed rule, the agency shall  
38 consider the review committee's decision.

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

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

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

10       (3) If the rules review committee finds by a majority vote of its  
11 members: (a) That an existing rule is not within the intent of the  
12 legislature as expressed by the statute which the rule implements, (b)  
13 that the rule has not been adopted in accordance with all applicable  
14 provisions of law, including section 7 of this act and chapter 19.85  
15 RCW, or (c) that an agency is using a policy statement, guideline, or  
16 issuance in place of a rule, the agency affected shall be notified of  
17 such finding and the reasons therefor. Within thirty days of the  
18 receipt of the rules review committee's notice, the agency shall file  
19 notice of a hearing on the rules review committee's finding with the  
20 code reviser and mail notice to all persons who have made timely  
21 request of the agency for advance notice of its rule-making proceedings  
22 as provided in RCW 34.05.320. The agency's notice shall include the  
23 rules review committee's findings and reasons therefor, and shall be  
24 published in the Washington state register in accordance with the  
25 provisions of chapter 34.08 RCW.

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

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

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

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

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

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

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

1 of the Washington state register in which the full text thereof  
2 appears.

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

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 34.05 RCW  
9 to read as follows:

10 Notwithstanding any other provision of law, an election by the  
11 rules review committee under RCW 34.05.640 to recommend suspension of  
12 a rule, regardless of whether the suspension is approved by the  
13 governor, establishes a presumption in any subsequent judicial review  
14 of the rule that it is invalid. The burden of demonstrating the rule's  
15 validity is on the adopting agency. The court shall declare the rule  
16 valid only if it finds that the rule does not violate constitutional  
17 provisions, does not exceed the statutory authority of the agency, and  
18 that it was adopted in compliance with statutory rule-making  
19 procedures, including section 7 of this act and chapter 19.85 RCW.

20 **Sec. 6.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to  
21 read as follows:

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

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

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

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

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

36 (d) Any official transcript of oral presentations made in the  
37 proceeding on which the rule is based or, if not transcribed, any tape

1 recording or stenographic record of them, and any memorandum prepared  
2 by a presiding official summarizing the contents of those  
3 presentations;

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

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

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

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

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

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

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 34.05 RCW  
24 to read as follows:

25 In addition to other requirements imposed by law, an agency may not  
26 adopt a rule the violation of which subjects a person to a penalty or  
27 administrative sanction unless:

28 (1) The rule-making file provides clear and convincing evidence:  
29 (a) That the particular rule is needed; (b) that the benefits of the  
30 particular rule outweigh its costs; (c) that the agency considered any  
31 other less intrusive or less costly means to achieve the purpose of the  
32 rule that were proposed in the rule-making hearing, but had reasonable  
33 justification for rejecting them in favor of the adopted rule; and (d)  
34 that any fee imposed by the rule is reasonable and directly related to  
35 the cost of program administration;

36 (2) To the extent practicable, the rule is clearly and simply  
37 stated, so that it will be understood by any party required to comply;

1 (3) The rule does not conflict with, or, without reasonable  
2 justification, overlap or duplicate, any other provision of law;

3 (4) The agency has a written plan to inform and educate affected  
4 parties about the rule, to promote voluntary compliance, and to  
5 evaluate whether the rule achieves the purpose for which it was  
6 adopted.

7 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each  
8 repealed:

9 (1) RCW 34.05.660 and 1988 c 288 s 606 & 1981 c 324 s 10;

10 (2) RCW 34.05.670 and 1992 c 197 s 3; and

11 (3) RCW 34.05.680 and 1992 c 197 s 4.

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