

SB 5052 - S AMD 001
By Senator Hale

1/26/04 ADOPTED

1 On page 1, after line 9, strike the remainder of the bill and
2 insert the following:

3 "Sec. 2. RCW 34.05.328 and 2003 c 165 s 2 are each amended to read
4 as follows:

5 (1) Before adopting a rule described in subsection (~~((+5-))~~)(6) of
6 this section, an agency shall:

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

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

13 (c) Provide notification in the notice of proposed rule making
14 under RCW 34.05.320 that a preliminary cost-benefit analysis is
15 available. The preliminary cost-benefit analysis must fulfill the
16 requirements of the cost-benefit analysis under (d) of this subsection.
17 If the agency files a supplemental notice under RCW 34.05.340, the
18 supplemental notice shall include notification that a revised
19 preliminary cost-benefit analysis is available. A final cost-benefit
20 analysis shall be available when the rule is adopted under RCW
21 34.05.360;

22 (d) Determine that the probable benefits of the rule are greater
23 than its probable costs, taking into account both the qualitative and
24 quantitative benefits and costs and the specific directives of the
25 statute being implemented;

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

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

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

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

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

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

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

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

22 (3) Before adopting rules described in subsection ~~((5))~~(6) of
23 this section, an agency shall place in the rule-making file a rule
24 implementation plan for rules filed under each adopting order. The
25 plan shall describe how the agency intends to:

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

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

29 (c) Promote and assist voluntary compliance; and

30 (d) Evaluate whether the rule achieves the purpose for which it was
31 adopted, including, to the maximum extent practicable, the use of
32 interim milestones to assess progress and the use of objectively
33 measurable outcomes.

34 (4) The adoption of rules described in subsection (6) of this
35 section must be made before December 1 of any year, and the rules may
36 not take effect before the end of the regular legislative session in
37 the next year.

38 (5) After adopting a rule described in subsection ~~((5))~~(6) of
39 this section regulating the same activity or subject matter as another

1 provision of federal or state law, an agency shall do all of the
2 following:

3 (a) Provide to the (~~(business assistance center)~~)department of
4 community, trade, and economic development a list citing by reference
5 the other federal and state laws that regulate the same activity or
6 subject matter;

7 (b) Coordinate implementation and enforcement of the rule with the
8 other federal and state entities regulating the same activity or
9 subject matter by making every effort to do one or more of the
10 following:

11 (i) Deferring to the other entity;

12 (ii) Designating a lead agency; or

13 (iii) Entering into an agreement with the other entities specifying
14 how the agency and entities will coordinate implementation and
15 enforcement.

16 If the agency is unable to comply with this subsection
17 (~~(+4)~~)(5)(b), the agency shall report to the legislature pursuant to
18 (c) of this subsection;

19 (c) Report to the joint administrative rules review committee:

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

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

26 (~~(+5)~~)(6) (a) Except as provided in (b) of this subsection, this
27 section applies to:

28 (i) Significant legislative rules of the departments of ecology,
29 labor and industries, health, revenue, social and health services, and
30 natural resources, the employment security department, the forest
31 practices board, the office of the insurance commissioner, and to the
32 legislative rules of the department of fish and wildlife implementing
33 chapter 77.55 RCW; and

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

39 (b) This section does not apply to:

- 1 (i) Emergency rules adopted under RCW 34.05.350;
- 2 (ii) Rules relating only to internal governmental operations that
3 are not subject to violation by a nongovernment party;
- 4 (iii) Rules adopting or incorporating by reference without material
5 change federal statutes or regulations, Washington state statutes,
6 rules of other Washington state agencies, shoreline master programs
7 other than those programs governing shorelines of statewide
8 significance, or, as referenced by Washington state law, national
9 consensus codes that generally establish industry standards, if the
10 material adopted or incorporated regulates the same subject matter and
11 conduct as the adopting or incorporating rule;
- 12 (iv) Rules that only correct typographical errors, make address or
13 name changes, or clarify language of a rule without changing its
14 effect;
- 15 (v) Rules the content of which is explicitly and specifically
16 dictated by statute;
- 17 (vi) Rules that set or adjust fees or rates pursuant to legislative
18 standards; or
- 19 (vii) Rules of the department of social and health services
20 relating only to client medical or financial eligibility and rules
21 concerning liability for care of dependents.
- 22 (c) For purposes of this subsection:
- 23 (i) A "procedural rule" is a rule that adopts, amends, or repeals
24 (A) any procedure, practice, or requirement relating to any agency
25 hearings; (B) any filing or related process requirement for making
26 application to an agency for a license or permit; or (C) any policy
27 statement pertaining to the consistent internal operations of an
28 agency.
- 29 (ii) An "interpretive rule" is a rule, the violation of which does
30 not subject a person to a penalty or sanction, that sets forth the
31 agency's interpretation of statutory provisions it administers.
- 32 (iii) A "significant legislative rule" is a rule other than a
33 procedural or interpretive rule that (A) adopts substantive provisions
34 of law pursuant to delegated legislative authority, the violation of
35 which subjects a violator of such rule to a penalty or sanction; (B)
36 establishes, alters, or revokes any qualification or standard for the
37 issuance, suspension, or revocation of a license or permit; or (C)
38 adopts a new, or makes significant amendments to, a policy or
39 regulatory program.

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

5 ~~((6))~~(7) By January 31, 1996, and by January 31st of each even-
6 numbered year thereafter, the office of financial management, after
7 consulting with state agencies, counties, and cities, and business,
8 labor, and environmental organizations, shall report to the governor
9 and the legislature regarding the effects of this section on the
10 regulatory system in this state. The report shall document:

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

14 (b) The costs incurred by state agencies in complying with this
15 section;

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

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

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

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

25 Renumber the sections consecutively and correct any internal
26 references accordingly.

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