

SB 5256 - S AMD 11

By Senators Kastama, Roach

ADOPTED 02/11/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 34.05.320 and 1995 c 403 s 302 are each amended to
4 read as follows:

5 (1) At least twenty days before the rule-making hearing at which
6 the agency receives public comment regarding adoption of a rule, the
7 agency shall cause notice of the hearing to be published in the state
8 register. The publication constitutes the proposal of a rule. The
9 notice shall include all of the following:

10 (a) A title, a description of the rule's purpose, and any other
11 information which may be of assistance in identifying the rule or its
12 purpose;

13 (b) Citations of the statutory authority for adopting the rule and
14 the specific statute the rule is intended to implement;

15 (c) A summary of the rule and a statement of the reasons supporting
16 the proposed action;

17 (d) The agency personnel, with their office location and telephone
18 number, who are responsible for the drafting, implementation, and
19 enforcement of the rule;

20 (e) The name of the person or organization, whether private,
21 public, or governmental, proposing the rule;

22 (f) Agency comments or recommendations, if any, regarding statutory
23 language, implementation, enforcement, and fiscal matters pertaining to
24 the rule;

25 (g) Whether the rule is necessary as the result of federal law or
26 federal or state court action, and if so, a copy of such law or court
27 decision shall be attached to the purpose statement;

28 (h) When, where, and how persons may present their views on the
29 proposed rule;

30 (i) The date on which the agency intends to adopt the rule;

1 (j) A short explanation of the rule, its purpose, and anticipated
2 effects, including in the case of a proposal that would modify existing
3 rules, a short description of the changes the proposal would make;

4 (k) A copy of the small business economic impact statement prepared
5 under chapter 19.85 RCW, or an explanation for why the agency did not
6 prepare the statement; ~~((and))~~

7 (l) A statement indicating whether RCW 34.05.328 applies to the
8 rule adoption; and

9 (m) If RCW 34.05.328 does apply, a statement indicating that a copy
10 of the preliminary cost-benefit analysis described in RCW
11 34.05.328(1)(c) is available.

12 (2) Upon filing notice of the proposed rule with the code reviser,
13 the adopting agency shall have copies of the notice on file and
14 available for public inspection and shall forward three copies of the
15 notice to the rules review committee.

16 (3) No later than three days after its publication in the state
17 register, the agency shall cause a copy of the notice of proposed rule
18 adoption to be mailed to each person, city, and county that has made a
19 request to the agency for a mailed copy of such notices. An agency may
20 charge for the actual cost of providing a requesting party mailed
21 copies of these notices.

22 (4) In addition to the notice required by subsections (1) and (2)
23 of this section, an institution of higher education shall cause the
24 notice to be published in the campus or standard newspaper of the
25 institution at least seven days before the rule-making hearing.

26 **Sec. 2.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
27 as follows:

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

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

32 (b) Determine that the rule is needed to achieve the general goals
33 and specific objectives stated under (a) of this subsection, and
34 analyze alternatives to rule making and the consequences of not
35 adopting the rule;

36 (c) Provide notification in the notice of proposed rule making
37 under RCW 34.05.320 that a preliminary cost-benefit analysis is

1 available. The preliminary cost-benefit analysis must fulfill the
2 requirements of the cost-benefit analysis under (d) of this subsection.
3 If the agency files a supplemental notice under RCW 34.05.340, the
4 supplemental notice shall include notification that a revised
5 preliminary cost-benefit analysis is available. A final cost-benefit
6 analysis shall be available when the rule is adopted under RCW
7 34.05.360;

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

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

18 ~~((e))~~ (f) Determine that the rule does not require those to whom
19 it applies to take an action that violates requirements of another
20 federal or state law;

21 ~~((f))~~ (g) Determine that the rule does not impose more stringent
22 performance requirements on private entities than on public entities
23 unless required to do so by federal or state law;

24 ~~((g))~~ (h) Determine if the rule differs from any federal
25 regulation or statute applicable to the same activity or subject matter
26 and, if so, determine that the difference is justified by the
27 following:

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

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

33 ~~((h))~~ (i) Coordinate the rule, to the maximum extent practicable,
34 with other federal, state, and local laws applicable to the same
35 activity or subject matter.

36 (2) In making its determinations pursuant to subsection (1)(b)
37 through ~~((g))~~ (h) of this section, the agency shall place in the

1 rule-making file documentation of sufficient quantity and quality so as
2 to persuade a reasonable person that the determinations are justified.

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

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

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

10 (c) Promote and assist voluntary compliance; and

11 (d) Evaluate whether the rule achieves the purpose for which it was
12 adopted, including, to the maximum extent practicable, the use of
13 interim milestones to assess progress and the use of objectively
14 measurable outcomes.

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

19 (a) Provide to the business assistance center a list citing by
20 reference the other federal and state laws that regulate the same
21 activity or subject matter;

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

26 (i) Deferring to the other entity;

27 (ii) Designating a lead agency; or

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

31 If the agency is unable to comply with this subsection (4)(b), the
32 agency shall report to the legislature pursuant to (c) of this
33 subsection;

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

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

1 (ii) Make recommendations for any legislation that may be necessary
2 to eliminate or mitigate any adverse effects of such overlap,
3 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, and
8 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 ((75.20)) 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 rule
14 by a majority vote of the joint administrative rules review committee
15 within forty-five days of receiving the notice of proposed rule making
16 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 material
22 change federal statutes or regulations, Washington state statutes,
23 rules of other Washington state agencies, shoreline master programs
24 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 and
28 conduct as the adopting or incorporating rule;

29 (iv) Rules that only correct typographical errors, make address or
30 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 or rates pursuant to legislative
35 standards; or

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

1 (c) For purposes of this subsection:

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

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

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

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

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

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

32 (b) The costs incurred by state agencies in complying with this
33 section;

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

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

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

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

5 **Sec. 3.** RCW 50.13.060 and 2000 c 134 s 2 are each amended to read
6 as follows:

7 (1) Governmental agencies, including law enforcement agencies,
8 prosecuting agencies, and the executive branch, whether state, local,
9 or federal shall have access to information or records deemed private
10 and confidential under this chapter if the information or records are
11 needed by the agency for official purposes and:

12 (a) The agency submits an application in writing to the employment
13 security department for the records or information containing a
14 statement of the official purposes for which the information or records
15 are needed and specific identification of the records or information
16 sought from the department; and

17 (b) The director, commissioner, chief executive, or other official
18 of the agency has verified the need for the specific information in
19 writing either on the application or on a separate document; and

20 (c) The agency requesting access has served a copy of the
21 application for records or information on the individual or employing
22 unit whose records or information are sought and has provided the
23 department with proof of service. Service shall be made in a manner
24 which conforms to the civil rules for superior court. The requesting
25 agency shall include with the copy of the application a statement to
26 the effect that the individual or employing unit may contact the public
27 records officer of the employment security department to state any
28 objections to the release of the records or information. The
29 employment security department shall not act upon the application of
30 the requesting agency until at least five days after service on the
31 concerned individual or employing unit. The employment security
32 department shall consider any objections raised by the concerned
33 individual or employing unit in deciding whether the requesting agency
34 needs the information or records for official purposes.

35 (2) The requirements of subsections (1) and (9) of this section
36 shall not apply to the state legislative branch. The state legislature
37 shall have access to information or records deemed private and

1 confidential under this chapter, if the legislature or a legislative
2 committee finds that the information or records are necessary and for
3 official purposes. If the employment security department does not make
4 information or records available as provided in this subsection, the
5 legislature may exercise its authority granted by chapter 44.16 RCW.

6 (3) In cases of emergency the governmental agency requesting access
7 shall not be required to formally comply with the provisions of
8 subsection (1) of this section at the time of the request if the
9 procedures required by subsection (1) of this section are complied with
10 by the requesting agency following the receipt of any records or
11 information deemed private and confidential under this chapter. An
12 emergency is defined as a situation in which irreparable harm or damage
13 could occur if records or information are not released immediately.

14 (4) The requirements of subsection (1)(c) of this section shall not
15 apply to governmental agencies where the procedures would frustrate the
16 investigation of possible violations of criminal laws or to the release
17 of employing unit names, addresses, number of employees, and aggregate
18 employer wage data for the purpose of state governmental agencies
19 preparing small business economic impact statements under chapter 19.85
20 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and
21 (d). Information provided by the department and held to be private and
22 confidential under state or federal laws must not be misused or
23 released to unauthorized parties. A person who misuses such
24 information or releases such information to unauthorized parties is
25 subject to the sanctions in RCW 50.13.080.

26 (5) Governmental agencies shall have access to certain records or
27 information, limited to such items as names, addresses, social security
28 numbers, and general information about benefit entitlement or employer
29 information possessed by the department, for comparison purposes with
30 records or information possessed by the requesting agency to detect
31 improper or fraudulent claims, or to determine potential tax liability
32 or employer compliance with registration and licensing requirements.
33 In those cases the governmental agency shall not be required to comply
34 with subsection (1)(c) of this section, but the requirements of the
35 remainder of subsection (1) of this section must be satisfied.

36 (6) Governmental agencies may have access to certain records and
37 information, limited to employer information possessed by the
38 department for purposes authorized in chapter 50.38 RCW. Access to

1 these records and information is limited to only those individuals
2 conducting authorized statistical analysis, research, and evaluation
3 studies. Only in cases consistent with the purposes of chapter 50.38
4 RCW are government agencies not required to comply with subsection
5 (1)(c) of this section, but the requirements of the remainder of
6 subsection (1) of this section must be satisfied. Information provided
7 by the department and held to be private and confidential under state
8 or federal laws shall not be misused or released to unauthorized
9 parties subject to the sanctions in RCW 50.13.080.

10 (7) Disclosure to governmental agencies of information or records
11 obtained by the employment security department from the federal
12 government shall be governed by any applicable federal law or any
13 agreement between the federal government and the employment security
14 department where so required by federal law. When federal law does not
15 apply to the records or information state law shall control.

16 (8) The department may provide information for purposes of
17 statistical analysis and evaluation of the WorkFirst program or any
18 successor state welfare program to the department of social and health
19 services, the office of financial management, and other governmental
20 entities with oversight or evaluation responsibilities for the program
21 in accordance with RCW 43.20A.080. The confidential information
22 provided by the department shall remain the property of the department
23 and may be used by the authorized requesting agencies only for
24 statistical analysis, research, and evaluation purposes as provided in
25 RCW 74.08A.410 and 74.08A.420. The department of social and health
26 services, the office of financial management, or other governmental
27 entities with oversight or evaluation responsibilities for the program
28 are not required to comply with subsection (1)(c) of this section, but
29 the requirements of the remainder of subsection (1) of this section and
30 applicable federal laws and regulations must be satisfied. The
31 confidential information used for evaluation and analysis of welfare
32 reform supplied to the authorized requesting entities with regard to
33 the WorkFirst program or any successor state welfare program are exempt
34 from public inspection and copying under RCW 42.17.310.

35 (9) The disclosure of any records or information by a governmental
36 agency which has obtained the records or information under this section
37 is prohibited unless the disclosure is directly connected to the
38 official purpose for which the records or information were obtained.

1 (10) In conducting periodic salary or fringe benefit studies
2 pursuant to law, the department of personnel shall have access to
3 records of the employment security department as may be required for
4 such studies. For such purposes, the requirements of subsection (1)(c)
5 of this section need not apply.

6 (11)(a) To promote the reemployment of job seekers, the
7 commissioner may enter into data-sharing contracts with partners of the
8 one-stop career development system. The contracts shall provide for
9 the transfer of data only to the extent that the transfer is necessary
10 for the efficient provisions of work force programs, including but not
11 limited to public labor exchange, unemployment insurance, worker
12 training and retraining, vocational rehabilitation, vocational
13 education, adult education, transition from public assistance, and
14 support services. The transfer of information under contracts with
15 one-stop partners is exempt from subsection (1)(c) of this section.

16 (b) An individual who applies for services from the department and
17 whose information will be shared under (a) of this subsection (11) must
18 be notified that his or her private and confidential information in the
19 department's records will be shared among the one-stop partners to
20 facilitate the delivery of one-stop services to the individual. The
21 notice must advise the individual that he or she may request that
22 private and confidential information not be shared among the one-stop
23 partners and the department must honor the request. In addition, the
24 notice must:

25 (i) Advise the individual that if he or she requests that private
26 and confidential information not be shared among one-stop partners, the
27 request will in no way affect eligibility for services;

28 (ii) Describe the nature of the information to be shared, the
29 general use of the information by one-stop partner representatives, and
30 among whom the information will be shared;

31 (iii) Inform the individual that shared information will be used
32 only for the purpose of delivering one-stop services and that further
33 disclosure of the information is prohibited under contract and is not
34 subject to disclosure under RCW 42.17.310; and

35 (iv) Be provided in English and an alternative language selected by
36 the one-stop center or job service center as appropriate for the
37 community where the center is located.

1 If the notice is provided in-person, the individual who does not
2 want private and confidential information shared among the one-stop
3 partners must immediately advise the one-stop partner representative of
4 that decision. The notice must be provided to an individual who
5 applies for services telephonically, electronically, or by mail, in a
6 suitable format and within a reasonable time after applying for
7 services, which shall be no later than ten working days from the
8 department's receipt of the application for services. A one-stop
9 representative must be available to answer specific questions regarding
10 the nature, extent, and purpose for which the information may be
11 shared.

12 (12) To facilitate improved operation and evaluation of state
13 programs, the commissioner may enter into data-sharing contracts with
14 other state agencies only to the extent that such transfer is necessary
15 for the efficient operation or evaluation of outcomes for those
16 programs. The transfer of information by contract under this
17 subsection is exempt from subsection (1)(c) of this section.

18 (13) The misuse or unauthorized release of records or information
19 by any person or organization to which access is permitted by this
20 chapter subjects the person or organization to a civil penalty of five
21 thousand dollars and other applicable sanctions under state and federal
22 law. Suit to enforce this section shall be brought by the attorney
23 general and the amount of any penalties collected shall be paid into
24 the employment security department administrative contingency fund.
25 The attorney general may recover reasonable attorneys' fees for any
26 action brought to enforce this section."

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27 In line 1 of the title, after "procedures;" strike the remainder of
28 the title and insert "and amending RCW 34.05.320, 34.05.328, and
29 50.13.060."

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