
HOUSE BILL 1877

State of Washington

58th Legislature

2003 Regular Session

By Representatives Shabro, Armstrong, Miloscia, Tom, Nixon, Woods and Condotta

Read first time 02/13/2003. Referred to Committee on State Government.

1 AN ACT Relating to state agency rules that set fees or rates;
2 amending RCW 34.05.310 and 34.05.328; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that administrative
5 rules that set fees and rates can have significant effects on small
6 businesses, and that increasing fees and rates does not always produce
7 a benefit commensurate with cost of raising fees and rates, either to
8 the state, to businesses, or to the general public. The legislature
9 finds that when it specifically determines fees and rates in statutes,
10 then it is appropriate that state agencies adopting administrative
11 rules that mirror those statutes not be required to perform a
12 cost/benefit analysis or conduct a small business impact statement.
13 The legislature finds that state agencies should meet all the
14 requirements for adopting significant legislative rules when an agency
15 sets fees or rates that have not been set in statute. The legislature
16 finds that this reform will assure that Washington's businesses and
17 citizens are not burdened by fee and rate increases which are not
18 justified by producing significant benefits without producing
19 significant burdens for Washington's businesses and citizens.

1 **Sec. 2.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to
2 read as follows:

3 (1) To meet the intent of providing greater public access to
4 administrative rule making and to promote consensus among interested
5 parties, agencies shall solicit comments from the public on a subject
6 of possible rule making before filing with the code reviser a notice of
7 proposed rule making under RCW 34.05.320. The agency shall prepare a
8 statement of inquiry that:

9 (a) Identifies the specific statute or statutes authorizing the
10 agency to adopt rules on this subject;

11 (b) Discusses why rules on this subject may be needed and what they
12 might accomplish;

13 (c) Identifies other federal and state agencies that regulate this
14 subject, and describes the process whereby the agency would coordinate
15 the contemplated rule with these agencies;

16 (d) Discusses the process by which the rule might be developed,
17 including, but not limited to, negotiated rule making, pilot rule
18 making, or agency study;

19 (e) Specifies the process by which interested parties can
20 effectively participate in the decision to adopt a new rule and
21 formulation of a proposed rule before its publication.

22 The statement of inquiry shall be filed with the code reviser for
23 publication in the state register at least thirty days before the date
24 the agency files notice of proposed rule making under RCW 34.05.320 and
25 shall be sent to any party that has requested receipt of the agency's
26 statements of inquiry.

27 (2) Agencies are encouraged to develop and use new procedures for
28 reaching agreement among interested parties before publication of
29 notice and the adoption hearing on a proposed rule. Examples of new
30 procedures include, but are not limited to:

31 (a) Negotiated rule making by which representatives of an agency
32 and of the interests that are affected by a subject of rule making,
33 including, where appropriate, county and city representatives, seek to
34 reach consensus on the terms of the proposed rule and on the process by
35 which it is negotiated; and

36 (b) Pilot rule making which includes testing the feasibility of
37 complying with or administering draft new rules or draft amendments to

1 existing rules through the use of volunteer pilot groups in various
2 areas and circumstances, as provided in RCW 34.05.313 or as otherwise
3 provided by the agency.

4 (3)(a) An agency must make a determination whether negotiated rule
5 making, pilot rule making, or another process for generating
6 participation from interested parties prior to development of the rule
7 is appropriate.

8 (b) An agency must include a written justification in the rule-
9 making file if an opportunity for interested parties to participate in
10 the rule-making process prior to publication of the proposed rule has
11 not been provided.

12 (4) This section does not apply to:

13 (a) Emergency rules adopted under RCW 34.05.350;

14 (b) Rules relating only to internal governmental operations that
15 are not subject to violation by a nongovernment party;

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

24 (d) Rules that only correct typographical errors, make address or
25 name changes, or clarify language of a rule without changing its
26 effect;

27 (e) Rules the content of which is explicitly and specifically
28 dictated by statute;

29 (f) Rules that set or adjust fees or rates (~~pursuant to~~
30 ~~legislative standards~~) to make the rules match fees or rates that are
31 explicitly set in statute; or

32 (g) Rules that adopt, amend, or repeal:

33 (i) A procedure, practice, or requirement relating to agency
34 hearings; or

35 (ii) A filing or related process requirement for applying to an
36 agency for a license or permit.

1 **Sec. 3.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
2 as follows:

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

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

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

11 (c) Determine that the probable benefits of the rule are greater
12 than its probable costs, taking into account both the qualitative and
13 quantitative benefits and costs and the specific directives of the
14 statute being implemented;

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

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

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

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

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

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

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

37 (2) In making its determinations pursuant to subsection (1)(b)

1 through (g) of this section, the agency shall place in the rule-making
2 file documentation of sufficient quantity and quality so as to persuade
3 a reasonable person that the determinations are justified.

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

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

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

11 (c) Promote and assist voluntary compliance; and

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

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

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

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

27 (i) Deferring to the other entity;

28 (ii) Designating a lead agency; or

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

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

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

36 (i) The existence of any overlap or duplication of other federal or
37 state laws, any differences from federal law, and any known overlap,
38 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
35 legislative standards)) to make the rules match fees or rates that are
36 explicitly set in statute; or

37 (vii) Rules of the department of social and health services

1 relating only to client medical or financial eligibility and rules
2 concerning liability for care of dependents.

3 (c) For purposes of this subsection:

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

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

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

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

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

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

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

36 (c) Any legal action maintained based upon the alleged failure of
37 any agency to comply with this section, the costs to the state of such
38 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 mission;
3 (e) The extent to which this section has improved the acceptability
4 of state rules to those regulated; and
5 (f) Any other information considered by the office of financial
6 management to be useful in evaluating the effect of this section.

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