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HOUSE BILL 3083

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Kretz, Kristiansen, Crouse, Schmick, and Bailey

Read first time 01/22/10. Referred to Committee on State Government & Tribal Affairs.

1            AN ACT Relating to full consideration of the economic impacts of  
2 agency rules on employers and citizens; amending RCW 19.85.011,  
3 19.85.020, 19.85.030, 19.85.040, 34.05.353, and 50.13.060; and  
4 reenacting and amending RCW 34.05.328.

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

6            **Sec. 1.** RCW 19.85.011 and 1994 c 249 s 9 are each amended to read  
7 as follows:

8            The legislature finds that administrative rules adopted by state  
9 agencies can have a disproportionate impact on the state's small  
10 businesses because of the size of those businesses. This  
11 disproportionate impact reduces competition, innovation, employment,  
12 and new employment opportunities, and threatens the very existence of  
13 some small businesses. Before adopting administrative rules, agencies  
14 must make a thorough, realistic, and comprehensive assessment of the  
15 economic impact and burdens it places on the businesses that must  
16 comply with the rules. The legislature therefore enacts the Regulatory  
17 Fairness Act with the intent of reducing the disproportionate impact of  
18 state administrative rules on small business and ensuring that the full

1 impact and costs of all proposed agency rules are understood prior to  
2 their adoption.

3 **Sec. 2.** RCW 19.85.020 and 2007 c 239 s 2 are each amended to read  
4 as follows:

5 The definitions in this section apply through this chapter unless  
6 the context clearly requires otherwise.

7 (1) "Industry" means all of the businesses in this state in any one  
8 four-digit standard industrial classification as published by the  
9 United States department of commerce, or the North American industry  
10 classification system as published by the executive office of the  
11 president and the office of management and budget. However, if the use  
12 of a four-digit standard industrial classification or North American  
13 industry classification system would result in the release of data that  
14 would violate state confidentiality laws, "industry" means all  
15 businesses in a three-digit standard industrial classification or the  
16 North American industry classification system.

17 (2) "Minor cost" means a cost per business that is less than three-  
18 tenths of one percent of annual revenue or income, or one hundred  
19 dollars, whichever is greater, or one percent of annual payroll.  
20 However, for the rules of the department of social and health services  
21 "minor cost" means cost per business that is less than fifty dollars of  
22 annual cost per client or other appropriate unit of service. In all  
23 cases, an agency must consider the cumulative cost to a business of all  
24 sections of all proposed rules in the rule-making notice when making a  
25 "minor cost" determination.

26 (3) "Small business" means any business entity, including a sole  
27 proprietorship, corporation, partnership, or other legal entity, that  
28 is owned and operated independently from all other businesses, and that  
29 has fifty or fewer employees.

30 (4) "Small business economic impact statement" means a statement  
31 meeting the requirements of RCW 19.85.040 prepared by a state agency  
32 pursuant to RCW 19.85.030.

33 **Sec. 3.** RCW 19.85.030 and 2007 c 239 s 3 are each amended to read  
34 as follows:

35 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
36 shall prepare a small business economic impact statement: (a) If the

1 proposed rule will impose more than minor costs on businesses in an  
2 industry; or (b) if requested to do so by a majority vote of the joint  
3 administrative rules review committee within forty-five days of  
4 receiving the notice of proposed rule making under RCW 34.05.320.  
5 However, if the agency has completed the pilot rule process as defined  
6 by RCW 34.05.313 before filing the notice of a proposed rule, the  
7 agency is not required to prepare a small business economic impact  
8 statement.

9 An agency shall prepare the small business economic impact  
10 statement in accordance with RCW 19.85.040, and file it with the code  
11 reviser along with the notice required under RCW 34.05.320. An agency  
12 shall file a statement prepared at the request of the joint  
13 administrative rules review committee with the code reviser upon its  
14 completion before the adoption of the rule. An agency shall provide a  
15 copy of the small business economic impact statement to any person  
16 requesting it. An agency shall post a copy of the small business  
17 economic impact statement on the agency's web site along with the  
18 proposed rule or rules if the agency posts the proposed rule or rules  
19 on its web site.

20 (2) Based upon the extent of disproportionate impact on small  
21 business identified in the statement prepared under RCW 19.85.040, the  
22 agency shall, where legal and feasible in meeting the stated objectives  
23 of the statutes upon which the rule is based, reduce the costs imposed  
24 by the rule on small businesses. Methods to reduce the costs on small  
25 businesses may include:

- 26 (a) Reducing, modifying, or eliminating substantive regulatory  
27 requirements;
- 28 (b) Simplifying, reducing, or eliminating recordkeeping and  
29 reporting requirements;
- 30 (c) Reducing the frequency of inspections;
- 31 (d) Delaying compliance timetables;
- 32 (e) Reducing or modifying fine schedules for noncompliance; or
- 33 (f) Any other mitigation techniques.

34 (3) If the agency determines it cannot reduce the costs imposed by  
35 the rule on small businesses, the agency shall provide a clear  
36 explanation of why it has made that determination and include that  
37 statement with its filing of the proposed rule pursuant to RCW  
38 34.05.320.

1 (4)(a) All small business economic impact statements are subject to  
2 selective review by the joint administrative rules review committee  
3 pursuant to RCW 34.05.630.

4 (b) Any person affected by a proposed rule where there is ~~((fa))~~  
5 a small business economic impact statement may petition the joint  
6 administrative rules review committee for review pursuant to the  
7 procedure in RCW 34.05.655.

8 **Sec. 4.** RCW 19.85.040 and 2007 c 239 s 4 are each amended to read  
9 as follows:

10 (1) A small business economic impact statement must include a brief  
11 description of the reporting, recordkeeping, and other compliance  
12 requirements of the proposed rule, and the kinds of professional  
13 services that a small business is likely to need in order to comply  
14 with such requirements. It shall analyze and document the costs of  
15 compliance for businesses required to comply with the proposed rule  
16 adopted pursuant to RCW 34.05.320, including costs of equipment,  
17 supplies, labor, professional services, and increased administrative  
18 costs. It shall consider, based on input received, whether compliance  
19 with the rule will cause businesses to lose sales or revenue. To  
20 determine whether the proposed rule will have a disproportionate cost  
21 impact on small businesses, the impact statement must compare the cost  
22 of compliance for small business with the cost of compliance for the  
23 ten percent of businesses that are the largest businesses required to  
24 comply with the proposed rules using one or more of the following as a  
25 basis for comparing costs:

- 26 (a) Cost per employee;
- 27 (b) Cost per hour of labor; or
- 28 (c) Cost per one hundred dollars of sales.

29 (2) A small business economic impact statement must also include:

30 (a) A statement of the steps taken by the agency to reduce the  
31 costs of the rule on small businesses as required by RCW 19.85.030(2),  
32 or reasonable justification for not doing so, addressing the options  
33 listed in RCW 19.85.030(2);

34 (b) A description of how the agency will involve small businesses  
35 in the development of the rule;

36 (c) A list of industries that will be required to comply with the

1 rule. However, this subsection (2)(c) shall not be construed to  
2 preclude application of the rule to any business or industry to which  
3 it would otherwise apply; and

4 (d) An estimate of the number of jobs that will be created or lost  
5 as the result of compliance with the proposed rule.

6 (3) To obtain information for purposes of this section, an agency:

7 (a) May survey a representative sample of affected businesses or  
8 trade associations;

9 (b) Must consult with a wide range of for-profit and other industry  
10 sources that will be impacted by the proposed rule;

11 (c) May not rely solely on economic modeling; and

12 (d) Should, whenever possible, appoint a committee under RCW  
13 34.05.310(2) to assist in the accurate assessment of the costs of a  
14 proposed rule, and the means to reduce the costs imposed on small  
15 business.

16 (4) The agency must disclose opinions and analysis submitted by  
17 individuals that substantially differ or conflict with the agency's  
18 analysis of the economic impacts and administrative burdens of the  
19 proposed rules. Failure to disclose such conflicting or substantially  
20 different opinions or analysis raised during the public rule-making  
21 process creates a rebuttable presumption that the rule has not been  
22 adopted in accordance with all applicable provisions of law for  
23 purposes of RCW 34.05.620 and 34.05.630.

24 **Sec. 5.** RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are  
25 each reenacted and amended to read as follows:

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

28 ~~(a) Clearly state in detail the general goals and specific~~  
29 ~~objectives of the statute that the rule implements;~~

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

34 ~~(c) Provide notification in the notice of proposed rule making~~  
35 ~~under RCW 34.05.320 that a preliminary cost benefit analysis is~~  
36 ~~available. The preliminary cost benefit analysis must fulfill the~~  
37 ~~requirements of the cost benefit analysis under (d) of this subsection.~~

1 ~~If the agency files a supplemental notice under RCW 34.05.340, the~~  
2 ~~supplemental notice shall include notification that a revised~~  
3 ~~preliminary cost benefit analysis is available. A final cost benefit~~  
4 ~~analysis shall be available when the rule is adopted under RCW~~  
5 ~~34.05.360;~~

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

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

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

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

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

24 ~~(i) A state statute that explicitly allows the agency to differ~~  
25 ~~from federal standards; or~~

26 ~~(ii) Substantial evidence that the difference is necessary to~~  
27 ~~achieve the general goals and specific objectives stated under (a) of~~  
28 ~~this subsection; and~~

29 ~~(i) Coordinate the rule, to the maximum extent practicable, with~~  
30 ~~other federal, state, and local laws applicable to the same activity or~~  
31 ~~subject matter.~~

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

36 ~~(3) Before adopting rules described in subsection (5) of this~~  
37 ~~section, an agency shall place in the rule making file a rule~~

1 ~~implementation plan for rules filed under each adopting order.—The~~  
2 ~~plan shall describe how the agency intends to:~~

3 ~~(a) Implement and enforce the rule, including a description of the~~  
4 ~~resources the agency intends to use;~~

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

6 ~~(c) Promote and assist voluntary compliance; and~~

7 ~~(d) Evaluate whether the rule achieves the purpose for which it was~~  
8 ~~adopted, including, to the maximum extent practicable, the use of~~  
9 ~~interim milestones to assess progress and the use of objectively~~  
10 ~~measurable outcomes.~~

11 ~~(4) After adopting a rule described in subsection (5) of this~~  
12 ~~section regulating the same activity or subject matter as another~~  
13 ~~provision of federal or state law, an agency shall do all of the~~  
14 ~~following:~~

15 ~~(a) Provide to the business assistance center a list citing by~~  
16 ~~reference the other federal and state laws that regulate the same~~  
17 ~~activity or subject matter;~~

18 ~~(b) Coordinate implementation and enforcement of the rule with the~~  
19 ~~other federal and state entities regulating the same activity or~~  
20 ~~subject matter by making every effort to do one or more of the~~  
21 ~~following:~~

22 ~~(i) Deferring to the other entity;~~

23 ~~(ii) Designating a lead agency; or~~

24 ~~(iii) Entering into an agreement with the other entities specifying~~  
25 ~~how the agency and entities will coordinate implementation and~~  
26 ~~enforcement.~~

27 ~~If the agency is unable to comply with this subsection (4)(b), the~~  
28 ~~agency shall report to the legislature pursuant to (c) of this~~  
29 ~~subsection;~~

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

31 ~~(i) The existence of any overlap or duplication of other federal or~~  
32 ~~state laws, any differences from federal law, and any known overlap,~~  
33 ~~duplication, or conflict with local laws; and~~

34 ~~(ii) Make recommendations for any legislation that may be necessary~~  
35 ~~to eliminate or mitigate any adverse effects of such overlap,~~  
36 ~~duplication, or difference.~~

37 ~~(5)(a) Except as provided in (b) of this subsection, this section~~  
38 ~~applies to:~~

1       ~~(i) Significant legislative rules of the departments of ecology,~~  
2 ~~labor and industries, health, revenue, social and health services, and~~  
3 ~~natural resources, the employment security department, the forest~~  
4 ~~practices board, the office of the insurance commissioner, and to the~~  
5 ~~legislative rules of the department of fish and wildlife implementing~~  
6 ~~chapter 77.55 RCW; and~~

7       ~~(ii) Any rule of any agency, if this section is voluntarily made~~  
8 ~~applicable to the rule by the agency, or is made applicable to the rule~~  
9 ~~by a majority vote of the joint administrative rules review committee~~  
10 ~~within forty five days of receiving the notice of proposed rule making~~  
11 ~~under RCW 34.05.320.~~

12       ~~(b) This section does not apply to:~~

13       ~~(i) Emergency rules adopted under RCW 34.05.350;~~

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

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

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

29       ~~(vi) Rules that set or adjust fees or rates pursuant to legislative~~  
30 ~~standards; or~~

31       ~~(vii) Rules of the department of social and health services~~  
32 ~~relating only to client medical or financial eligibility and rules~~  
33 ~~concerning liability for care of dependents.~~

34       ~~(c) For purposes of this subsection:~~

35       ~~(i) A "procedural rule" is a rule that adopts, amends, or repeals~~  
36 ~~(A) any procedure, practice, or requirement relating to any agency~~  
37 ~~hearings; (B) any filing or related process requirement for making~~



1 ~~application to an agency for a license or permit; or (C) any policy~~  
2 ~~statement pertaining to the consistent internal operations of an~~  
3 ~~agency.~~

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

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

15 ~~(d) In the notice of proposed rule making under RCW 34.05.320, an~~  
16 ~~agency shall state whether this section applies to the proposed rule~~  
17 ~~pursuant to (a)(i) of this subsection, or if the agency will apply this~~  
18 ~~section voluntarily.~~

19 ~~(6)) The definitions in this subsection (1) apply throughout this~~  
20 ~~section unless the context clearly requires otherwise.~~

21 ~~(a) "Interpretive rule" means a rule, the violation of which does~~  
22 ~~not subject a person to a penalty or sanction, that sets forth the~~  
23 ~~agency's interpretation of statutory provisions it administers.~~

24 ~~(b) "Procedural rule" means a rule that adopts, amends, or repeals:~~  
25 ~~(i) Any procedure, practice, or requirement relating to any agency~~  
26 ~~hearings; (ii) any filing or related process requirement for making~~  
27 ~~application to an agency for a license or permit; or (iii) any policy~~  
28 ~~statement pertaining to the consistent internal operations of an~~  
29 ~~agency.~~

30 ~~(c) "Return on investment" means the time period required for full~~  
31 ~~recovery of any initial and ongoing monetary or capital outlays~~  
32 ~~necessary to comply with the proposed rule or rules.~~

33 ~~(d) "Significant legislative rule" means a rule other than a~~  
34 ~~procedural or interpretive rule that: (i) Adopts substantive~~  
35 ~~provisions of law pursuant to delegated legislative authority, the~~  
36 ~~violation of which subjects a violator of the rule to a penalty or~~  
37 ~~sanction; (ii) establishes, alters, or revokes any qualification or~~

1 standard for the issuance, suspension, or revocation of a license or  
2 permit; or (iii) adopts a new, or makes significant amendments to, a  
3 policy or regulatory program.

4 (2)(a) Except as provided in (b) of this subsection, this section  
5 applies to:

6 (i) Significant legislative rules of any agency; and

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

12 (b) This section does not apply to:

13 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

29 (vi) Rules that set or adjust fees or rates pursuant to legislative  
30 standards; or

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

34 (c) In the notice of proposed rule making under RCW 34.05.320, an  
35 agency shall state whether this section applies to the proposed rule  
36 pursuant to (a)(i) of this subsection, or if the agency will apply this  
37 section voluntarily.

1 (3) Before adopting a rule described in subsection (2) of this  
2 section, an agency shall:

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

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

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

18 (d) Determine that the probable benefits of the rule are greater  
19 than its probable costs, taking into account:

20 (i) Both the qualitative and quantitative benefits and costs and  
21 the specific directives of the statute being implemented; and

22 (ii) The initial costs required to comply with the proposed rule  
23 and the expected return on investment;

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

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

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

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

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

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

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

9 (4) In making its determinations pursuant to subsection (3) of this  
10 section, the agency shall proactively consult with a wide range of for-  
11 profit and other industry sources that will be impacted by the proposed  
12 rule and place in the rule-making file documentation of sufficient  
13 quantity and quality so as to persuade a reasonable person that the  
14 determinations are justified.

15 (5) Before adopting rules described in subsection (2) of this  
16 section, the agency shall:

17 (a) Disclose opinions and analysis submitted by individuals that  
18 substantially differ or conflict with the agency's analysis of the  
19 economic impacts and administrative burdens of the proposed rules.  
20 Failure to disclose such conflicting or substantially different  
21 opinions or analysis raised during the public rule-making process  
22 creates a rebuttable presumption that the rule has not been adopted in  
23 accordance with all applicable provisions of law for purposes of RCW  
24 34.05.620 and 34.05.630.

25 (b) Place in the rule-making file a rule implementation plan for  
26 rules filed under each adopting order. The plan must describe how the  
27 agency intends to:

28 (i) Implement and enforce the rule, including a description of the  
29 resources the agency intends to use;

30 (ii) Inform and educate affected persons about the rule;

31 (iii) Promote and assist voluntary compliance; and

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

36 (6) After adopting a rule described in subsection (2) of this  
37 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 department of commerce a list citing by  
4 reference the other federal and state laws that regulate the same  
5 activity or subject matter;

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

10 (i) Deferring to the other entity;

11 (ii) Designating a lead agency; or

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

15 If the agency is unable to comply with this subsection (6)(b), the  
16 agency shall report to the legislature pursuant to (c) of this  
17 subsection;

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

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

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

25 (7) 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.

7 **Sec. 6.** RCW 34.05.353 and 2004 c 31 s 4 are each amended to read  
8 as follows:

9 (1) An agency may file notice for the expedited adoption of rules  
10 in accordance with the procedures set forth in this section for rules  
11 meeting any one of the following criteria:

12 (a) The proposed rules relate only to internal governmental  
13 operations that are not subject to violation by a person;

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

22 (c) The proposed rules only correct typographical errors, make  
23 address or name changes, or clarify language of a rule without changing  
24 its effect;

25 (d) The content of the proposed rules is explicitly and  
26 specifically dictated by statute;

27 (e) The proposed rules have been the subject of negotiated rule  
28 making, pilot rule making, or some other process that involved  
29 substantial participation by interested parties before the development  
30 of the proposed rule; or

31 (f) The proposed rule is being amended after a review under RCW  
32 34.05.328.

33 (2) An agency may file notice for the expedited repeal of rules  
34 under the procedures set forth in this section for rules meeting any  
35 one of the following criteria:

36 (a) The statute on which the rule is based has been repealed and

1 has not been replaced by another statute providing statutory authority  
2 for the rule;

3 (b) The statute on which the rule is based has been declared  
4 unconstitutional by a court with jurisdiction, there is a final  
5 judgment, and no statute has been enacted to replace the  
6 unconstitutional statute;

7 (c) The rule is no longer necessary because of changed  
8 circumstances; or

9 (d) Other rules of the agency or of another agency govern the same  
10 activity as the rule, making the rule redundant.

11 (3) The expedited rule-making process must follow the requirements  
12 for rule making set forth in RCW 34.05.320, except that the agency is  
13 not required to prepare a small business economic impact statement  
14 under RCW 19.85.025, a statement indicating whether the rule  
15 constitutes a significant legislative rule under RCW  
16 34.05.328(~~((5)(e)(iii))~~) (1)(d), or a significant legislative rule  
17 analysis under RCW 34.05.328. An agency is not required to prepare  
18 statements of inquiry under RCW 34.05.310 or conduct a hearing for the  
19 expedited rule making. The notice for the expedited rule making must  
20 contain a statement in at least ten-point type, that is substantially  
21 in the following form:

22 **NOTICE**

23 THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-  
24 MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO  
25 HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT  
26 STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A  
27 SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE  
28 EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS  
29 IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS)  
30 AND RECEIVED BY (INSERT DATE).

31 (4) The agency shall send either a copy of the notice of the  
32 proposed expedited rule making, or a summary of the information on the  
33 notice, to any person who has requested notification of proposals for  
34 expedited rule making or of regular agency rule making, as well as the  
35 joint administrative rules review committee, within three days after  
36 its publication in the Washington State Register. An agency may charge  
37 for the actual cost of providing a requesting party mailed copies of

1 these notices. The notice of the proposed expedited rule making must  
2 be preceded by a statement substantially in the form provided in  
3 subsection (3) of this section. The notice must also include an  
4 explanation of the reasons the agency believes the expedited rule-  
5 making process is appropriate.

6 (5) The code reviser shall publish the text of all rules proposed  
7 for expedited adoption, and the citation and caption of all rules  
8 proposed for expedited repeal, along with the notice required in this  
9 section in a separate section of the Washington State Register. Once  
10 the notice of expedited rule making has been published in the  
11 Washington State Register, the only changes that an agency may make in  
12 the noticed materials before their final adoption or repeal are to  
13 correct typographical errors.

14 (6) Any person may file a written objection to the expedited rule  
15 making. The objection must be filed with the agency rules coordinator  
16 within forty-five days after the notice of the proposed expedited rule  
17 making has been published in the Washington State Register. A person  
18 who has filed a written objection to the expedited rule making may  
19 withdraw the objection.

20 (7) If no written objections to the expedited rule making are filed  
21 with the agency within forty-five days after the notice of proposed  
22 expedited rule making is published, or if all objections that have been  
23 filed are withdrawn by the persons filing the objections, the agency  
24 may enter an order adopting or repealing the rule without further  
25 notice or a public hearing. The order must be published in the manner  
26 required by this chapter for any other agency order adopting, amending,  
27 or repealing a rule.

28 (8) If a written notice of objection to the expedited rule making  
29 is timely filed with the agency and is not withdrawn, the notice of  
30 proposed expedited rule making published under this section is  
31 considered a statement of inquiry for the purposes of RCW 34.05.310,  
32 and the agency may initiate further rule-making proceedings in  
33 accordance with this chapter.

34 (9) As used in this section, "expedited rule making" includes both  
35 the expedited adoption of rules and the expedited repeal of rules.

36 **Sec. 7.** RCW 50.13.060 and 2008 c 120 s 6 are each amended to read  
37 as follows:



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

6 (a) The agency submits an application in writing to the employment  
7 security department for the records or information containing a  
8 statement of the official purposes for which the information or records  
9 are needed and specific identification of the records or information  
10 sought from the department; and

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

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

29 (2) The requirements of subsections (1) and (9) of this section  
30 shall not apply to the state legislative branch. The state legislature  
31 shall have access to information or records deemed private and  
32 confidential under this chapter, if the legislature or a legislative  
33 committee finds that the information or records are necessary and for  
34 official purposes. If the employment security department does not make  
35 information or records available as provided in this subsection, the  
36 legislature may exercise its authority granted by chapter 44.16 RCW.

37 (3) In cases of emergency the governmental agency requesting access  
38 shall not be required to formally comply with the provisions of

1 subsection (1) of this section at the time of the request if the  
2 procedures required by subsection (1) of this section are complied with  
3 by the requesting agency following the receipt of any records or  
4 information deemed private and confidential under this chapter. An  
5 emergency is defined as a situation in which irreparable harm or damage  
6 could occur if records or information are not released immediately.

7 (4) The requirements of subsection (1)(c) of this section shall not  
8 apply to governmental agencies where the procedures would frustrate the  
9 investigation of possible violations of criminal laws or to the release  
10 of employing unit names, addresses, number of employees, and aggregate  
11 employer wage data for the purpose of state governmental agencies  
12 preparing small business economic impact statements under chapter 19.85  
13 RCW or preparing cost-benefit analyses under RCW 34.05.328(~~((+1))~~) (3)  
14 (c) and (d). Information provided by the department and held to be  
15 private and confidential under state or federal laws must not be  
16 misused or released to unauthorized parties. A person who misuses such  
17 information or releases such information to unauthorized parties is  
18 subject to the sanctions in RCW 50.13.080.

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

29 (6) Governmental agencies may have access to certain records and  
30 information, limited to employer information possessed by the  
31 department for purposes authorized in chapter 50.38 RCW. Access to  
32 these records and information is limited to only those individuals  
33 conducting authorized statistical analysis, research, and evaluation  
34 studies. Only in cases consistent with the purposes of chapter 50.38  
35 RCW are government agencies not required to comply with subsection  
36 (1)(c) of this section, but the requirements of the remainder of  
37 subsection (1) of this section must be satisfied. Information provided

1 by the department and held to be private and confidential under state  
2 or federal laws shall not be misused or released to unauthorized  
3 parties subject to the sanctions in RCW 50.13.080.

4 (7) Disclosure to governmental agencies of information or records  
5 obtained by the employment security department from the federal  
6 government shall be governed by any applicable federal law or any  
7 agreement between the federal government and the employment security  
8 department where so required by federal law. When federal law does not  
9 apply to the records or information state law shall control.

10 (8) The department may provide information for purposes of  
11 statistical analysis and evaluation of the WorkFirst program or any  
12 successor state welfare program to the department of social and health  
13 services, the office of financial management, and other governmental  
14 entities with oversight or evaluation responsibilities for the program  
15 in accordance with RCW 43.20A.080. The confidential information  
16 provided by the department shall remain the property of the department  
17 and may be used by the authorized requesting agencies only for  
18 statistical analysis, research, and evaluation purposes as provided in  
19 RCW 74.08A.410 and 74.08A.420. The department of social and health  
20 services, the office of financial management, or other governmental  
21 entities with oversight or evaluation responsibilities for the program  
22 are not required to comply with subsection (1)(c) of this section, but  
23 the requirements of the remainder of subsection (1) of this section and  
24 applicable federal laws and regulations must be satisfied. The  
25 confidential information used for evaluation and analysis of welfare  
26 reform supplied to the authorized requesting entities with regard to  
27 the WorkFirst program or any successor state welfare program are exempt  
28 from public inspection and copying under chapter 42.56 RCW.

29 (9) The disclosure of any records or information by a governmental  
30 agency which has obtained the records or information under this section  
31 is prohibited unless the disclosure is (a) directly connected to the  
32 official purpose for which the records or information were obtained or  
33 (b) to another governmental agency which would be permitted to obtain  
34 the records or information under subsection (4) or (5) of this section.

35 (10) In conducting periodic salary or fringe benefit studies  
36 pursuant to law, the department of personnel shall have access to  
37 records of the employment security department as may be required for

1 such studies. For such purposes, the requirements of subsection (1)(c)  
2 of this section need not apply.

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

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

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

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

28 (iii) Inform the individual that shared information will be used  
29 only for the purpose of delivering one-stop services and that further  
30 disclosure of the information is prohibited under contract and is not  
31 subject to disclosure under chapter 42.56 RCW; and

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

35 If the notice is provided in-person, the individual who does not  
36 want private and confidential information shared among the one-stop  
37 partners must immediately advise the one-stop partner representative of  
38 that decision. The notice must be provided to an individual who

1 applies for services telephonically, electronically, or by mail, in a  
2 suitable format and within a reasonable time after applying for  
3 services, which shall be no later than ten working days from the  
4 department's receipt of the application for services. A one-stop  
5 representative must be available to answer specific questions regarding  
6 the nature, extent, and purpose for which the information may be  
7 shared.

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

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

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