

HB 1178 - S COMM AMD

By Committee on Economic Development, Trade & Innovation

ADOPTED 04/06/2011

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

3 "Sec. 1. RCW 34.05.328 and 2010 c 112 s 15 are each amended to  
4 read as follows:

5 (1) Before adopting a rule described in subsection (5) of this  
6 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) of this  
23 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) After adopting a rule described in subsection (5) of this  
35 section regulating the same activity or subject matter as another  
36 provision of federal or state law, an agency shall do all of the  
37 following:

1 (a) Coordinate implementation and enforcement of the rule with the  
2 other federal and state entities regulating the same activity or  
3 subject matter by making every effort to do one or more of the  
4 following:

- 5 (i) Deferring to the other entity;
- 6 (ii) Designating a lead agency; or
- 7 (iii) Entering into an agreement with the other entities specifying  
8 how the agency and entities will coordinate implementation and  
9 enforcement.

10 If the agency is unable to comply with this subsection (4)(a), the  
11 agency shall report to the legislature pursuant to (b) of this  
12 subsection;

13 (b) Report to the joint administrative rules review committee:

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

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

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

22 (i) Significant legislative rules of the departments of ecology,  
23 labor and industries, health, revenue, social and health services, and  
24 natural resources, the employment security department, the forest  
25 practices board, the office of the insurance commissioner, and to the  
26 legislative rules of the department of fish and wildlife implementing  
27 chapter 77.55 RCW; and

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

33 (b) This section does not apply to:

34 (i) Emergency rules adopted under RCW 34.05.350;  
35 (ii) Rules relating only to internal governmental operations that  
36 are not subject to violation by a nongovernment party;

37 (iii) Rules adopting or incorporating by reference without material  
38 change federal statutes or regulations, Washington state statutes,

1 rules of other Washington state agencies, shoreline master programs  
2 other than those programs governing shorelines of statewide  
3 significance, or, as referenced by Washington state law, national  
4 consensus codes that generally establish industry standards, if the  
5 material adopted or incorporated regulates the same subject matter and  
6 conduct as the adopting or incorporating rule;

7 (iv) Rules that only correct typographical errors, make address or  
8 name changes, or clarify language of a rule without changing its  
9 effect;

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

12 (vi) Rules that set or adjust fees or rates pursuant to legislative  
13 standards;

14 (vii) Rules of the department of social and health services  
15 relating only to client medical or financial eligibility and rules  
16 concerning liability for care of dependents; or

17 (viii) Rules of the department of revenue that adopt a uniform  
18 expiration date for reseller permits as authorized in RCW 82.32.780 and  
19 82.32.783.

20 (c) For purposes of this subsection:

21 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
22 (A) any procedure, practice, or requirement relating to any agency  
23 hearings; (B) any filing or related process requirement for making  
24 application to an agency for a license or permit; or (C) any policy  
25 statement pertaining to the consistent internal operations of an  
26 agency.

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

30 (iii) A "significant legislative rule" is a rule other than a  
31 procedural or interpretive rule that (A) adopts substantive provisions  
32 of law pursuant to delegated legislative authority, the violation of  
33 which subjects a violator of such rule to a penalty or sanction; (B)  
34 establishes, alters, or revokes any qualification or standard for the  
35 issuance, suspension, or revocation of a license or permit; or (C)  
36 adopts a new, or makes significant amendments to, a policy or  
37 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) By January 31, 1996, and by January 31st of each even-numbered  
6 year thereafter, the office of (~~financial management~~) regulatory  
7 assistance, after consulting with state agencies, counties, and cities,  
8 and business, labor, and environmental organizations, shall report to  
9 the governor and the legislature regarding the effects of this section  
10 on the 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 **Sec. 2.** RCW 43.42.010 and 2009 c 97 s 4 are each amended to read  
26 as follows:

27 (1) The office of regulatory assistance is created in the office of  
28 financial management and (~~shall~~) must be administered by the office  
29 of the governor to help improve the regulatory system and assist  
30 citizens, businesses, and project proponents.

31 (2) The governor (~~shall~~) must appoint a director. The director  
32 may employ a deputy director and a confidential secretary and such  
33 staff as are necessary, or contract with another state agency pursuant  
34 to chapter 39.34 RCW for support in carrying out the purposes of this  
35 chapter.

36 (3) The office (~~shall~~) must offer to:

- 1 (a) Act as the central point of contact for the project proponent  
2 in communicating about defined issues;
- 3 (b) Conduct project scoping as provided in RCW 43.42.050;
- 4 (c) Verify that the project proponent has all the information  
5 needed to correctly apply for all necessary permits;
- 6 (d) Provide general coordination services;
- 7 (e) Coordinate the efficient completion among participating  
8 agencies of administrative procedures, such as collecting fees or  
9 providing public notice;
- 10 (f) Maintain contact with the project proponent and the permit  
11 agencies to promote adherence to agreed schedules;
- 12 (g) Assist in resolving any conflict or inconsistency among permit  
13 requirements and conditions;
- 14 (h) Coordinate, to the extent practicable, with relevant federal  
15 permit agencies and tribal governments;
- 16 (i) Facilitate meetings;
- 17 (j) Manage a fully coordinated permit process, as provided in RCW  
18 43.42.060;
- 19 (k) Help local jurisdictions comply with the requirements of  
20 chapter 36.70B RCW by providing information about best permitting  
21 practices methods to improve communication with, and solicit early  
22 involvement of, state agencies when needed; and
- 23 (l) Maintain and furnish information as provided in RCW 43.42.040.
- 24 (4) The office (~~shall~~) must provide the following by September 1,  
25 2009, and biennially thereafter, to the governor and the appropriate  
26 committees of the legislature:
- 27 (a) A performance report including:
- 28 (i) Information regarding use of the office's voluntary cost-  
29 reimbursement services as provided in RCW 43.42.070;
- 30 (ii) The number and type of projects where the office provided  
31 services and the resolution provided by the office on any conflicts  
32 that arose on such projects; (~~and~~)
- 33 (iii) The agencies involved on specific projects;
- 34 (iv) Specific information on any difficulty encountered in  
35 provision of services, implementation of programs or processes, or use  
36 of tools; and
- 37 (v) Trend reporting that allows comparisons between statements of

1 goals and performance targets and the achievement of those goals and  
2 targets; and

3 (b) Recommendations on system improvements including  
4 recommendations regarding:

5 (i) Measurement of overall system performance; (~~and~~)

6 (ii) Changes needed to make cost reimbursement, a fully coordinated  
7 permit process, multiagency permitting teams, and other processes  
8 effective; and

9 (iii) Resolving any conflicts or inconsistencies arising from  
10 differing statutory or regulatory authorities, roles and missions of  
11 agencies, timing and sequencing of permitting and procedural  
12 requirements as identified by the office in the course of its duties.

13 NEW SECTION. Sec. 3. The following acts or parts of acts are each  
14 repealed:

15 (1) RCW 43.131.401 (Office of regulatory assistance--Termination)  
16 and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13;  
17 and

18 (2) RCW 43.131.402 (Office of regulatory assistance--Repeal) and  
19 2010 c 162 s 7.

20 NEW SECTION. Sec. 4. This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 June 29, 2011."

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24 On page 1, line 2 of the title, after "34.05.328" insert "and  
25 43.42.010"

EFFECT: Reporting requirements relating to services, programs,

processes, tools, and trends, as well as needed changes, are added.

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