
SUBSTITUTE SENATE BILL 5506

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Moore, Anderson, Jesernig, Amondson, Haugen, Barr, Snyder, Cantu, Owen, Vognild, Deccio and Hochstatter)

Read first time 03/03/93.

1 AN ACT Relating to administrative rule making; amending RCW
2 34.05.380, 34.05.620, 34.05.630, 34.05.640, and 34.05.370; adding new
3 sections to chapter 34.05 RCW; and repealing RCW 34.05.660, 34.05.670,
4 and 34.05.680.

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

6 **Sec. 1.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to read
7 as follows:

8 (1) Each agency shall file in the office of the code reviser a
9 certified copy of all rules it adopts, except for rules contained in
10 tariffs filed with or published by the Washington utilities and
11 transportation commission. The code reviser shall place upon each rule
12 a notation of the time and date of filing and shall keep a permanent
13 register of filed rules open to public inspection. In filing a rule,
14 each agency shall use the standard form prescribed for this purpose by
15 the code reviser.

16 (2)(a) Emergency rules adopted under RCW 34.05.350 become effective
17 upon filing unless a later date is specified in the order of adoption.

18 (b) The effective date for any nonemergency rule, the violation of
19 which subjects a person to a penalty or administrative sanction, except

1 those regulating the dates of hunting and fishing seasons, is as
2 follows: (i) Those filed on or between January 1st and November 30th
3 of a year take effect at the end of the regular legislative session
4 held in the following calendar year; (ii) those filed during the month
5 of December of a year take effect at the end of the second subsequent
6 regular legislative session.

7 (c) All other rules not covered under (a) or (b) of this subsection
8 become effective upon the expiration of thirty days after the date of
9 filing, unless a later date is required by statute or specified in the
10 order of adoption.

11 (3) A rule may become effective immediately upon its filing with
12 the code reviser or on any subsequent date earlier than that
13 established by subsection (2) of this section, if the agency
14 establishes that effective date in the adopting order and finds that:

15 (a) Such action is required by the state or federal Constitution,
16 a statute, or court order;

17 (b) The rule only delays the effective date of another rule that is
18 not yet effective; or

19 (c) The earlier effective date is necessary because of imminent
20 peril to the public health, safety, or welfare.

21 The finding and a brief statement of the reasons therefor required
22 by this subsection shall be made a part of the order adopting the rule.

23 (4) With respect to a rule made effective pursuant to subsection
24 (3) of this section, each agency shall make reasonable efforts to make
25 the effective date known to persons who may be affected by it.

26 **Sec. 2.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
27 read as follows:

28 Whenever a majority of the members of the rules review committee
29 determines that a proposed rule is not within the intent of the
30 legislature as expressed in the statute which the rule implements, or
31 that an agency may not be adopting a proposed rule in accordance with
32 all applicable provisions of law, including section 7 of this act and
33 chapter 19.85 RCW, the committee shall give the affected agency written
34 notice of its decision. The notice shall be given at least seven days
35 prior to any hearing scheduled for consideration of or adoption of the
36 proposed rule pursuant to RCW 34.05.320. The notice shall include a
37 statement of the review committee's findings and the reasons therefor.

1 When the agency holds a hearing on the proposed rule, the agency shall
2 consider the review committee's decision.

3 **Sec. 3.** RCW 34.05.630 and 1988 c 288 s 603 are each amended to
4 read as follows:

5 (1) All rules required to be filed pursuant to RCW 34.05.380, and
6 emergency rules adopted pursuant to RCW 34.05.350, are subject to
7 selective review by the legislature.

8 (2) The rules review committee may review an agency's use of policy
9 statements, guidelines, and issuances that are of general
10 applicability, or their equivalents to determine whether or not an
11 agency has failed to adopt a rule.

12 (3) If the rules review committee finds by a majority vote of its
13 members: (a) That an existing rule is not within the intent of the
14 legislature as expressed by the statute which the rule implements, (b)
15 that the rule has not been adopted in accordance with all applicable
16 provisions of law, including section 7 of this act and chapter 19.85
17 RCW, or (c) that an agency is using a policy statement, guideline, or
18 issuance in place of a rule, the agency affected shall be notified of
19 such finding and the reasons therefor. Within thirty days of the
20 receipt of the rules review committee's notice, the agency shall file
21 notice of a hearing on the rules review committee's finding with the
22 code reviser and mail notice to all persons who have made timely
23 request of the agency for advance notice of its rule-making proceedings
24 as provided in RCW 34.05.320. The agency's notice shall include the
25 rules review committee's findings and reasons therefor, and shall be
26 published in the Washington state register in accordance with the
27 provisions of chapter 34.08 RCW.

28 (4) The agency shall consider fully all written and oral
29 submissions regarding (a) whether the rule in question is within the
30 intent of the legislature as expressed by the statute which the rule
31 implements, (b) whether the rule was adopted in accordance with all
32 applicable provisions of law, including section 7 of this act and
33 chapter 19.85 RCW, or (c) whether the agency is using a policy
34 statement, guideline, or issuance in place of a rule.

35 **Sec. 4.** RCW 34.05.640 and 1988 c 288 s 604 are each amended to
36 read as follows:

1 (1) Within seven days of an agency hearing held after notification
2 of the agency by the rules review committee pursuant to RCW 34.05.620
3 or 34.05.630, the affected agency shall notify the committee of its
4 action on a proposed or existing rule to which the committee objected
5 or on a committee finding of the agency's failure to adopt rules. If
6 the rules review committee determines, by a majority vote of its
7 members, that the agency has failed to provide for the required
8 hearings or notice of its action to the committee, the committee may
9 file notice of its objections, together with a concise statement of the
10 reasons therefor, with the code reviser within thirty days of such
11 determination.

12 (2) If the rules review committee finds, by a majority vote of its
13 members: (a) That the proposed or existing rule in question has not
14 been modified, amended, withdrawn, or repealed by the agency so as to
15 conform with the intent of the legislature, or (b) that an existing
16 rule was not adopted in accordance with all applicable provisions of
17 law, including section 7 of this act and chapter 19.85 RCW, or (c) that
18 the agency is using a policy statement, guideline, or issuance in place
19 of a rule, the rules review committee may, within thirty days from
20 notification by the agency of its action, file with the code reviser
21 notice of its objections together with a concise statement of the
22 reasons therefor. Such notice and statement shall also be provided to
23 the agency by the rules review committee.

24 (3) If the rules review committee makes an adverse finding under
25 subsection (2) of this section, the committee may, by a ~~((two-thirds))~~
26 majority vote of its members, recommend suspension of an existing rule.
27 Within seven days of such vote the committee shall transmit to the
28 appropriate standing committees of the legislature, the governor, the
29 code reviser, and the agency written notice of its objection and
30 recommended suspension and the concise reasons therefor. Within thirty
31 days of receipt of the notice, the governor shall transmit to the
32 committee, the code reviser, and the agency written approval or
33 disapproval of the recommended suspension. If the suspension is
34 approved by the governor, it is effective from the date of that
35 approval and continues until ninety days after the expiration of the
36 next regular legislative session.

37 (4) The code reviser shall publish transmittals from the rules
38 review committee or the governor issued pursuant to subsection (1),
39 (2), or (3) of this section in the Washington state register and shall

1 publish in the next supplement and compilation of the Washington
2 Administrative Code a reference to the committee's objection or
3 recommended suspension and the governor's action on it and to the issue
4 of the Washington state register in which the full text thereof
5 appears.

6 (5) The reference shall be removed from a rule published in the
7 Washington Administrative Code if a subsequent adjudicatory proceeding
8 determines that the rule is within the intent of the legislature or was
9 adopted in accordance with all applicable laws, whichever was the
10 objection of the rules review committee.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 34.05 RCW
12 to read as follows:

13 Notwithstanding any other provision of law, an election by the
14 rules review committee under RCW 34.05.640 to recommend suspension of
15 a rule, regardless of whether the suspension is approved by the
16 governor, establishes a presumption in any subsequent judicial review
17 of the rule that it is invalid. The burden of demonstrating the rule's
18 validity is then on the adopting agency. The court shall declare the
19 rule valid only if it finds that the rule does not violate
20 constitutional provisions, does not exceed the statutory authority of
21 the agency, that it was adopted in compliance with statutory rule-
22 making procedures, and that it could conceivably have been the product
23 of a rational decision maker.

24 **Sec. 6.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
25 read as follows:

26 (1) Each agency shall maintain an official rule-making file for
27 each rule that it (a) proposes by publication in the state register, or
28 (b) adopts. The file and materials incorporated by reference shall be
29 available for public inspection.

30 (2) The agency rule-making file shall contain all of the following:

31 (a) Copies of all publications in the state register with respect
32 to the rule or the proceeding upon which the rule is based;

33 (b) Copies of any portions of the agency's public rule-making
34 docket containing entries relating to the rule or the proceeding on
35 which the rule is based;

36 (c) All written petitions, requests, submissions, and comments
37 received by the agency and all other written material regarded by the

1 agency as important to adoption of the rule or the proceeding on which
2 the rule is based;

3 (d) Any official transcript of oral presentations made in the
4 proceeding on which the rule is based or, if not transcribed, any tape
5 recording or stenographic record of them, and any memorandum prepared
6 by a presiding official summarizing the contents of those
7 presentations;

8 (e) The concise explanatory statement required by RCW 34.05.355;

9 (f) All petitions for exceptions to, amendment of, or repeal or
10 suspension of, the rule; (~~and~~)

11 (g) All data and other factual information, technical, theoretical,
12 and empirical studies or reports, if any, on which the agency relies in
13 the adoption of the rule; and

14 (h) Any other material placed in the file by the agency.

15 (3) Internal agency documents are exempt from inclusion in the
16 rule-making file under subsection (2) of this section to the extent
17 they constitute preliminary drafts, notes, recommendations, and intra-
18 agency memoranda in which opinions are expressed or policies formulated
19 or recommended, except that a specific document is not exempt from
20 inclusion when it is publicly cited by an agency in connection with its
21 decision.

22 (4) Upon judicial review, the file required by this section
23 constitutes the official agency rule-making file with respect to that
24 rule. Unless otherwise required by another provision of law, the
25 official agency rule-making file need not be the exclusive basis for
26 agency action on that rule.

27 NEW SECTION. **Sec. 7.** A new section is added to chapter 34.05 RCW
28 to read as follows:

29 (1) In addition to other requirements imposed by law, an agency may
30 not adopt a rule the violation of which subjects a person to a penalty
31 or administrative sanction; that establishes, alters, or revokes a
32 qualification or standard for the issuance, suspension, or revocation
33 of a license to pursue a commercial activity, trade, or profession; or
34 that establishes, alters, or revokes a mandatory standard for a product
35 or material that must be met before distribution or sale, unless:

36 (a) The rule-making file provides substantial evidence that: (i)
37 The particular rule is necessary to fulfill the purpose and intent of
38 a specific statute; (ii) the agency considered the probable benefits of

1 the particular rule relative to its probable costs; (iii) the agency
2 considered other less intrusive or less costly means to achieve the
3 purpose of the rule, including any that were proposed in the rule-
4 making hearing, but had reasonable justification for rejecting them in
5 favor of the adopted rule; and (iv) any fee imposed by the rule will
6 generate no more revenue than is necessary to fulfill the intent of the
7 specific statute authorizing the fee;

8 (b) The rule is clearly and simply stated, so that it will be
9 understood by any person required to comply;

10 (c) The agency has a written plan to (i) inform and educate
11 affected persons about the rule; (ii) promote voluntary compliance;
12 (iii) evaluate whether the rule achieves the purpose for which it was
13 adopted; and (iv) where necessary, meet the requirements of subsection
14 (2) or (3) of this section;

15 (d) The rule does not, without clear and specific statutory
16 authorization to do so, exceed any provision of federal law regulating
17 the same activity or subject matter; and

18 (e) The rule does not, without clear and specific statutory
19 authorization to do so, conflict with, overlap, or duplicate, any other
20 provision of federal, state, or local law regulating the same activity
21 or subject matter. The agency shall survey other federal, state, and
22 local entities that have jurisdiction over the same or similar subject
23 matter to determine whether such conflict, overlap, or duplication
24 exists.

25 (2) Upon the adoption of a rule that conflicts with, overlaps, or
26 duplicates any other provision of federal, state, or local law
27 regulating the same activity or subject matter, an agency shall: (a)
28 File with the code reviser for publication in the Washington State
29 Register a list citing by reference the other laws that the rule
30 conflicts with, overlaps, or duplicates; (b) mitigate the adverse
31 impact of the conflict, overlap, or duplication through coordination
32 with the appropriate federal, state, or local entities; and (c) submit
33 to the appropriate standing committee of the legislature before the
34 next legislative session proposed legislation to mitigate the conflict,
35 overlap, or duplication, and facilitate coordination with appropriate
36 federal, state, or local entities.

37 (3) Upon the adoption of a rule that exceeds any provision of
38 federal law regulating the same activity or subject matter, the agency

1 shall, to the extent practicable, coordinate implementation and
2 enforcement with the appropriate federal entities.

3 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
4 repealed:

5 (1) RCW 34.05.660 and 1988 c 288 s 606 & 1981 c 324 s 10;

6 (2) RCW 34.05.670 and 1992 c 197 s 3; and

7 (3) RCW 34.05.680 and 1992 c 197 s 4.

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