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HOUSE BILL 1478

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Orcutt, Taylor, Short, Smith, Angel, Pike, Condotta, Vick, Haler, Hargrove, Buys, Fagan, Scott, and Kristiansen

Read first time 01/28/13.      Referred to Committee on Government Operations & Elections.

1            AN ACT Relating to suspension of rule making; amending RCW  
2 34.05.310, 34.05.313, and 34.05.320; reenacting and amending RCW  
3 34.05.328; adding new sections to chapter 34.05 RCW; and declaring an  
4 emergency.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 34.05 RCW  
7 to read as follows:

8            The legislature finds that Washington families, workers, and  
9 employers continue to struggle to make ends meet. As families and  
10 employers have streamlined their budgets and services, so should state  
11 government. Government continues to increase the burden on citizens  
12 and employers through perpetual alteration and expansion of rules.  
13 During 2012, an estimated 1,129 new sections to the Washington  
14 Administrative Code were permanently adopted, 2,211 sections were  
15 permanently amended, 393 emergency rule filings were made, and 961  
16 sections were permanently repealed. A total of 5,511 pages of  
17 permanent rule changes were made and 2,398 pages of emergency rules  
18 were adopted.

1           The constant changing of rules provides uncertainty to citizens  
2 and employers and adds additional costs to taxpayers as agencies hold  
3 public meetings and telephone conferences, and employees spend  
4 thousands of hours working on drafts for rules. Furthermore, continual  
5 proposal of new rules distracts employers from being productive in  
6 their respective businesses due to a need to comment on these proposed  
7 rules, and to change their policies, procedures, tools, and equipment  
8 to implement the rules once they are adopted. Most agencies do not  
9 track the number of hours employees spend on rule making nor do they  
10 track the cost to the agency to do this task. One way to reduce  
11 millions of dollars in employee and administrative costs is to impose  
12 a moratorium on formal and informal rule making by state agencies  
13 except in certain specified instances. This moratorium is to last for  
14 three years or until the state is no longer facing financial deficits.

15           NEW SECTION.   **Sec. 2.** A new section is added to chapter 34.05 RCW  
16 to read as follows:

17           (1) Agency rule making is suspended until the later of July 1,  
18 2016, or such time as the economic and revenue forecast council reports  
19 for three consecutive quarters that state revenue collections have  
20 increased above the official forecast adopted pursuant to RCW 82.33.010  
21 on or before February 20th in an even-numbered year or March 20th in an  
22 odd-numbered year, except in the following cases:

23           (a) A rule is needed to implement a federal law;

24           (b) A rule is needed to implement the terms of a governor-declared  
25 state of emergency;

26           (c) A rule is needed by the department of health to respond to a  
27 public health emergency;

28           (d) A rule is needed to set the times for the taking of wildlife,  
29 fish, or shellfish pursuant to RCW 77.12.047(1) and 77.04.055(2); or

30           (e) Legislation specifically directs that rule making be  
31 undertaken. Rules adopted under this subsection (1)(e) must be  
32 approved by the legislature in the ensuing legislative session before  
33 the rule may take effect.

34           (2) This section does not prohibit an agency from repealing rules.

35           **Sec. 3.** RCW 34.05.310 and 2011 c 298 s 20 are each amended to read  
36 as follows:

1       (1) The provisions of this section are subject to section 2 of this  
2 act.

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

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

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

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

16       (iv) 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       (v) 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       (b) The statement of inquiry must be filed with the code reviser  
23 for publication in the state register at least thirty days before the  
24 date the agency files notice of proposed rule making under RCW  
25 34.05.320 and the statement, or a summary of the information contained  
26 in that statement, must be sent to any party that has requested receipt  
27 of the agency's statements of inquiry.

28       (~~(2)~~) (3) Agencies are encouraged to develop and use new  
29 procedures for reaching agreement among interested parties before  
30 publication of notice and the adoption hearing on a proposed rule.  
31 Examples of new procedures include, but are not limited to:

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

37       (b) Pilot rule making which includes testing the feasibility of  
38 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))~~ (4)(a) An agency must make a determination whether  
5 negotiated rule making, pilot rule making, or another process for  
6 generating participation from interested parties prior to development  
7 of the rule 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))~~ (5) 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 under the authority of RCW  
30 19.02.075 or that set or adjust fees or rates pursuant to legislative  
31 standards, including fees set or adjusted under the authority of RCW  
32 19.80.045; or

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

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

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

1           **Sec. 4.** RCW 34.05.313 and 1995 c 403 s 303 are each amended to  
2 read as follows:

3           (1) The provisions of this section are subject to section 2 of this  
4 act.

5           (2) During the development of a rule or after its adoption, an  
6 agency may develop methods for measuring or testing the feasibility of  
7 complying with or administering the rule and for identifying simple,  
8 efficient, and economical alternatives for achieving the goal of the  
9 rule. A pilot project shall include public notice, participation by  
10 volunteers who are or will be subject to the rule, a high level of  
11 involvement from agency management, reasonable completion dates, and a  
12 process by which one or more parties may withdraw from the process or  
13 the process may be terminated. Volunteers who agree to test a rule and  
14 attempt to meet the requirements of the draft rule, to report  
15 periodically to the proposing agency on the extent of their ability to  
16 meet the requirements of the draft rule, and to make recommendations  
17 for improving the draft rule shall not be obligated to comply fully  
18 with the rule being tested nor be subject to any enforcement action or  
19 other sanction for failing to comply with the requirements of the draft  
20 rule.

21           (~~(2)~~) (3) An agency conducting a pilot rule project authorized  
22 under subsection (~~(1)~~) (2) of this section may waive one or more  
23 provisions of agency rules otherwise applicable to participants in such  
24 a pilot project if the agency first determines that such a waiver is in  
25 the public interest and necessary to conduct the project. Such a  
26 waiver may be only for a stated period of time, not to exceed the  
27 duration of the project.

28           (~~(3)~~) (4) The findings of the pilot project should be widely  
29 shared and, where appropriate, adopted as amendments to the rule.

30           (~~(4)~~) (5) If an agency conducts a pilot rule project in lieu of  
31 meeting the requirements of the regulatory fairness act, chapter 19.85  
32 RCW, the agency shall ensure the following conditions are met:

33           (a) If over ten small businesses are affected, there shall be at  
34 least ten small businesses in the test group and at least one-half of  
35 the volunteers participating in the pilot test group shall be small  
36 businesses.

37           (b)(i) If there are at least one hundred businesses affected, the

1 participation by small businesses in the test group shall be as  
2 follows:

3 (A) Not less than twenty percent of the small businesses must  
4 employ twenty-six to fifty employees;

5 (B) Not less than twenty percent of the small businesses must  
6 employ eleven to twenty-six employees; and

7 (C) Not less than twenty percent of the small businesses must  
8 employ zero to ten employees.

9 (ii) If there do not exist a sufficient number of small businesses  
10 in each size category set forth in (b)(i) of this subsection willing to  
11 participate in the pilot project to meet the minimum requirements of  
12 that subsection, then the agency must comply with this section to the  
13 maximum extent practicable.

14 (c) The agency may not terminate the pilot project before  
15 completion.

16 (d) Before filing the notice of proposed rule making pursuant to  
17 RCW 34.05.320, the agency must prepare a report of the pilot rule  
18 project that includes:

19 (i) A description of the difficulties small businesses had in  
20 complying with the pilot rule;

21 (ii) A list of the recommended revisions to the rule to make  
22 compliance with the rule easier or to reduce the cost of compliance  
23 with the rule by the small businesses participating in the pilot rule  
24 project;

25 (iii) A written statement explaining the options it considered to  
26 resolve each of the difficulties described and a statement explaining  
27 its reasons for not including a recommendation by the pilot test group  
28 to revise the rule; and

29 (iv) If the agency was unable to meet the requirements set forth in  
30 (b)(i) of this subsection, a written explanation of why it was unable  
31 to do so and the steps the agency took to include small businesses in  
32 the pilot project.

33 **Sec. 5.** RCW 34.05.320 and 2012 c 210 s 2 are each amended to read  
34 as follows:

35 (1) The provisions of this section are subject to section 2 of this  
36 act.

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

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

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

11       (c) A short explanation of the rule, its purpose, and anticipated  
12 effects, including in the case of a proposal that would modify existing  
13 rules, a short description of the changes the proposal would make, and  
14 a statement of the reasons supporting the proposed action;

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

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

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

23       (g) Whether the rule is necessary as the result of federal law or  
24 federal or state court action, and if so, a citation to such law or  
25 court decision;

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

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

29       (j) A copy of the small business economic impact statement prepared  
30 under chapter 19.85 RCW, or a copy of the school district fiscal impact  
31 statement under RCW 28A.305.135 in the case of the state board of  
32 education, or an explanation for why the agency did not prepare the  
33 statement;

34       (k) A statement indicating whether RCW 34.05.328 applies to the  
35 rule adoption; and

36       (l) If RCW 34.05.328 does apply, a statement indicating that a copy  
37 of the preliminary cost-benefit analysis described in RCW  
38 34.05.328(1)(c) is available.

1        ~~((2))~~ (3)(a) Upon filing notice of the proposed rule with the  
2 code reviser, the adopting agency shall have copies of the notice on  
3 file and available for public inspection. Except as provided in (b) of  
4 this subsection, the agency shall forward three copies of the notice to  
5 the rules review committee.

6        (b) A pilot of at least ten agencies, including the departments of  
7 labor and industries, fish and wildlife, revenue, ecology, retirement  
8 systems, and health, shall file the copies required under this  
9 subsection, as well as under RCW 34.05.350 and 34.05.353, with the  
10 rules review committee electronically for a period of four years from  
11 June 10, 2004. The office of regulatory assistance shall negotiate the  
12 details of the pilot among the agencies, the legislature, and the code  
13 reviser.

14        ~~((3))~~ (4) No later than three days after its publication in the  
15 state register, the agency shall cause either a copy of the notice of  
16 proposed rule adoption, or a summary of the information contained on  
17 the notice, to be mailed to each person, city, and county that has made  
18 a request to the agency for a mailed copy of such notices. An agency  
19 may charge for the actual cost of providing a requesting party mailed  
20 copies of these notices.

21        ~~((4))~~ (5) In addition to the notice required by subsections  
22 ~~((1))~~ (2) and ~~((2))~~ (3) of this section, an institution of higher  
23 education shall cause the notice to be published in the campus or  
24 standard newspaper of the institution at least seven days before the  
25 rule-making hearing.

26        **Sec. 6.** RCW 34.05.328 and 2011 c 298 s 21 and 2011 c 149 s 1 are  
27 each reenacted and amended to read as follows:

28        (1) The provisions of this section are subject to section 2 of this  
29 act.

30        (2) Before adopting a rule described in subsection ~~((5))~~ (6) of  
31 this section, an agency must:

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

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

1 (c) Provide notification in the notice of proposed rule making  
2 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
3 available. The preliminary cost-benefit analysis must fulfill the  
4 requirements of the cost-benefit analysis under (d) of this subsection.  
5 If the agency files a supplemental notice under RCW 34.05.340, the  
6 supplemental notice must include notification that a revised  
7 preliminary cost-benefit analysis is available. A final cost-benefit  
8 analysis must be available when the rule is adopted under RCW  
9 34.05.360;

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

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

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

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

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

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

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

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

36 ((+2)) (3) In making its determinations pursuant to subsection  
37 ((+1)) (2)(b) through (h) of this section, the agency must place in

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

4 ~~((3))~~ (4) Before adopting rules described in subsection ~~((5))~~  
5 (6) of this section, an agency must place in the rule-making file a  
6 rule implementation plan for rules filed under each adopting order.  
7 The plan must 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))~~ (5) After adopting a rule described in subsection ~~((5))~~  
17 (6) of this section regulating the same activity or subject matter as  
18 another provision of federal or state law, an agency must do all of the  
19 following:

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

24 (i) Deferring to the other entity;

25 (ii) Designating a lead agency; or

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

29 If the agency is unable to comply with this subsection ~~((4))~~  
30 (5)(a), the agency must report to the legislature pursuant to (b) of  
31 this subsection;

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

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

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

1       (~~(5)~~) (6)(a) Except as provided in (b) of this subsection, this  
2 section applies to:

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

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

14       (b) This section does not apply to:

15       (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

31       (vi) Rules that set or adjust fees under the authority of RCW  
32 19.02.075 or that set or adjust fees or rates pursuant to legislative  
33 standards, including fees set or adjusted under the authority of RCW  
34 19.80.045;

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

1 (viii) Rules of the department of revenue that adopt a uniform  
2 expiration date for reseller permits as authorized in RCW 82.32.780 and  
3 82.32.783.

4 (c) For purposes of this subsection:

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

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

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

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

26 ((+6+)) (7) By January 31, 1996, and by January 31st of each even-  
27 numbered year thereafter, the office of regulatory assistance, after  
28 consulting with state agencies, counties, and cities, and business,  
29 labor, and environmental organizations, must report to the governor and  
30 the legislature regarding the effects of this section on the regulatory  
31 system in this state. The report must document:

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

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

37 (c) Any legal action maintained based upon the alleged failure of

1 any agency to comply with this section, the costs to the state of such  
2 action, and the result;

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

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

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

9 NEW SECTION. **Sec. 7.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

--- END ---