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**SENATE BILL 5276**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senator Short

1 AN ACT Relating to requiring additional agencies to comply with  
2 the procedures for significant legislative rules; and amending RCW  
3 34.05.328.

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

5 **Sec. 1.** RCW 34.05.328 and 2019 c 8 s 405 are each amended to  
6 read as follows:

7 (1) Before adopting a rule described in subsection (5) of this  
8 section, an agency must:

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

11 (b) Determine that the rule is needed to achieve the general  
12 goals and specific objectives stated under (a) of this subsection,  
13 and analyze alternatives to rule making and the consequences of not  
14 adopting the rule;

15 (c) Provide notification in the notice of proposed rule making  
16 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
17 available. The preliminary cost-benefit analysis must fulfill the  
18 requirements of the cost-benefit analysis under (d) of this  
19 subsection. If the agency files a supplemental notice under RCW  
20 34.05.340, the supplemental notice must include notification that a  
21 revised preliminary cost-benefit analysis is available. A final cost-

1 benefit analysis must be available when the rule is adopted under RCW  
2 34.05.360;

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

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

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

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

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

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

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

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

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

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

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

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

40 (c) Promote and assist voluntary compliance; and

1 (d) Evaluate whether the rule achieves the purpose for which it  
2 was adopted, including, to the maximum extent practicable, the use of  
3 interim milestones to assess progress and the use of objectively  
4 measurable outcomes.

5 (4) After adopting a rule described in subsection (5) of this  
6 section regulating the same activity or subject matter as another  
7 provision of federal or state law, an agency must do all of the  
8 following:

9 (a) Coordinate implementation and enforcement of the rule with  
10 the other federal and state entities regulating the same activity or  
11 subject matter by making every effort to do one or more of the  
12 following:

13 (i) Deferring to the other entity;

14 (ii) Designating a lead agency; or

15 (iii) Entering into an agreement with the other entities  
16 specifying how the agency and entities will coordinate implementation  
17 and enforcement.

18 If the agency is unable to comply with this subsection (4)(a),  
19 the agency must report to the legislature pursuant to (b) of this  
20 subsection;

21 (b) Report to the ((~~joint—administrative~~)) rules review  
22 committee:

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

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

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

31 (i) Significant legislative rules of the departments of commerce,  
32 ecology, labor and industries, health, revenue, social and health  
33 services, and natural resources, the employment security department,  
34 the forest practices board, the office of the insurance commissioner,  
35 the state building code council, the utilities and transportation  
36 commission, and to the legislative rules of the department of fish  
37 and wildlife implementing chapter 77.55 RCW; and

38 (ii) Any rule of any agency, if this section is voluntarily made  
39 applicable to the rule by the agency, or is made applicable to the  
40 rule by a majority vote of the ((~~joint—administrative~~)) rules review

1 committee within forty-five days of receiving the notice of proposed  
2 rule making under RCW 34.05.320.

3 (b) This section does not apply to:

4 (i) Emergency rules adopted under RCW 34.05.350;

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

7 (iii) Rules adopting or incorporating by reference without  
8 material change federal statutes or regulations, Washington state  
9 statutes, rules of other Washington state agencies, shoreline master  
10 programs other than those programs governing shorelines of statewide  
11 significance, or, as referenced by Washington state law, national  
12 consensus codes that generally establish industry standards, if the  
13 material adopted or incorporated regulates the same subject matter  
14 and conduct as the adopting or incorporating rule;

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

18 (v) Rules the content of which is explicitly and specifically  
19 dictated by statute, including any rules of the department of revenue  
20 adopted under the authority of RCW 82.32.762(3);

21 (vi) Rules that set or adjust fees under the authority of RCW  
22 19.02.075 or that set or adjust fees or rates pursuant to legislative  
23 standards, including fees set or adjusted under the authority of RCW  
24 19.80.045;

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

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

31 (c) For purposes of this subsection:

32 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
33 (A) any procedure, practice, or requirement relating to any agency  
34 hearings; (B) any filing or related process requirement for making  
35 application to an agency for a license or permit; or (C) any policy  
36 statement pertaining to the consistent internal operations of an  
37 agency.

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

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

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

13 (6) By (~~January 31, 1996, and by~~) January 31st of each even-  
14 numbered year (~~thereafter~~), the office of regulatory assistance,  
15 after consulting with state agencies, counties, and cities, and  
16 business, labor, and environmental organizations, must report to the  
17 governor and the legislature regarding the effects of this section on  
18 the regulatory system in this state. The report must document:

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

22 (b) The costs incurred by state agencies in complying with this  
23 section;

24 (c) Any legal action maintained based upon the alleged failure of  
25 any agency to comply with this section, the costs to the state of  
26 such action, and the result;

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

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

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

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