
HOUSE BILL 1913

State of Washington 64th Legislature 2015 Regular Session

By Representatives Wylie, Wilson, Gregerson, Ryu, and Scott

Read first time 02/02/15. Referred to Committee on State Government.

1 AN ACT Relating to rule making, including requiring new
2 information uncovered during the rule-making process to be provided
3 to the appropriate legislative policy committees and a review of
4 certain rules; and amending RCW 34.05.325, 34.05.620, and 34.05.630.

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

6 **Sec. 1.** RCW 34.05.325 and 2009 c 336 s 1 are each amended to
7 read as follows:

8 (1) The agency shall make a good faith effort to insure that the
9 information on the proposed rule published pursuant to RCW 34.05.320
10 accurately reflects the rule to be presented and considered at the
11 oral hearing on the rule. Written comment about a proposed rule,
12 including supporting data, shall be accepted by an agency if received
13 no later than the time and date specified in the notice, or such
14 later time and date established at the rule-making hearing.

15 (2) The agency shall provide an opportunity for oral comment to
16 be received by the agency in a rule-making hearing.

17 (3) If the agency possesses equipment capable of receiving
18 telefacsimile transmissions or recorded telephonic communications,
19 the agency may provide in its notice of hearing filed under RCW
20 34.05.320 that interested parties may comment on proposed rules by
21 these means. If the agency chooses to receive comments by these

1 means, the notice of hearing shall provide instructions for making
2 such comments, including, but not limited to, appropriate telephone
3 numbers to be used; the date and time by which comments must be
4 received; required methods to verify the receipt and authenticity of
5 the comments; and any limitations on the number of pages for
6 telefacsimile transmission comments and on the minutes of tape
7 recorded comments. The agency shall accept comments received by these
8 means for inclusion in the official record if the comments are made
9 in accordance with the agency's instructions.

10 (4) The agency head, a member of the agency head, or a presiding
11 officer designated by the agency head shall preside at the rule-
12 making hearing. Rule-making hearings shall be open to the public. The
13 agency shall cause a record to be made of the hearing by
14 stenographic, mechanical, or electronic means. Regardless of whether
15 the agency head has delegated rule-making authority, the presiding
16 official shall prepare a memorandum for consideration by the agency
17 head, summarizing the contents of the presentations made at the rule-
18 making hearing, unless the agency head presided or was present at
19 substantially all of the hearings. The summarizing memorandum is a
20 public document and shall be made available to any person in
21 accordance with chapter 42.56 RCW. If information is revealed that
22 indicates the existence of new data, an unanticipated adverse impact,
23 or new cost information, the agency head shall inform the appropriate
24 legislative policy committees of such information.

25 (5) Rule-making hearings are legislative in character and shall
26 be reasonably conducted by the presiding official to afford
27 interested persons the opportunity to present comment individually.
28 All comments by all persons shall be made in the presence and hearing
29 of other attendees. Written or electronic submissions may be accepted
30 and included in the record. Rule-making hearings may be continued to
31 a later time and place established on the record without publication
32 of further notice under RCW 34.05.320.

33 (6)(a) Before it files an adopted rule with the code reviser, an
34 agency shall prepare a concise explanatory statement of the rule:

35 (i) Identifying the agency's reasons for adopting the rule;

36 (ii) Describing differences between the text of the proposed rule
37 as published in the register and the text of the rule as adopted,
38 other than editing changes, stating the reasons for differences; and

39 (iii) Summarizing all comments received regarding the proposed
40 rule, and responding to the comments by category or subject matter,

1 indicating how the final rule reflects agency consideration of the
2 comments, or why it fails to do so.

3 (b) The agency shall provide the concise explanatory statement to
4 any person upon request or from whom the agency received comment.

5 **Sec. 2.** RCW 34.05.620 and 1996 c 318 s 3 are each amended to
6 read as follows:

7 (1) The rules review committee must review proposed rules
8 petitioned pursuant to RCW 34.05.655 when:

9 (a) The proposed rule is not within the intent of the legislature
10 as expressed in the statute which the rule implements; or

11 (b) New information regarding cost, adverse impacts, or other
12 relevant information that was not known during the legislative
13 process is identified.

14 (2) If the rules review committee finds by a majority vote of its
15 members that a proposed rule is not within the intent of the
16 legislature as expressed in the statute which the rule implements,
17 ((~~or~~)) that an agency may not be adopting a proposed rule in
18 accordance with all applicable provisions of law, or that an agency
19 is adopting a proposed rule without regard to new information not
20 known during the legislative process, the committee shall give the
21 affected agency written notice of its decision. The notice shall be
22 given at least seven days prior to any hearing scheduled for
23 consideration of or adoption of the proposed rule pursuant to RCW
24 34.05.320. The notice shall include a statement of the review
25 committee's findings and the reasons therefor. When the agency holds
26 a hearing on the proposed rule, the agency shall consider the review
27 committee's decision.

28 **Sec. 3.** RCW 34.05.630 and 1998 c 21 s 1 are each amended to read
29 as follows:

30 (1) Any rule that has a fiscal impact of one million dollars or
31 more must be reviewed by the committee.

32 (2) All rules required to be filed pursuant to RCW 34.05.380, and
33 emergency rules adopted pursuant to RCW 34.05.350, are subject to
34 selective review by the committee.

35 ((~~2~~)) (3) All agency policy and interpretive statements,
36 guidelines, and documents that are of general applicability, or their
37 equivalents, are subject to selective review by the committee to
38 determine whether or not a statement, guideline, or document that is

1 of general applicability, or its equivalent, is being used as a rule
2 that has not been adopted in accordance with all applicable
3 provisions of law.

4 ~~((3))~~ (4) If the rules review committee finds by a majority
5 vote of its members: (a) That an existing rule is not within the
6 intent of the legislature as expressed by the statute which the rule
7 implements, (b) that the rule has not been adopted in accordance with
8 all applicable provisions of law, or (c) that an agency is using a
9 policy or interpretive statement in place of a rule, the agency
10 affected shall be notified of such finding and the reasons therefor.
11 Within thirty days of the receipt of the rules review committee's
12 notice, the agency shall file notice of a hearing on the rules review
13 committee's finding with the code reviser and mail notice to all
14 persons who have made timely request of the agency for advance notice
15 of its rule-making proceedings as provided in RCW 34.05.320. The
16 agency's notice shall include the rules review committee's findings
17 and reasons therefor, and shall be published in the Washington state
18 register in accordance with the provisions of chapter 34.08 RCW.

19 ~~((4))~~ (5) The agency shall consider fully all written and oral
20 submissions regarding (a) whether the rule in question is within the
21 intent of the legislature as expressed by the statute which the rule
22 implements, (b) whether the rule was adopted in accordance with all
23 applicable provisions of law, and (c) whether the agency is using a
24 policy or interpretive statement, guideline, or document that is of
25 general applicability, or its equivalent, in place of a rule.

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