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**HOUSE BILL 1014**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Shea, Taylor, Holy, Short, McCaslin, Pike, Buys, Haler, and Young

AN ACT Relating to establishing a peer review process to ensure robust economic analysis of department of ecology administrative rules; amending RCW 19.85.030; adding new sections to chapter 34.05 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that environmental administrative rules frequently significantly affect the state's economy. In recognition of the economic impacts of environmental regulations, state law already requires the department of ecology, as well as certain other state agencies, to produce economic analyses of major agency rules. Currently, these economic analyses are completed by the staff of the very same state agency that seeks to adopt the rule, creating a misplaced incentive in favor of economic analyses that support the proposed rules.

(2) Even the most academically robust and most objective forward-looking economic analyses must rely on a variety of assumptions and model inputs. The ability of models to precisely depict future economic impacts is inescapably limited by the variability, randomness, and uncertainty that influence how policies unfold in the real world. However, economic analyses that rely on a narrow set of parameters will be less able to forecast economic costs and benefits than similar analyses that incorporate a range of scenarios that include both optimistic and pessimistic assumptions.

(3) Therefore, it is the intent of the legislature to improve the robustness of department of ecology administrative rule economic analyses by creating a peer review process that produces analyses that better reflect the range of possible economic impacts of administrative rules. Furthermore, it is the intent of the legislature to direct the department of ecology to err on the side of only adopting an administrative rule if its benefits appear far likelier than not to outweigh its costs, taking into consideration the range of possible outcomes evaluated by the department in its economic analysis of a proposed rule.

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

(1) Prior to making available a preliminary cost-benefit analysis under RCW 34.05.328(1)(c) or finalizing a small business economic impact statement under RCW 19.85.030, the department of ecology shall solicit peer review of the draft economic analyses by qualified professionals. The peer review solicitation must be announced on the same internet web page as the notice of the department's proposed rule pursuant to RCW 34.05.320, and must also be posted consistent with the requirements of RCW 39.26.150.

(2)(a) The department of ecology must accept and respond to feedback from any qualified professional who offers to provide peer review of the department's draft analysis cost to the department. The department of ecology must accept feedback from qualified professionals for thirty days after a draft economic analysis is first made available for peer review under this subsection before it determines whether it is necessary to contract for a peer review under (b) of this subsection.

(b) If no qualified professionals respond to the solicitation by offering to provide a complete and thorough peer review of the draft analysis without cost to the department, the department of ecology must contract, consistent with the requirements of chapter 39.26 RCW, for a complete and thorough peer review by a qualified professional. In addition to meeting the requirements of a responsible bidder consistent with RCW 39.26.160, the department must select a peer reviewer with the following attributes:

(i) Expertise as demonstrated by the publication of cost-benefit analyses or similar economic studies;

(ii) Demonstrated experience in critiquing the economic analyses of others;

(iii) Demonstrated professional familiarity with the subject matter of the rule; and

(iv) An ability to provide objective, independent, and critical review of the draft economic analysis.

(c) If no qualified professionals respond to the department of ecology's solicitation for peer review under the terms of (a) or (b) of this subsection, a peer review is not required in order for the economic analyses to be finalized or in order for the rule-making process to proceed.

(3) All peer review feedback received by the department must be made public on the same internet web page as the notice of the department's proposed rule under RCW 34.05.320.

(4) A peer review by a qualified professional must focus on the reasonableness of the models, calculations, and assumptions incorporated into the department of ecology's draft economic analysis. The peer review must identify any assumptions or modeling choices for which there are plausible alternative modeling choices or plausible alternative assumptions or ranges of alternative assumptions that would result in a more optimistic or pessimistic forecast of probable costs or benefits.

(5)(a) Once the department of ecology has closed the period of peer review feedback under subsection (2)(a) of this section or received the final work product of a contracted peer review under subsection (2)(b) of this section, the department of ecology must revise the draft economic analyses to incorporate the feedback received during the peer review process.

(b) Based on specific suggestions or criticisms contained in the peer review feedback, the economic analyses must be revised to include at least two alternative scenario estimates as follows:

(i) A cost-benefit analysis must include at least one pessimistic scenario constructed from reasonable assumptions and modeling choices that would produce comparatively high probable costs and comparatively low probable benefits, and at least one optimistic scenario constructed from reasonable assumptions and modeling choices that would produce comparatively low probable costs and comparatively high probable benefits.

(ii) A small business economic impact statement must include at least one pessimistic scenario constructed from reasonable assumptions and modeling choices that would produce comparatively high probable costs, and at least one optimistic scenario constructed from reasonable assumptions and modeling choices that would produce comparatively low probable costs.

(c) The optimistic scenarios and the pessimistic scenarios may derive from modeling choices or assumptions used in the department of ecology's draft economic analyses or that were suggested by qualified professional peer reviewers as alternatives to the department's initial parameter choices.

(d) In developing the optimistic and pessimistic scenarios, the department of ecology shall attempt to select parameter values and modeling choices that result in a ninety-five percent confidence interval between the most optimistic and most pessimistic scenario estimates, such that there is a five percent chance that the economic benefit and cost outcomes of implementing the rule would fall outside of the interval between the most optimistic and pessimistic scenario estimates.

(6) The department of ecology must incorporate both the optimistic and pessimistic economic impact scenarios into the final cost-benefit analysis under RCW 34.05.328. In the final cost-benefit analysis, the department of ecology must make amendments where appropriate to the preliminary analysis that reflect any changes between the draft rule and the final rule. However, the department of ecology is not required to conduct a separate peer review process for the final cost-benefit analysis.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Economic analysis" or "economic analyses" means a small business economic impact statement produced by the department of ecology pursuant to chapter 19.85 RCW or a preliminary cost-benefit analysis or cost-benefit analysis produced by the department of ecology pursuant to this chapter.

(b) "Qualified professional" means a person employed by the federal government, a different state agency, an academic institution, or an independent for-profit or nonprofit organization who has:

(i) Earned a graduate degree in economics, public policy, or a related field; and

(ii) Demonstrated familiarity with the subject matter of the proposed administrative rule via academic publications or professional experience.

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

Consistent with RCW 34.05.328(1)(d), the department of ecology may not adopt a rule whose probable benefits are less than its probable costs. For purposes of determining the probable benefits and the probable costs of a proposed rule, the department of ecology must use the arithmetic mean of the following two addends:

(1) The most pessimistic scenario estimate described in section 2(5) of this act; and

(2) The arithmetic mean of the most optimistic and pessimistic scenario estimates described in section 2(5) of this act.

**Sec.**  RCW 19.85.030 and 2011 c 249 s 2 are each amended to read as follows:

(1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

(b) An agency must prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency must provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

(c) Reducing the frequency of inspections;

(d) Delaying compliance timetables;

(e) Reducing or modifying fine schedules for noncompliance; or

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

(3) If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency must provide a clear explanation of why it has made that determination and include that statement with its filing of the proposed rule pursuant to RCW 34.05.320.

(4)(a) All small business economic impact statements are subject to selective review by the joint administrative rules review committee pursuant to RCW 34.05.630.

(b) Any person affected by a proposed rule where there is a small business economic impact statement may petition the joint administrative rules review committee for review pursuant to the procedure in RCW 34.05.655.

(5) Small business economic impact statements produced by the department of ecology must be consistent with the requirements of section 2 of this act.

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