
HOUSE BILL 2231

State of Washington

54th Legislature

1996 Regular Session

By Representatives Mastin and Dyer

Read first time 01/08/96. Referred to Committee on Government Operations.

1 AN ACT Relating to the rule-making process; and amending RCW
2 34.05.310, 34.05.330, 34.05.335, and 34.05.350.

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

4 **Sec. 1.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to
5 read as follows:

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

12 (a) Identifies the specific statute or statutes authorizing the
13 agency to adopt rules on this subject;

14 (b) Discusses why rules on this subject may be needed and what they
15 might accomplish;

16 (c) Identifies other federal and state agencies that regulate this
17 subject, and describes the process whereby the agency would coordinate
18 the contemplated rule with these agencies;

1 (d) Discusses the process by which the rule might be developed,
2 including, but not limited to, negotiated rule making, pilot rule
3 making, or agency study;

4 (e) Specifies the process by which interested parties can
5 effectively participate in the decision to adopt a new rule and
6 formulation of a proposed rule before its publication.

7 The statement of ((~~inquiry~~)) intent shall be filed with the code
8 reviser for publication in the state register at least thirty days
9 before the date the agency files notice of proposed rule making under
10 RCW 34.05.320 and shall be sent to any party that has requested receipt
11 of the agency's statements of ((~~inquiry~~)) intent.

12 (2) Agencies are encouraged to develop and use new procedures for
13 reaching agreement among interested parties before publication of
14 notice and the adoption hearing on a proposed rule. Examples of new
15 procedures include, but are not limited to:

16 (a) Negotiated rule making by which representatives of an agency
17 and of the interests that are affected by a subject of rule making,
18 including, where appropriate, county and city representatives, seek to
19 reach consensus on the terms of the proposed rule and on the process by
20 which it is negotiated; and

21 (b) Pilot rule making which includes testing the feasibility of
22 complying with or administering draft new rules or draft amendments to
23 existing rules through the use of volunteer pilot groups in various
24 areas and circumstances, as provided in RCW 34.05.313 or as otherwise
25 provided by the agency.

26 (3)(a) An agency must make a determination whether negotiated rule
27 making, pilot rule making, or another process for generating
28 participation from interested parties prior to development of the rule
29 is appropriate.

30 (b) An agency must include a written justification in the rule-
31 making file if an opportunity for interested parties to participate in
32 the rule-making process prior to publication of the proposed rule has
33 not been provided.

34 (4) This section does not apply to:

35 (a) Emergency rules adopted under RCW 34.05.350;

36 (b) Rules relating only to internal governmental operations that
37 are not subject to violation by a nongovernment party;

38 (c) Rules adopting or incorporating by reference without material
39 change federal statutes or regulations, Washington state statutes,

1 rules of other Washington state agencies, shoreline master programs
2 other than those programs governing shorelines of state-wide
3 significance, or, as referenced by Washington state law, national
4 consensus codes that generally establish industry standards, if the
5 material adopted or incorporated regulates the same subject matter and
6 conduct as the adopting or incorporating rule;

7 (d) Rules that only correct typographical errors, make address or
8 name changes, or clarify language of a rule without changing its
9 effect;

10 (e) Rules the content of which is explicitly and specifically
11 dictated by statute;

12 (f) Rules that set or adjust fees or rates pursuant to legislative
13 standards; or

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

15 (i) A procedure, practice, or requirement relating to agency
16 hearings; or

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

19 **Sec. 2.** RCW 34.05.330 and 1995 c 403 s 703 are each amended to
20 read as follows:

21 (1) Any person may petition an agency requesting the adoption,
22 amendment, or repeal of any rule. The office of financial management
23 shall prescribe by rule the format for such petitions and the procedure
24 for their submission, consideration, and disposition and provide a
25 standard form that may be used to petition any agency. Within sixty
26 days after submission of a petition, the agency shall either (a) deny
27 the petition in writing, stating (i) its reasons for the denial,
28 specifically addressing the concerns raised by the petitioner, and,
29 where appropriate, (ii) the alternative means by which it will address
30 the concerns raised by the petitioner, or (b) initiate rule-making
31 proceedings in accordance with this chapter.

32 (2) If an agency denies a petition to repeal or amend a rule
33 submitted under subsection (1) of this section, the petitioner, within
34 thirty days of the denial, may appeal the denial to the governor. The
35 governor shall immediately file notice of the appeal with the code
36 reviser for publication in the Washington state register. Within
37 forty-five days after receiving the appeal, the governor shall either
38 (a) deny the petition in writing, stating (i) his or her reasons for

1 the denial, specifically addressing the concerns raised by the
2 petitioner, and, (ii) where appropriate, the alternative means by which
3 he or she will address the concerns raised by the petitioner; (b) for
4 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
5 making proceedings in accordance with this chapter; or (c) for agencies
6 not listed in RCW 43.17.010, recommend that the agency initiate rule-
7 making proceedings in accordance with this chapter. The governor's
8 response to the appeal shall be published in the Washington state
9 register and copies shall be submitted to the chief clerk of the house
10 of representatives and the secretary of the senate.

11 (3) If an agency denies a petition to repeal or amend a rule
12 submitted under subsection (1) of this section, the petitioner may
13 appeal to the joint administrative rules review committee.

14 (4) In petitioning for repeal or amendment of a rule under this
15 section, a person is encouraged to address, among other concerns:

16 (a) Whether the rule is authorized;

17 (b) Whether the rule is needed;

18 (c) Whether the rule conflicts with or duplicates other federal,
19 state, or local laws;

20 (d) Whether alternatives to the rule exist that will serve the same
21 purpose at less cost;

22 (e) Whether the rule applies differently to public and private
23 entities;

24 (f) Whether the rule serves the purposes for which it was adopted;

25 (g) Whether the costs imposed by the rule are unreasonable;

26 (h) Whether the rule is clearly and simply stated; and

27 (i) Whether the rule is different than a federal law applicable to
28 the same activity or subject matter without adequate justification.

29 ~~((4))~~ (5) The business assistance center and the office of
30 financial management shall coordinate efforts among agencies to inform
31 the public about the existence of this rules review process.

32 ~~((5))~~ (6) The office of financial management shall initiate the
33 rule making required by subsection (1) of this section by September 1,
34 1995.

35 **Sec. 3.** RCW 34.05.335 and 1989 c 175 s 8 are each amended to read
36 as follows:

1 (1) A proposed rule may be withdrawn by the proposing agency at any
2 time before adoption. A withdrawn rule may not be adopted unless it is
3 again proposed in accordance with RCW 34.05.320.

4 (2) Before adopting a rule, an agency shall consider the written
5 and oral submissions, or any memorandum summarizing oral submissions.

6 (3) Rules not adopted and filed with the code reviser within (~~one~~
7 ~~hundred eighty~~) two hundred ten days after publication of the text as
8 last proposed in the register shall be regarded as withdrawn. An
9 agency may not thereafter adopt the proposed rule without refileing it
10 in accordance with RCW 34.05.320. The code reviser shall give notice
11 of the withdrawal in the register.

12 (4) An agency may not adopt a rule before the time established in
13 the published notice, or such later time established on the record or
14 by publication in the state register.

15 **Sec. 4.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read
16 as follows:

17 (1) If an agency for good cause finds:

18 (a) That immediate adoption, amendment, or repeal of a rule is
19 necessary for the preservation of the public health(~~()~~) or safety(~~(~~
20 ~~or general welfare~~()~~~~) and that observing the time requirements of
21 notice and opportunity to comment upon adoption of a permanent rule
22 would be contrary to the public interest; or

23 (b) That state or federal law or federal rule or a federal deadline
24 for state receipt of federal funds requires immediate adoption of a
25 rule,

26 the agency may dispense with those requirements and adopt, amend, or
27 repeal the rule on an emergency basis. The agency's finding and a
28 concise statement of the reasons for its finding shall be incorporated
29 in the order for adoption of the emergency rule or amendment filed with
30 the office of the code reviser under RCW 34.05.380 and with the rules
31 review committee.

32 (2) An emergency rule adopted under this section takes effect upon
33 filing with the code reviser, unless a later date is specified in the
34 order of adoption, and may not remain in effect for longer than one
35 hundred twenty days after filing. Identical or substantially similar
36 emergency rules may not be adopted in sequence unless conditions have
37 changed or the agency has filed notice of its intent to adopt the rule
38 as a permanent rule, and is actively undertaking the appropriate

1 procedures to adopt the rule as a permanent rule. This section does
2 not relieve any agency from compliance with any law requiring that its
3 permanent rules be approved by designated persons or bodies before they
4 become effective.

5 (3) Within seven days after the rule is adopted, any person may
6 petition the governor requesting the immediate repeal of a rule adopted
7 on an emergency basis by any department listed in RCW 43.17.010.
8 Within seven days after submission of the petition, the governor shall
9 either deny the petition in writing, stating his or her reasons for the
10 denial, or order the immediate repeal of the rule. In ruling on the
11 petition, the governor shall consider only whether the conditions in
12 subsection (1) of this section were met such that adoption of the rule
13 on an emergency basis was necessary. If the governor orders the repeal
14 of the emergency rule, any sanction imposed based on that rule is void.
15 This subsection shall not be construed to prohibit adoption of any rule
16 as a permanent rule.

17 (4) In adopting an emergency rule, the agency shall comply with
18 section 4 of this act or provide a written explanation for its failure
19 to do so.

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