
SENATE BILL 6702

State of Washington 54th Legislature 1996 Regular Session

By Senators Fraser, McCaslin, Sheldon, West, Winsley and Hale

Read first time 01/24/96. Referred to Committee on Government Operations.

1 AN ACT Relating to clarifying and streamlining procedures of the
2 joint administrative rules review committee; amending RCW 34.05.330,
3 34.05.620, 34.05.630, 34.05.640, and 34.05.655; and repealing RCW
4 34.05.645.

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

6 **Sec. 1.** RCW 34.05.330 and 1995 c 403 s 703 are each amended to
7 read as follows:

8 (1) Any person may petition an agency requesting the adoption,
9 amendment, or repeal of any rule. The office of financial management
10 shall prescribe by rule the format for such petitions and the procedure
11 for their submission, consideration, and disposition and provide a
12 standard form that may be used to petition any agency. Within sixty
13 days after submission of a petition, the agency shall either (a) deny
14 the petition in writing, stating (i) its reasons for the denial,
15 specifically addressing the concerns raised by the petitioner, and,
16 where appropriate, (ii) the alternative means by which it will address
17 the concerns raised by the petitioner, or (b) initiate rule-making
18 proceedings in accordance with this chapter.

1 (2) If an agency denies a petition to repeal or amend a rule
2 submitted under subsection (1) of this section, and the petition
3 alleges that the rule is not within the intent of the legislature or
4 was not adopted in accordance with all applicable provisions of law,
5 the person may petition for review of the rule by the joint
6 administrative rules review committee under RCW 34.05.655.

7 (3) If an agency denies a petition to repeal or amend a rule
8 submitted under subsection (1) of this section, the petitioner, within
9 thirty days of the denial, may appeal the denial to the governor. The
10 governor shall immediately file notice of the appeal with the code
11 reviser for publication in the Washington state register. Within
12 forty-five days after receiving the appeal, the governor shall either
13 (a) deny the petition in writing, stating (i) his or her reasons for
14 the denial, specifically addressing the concerns raised by the
15 petitioner, and, (ii) where appropriate, the alternative means by which
16 he or she will address the concerns raised by the petitioner; (b) for
17 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
18 making proceedings in accordance with this chapter; or (c) for agencies
19 not listed in RCW 43.17.010, recommend that the agency initiate rule-
20 making proceedings in accordance with this chapter. The governor's
21 response to the appeal shall be published in the Washington state
22 register and copies shall be submitted to the chief clerk of the house
23 of representatives and the secretary of the senate.

24 (~~(3)~~) (4) In petitioning for repeal or amendment of a rule under
25 this section, a person is encouraged to address, among other concerns:

26 (a) Whether the rule is authorized;

27 (b) Whether the rule is needed;

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

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

32 (e) Whether the rule applies differently to public and private
33 entities;

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

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

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

37 (i) Whether the rule is different than a federal law applicable to
38 the same activity or subject matter without adequate justification; and

1 (j) Whether the rule was adopted according to all applicable
2 provisions of law.

3 ~~((4))~~ (5) The business assistance center and the office of
4 financial management shall coordinate efforts among agencies to inform
5 the public about the existence of this rules review process.

6 ~~((5))~~ (6) The office of financial management shall initiate the
7 rule making required by subsection (1) of this section by September 1,
8 1995.

9 **Sec. 2.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to read
10 as follows:

11 ~~((Whenever a majority of the members of the rules review committee~~
12 ~~determines))~~ If the rules review committee finds by a majority vote of
13 its members that a proposed rule is not within the intent of the
14 legislature as expressed in the statute which the rule implements, or
15 that an agency may not be adopting a proposed rule in accordance with
16 all applicable provisions of law, ~~((including section 4 of this act and~~
17 ~~chapter 19.85 RCW,))~~ the committee shall give the affected agency
18 written notice of its decision. The notice shall be given at least
19 seven days prior to any hearing scheduled for consideration of or
20 adoption of the proposed rule pursuant to RCW 34.05.320. The notice
21 shall include a statement of the review committee's findings and the
22 reasons therefor. When the agency holds a hearing on the proposed
23 rule, the agency shall consider the review committee's decision.

24 **Sec. 3.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to read
25 as follows:

26 (1) All rules required to be filed pursuant to RCW 34.05.380, and
27 emergency rules adopted pursuant to RCW 34.05.350, are subject to
28 selective review by the legislature.

29 ~~((The rules review committee may review an agency's use of~~
30 ~~policy statements, guidelines, and issuances that are of general~~
31 ~~applicability, or their equivalents to determine whether or not an~~
32 ~~agency has failed to adopt a rule or whether they are within the intent~~
33 ~~of the legislature as expressed by the governing statute))~~ All agency
34 policy and interpretive statements are subject to selective review by
35 the legislature.

36 (3) If the rules review committee finds by a majority vote of its
37 members: (a) That an existing rule is not within the intent of the

1 legislature as expressed by the statute which the rule implements, (b)
2 that the rule has not been adopted in accordance with all applicable
3 provisions of law, (~~including section 4 of this act if the rule was~~
4 ~~adopted after the effective date of section 4 of this act and chapter~~
5 ~~19.85 RCW,~~) or (c) that an agency is using a policy or interpretive
6 statement(~~(, guideline, or issuance)~~) in place of a rule, (~~or (d) that~~
7 ~~the policy statement, guideline, or issuance is outside of legislative~~
8 ~~intent,~~) the agency affected shall be notified of such finding and the
9 reasons therefor. Within thirty days of the receipt of the rules
10 review committee's notice, the agency shall file notice of a hearing on
11 the rules review committee's finding with the code reviser and mail
12 notice to all persons who have made timely request of the agency for
13 advance notice of its rule-making proceedings as provided in RCW
14 34.05.320. The agency's notice shall include the rules review
15 committee's findings and reasons therefor, and shall be published in
16 the Washington state register in accordance with the provisions of
17 chapter 34.08 RCW.

18 (4) The agency shall consider fully all written and oral
19 submissions regarding (a) whether the rule in question is within the
20 intent of the legislature as expressed by the statute which the rule
21 implements, (b) whether the rule was adopted in accordance with all
22 applicable provisions of law, (~~including section 4 of this act if the~~
23 ~~rule was adopted after the effective date of section 4 of this act and~~
24 ~~chapter 19.85 RCW,~~) or (c) whether the agency is using a policy or
25 interpretive statement(~~(, guideline, or issuance)~~) in place of a
26 rule(~~(, or (d) whether the policy statement, guideline, or issuance is~~
27 ~~within the legislative intent)~~).

28 **Sec. 4.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to read
29 as follows:

30 (1) Within seven days of an agency hearing held after notification
31 of the agency by the rules review committee pursuant to RCW 34.05.620
32 or 34.05.630, the affected agency shall notify the committee of its
33 intended action on a proposed or existing rule to which the committee
34 objected or on a committee finding of the agency's failure to adopt
35 rules. (~~If the rules review committee determines, by a majority vote~~
36 ~~of its members, that the agency has failed to provide for the required~~
37 ~~hearings or notice of its action to the committee, the committee may~~
38 ~~file notice of its objections, together with a concise statement of the~~

1 reasons therefor, with the code reviser within thirty days of such
2 determination.))

3 (2) If the rules review committee finds(~~(7)~~) by a majority vote of
4 its members: (a) That the proposed or existing rule in question (~~has~~
5 ~~not been~~) will not be modified, amended, withdrawn, or repealed by the
6 agency so as to conform with the intent of the legislature, (~~(or)~~) (b)
7 that an existing rule was not adopted in accordance with all applicable
8 provisions of law, (~~(including section 4 of this act if the rule was~~
9 ~~adopted after the effective date of section 4 of this act and chapter~~
10 ~~19.85 RCW,~~) or (c) that the agency (~~(is using a policy statement,~~
11 ~~guideline, or issuance in place of a rule, or that the policy~~
12 ~~statement, guideline, or issuance is outside of the legislative~~
13 ~~intent)~~) will not replace the policy or interpretive statement with a
14 rule, the rules review committee may, within thirty days from
15 notification by the agency of its intended action, file with the code
16 reviser notice of its objections together with a concise statement of
17 the reasons therefor. Such notice and statement shall also be provided
18 to the agency by the rules review committee.

19 (3) If the rules review committee makes an adverse finding
20 regarding an existing rule under subsection (2) (a) or (b) of this
21 section, the committee may, by a majority vote of its members,
22 recommend suspension of (~~(an existing)~~) the rule. Within seven days of
23 such vote the committee shall transmit to the appropriate standing
24 committees of the legislature, the governor, the code reviser, and the
25 agency written notice of its objection and recommended suspension and
26 the concise reasons therefor. Within thirty days of receipt of the
27 notice, the governor shall transmit to the committee, the code reviser,
28 and the agency written approval or disapproval of the recommended
29 suspension. If the suspension is approved by the governor, it is
30 effective from the date of that approval and continues until ninety
31 days after the expiration of the next regular legislative session.

32 (4) (~~(If the governor disapproves the recommendation of the rules~~
33 ~~review committee to suspend the rule, the transmittal of such decision,~~
34 ~~along with the findings of the rules review committee, shall be treated~~
35 ~~by the agency as a petition by the rules review committee to repeal the~~
36 ~~rule under RCW 34.05.330.~~

37 ~~(5))~~) The code reviser shall publish transmittals from the rules
38 review committee or the governor issued pursuant to subsection (~~((1)7)~~)
39 (2)(~~(7)~~) or (3) of this section in the Washington state register and

1 shall publish in the next supplement and compilation of the Washington
2 Administrative Code a reference to the committee's objection or
3 recommended suspension and the governor's action on it and to the issue
4 of the Washington state register in which the full text thereof
5 appears.

6 ~~((+6))~~ (5) The reference shall be removed from a rule published in
7 the Washington Administrative Code if a subsequent adjudicatory
8 proceeding determines that the rule is within the intent of the
9 legislature or was adopted in accordance with all applicable laws,
10 whichever was the objection of the rules review committee.

11 NEW SECTION. **Sec. 5.** RCW 34.05.645 and 1995 c 403 s 501 are each
12 repealed.

13 **Sec. 6.** RCW 34.05.655 and 1995 c 403 s 502 are each amended to
14 read as follows:

15 (1) Any person may petition the rules review committee for a review
16 of ~~((that rule))~~ a proposed or existing rule or a policy or
17 interpretive statement. Within thirty days of the receipt of the
18 petition, the rules review committee shall acknowledge receipt of the
19 petition and describe any initial action taken. If the rules review
20 committee rejects the petition, a written statement of the reasons for
21 rejection shall be included.

22 (2) A person may petition the rules review committee under
23 subsection (1) of this section requesting review of an existing rule
24 only if the person has petitioned the agency to amend or repeal the
25 rule under RCW 34.05.330(1) and such petition was denied.

26 (3) A petition for review of a rule under subsection (1) of this
27 section shall:

28 (a) Identify with specificity the proposed or existing rule to be
29 reviewed;

30 (b) Identify the specific statute identified by the agency as
31 authorizing the rule, the specific statute which the rule interprets or
32 implements, and, if applicable, the specific statute the department is
33 alleged not to have followed in adopting the rule;

34 (c) State the reasons why the petitioner believes that the rule is
35 not within the intent of the legislature, or that its adoption was not
36 or is not in accordance with law, and provide documentation to support
37 these statements;

1 (d) Identify any known judicial action regarding the rule or
2 statutes identified in the petition.

3 A petition to review an existing rule shall also include a copy of
4 the agency's denial of a petition to amend or repeal the rule issued
5 under RCW 34.05.330(1) and, if available, a copy of the governor's
6 denial issued under RCW 34.05.330(3).

7 (4) A petition for review of a policy or interpretive statement
8 under subsection (1) of this section shall:

9 (a) Identify the specific statement to be reviewed;

10 (b) Identify the specific statute which the rule interprets or
11 implements;

12 (c) State the reasons why the petitioner believes that the
13 statement meets the definition of a rule under RCW 34.05.010 and should
14 have been adopted according to the procedures of this chapter;

15 (d) Identify any known judicial action regarding the statement or
16 statutes identified in the petition.

17 (5) Within ninety days of receipt of the petition, the rules review
18 committee shall make a final decision on the rule for which the
19 petition for review was not previously rejected.

--- END ---