

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6702

Chapter 318, Laws of 1996

(partial veto)

54th Legislature
1996 Regular Session

JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE--CLARIFICATION
AND STREAMLINING OF PROCEDURES

EFFECTIVE DATE: 6/6/96

Passed by the Senate February 12, 1996
YEAS 49 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House February 23, 1996
YEAS 76 NAYS 15

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1996, with the
exception of section 8, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
ENGROSSED SENATE BILL 6702 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

March 30, 1996 - 4:52 p.m.

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6702

Passed Legislature - 1996 Regular Session

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 34.05.610, 34.05.620, 34.05.630, 34.05.640, 34.05.655, and 34.05.660;
4 and repealing RCW 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 34.05.610 and 1988 c 288 s 601 are each amended to
10 read as follows:

11 (1) There is hereby created a joint administrative rules review
12 committee which shall be a bipartisan committee consisting of four
13 senators and four representatives from the state legislature. The
14 senate members of the committee shall be appointed by the president of
15 the senate, and the house members of the committee shall be appointed
16 by the speaker of the house. Not more than two members from each house
17 may be from the same political party. The appointing authorities shall
18 also appoint one alternate member from each caucus of each house. All
19 appointments to the committee are subject to approval by the caucuses
20 to which the appointed members belong.

21 (2) Members and alternates shall be appointed as soon as possible
22 after the legislature convenes in regular session in an odd-numbered
23 year, and their terms shall extend until their successors are appointed
24 and qualified at the next regular session of the legislature in an odd-
25 numbered year or until such (~~(members)~~) persons no longer serve in the
26 legislature, whichever occurs first. Members and alternates may be
27 reappointed to (~~(a)~~) the committee.

28 (3) The president of the senate shall appoint the chairperson in
29 even-numbered years and the vice chairperson in odd-numbered years from
30 among committee membership. The speaker of the house shall appoint the
31 chairperson in odd-numbered years and the vice chairperson in even-
32 numbered years from among committee membership. Such appointments
33 shall be made in January of each year as soon as possible after a
34 legislative session convenes.

35 (4) The chairperson of the committee shall cause all meeting
36 notices and committee documents to be sent to the members and
37 alternates. A vacancy (~~(on the committee)~~) shall be filled by
38 appointment of a legislator from the same political party as the

1 original appointment. The appropriate appointing authority shall make
2 the appointment within thirty days of the vacancy occurring.

3 **Sec. 3.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to read
4 as follows:

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

18 **Sec. 4.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to read
19 as follows:

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

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

30 (3) If the rules review committee finds by a majority vote of its
31 members: (a) That an existing rule is not within the intent of the
32 legislature as expressed by the statute which the rule implements, (b)
33 that the rule has not been adopted in accordance with all applicable
34 provisions of law, ~~((including section 4 of this act if the rule was
35 adopted after the effective date of section 4 of this act and chapter
36 19.85 RCW,))~~ or (c) that an agency is using a policy or interpretive
37 statement~~((, guideline, or issuance))~~ in place of a rule, ~~((or (d) that~~

1 ~~the policy statement, guideline, or issuance is outside of legislative~~
2 ~~intent,~~) the agency affected shall be notified of such finding and the
3 reasons therefor. Within thirty days of the receipt of the rules
4 review committee's notice, the agency shall file notice of a hearing on
5 the rules review committee's finding with the code reviser and mail
6 notice to all persons who have made timely request of the agency for
7 advance notice of its rule-making proceedings as provided in RCW
8 34.05.320. The agency's notice shall include the rules review
9 committee's findings and reasons therefor, and shall be published in
10 the Washington state register in accordance with the provisions of
11 chapter 34.08 RCW.

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

22 **Sec. 5.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to read
23 as follows:

24 (1) Within seven days of an agency hearing held after notification
25 of the agency by the rules review committee pursuant to RCW 34.05.620
26 or 34.05.630, the affected agency shall notify the committee of its
27 intended action on a proposed or existing rule to which the committee
28 objected or on a committee finding of the agency's failure to adopt
29 rules. (~~If the rules review committee determines, by a majority vote~~
30 ~~of its members, that the agency has failed to provide for the required~~
31 ~~hearings or notice of its action to the committee, the committee may~~
32 ~~file notice of its objections, together with a concise statement of the~~
33 ~~reasons therefor, with the code reviser within thirty days of such~~
34 ~~determination.~~)

35 (2) If the rules review committee finds(~~(,)~~) by a majority vote of
36 its members: (a) That the proposed or existing rule in question (~~has~~
37 ~~not been~~) will not be modified, amended, withdrawn, or repealed by the
38 agency so as to conform with the intent of the legislature, (~~(or)~~) (b)

1 that an existing rule was not adopted in accordance with all applicable
2 provisions of law, (~~including section 4 of this act if the rule was~~
3 ~~adopted after the effective date of section 4 of this act and chapter~~
4 ~~19.85 RCW,~~) or (c) that the agency (~~is using a policy statement,~~
5 ~~guideline, or issuance in place of a rule, or that the policy~~
6 ~~statement, guideline, or issuance is outside of the legislative~~
7 ~~intent~~) will not replace the policy or interpretive statement with a
8 rule, the rules review committee may, within thirty days from
9 notification by the agency of its intended action, file with the code
10 reviser notice of its objections together with a concise statement of
11 the reasons therefor. Such notice and statement shall also be provided
12 to the agency by the rules review committee.

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

26 (4) (~~If the governor disapproves the recommendation of the rules~~
27 ~~review committee to suspend the rule, the transmittal of such decision,~~
28 ~~along with the findings of the rules review committee, shall be treated~~
29 ~~by the agency as a petition by the rules review committee to repeal the~~
30 ~~rule under RCW 34.05.330.~~

31 (~~5~~) The code reviser shall publish transmittals from the rules
32 review committee or the governor issued pursuant to subsection (~~(1)~~)
33 (2)(~~7~~) or (3) of this section in the Washington state register and
34 shall publish in the next supplement and compilation of the Washington
35 Administrative Code a reference to the committee's objection or
36 recommended suspension and the governor's action on it and to the issue
37 of the Washington state register in which the full text thereof
38 appears.

1 (~~(6)~~) (5) The reference shall be removed from a rule published in
2 the Washington Administrative Code if a subsequent adjudicatory
3 proceeding determines that the rule is within the intent of the
4 legislature or was adopted in accordance with all applicable laws,
5 whichever was the objection of the rules review committee.

6 NEW SECTION. Sec. 6. RCW 34.05.645 and 1995 c 403 s 501 are each
7 repealed.

8 **Sec. 7.** RCW 34.05.655 and 1995 c 403 s 502 are each amended to
9 read as follows:

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

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

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

23 (a) Identify with specificity the proposed or existing rule to be
24 reviewed;

25 (b) Identify the specific statute identified by the agency as
26 authorizing the rule, the specific statute which the rule interprets or
27 implements, and, if applicable, the specific statute the department is
28 alleged not to have followed in adopting the rule;

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

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

35 A petition to review an existing rule shall also include a copy of
36 the agency's denial of a petition to amend or repeal the rule issued

1 under RCW 34.05.330(1) and, if available, a copy of the governor's
2 denial issued under RCW 34.05.330(3).

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

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

6 (b) Identify the specific statute which the rule interprets or
7 implements;

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

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

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

16 **Sec. 8. RCW 34.05.660 and 1988 c 288 s 606 are each amended to*
17 *read as follows:*

18 *(1) Except as provided in subsection (2) of this section, it is the*
19 *express policy of the legislature that establishment of procedures for*
20 *review of administrative rules by the legislature and the notice of*
21 *objection required by RCW 34.05.630(2) and 34.05.640(2) in no way*
22 *serves to establish a presumption as to the legality or*
23 *constitutionality of a rule in any subsequent judicial proceedings*
24 *interpreting such rules.*

25 *(2) If the joint administrative rules review committee recommends*
26 *to the governor that an existing rule be suspended because it does not*
27 *conform with the intent of the legislature, the recommendation shall*
28 *establish a rebuttable presumption in any proceeding challenging the*
29 *validity of the rule that the rule is invalid. The burden of*
30 *demonstrating the rule's validity is then on the adopting agency.*

31 **Sec. 8 was vetoed. See message at end of chapter.*

Passed the Senate February 12, 1996.

Passed the House February 23, 1996.

Approved by the Governor March 30, 1996, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1996.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 8,
3 Engrossed Senate Bill No. 6702 entitled:

4 "AN ACT Relating to clarifying and streamlining procedures of the
5 joint administrative rules review committee;"

6 The Joint Administrative Rules Review Committee (JARRC) plays an
7 important role in providing a bipartisan forum for selective review of
8 agency rules. This legislation clarifies a number of JARRC's
9 procedures. I commend the members of the legislature for their
10 continuing hard work.

11 However, section 8 of Engrossed Senate Bill No. 6702 includes
12 language that I have vetoed from two other bills in prior legislative
13 sessions. This section would give JARRC the ability, by a simple
14 majority vote of committee members, to establish a rebuttable
15 presumption in judicial proceedings that a rule does not comply with
16 the legislature's intent. The burden of proof to establish that a rule
17 was within legislative intent would be shifted to the state agency
18 rather than placed on the individual bringing the challenge. This would
19 mean that five legislators out of a total of 147 could determine
20 legislative intent. These five individual legislators would have this
21 ability regardless of their participation in the policy committees that
22 developed the underlying legislation upon which the rule is based.

23 I have serious concerns about the constitutionality of this kind of
24 authority. Article II, section 22 and Article III, section 12 of the
25 state constitution require that legislative acts be passed by a
26 majority of the members elected to each house of the legislature, with
27 presentment to the governor for approval. This section violates these
28 provisions. Moreover, section 8 of Engrossed Senate Bill No. 6702
29 violates the separation of powers doctrine in that it intrudes unduly
30 into those constitutional powers reserved for the executive and
31 judicial branches of government.

32 For these reasons, I have vetoed section 8 of Engrossed Senate Bill
33 No. 6702.

34 With the exception of section 8, Engrossed Senate Bill No. 6702 is
35 approved."