
SENATE BILL 6492

State of Washington 56th Legislature 2000 Regular Session

By Senators Hochstatter, Swecker, Zarelli, Morton, McCaslin and Horn

Read first time . Referred to Committee on .

1 AN ACT Relating to the effective date of rules that obligate the
2 expenditure of taxpayer funds; amending RCW 34.05.380, 34.05.356, and
3 34.05.350; adding a new section to chapter 34.05 RCW; and creating a
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the Constitution
7 of the state of Washington provides that the lawmaking power is vested
8 in the legislature and the citizens of the state. In order to protect
9 taxpayers from frivolous government spending, it is the responsibility
10 of the legislature to safeguard the integrity of the budget process by
11 carefully allocating taxpayer funds through budget appropriations.
12 However, agency rule making often obligates taxpayer funds without the
13 approval of the legislature. Therefore, it is the intent of the
14 legislature to monitor agency rule making by closely examining those
15 rules that, if implemented, would obligate taxpayer funds.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW
17 to read as follows:

1 If an agency adopts a rule that obligates the expenditure of
2 taxpayer funds, that rule may not take effect until the end of the next
3 ensuing session of the legislature. If the legislature affirmatively
4 votes to reject the rule, the rule is not effective and is considered
5 to be repealed.

6 As used in this chapter, "a rule that obligates the expenditure of
7 taxpayer funds" does not include a rule affecting fees for services or
8 fines that the agency is authorized to collect.

9 **Sec. 3.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to read
10 as follows:

11 (1) Each agency shall file in the office of the code reviser a
12 certified copy of all rules it adopts, except for rules contained in
13 tariffs filed with or published by the Washington utilities and
14 transportation commission. The code reviser shall place upon each rule
15 a notation of the time and date of filing and shall keep a permanent
16 register of filed rules open to public inspection. In filing a rule,
17 each agency shall use the standard form prescribed for this purpose by
18 the code reviser.

19 (2) Emergency rules adopted under RCW 34.05.350 become effective
20 upon filing unless (a) a later date is specified in the order of
21 adoption or (b) they obligate the expenditure of taxpayer funds. Any
22 rules, whether regular or emergency, that obligate the expenditure of
23 taxpayer funds may not take effect before the end of the next ensuing
24 session of the legislature. All other rules become effective upon the
25 expiration of thirty days after the date of filing, unless a later date
26 is required by statute or specified in the order of adoption.

27 (3) A rule may become effective immediately upon its filing with
28 the code reviser or on any subsequent date earlier than that
29 established by subsection (2) of this section, if the agency
30 establishes that effective date in the adopting order and finds that:

31 (a) Such action is required by the state or federal Constitution,
32 a statute, or court order;

33 (b) The rule only delays the effective date of another rule that is
34 not yet effective; or

35 (c) The earlier effective date is necessary because of imminent
36 peril to the public health, safety, or welfare.

37 The finding and a brief statement of the reasons therefor required
38 by this subsection shall be made a part of the order adopting the rule.

1 (4) With respect to a rule made effective pursuant to subsection
2 (3) of this section, each agency shall make reasonable efforts to make
3 the effective date known to persons who may be affected by it.

4 **Sec. 4.** RCW 34.05.356 and 1998 c 280 s 2 are each amended to read
5 as follows:

6 (1) If a proposed rule will not obligate the expenditure of
7 taxpayer funds, an agency may file notice for the expedited adoption of
8 rules in accordance with the procedures set forth in this section for
9 rules meeting any one of the following criteria:

10 (a) The proposed rules relate only to internal governmental
11 operations that are not subject to violation by a person;

12 (b) The proposed rules adopt or incorporate by reference without
13 material change federal statutes or regulations, Washington state
14 statutes, rules of other Washington state agencies, shoreline master
15 programs other than those programs governing shorelines of state-wide
16 significance, or, as referenced by Washington state law, national
17 consensus codes that generally establish industry standards, if the
18 material adopted or incorporated regulates the same subject matter and
19 conduct as the adopting or incorporating rule;

20 (c) The proposed rules only correct typographical errors, make
21 address or name changes, or clarify language of a rule without changing
22 its effect;

23 (d) The content of the proposed rules is explicitly and
24 specifically dictated by statute;

25 (e) The proposed rules have been the subject of negotiated rule
26 making, pilot rule making, or some other process that involved
27 substantial participation by interested parties before the development
28 of the proposed rule; or

29 (f) The proposed rule is being amended after a review under RCW
30 34.05.328.

31 (2) The expedited rule-making process must follow the requirements
32 for rule making set forth in RCW 34.05.320, except that the agency is
33 not required to prepare a small business economic impact statement
34 under RCW 19.85.025, a statement indicating whether the rule
35 constitutes a significant legislative rule under RCW
36 ~~((34.05.328(6)(c)(iii)))~~ 34.05.328(5)(c)(iii), or a significant
37 legislative rule analysis under RCW 34.05.328. An agency is not
38 required to prepare statements of inquiry under RCW 34.05.310 or

1 conduct a hearing for the expedited adoption of rules. The notice for
2 the expedited adoption of rules must contain a statement in at least
3 ten-point type, that is substantially in the following form:

4 **NOTICE**

5 THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN
6 EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR
7 THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS
8 ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA
9 FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE
10 BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST
11 EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO
12 (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

13 (3) The agency shall send a copy of the notice of the proposed
14 expedited rule making to any person who has requested notification of
15 proposals for the expedited adoption of rules or of agency rule making,
16 as well as the joint administrative rules review committee, within
17 three days after its publication in the Washington State Register. An
18 agency may charge for the actual cost of providing a requesting party
19 mailed copies of these notices. The notice of the proposed expedited
20 rule making must be preceded by a statement substantially in the form
21 provided in subsection (2) of this section. The notice must also
22 include an explanation of the reasons the agency believes the expedited
23 adoption of the rule is appropriate.

24 (4) The code reviser shall publish the text of all rules proposed
25 for expedited adoption along with the notice required in this section
26 in a separate section of the Washington State Register. Once the text
27 of the proposed rules has been published in the Washington State
28 Register, the only changes that an agency may make in the text of these
29 proposed rules before their final adoption are to correct typographical
30 errors.

31 (5) Any person may file a written objection to the expedited
32 adoption of a rule. The objection must be filed with the agency rules
33 coordinator within forty-five days after the notice of the proposed
34 expedited rule making has been published in the Washington State
35 Register. A person who has filed a written objection to the expedited
36 adoption of a rule may withdraw the objection.

37 (6) If no written objections to the expedited adoption of a rule
38 are filed with the agency within forty-five days after the notice of

1 proposed expedited rule making is published, or if all objections that
2 have been filed are withdrawn by the persons filing the objections, the
3 agency may enter an order adopting the rule without further notice or
4 a public hearing. The order must be published in the manner required
5 by this chapter for any other agency order adopting, amending, or
6 repealing a rule.

7 (7) If a written notice of objection to the expedited adoption of
8 the rule is timely filed with the agency and is not withdrawn, the
9 notice of proposed expedited rule making published under this section
10 is considered a statement of inquiry for the purposes of RCW 34.05.310,
11 and the agency may initiate further rule adoption proceedings in
12 accordance with this chapter.

13 (8) This section expires December 31, 2000.

14 **Sec. 5.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read
15 as follows:

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

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

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

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

31 (2) An emergency rule adopted under this section takes effect upon
32 filing with the code reviser, unless (a) a later date is specified in
33 the order of adoption~~((, and))~~ or (b) it obligates the expenditure of
34 taxpayer funds, in which case it takes effect as provided under section
35 2 of this act. An emergency rule may not remain in effect for longer
36 than one hundred twenty days after ~~((filing))~~ taking effect. Identical
37 or substantially similar emergency rules may not be adopted in sequence
38 unless conditions have changed or the agency has filed notice of its

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

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

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

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