

# HOUSE BILL REPORT

## HB 2683

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### As Passed Legislature

**Title:** An act relating to providing notice of potential administrative rule actions.

**Brief Description:** Changing provisions relating to providing notice of proposed rule changes.

**Sponsors:** By Representatives Haigh, Armstrong and Linville; by request of Governor Locke.

#### Brief History:

##### Committee Activity:

State Government: 2/3/04 [DP].

##### Floor Activity:

Passed House: 2/11/04, 93-0.

Passed Senate: 3/3/04, 45-0.

Passed Legislature.

#### Brief Summary of Bill

- Gives agencies an option to provide the *statement of inquiry* or a *summary of the information* contained in the statement of inquiry for general rulemaking as well as for expedited rulemaking to those who have made a request.
- Establishes a pilot project requiring at least 10 agencies to file copies of the notice of a proposed rule to the Joint Administrative Rules Review Committee by electronic means for a period of four years.
- Changes the requirement that agencies update the roster of persons requesting notifications of interpretive and policy statements from a *yearly basis* to *periodically*.

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#### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Marsha Reilly (786-7135).

#### Background:

The Administrative Procedure Act details procedures that state agencies are required to follow when adopting rules.

### Pre-notice Inquiry

Agencies are required to solicit comments from the public on proposed rules before filing with the code reviser a notice of proposed rulemaking. The agency is required to prepare a statement of inquiry that:

- Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;
- States why rules on the subject are needed and what they might accomplish;
- Names other federal and state agencies that regulate this subject and describes process for coordination;
- Describes the development process of the rule (i.e., negotiated rulemaking, pilot rulemaking, or agency study); and
- Specifies how interested parties may participate in the process.

During the prenotice inquiry, agencies are encouraged to reach a consensus among interested parties through negotiated rulemaking, pilot rulemaking, or some other process before the proposed rule is published and an adoption hearing takes place. If such a process is not used, the agency is required to include a written justification in the rulemaking file.

### Notice of Proposed Rule

When an agency is ready to hold a hearing on a proposed rule, it publishes a notice in the state register at least 20 days before the hearing. The publication constitutes the proposal of a rule. The notice must include such things as a description of the rule's purpose; citations of statutory authority; a summary of the rule; whether the rule is the result of federal law or court action; a small business economic impact statement; a cost benefit analysis, if required, etc.

Agencies must have copies of the notice on file and available for public inspection. No later than three days after its publication in the state register, the agency must mail the notice on proposed rule adoption to each person, city, and county that has made a request for such notices. The notice must also be sent to the Joint Administrative Rules Review Committee (JARRC).

A hearing is held and comments are received. An agency is required to consider, summarize, and respond to the oral and written comments it receives. The agency may then withdraw the rule, modify it, or adopt the rule as proposed.

### Interpretive and Policy Statements

Agencies are encouraged to convert long-standing interpretive or policy statements into rules. Any person may petition an agency requesting such a conversion and the agency must either deny the petition in writing, stating reasons for the denial, or initiate rulemaking proceedings. When an agency issues an interpretive or policy statement, it must submit a description of the statement to the Code Reviser for publication in the Washington State Register.

Agencies must maintain a roster of persons who have requested notification of interpretive and policy statements and must update the roster on a yearly basis. Copies of interpretive and policy statements are sent to the persons on the roster, and agencies may charge a nominal fee for this service.

#### Expedited Rulemaking

An expedited rule adoption process was established in 1997. Rules may be adopted under this process without preparation of a small business economic impact statement, publishing a statement indicating whether the rule constitutes a significant legislative rule, preparing a significant legislative rule analysis, making a pre-notice inquiry, or conducting a hearing. Notice is published indicating the use of the expedited rule adoption process. If any person files written objections to the use of this process within 45 days of the publishing of the notice, the use of the expedited rule adoption process stops, and the agency may proceed to adopt the proposed rules following the regular rule adoption process.

The expedited rule adoption process is generally limited to rules that do not have an effect on the general public, that are explicitly and specifically dictated by statute, and, by reference, adopt changes in other laws or rules.

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#### **Summary of Bill:**

##### Pre-notice Inquiry

At the time the statement of inquiry is filed with the Code Reviser for publication, agencies have an option to provide the statement of inquiry or a summary of the information contained in the statement, to those who have requested statements of inquiry.

##### Notice of Proposed Rule

A pilot project is established requiring at least 10 agencies, including the departments of Labor and Industries, Fish and Wildlife, Revenue, Ecology, Retirement Systems, and Health, to file copies of the notice of a proposed rule, including emergency rules and amendments and expedited adoption of rules, to the JARRC by electronic means for a period of four years. The Office of Regulatory Assistance shall negotiate the details of the pilot among the agencies, the Legislature, and the Code Reviser.

##### Interpretive and Policy Statements

The requirement that agencies update the roster of persons requesting notifications of interpretive and policy statements on a *yearly basis* is changed to update the roster *periodically*.

##### Expedited Rulemaking

At the time the notice of expedited rulemaking is filed with the Code Reviser for publication, agencies have an option to send either the notice or a summary of the information in the notice

to persons requesting notification of proposals for expedited rulemaking or of regular rulemaking.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This is Governor request legislation. Regulatory improvement and government efficiency have been a top priority of the Governor's administration. Regulatory improvement should reduce inefficiencies, conflicts and delays in the regulatory process, and should increase the opportunity for public input and comment. It gives agencies the flexibility to get information out in a more efficient way.

**Testimony Against:** None.

**Persons Testifying:** Representative Haigh, prime sponsor; and Claire Hesselhoft, Office of the Governor.

**Persons Signed In To Testify But Not Testifying:** None.