

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2683

Chapter 31, Laws of 2004

58th Legislature
2004 Regular Session

ADMINISTRATIVE RULE MAKING--NOTICE

EFFECTIVE DATE: 6/10/04

Passed by the House February 11, 2004
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 3, 2004
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2683** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 22, 2004 - 4:17 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 2683

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Representatives Haigh, Armstrong and Linville; by request of Governor Locke

Read first time 01/19/2004. Referred to Committee on State Government.

1 AN ACT Relating to providing notice of potential administrative
2 rule actions; and amending RCW 34.05.310, 34.05.320, 34.05.230, and
3 34.05.353.

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

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

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

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

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

17 (c) Identifies other federal and state agencies that regulate this
18 subject, and describes the process whereby the agency would coordinate
19 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 shall be filed with the code reviser for
8 publication in the state register at least thirty days before the date
9 the agency files notice of proposed rule making under RCW 34.05.320 and
10 the statement, or a summary of the information contained in that
11 statement, shall be sent to any party that has requested receipt of the
12 agency's statements of inquiry.

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

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

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

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

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

35 (4) This section does not apply to:

36 (a) Emergency rules adopted under RCW 34.05.350;

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

1 (c) Rules adopting or incorporating by reference without material
2 change federal statutes or regulations, Washington state statutes,
3 rules of other Washington state agencies, shoreline master programs
4 other than those programs governing shorelines of statewide
5 significance, or, as referenced by Washington state law, national
6 consensus codes that generally establish industry standards, if the
7 material adopted or incorporated regulates the same subject matter and
8 conduct as the adopting or incorporating rule;

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

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

14 (f) Rules that set or adjust fees or rates pursuant to legislative
15 standards; or

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

17 (i) A procedure, practice, or requirement relating to agency
18 hearings; or

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

21 **Sec. 2.** RCW 34.05.320 and 2003 c 165 s 1 are each amended to read
22 as follows:

23 (1) At least twenty days before the rule-making hearing at which
24 the agency receives public comment regarding adoption of a rule, the
25 agency shall cause notice of the hearing to be published in the state
26 register. The publication constitutes the proposal of a rule. The
27 notice shall include all of the following:

28 (a) A title, a description of the rule's purpose, and any other
29 information which may be of assistance in identifying the rule or its
30 purpose;

31 (b) Citations of the statutory authority for adopting the rule and
32 the specific statute the rule is intended to implement;

33 (c) A (~~summary~~) short explanation of the rule, its purpose, and
34 anticipated effects, including in the case of a proposal that would
35 modify existing rules, a short description of the changes the proposal
36 would make, and a statement of the reasons supporting the proposed
37 action;

1 (d) The agency personnel, with their office location and telephone
2 number, who are responsible for the drafting, implementation, and
3 enforcement of the rule;

4 (e) The name of the person or organization, whether private,
5 public, or governmental, proposing the rule;

6 (f) Agency comments or recommendations, if any, regarding statutory
7 language, implementation, enforcement, and fiscal matters pertaining to
8 the rule;

9 (g) Whether the rule is necessary as the result of federal law or
10 federal or state court action, and if so, a ~~((copy of))~~ citation to
11 such law or court decision ~~((shall be attached to the purpose~~
12 ~~statement))~~;

13 (h) When, where, and how persons may present their views on the
14 proposed rule;

15 (i) The date on which the agency intends to adopt the rule;

16 ~~((A short explanation of the rule, its purpose, and anticipated~~
17 ~~effects, including in the case of a proposal that would modify existing~~
18 ~~rules, a short description of the changes the proposal would make;~~

19 ~~(k))~~ A copy of the small business economic impact statement
20 prepared under chapter 19.85 RCW, or an explanation for why the agency
21 did not prepare the statement;

22 ~~((l))~~ (k) A statement indicating whether RCW 34.05.328 applies to
23 the rule adoption; and

24 ~~((m))~~ (l) If RCW 34.05.328 does apply, a statement indicating
25 that a copy of the preliminary cost-benefit analysis described in RCW
26 34.05.328(1)(c) is available.

27 (2)(a) Upon filing notice of the proposed rule with the code
28 reviser, the adopting agency shall have copies of the notice on file
29 and available for public inspection ~~((and))~~. Except as provided in (b)
30 of this subsection, the agency shall forward three copies of the notice
31 to the rules review committee.

32 (b) A pilot of at least ten agencies, including the departments of
33 labor and industries, fish and wildlife, revenue, ecology, retirement
34 systems, and health, shall file the copies required under this
35 subsection, as well as under RCW 34.05.350 and 34.05.353, with the
36 rules review committee electronically for a period of four years from
37 the effective date of this section. The office of regulatory

1 assistance shall negotiate the details of the pilot among the agencies,
2 the legislature, and the code reviser.

3 (3) No later than three days after its publication in the state
4 register, the agency shall cause either a copy of the notice of
5 proposed rule adoption, or a summary of the information contained on
6 the notice, to be mailed to each person, city, and county that has made
7 a request to the agency for a mailed copy of such notices. An agency
8 may charge for the actual cost of providing a requesting party mailed
9 copies of these notices.

10 (4) In addition to the notice required by subsections (1) and (2)
11 of this section, an institution of higher education shall cause the
12 notice to be published in the campus or standard newspaper of the
13 institution at least seven days before the rule-making hearing.

14 **Sec. 3.** RCW 34.05.230 and 2001 c 25 s 1 are each amended to read
15 as follows:

16 (1) An agency is encouraged to advise the public of its current
17 opinions, approaches, and likely courses of action by means of
18 interpretive or policy statements. Current interpretive and policy
19 statements are advisory only. To better inform and involve the public,
20 an agency is encouraged to convert long-standing interpretive and
21 policy statements into rules.

22 (2) A person may petition an agency requesting the conversion of
23 interpretive and policy statements into rules. Upon submission, the
24 agency shall notify the joint administrative rules review committee of
25 the petition. Within sixty days after submission of a petition, the
26 agency shall either deny the petition in writing, stating its reasons
27 for the denial, or initiate rule-making proceedings in accordance with
28 this chapter.

29 (3) Each agency shall maintain a roster of interested persons,
30 consisting of persons who have requested in writing to be notified of
31 all interpretive and policy statements issued by that agency. Each
32 agency shall update the roster (~~((once each year))~~) periodically and
33 eliminate persons who do not indicate a desire to continue on the
34 roster. Whenever an agency issues an interpretive or policy statement,
35 it shall send a copy of the statement to each person listed on the
36 roster. The agency may charge a nominal fee to the interested person
37 for this service.

1 (4) Whenever an agency issues an interpretive or policy statement,
2 it shall submit to the code reviser for publication in the Washington
3 State Register a statement describing the subject matter of the
4 interpretive or policy statement, and listing the person at the agency
5 from whom a copy of the interpretive or policy statement may be
6 obtained.

7 **Sec. 4.** RCW 34.05.353 and 2001 c 25 s 2 are each amended to read
8 as follows:

9 (1) An agency may file notice for the expedited adoption of rules
10 in accordance with the procedures set forth in this section for rules
11 meeting any one of the following criteria:

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

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

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

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

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

31 (f) The proposed rule is being amended after a review under RCW
32 34.05.328.

33 (2) An agency may file notice for the expedited repeal of rules
34 under the procedures set forth in this section for rules meeting any
35 one of the following criteria:

36 (a) The statute on which the rule is based has been repealed and

1 has not been replaced by another statute providing statutory authority
2 for the rule;

3 (b) The statute on which the rule is based has been declared
4 unconstitutional by a court with jurisdiction, there is a final
5 judgment, and no statute has been enacted to replace the
6 unconstitutional statute;

7 (c) The rule is no longer necessary because of changed
8 circumstances; or

9 (d) Other rules of the agency or of another agency govern the same
10 activity as the rule, making the rule redundant.

11 (3) The expedited rule-making process must follow the requirements
12 for rule making set forth in RCW 34.05.320, except that the agency is
13 not required to prepare a small business economic impact statement
14 under RCW 19.85.025, a statement indicating whether the rule
15 constitutes a significant legislative rule under RCW
16 34.05.328(5)(c)(iii), or a significant legislative rule analysis under
17 RCW 34.05.328. An agency is not required to prepare statements of
18 inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule
19 making. The notice for the expedited rule making must contain a
20 statement in at least ten-point type, that is substantially in the
21 following form:

22 **NOTICE**

23 THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-
24 MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO
25 HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT
26 STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A
27 SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE
28 EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS
29 IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS)
30 AND RECEIVED BY (INSERT DATE).

31 (4) The agency shall send either a copy of the notice of the
32 proposed expedited rule making, or a summary of the information on the
33 notice, to any person who has requested notification of proposals for
34 expedited rule making or of regular agency rule making, as well as the
35 joint administrative rules review committee, within three days after
36 its publication in the Washington State Register. An agency may charge
37 for the actual cost of providing a requesting party mailed copies of

1 these notices. The notice of the proposed expedited rule making must
2 be preceded by a statement substantially in the form provided in
3 subsection (3) of this section. The notice must also include an
4 explanation of the reasons the agency believes the expedited rule-
5 making process is appropriate.

6 (5) The code reviser shall publish the text of all rules proposed
7 for expedited adoption, and the citation and caption of all rules
8 proposed for expedited repeal, along with the notice required in this
9 section in a separate section of the Washington State Register. Once
10 the notice of expedited rule making has been published in the
11 Washington State Register, the only changes that an agency may make in
12 the noticed materials before their final adoption or repeal are to
13 correct typographical errors.

14 (6) Any person may file a written objection to the expedited rule
15 making. The objection must be filed with the agency rules coordinator
16 within forty-five days after the notice of the proposed expedited rule
17 making has been published in the Washington State Register. A person
18 who has filed a written objection to the expedited rule making may
19 withdraw the objection.

20 (7) If no written objections to the expedited rule making are filed
21 with the agency within forty-five days after the notice of proposed
22 expedited rule making is published, or if all objections that have been
23 filed are withdrawn by the persons filing the objections, the agency
24 may enter an order adopting or repealing the rule without further
25 notice or a public hearing. The order must be published in the manner
26 required by this chapter for any other agency order adopting, amending,
27 or repealing a rule.

28 (8) If a written notice of objection to the expedited rule making
29 is timely filed with the agency and is not withdrawn, the notice of
30 proposed expedited rule making published under this section is
31 considered a statement of inquiry for the purposes of RCW 34.05.310,
32 and the agency may initiate further rule-making proceedings in
33 accordance with this chapter.

34 (9) As used in this section, "expedited rule making" includes both
35 the expedited adoption of rules and the expedited repeal of rules.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.