
SENATE BILL 6314

State of Washington

52nd Legislature

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By Senators Bauer, Newhouse, Vognild and Rasmussen

Read first time 01/24/92. Referred to Committee on Governmental Operations.

1 AN ACT Relating to administrative rule making; amending RCW
2 34.05.010, 34.05.315, 34.05.370, and 34.08.020; adding a new section to
3 chapter 34.05 RCW; adding a new section to chapter 44.04 RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the success
7 of a pilot rule project by the department of ecology in 1990 and 1991
8 in the development of rules to implement chapter 114, Laws of 1990,
9 requiring waste reduction planning, justifies the addition of this
10 rule-making technique to the state Administrative Procedure Act. The
11 pilot rule concept requires coordination between the legislature and
12 state agencies. The legislature finds that the pilot rule procedure is
13 an effective model in assuring rule effectiveness and efficiency, in
14 reducing excessive economic impacts, and in minimizing administrative

1 burdens for both the regulators and the regulated. For these reasons,
2 the legislature strongly encourages and directs, whenever reasonably
3 possible, that agencies adopting rules that implement or establish a
4 new program or make substantial changes in an existing program use the
5 pilot rule procedure in developing the rules before their formal
6 proposal.

7 **Sec. 2.** RCW 34.05.010 and 1989 c 175 s 1 are each amended to read
8 as follows:

9 The definitions set forth in this section shall apply throughout
10 this chapter, unless the context clearly requires otherwise.

11 (1) "Adjudicative proceeding" means a proceeding before an agency
12 in which an opportunity for hearing before that agency is required by
13 statute or constitutional right before or after the entry of an order
14 by the agency. Adjudicative proceedings also include all cases of
15 licensing and rate making in which an application for a license or rate
16 change is denied except as limited by RCW 66.08.150, or a license is
17 revoked, suspended, or modified, or in which the granting of an
18 application is contested by a person having standing to contest under
19 the law.

20 (2) "Agency" means any state board, commission, department,
21 institution of higher education, or officer, authorized by law to make
22 rules or to conduct adjudicative proceedings, except those in the
23 legislative or judicial branches, the governor, or the attorney general
24 except to the extent otherwise required by law.

25 (3) "Agency action" means licensing, the implementation or
26 enforcement of a statute, the adoption or application of an agency rule
27 or order, the imposition of sanctions, or the granting or withholding
28 of benefits.

1 Agency action does not include an agency decision regarding (a)
2 contracting or procurement of goods, services, public works, and the
3 purchase, lease, or acquisition by any other means, including eminent
4 domain, of real estate, as well as all activities necessarily related
5 to those functions, or (b) determinations as to the sufficiency of a
6 showing of interest filed in support of a representation petition, or
7 mediation or conciliation of labor disputes or arbitration of labor
8 disputes under a collective bargaining law or similar statute, or (c)
9 any sale, lease, contract, or other proprietary decision in the
10 management of public lands or real property interests, or (d) the
11 granting of a license, franchise, or permission for the use of
12 trademarks, symbols, and similar property owned or controlled by the
13 agency.

14 (4) "Agency head" means the individual or body of individuals in
15 whom the ultimate legal authority of the agency is vested by any
16 provision of law. If the agency head is a body of individuals, a
17 majority of those individuals constitutes the agency head.

18 (5) "Entry" of an order means the signing of the order by all
19 persons who are to sign the order, as an official act indicating that
20 the order is to be effective.

21 (6) "Filing" of a document that is required to be filed with an
22 agency means delivery of the document to a place designated by the
23 agency by rule for receipt of official documents, or in the absence of
24 such designation, at the office of the agency head.

25 (7) "Institutions of higher education" are the University of
26 Washington, Washington State University, Central Washington University,
27 Eastern Washington University, Western Washington University, The
28 Evergreen State College, the various community colleges, and the
29 governing boards of each of the above, and the various colleges,
30 divisions, departments, or offices authorized by the governing board of

1 the institution involved to act for the institution, all of which are
2 sometimes referred to in this chapter as "institutions."

3 (8) "Interpretive statement" means a written expression of the
4 opinion of an agency, entitled an interpretive statement by the agency
5 head or its designee, as to the meaning of a statute or other provision
6 of law, of a court decision, or of an agency order.

7 (9)(a) "License" means a franchise, permit, certification,
8 approval, registration, charter, or similar form of authorization
9 required by law, but does not include (i) a license required solely for
10 revenue purposes, or (ii) a certification of an exclusive bargaining
11 representative, or similar status, under a collective bargaining law or
12 similar statute, or (iii) a license, franchise, or permission for use
13 of trademarks, symbols, and similar property owned or controlled by the
14 agency.

15 (b) "Licensing" includes the agency process respecting the
16 issuance, denial, revocation, suspension, or modification of a license.

17 (10)(a) "Order," without further qualification, means a written
18 statement of particular applicability that finally determines the legal
19 rights, duties, privileges, immunities, or other legal interests of a
20 specific person or persons.

21 (b) "Order of adoption" means the official written statement by
22 which an agency adopts, amends, or repeals a rule.

23 (11) "Party to agency proceedings," or "party" in a context so
24 indicating, means:

25 (a) A person to whom the agency action is specifically directed; or

26 (b) A person named as a party to the agency proceeding or allowed
27 to intervene or participate as a party in the agency proceeding.

28 (12) "Party to judicial review or civil enforcement proceedings,"
29 or "party" in a context so indicating, means:

1 (a) A person who files a petition for a judicial review or civil
2 enforcement proceeding; or

3 (b) A person named as a party in a judicial review or civil
4 enforcement proceeding, or allowed to participate as a party in a
5 judicial review or civil enforcement proceeding.

6 (13) "Person" means any individual, partnership, corporation,
7 association, governmental subdivision or unit thereof, or public or
8 private organization or entity of any character, and includes another
9 agency.

10 (14) "Pilot rule" means a draft of a rule being considered by an
11 agency that has not been formally proposed under RCW 34.05.320 for
12 adoption but is being developed on a pilot basis under section 3 of
13 this act.

14 (15) "Policy statement" means a written description of the current
15 approach of an agency, entitled a policy statement by the agency head
16 or its designee, to implementation of a statute or other provision of
17 law, of a court decision, or of an agency order, including where
18 appropriate the agency's current practice, procedure, or method of
19 action based upon that approach.

20 (~~(15)~~) (16) "Rule" means any agency order, directive, or
21 regulation of general applicability (a) the violation of which subjects
22 a person to a penalty or administrative sanction; (b) which
23 establishes, alters, or revokes any procedure, practice, or requirement
24 relating to agency hearings; (c) which establishes, alters, or revokes
25 any qualification or requirement relating to the enjoyment of benefits
26 or privileges conferred by law; (d) which establishes, alters, or
27 revokes any qualifications or standards for the issuance, suspension,
28 or revocation of licenses to pursue any commercial activity, trade, or
29 profession; or (e) which establishes, alters, or revokes any mandatory
30 standards for any product or material which must be met before

1 distribution or sale. The term includes the amendment or repeal of a
2 prior rule, but does not include (i) statements concerning only the
3 internal management of an agency and not affecting private rights or
4 procedures available to the public, (ii) declaratory rulings issued
5 pursuant to RCW (~~(34.05.230)~~) 34.05.240, (iii) traffic restrictions for
6 motor vehicles, bicyclists, and pedestrians established by the
7 secretary of transportation or his designee where notice of such
8 restrictions is given by official traffic control devices, or (iv)
9 rules of institutions of higher education involving standards of
10 admission, academic advancement, academic credit, graduation and the
11 granting of degrees, employment relationships, or fiscal processes.

12 (~~(16)~~) (17) "Rules review committee" or "committee" means the
13 joint administrative rules review committee created pursuant to RCW
14 34.05.610 for the purpose of selectively reviewing existing and
15 proposed rules of state agencies.

16 (~~(17)~~) (18) "Rule making" means the process for formulation and
17 adoption of a rule.

18 (~~(18)~~) (19) "Service," except as otherwise provided in this
19 chapter, means posting in the United States mail, properly addressed,
20 postage prepaid, or personal service. Service by mail is complete upon
21 deposit in the United States mail. Agencies may, by rule, authorize
22 service by electronic telefacsimile transmission, where copies are
23 mailed simultaneously, or by commercial parcel delivery company.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 34.05 RCW
25 to read as follows:

26 (1) A state agency engaging in the process of proposing a rule
27 shall, if the rule likely to be proposed will implement or establish a
28 new program or substantially change an existing program, use the pilot
29 rule-making procedure unless the agency head finds that the pilot rule

1 process will impose an unreasonable risk to the public health, safety,
2 and welfare.

3 (2) The agency shall conduct the pilot rule process in
4 substantially the following manner:

5 (a) The agency shall develop a reasonably complete draft of the
6 rule in substantially the form the agency believes a final rule will
7 take.

8 (b) Before or upon completion of (a) of this subsection, the agency
9 shall identify organizations of persons or firms likely to be required
10 to comply with the rule.

11 (c) The agency shall file with the code reviser for publication in
12 the state register a notice advising interested persons of the agency's
13 desire to engage in a pilot rule project and requesting nominations of
14 volunteers to participate in the pilot rule project.

15 (d) The agency shall select volunteers reasonably representing the
16 spectrum of persons and firms likely to be required to comply with the
17 rule, if adopted. The agency shall offer to provide all selected
18 volunteers with technical assistance as they attempt to implement the
19 pilot rule. The volunteers are under no obligation to fully implement
20 the pilot rule but are responsible for informing the agency of their
21 observations on the parts of the pilot rule that are acceptable and
22 those parts that should be modified, the reasons the modifications are
23 needed, and any suggested modifications.

24 (e) Upon completion of (d) of this subsection, the agency shall
25 fully review the information gathered from the volunteers and modify
26 the pilot rule to improve compliance efficiency, reduce economic
27 impacts to the greatest extent possible for each group of persons and
28 firms likely to be required to comply with the rule, if adopted, and
29 reduce the administrative requirements imposed by the pilot rule on

1 those likely to be required to comply with the permanent rule, if
2 adopted.

3 (f) Upon completion of the review under (e) of this subsection, the
4 pilot rule process is terminated.

5 **Sec. 4.** RCW 34.05.315 and 1989 c 175 s 6 are each amended to read
6 as follows:

7 (1) Each agency shall maintain a current public rule-making docket.
8 The rule-making docket shall contain the information specified in
9 subsection (3) of this section.

10 (2) The rule-making docket shall contain a listing of each pending
11 rule-making proceeding. A rule-making proceeding is pending from the
12 time it is commenced by publication of a notice of a pilot rule under
13 section 3 of this act or a proposed rule adoption under RCW 34.05.320
14 until the pilot rule process is terminated under section 3(2)(f) of
15 this act or the proposed rule is withdrawn under RCW 34.05.335 or is
16 adopted by the agency.

17 (3) For each rule-making proceeding, the docket shall indicate all
18 of the following:

19 (a) The name and address of agency personnel responsible for the
20 pilot or proposed rule;

21 (b) The subject of the pilot or proposed rule;

22 (c) A citation to all notices relating to the proceeding that have
23 been published in the state register under section 3 of this act or RCW
24 34.05.320;

25 (d) The place where written submissions about the pilot or proposed
26 rule may be inspected;

27 (e) The time during which written submissions will be accepted;

1 (f) The current timetable established for the agency proceeding,
2 including the time and place of any rule-making hearing, the date of
3 the rule's adoption, filing, publication, and its effective date.

4 **Sec. 5.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
5 read as follows:

6 (1) Each agency shall maintain an official rule-making file for
7 each pilot or regular rule that it (a) proposes by publication in the
8 state register, or (b) adopts. The file and materials incorporated by
9 reference shall be available for public inspection.

10 (2) The agency rule-making file shall contain all of the following:

11 (a) Copies of all publications in the state register with respect
12 to the rule or the proceeding upon which the rule is based;

13 (b) Copies of any portions of the agency's public rule-making
14 docket containing entries relating to the rule or the proceeding on
15 which the rule is based;

16 (c) All written petitions, requests, submissions, and comments
17 received by the agency and all other written material regarded by the
18 agency as important to adoption of the rule or the proceeding on which
19 the rule is based;

20 (d) Any official transcript of oral presentations made in the
21 proceeding on which the rule is based or, if not transcribed, any tape
22 recording or stenographic record of them, and any memorandum prepared
23 by a presiding official summarizing the contents of those
24 presentations;

25 (e) The concise explanatory statement required by RCW 34.05.355;

26 (f) All petitions for exceptions to, amendment of, or repeal or
27 suspension of, the rule; and

28 (g) Any other material placed in the file by the agency.

1 (3) Internal agency documents are exempt from inclusion in the
2 rule-making file under subsection (2) of this section to the extent
3 they constitute preliminary drafts, notes, recommendations, and intra-
4 agency memoranda in which opinions are expressed or policies formulated
5 or recommended, except that a specific document is not exempt from
6 inclusion when it is publicly cited by an agency in connection with its
7 decision.

8 (4) Upon judicial review, the file required by this section
9 constitutes the official agency rule-making file with respect to that
10 rule. Unless otherwise required by another provision of law, the
11 official agency rule-making file need not be the exclusive basis for
12 agency action on that rule.

13 **Sec. 6.** RCW 34.08.020 and 1987 c 186 s 8 are each amended to read
14 as follows:

15 There is hereby created a state publication to be called the
16 Washington State Register, which shall be published on no less than a
17 monthly basis. The register shall contain, but is not limited to, the
18 following materials received by the code reviser's office during the
19 pertinent publication period:

20 (1)(a) The full text of any pilot rule or proposed new or
21 amendatory rule, as defined in RCW 34.05.010, and the citation of any
22 existing rules the repeal of which is proposed, prior to the public
23 hearing on such proposal. Such material shall be considered, when
24 published, to be the official notification of the intended action, and
25 no state agency or official thereof may take action on any such rule
26 except on emergency rules adopted in accordance with RCW 34.05.350,
27 until twenty days have passed since the distribution date of the
28 register in which the rule and hearing notice have been published or a

1 notice regarding the omission of the rule has been published pursuant
2 to RCW 34.05.210(4) (~~as now or hereafter amended~~);

3 (b) The small business economic impact statement, if required by
4 RCW 19.85.030, preceding the full text of the proposed new or
5 amendatory rule;

6 (2) The full text of any new or amendatory rule adopted, and the
7 citation of any existing rule repealed, on a permanent or emergency
8 basis;

9 (3) Executive orders and emergency declarations of the governor;

10 (4) Public meeting notices of any and all agencies of state
11 government, including state elected officials whose offices are created
12 by Article III of the state Constitution or RCW 48.02.010;

13 (5) Rules of the state supreme court which have been adopted but
14 not yet published in an official permanent codification;

15 (6) Summaries of attorney general opinions and letter opinions,
16 noting the number, date, subject, and other information, and prepared
17 by the attorney general for inclusion in the register;

18 (7) Juvenile disposition standards and security guidelines proposed
19 and adopted under RCW 13.40.030;

20 (8) Proposed and adopted rules of the commission on judicial
21 conduct; and

22 (9) The maximum allowable rates of interest and retail installment
23 contract service charges filed by the state treasurer under RCW
24 19.52.025 and 63.14.135. In addition, the highest rate of interest
25 permissible for the current month and the maximum retail installment
26 contract service charge for the current year shall be published in each
27 issue of the register. The publication of the maximum allowable
28 interest rate established pursuant to RCW 19.52.025 shall be
29 accompanied by the following advisement: NOTICE: FEDERAL LAW PERMITS
30 FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE

1 HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL
2 INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET
3 FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 44.04 RCW
5 to read as follows:

6 In establishing a statutory requirement for an agency to adopt
7 rules to implement a statutory program, the legislature shall allow
8 sufficient time between the effective date of the statute and the time
9 when the agency is required to adopt the rules for the agency to engage
10 in a pilot rule development process under section 3 of this act.