

SHB 1601 - H AMD 294

By Representative Orcutt

NOT CONSIDERED 04/22/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW
4 to read as follows:

5 The legislature finds that Washington families, workers, and
6 employers continue to struggle to make ends meet as the recession
7 starting in December 2007 continues into 2011. As families and
8 employers have streamlined their budgets and services, so should state
9 government. Government continues to increase the burden on citizens
10 and employers through perpetual alteration and expansion of rules. The
11 Washington Administrative Code has grown by 2,778 pages between 2001
12 and 2009 (15,138 pages to 17,916 pages). In 2010, 1,354 new, permanent
13 rules were adopted, 2,477 rules were amended, 459 emergency rule
14 filings were made, and 1,125 rules were repealed.

15 The constant changing of rules provides uncertainty to citizens
16 and employers and adds additional costs to taxpayers as agencies hold
17 public meetings and telephone conferences, and employees spend untold
18 hours working on drafts for rules. Furthermore, continual proposal of
19 new rules distracts employers from being productive in their respective
20 businesses due to a need to comment against proposed rules. Most
21 agencies do not track the number of hours employees spend on rule
22 making nor do they track the cost to the agency to do this task. One
23 way to reduce millions of dollars in employee and administrative costs
24 is to impose a moratorium on formal and informal rule making by state
25 agencies except in certain specified instances. This moratorium is to
26 last for three years or until the state is no longer facing financial
27 deficits.

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

1 (1) Agency rule making is suspended until the later of July 1,
2 2014, or such time as the economic and revenue forecast council reports
3 for three consecutive quarters that state revenue collections have
4 increased above the official forecast adopted pursuant to RCW 82.33.010
5 on or before February 20th in an even-numbered year or March 20th in an
6 odd-numbered year, except in the following cases:

7 (a) A rule is needed to implement a federal law;

8 (b) A rule is needed to implement the terms of a governor-declared
9 state of emergency;

10 (c) A rule is needed by the department of health to respond to a
11 public health emergency;

12 (d) A rule is needed to set the times for the taking of wildlife,
13 fish, or shellfish pursuant to RCW 77.12.047(1)(a); or

14 (e) Legislation specifically directs that rule making be
15 undertaken. Rules adopted under this subsection (1)(e) must be
16 approved by the legislature in the ensuing legislative session before
17 the rule may take effect.

18 (2) This section does not prohibit an agency from repealing rules.

19 **Sec. 3.** RCW 34.05.310 and 2004 c 31 s 1 are each amended to read
20 as follows:

21 (1) The provisions of this section are subject to section 2 of this
22 act.

23 (2) To meet the intent of providing greater public access to
24 administrative rule making and to promote consensus among interested
25 parties, agencies shall solicit comments from the public on a subject
26 of possible rule making before filing with the code reviser a notice of
27 proposed rule making under RCW 34.05.320. The agency shall prepare a
28 statement of inquiry that:

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

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

33 (c) Identifies other federal and state agencies that regulate this
34 subject, and describes the process whereby the agency would coordinate
35 the contemplated rule with these agencies;

36 (d) Discusses the process by which the rule might be developed,

1 including, but not limited to, negotiated rule making, pilot rule
2 making, or agency study;

3 (e) Specifies the process by which interested parties can
4 effectively participate in the decision to adopt a new rule and
5 formulation of a proposed rule before its publication.

6 The statement of inquiry shall be filed with the code reviser for
7 publication in the state register at least thirty days before the date
8 the agency files notice of proposed rule making under RCW 34.05.320 and
9 the statement, or a summary of the information contained in that
10 statement, shall be sent to any party that has requested receipt of the
11 agency's statements of inquiry.

12 ((+2)) (3) Agencies are encouraged to develop and use new
13 procedures for reaching agreement among interested parties before
14 publication of notice and the adoption hearing on a proposed rule.
15 Examples of new procedures include, but are not limited to:

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

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

26 ((+3)) (4)(a) An agency must make a determination whether
27 negotiated rule making, pilot rule making, or another process for
28 generating participation from interested parties prior to development
29 of the rule is appropriate.

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

34 ((+4)) (5) This section does not apply to:

35 (a) Emergency rules adopted under RCW 34.05.350;

36 (b) Rules relating only to internal governmental operations that
37 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. 4.** RCW 34.05.313 and 1995 c 403 s 303 are each amended to
22 read as follows:

23 (1) The provisions of this section are subject to section 2 of this
24 act.

25 (2) During the development of a rule or after its adoption, an
26 agency may develop methods for measuring or testing the feasibility of
27 complying with or administering the rule and for identifying simple,
28 efficient, and economical alternatives for achieving the goal of the
29 rule. A pilot project shall include public notice, participation by
30 volunteers who are or will be subject to the rule, a high level of
31 involvement from agency management, reasonable completion dates, and a
32 process by which one or more parties may withdraw from the process or
33 the process may be terminated. Volunteers who agree to test a rule and
34 attempt to meet the requirements of the draft rule, to report
35 periodically to the proposing agency on the extent of their ability to
36 meet the requirements of the draft rule, and to make recommendations
37 for improving the draft rule shall not be obligated to comply fully

1 with the rule being tested nor be subject to any enforcement action or
2 other sanction for failing to comply with the requirements of the draft
3 rule.

4 ~~((+2))~~ (3) An agency conducting a pilot rule project authorized
5 under subsection ~~((+1))~~ (2) of this section may waive one or more
6 provisions of agency rules otherwise applicable to participants in such
7 a pilot project if the agency first determines that such a waiver is in
8 the public interest and necessary to conduct the project. Such a
9 waiver may be only for a stated period of time, not to exceed the
10 duration of the project.

11 ~~((+3))~~ (4) The findings of the pilot project should be widely
12 shared and, where appropriate, adopted as amendments to the rule.

13 ~~((+4))~~ (5) If an agency conducts a pilot rule project in lieu of
14 meeting the requirements of the regulatory fairness act, chapter 19.85
15 RCW, the agency shall ensure the following conditions are met:

16 (a) If over ten small businesses are affected, there shall be at
17 least ten small businesses in the test group and at least one-half of
18 the volunteers participating in the pilot test group shall be small
19 businesses.

20 (b)(i) If there are at least one hundred businesses affected, the
21 participation by small businesses in the test group shall be as
22 follows:

23 (A) Not less than twenty percent of the small businesses must
24 employ twenty-six to fifty employees;

25 (B) Not less than twenty percent of the small businesses must
26 employ eleven to twenty-six employees; and

27 (C) Not less than twenty percent of the small businesses must
28 employ zero to ten employees.

29 (ii) If there do not exist a sufficient number of small businesses
30 in each size category set forth in (b)(i) of this subsection willing to
31 participate in the pilot project to meet the minimum requirements of
32 that subsection, then the agency must comply with this section to the
33 maximum extent practicable.

34 (c) The agency may not terminate the pilot project before
35 completion.

36 (d) Before filing the notice of proposed rule making pursuant to
37 RCW 34.05.320, the agency must prepare a report of the pilot rule
38 project that includes:

1 (i) A description of the difficulties small businesses had in
2 complying with the pilot rule;

3 (ii) A list of the recommended revisions to the rule to make
4 compliance with the rule easier or to reduce the cost of compliance
5 with the rule by the small businesses participating in the pilot rule
6 project;

7 (iii) A written statement explaining the options it considered to
8 resolve each of the difficulties described and a statement explaining
9 its reasons for not including a recommendation by the pilot test group
10 to revise the rule; and

11 (iv) If the agency was unable to meet the requirements set forth in
12 (b)(i) of this subsection, a written explanation of why it was unable
13 to do so and the steps the agency took to include small businesses in
14 the pilot project.

15 **Sec. 5.** RCW 34.05.320 and 2004 c 31 s 2 are each amended to read
16 as follows:

17 (1) The provisions of this section are subject to section 2 of this
18 act.

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

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

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

29 (c) A short explanation of the rule, its purpose, and anticipated
30 effects, including in the case of a proposal that would modify existing
31 rules, a short description of the changes the proposal would make, and
32 a statement of the reasons supporting the proposed action;

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

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

1 (f) Agency comments or recommendations, if any, regarding statutory
2 language, implementation, enforcement, and fiscal matters pertaining to
3 the rule;

4 (g) Whether the rule is necessary as the result of federal law or
5 federal or state court action, and if so, a citation to such law or
6 court decision;

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

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

10 (j) A copy of the small business economic impact statement prepared
11 under chapter 19.85 RCW, or an explanation for why the agency did not
12 prepare the statement;

13 (k) A statement indicating whether RCW 34.05.328 applies to the
14 rule adoption; and

15 (l) If RCW 34.05.328 does apply, a statement indicating that a copy
16 of the preliminary cost-benefit analysis described in RCW
17 34.05.328(~~(1)~~) (2)(c) is available.

18 (~~(2)~~) (3)(a) Upon filing notice of the proposed rule with the
19 code reviser, the adopting agency shall have copies of the notice on
20 file and available for public inspection. Except as provided in (b) of
21 this subsection, the agency shall forward three copies of the notice to
22 the rules review committee.

23 (b) A pilot of at least ten agencies, including the departments of
24 labor and industries, fish and wildlife, revenue, ecology, retirement
25 systems, and health, shall file the copies required under this
26 subsection, as well as under RCW 34.05.350 and 34.05.353, with the
27 rules review committee electronically for a period of four years from
28 June 10, 2004. The office of regulatory assistance shall negotiate the
29 details of the pilot among the agencies, the legislature, and the code
30 reviser.

31 (~~(3)~~) (4) No later than three days after its publication in the
32 state register, the agency shall cause either a copy of the notice of
33 proposed rule adoption, or a summary of the information contained on
34 the notice, to be mailed to each person, city, and county that has made
35 a request to the agency for a mailed copy of such notices. An agency
36 may charge for the actual cost of providing a requesting party mailed
37 copies of these notices.

1 ~~((+4))~~ (5) In addition to the notice required by subsections
2 ~~((+1))~~ (2) and ~~((+2))~~ (3) of this section, an institution of higher
3 education shall cause the notice to be published in the campus or
4 standard newspaper of the institution at least seven days before the
5 rule-making hearing.

6 **Sec. 6.** RCW 34.05.328 and 2010 c 112 s 15 are each amended to read
7 as follows:

8 (1) The provisions of this section are subject to section 2 of this
9 act.

10 (2) Before adopting a rule described in subsection ~~((+5))~~ (6) of
11 this section, an agency shall:

12 (a) Clearly state in detail the general goals and specific
13 objectives of the statute that the rule implements;

14 (b) Determine that the rule is needed to achieve the general goals
15 and specific objectives stated under (a) of this subsection, and
16 analyze alternatives to rule making and the consequences of not
17 adopting the rule;

18 (c) Provide notification in the notice of proposed rule making
19 under RCW 34.05.320 that a preliminary cost-benefit analysis is
20 available. The preliminary cost-benefit analysis must fulfill the
21 requirements of the cost-benefit analysis under (d) of this subsection.
22 If the agency files a supplemental notice under RCW 34.05.340, the
23 supplemental notice shall include notification that a revised
24 preliminary cost-benefit analysis is available. A final cost-benefit
25 analysis shall be available when the rule is adopted under RCW
26 34.05.360;

27 (d) Determine that the probable benefits of the rule are greater
28 than its probable costs, taking into account both the qualitative and
29 quantitative benefits and costs and the specific directives of the
30 statute being implemented;

31 (e) Determine, after considering alternative versions of the rule
32 and the analysis required under (b), (c), and (d) of this subsection,
33 that the rule being adopted is the least burdensome alternative for
34 those required to comply with it that will achieve the general goals
35 and specific objectives stated under (a) of this subsection;

36 (f) Determine that the rule does not require those to whom it

1 applies to take an action that violates requirements of another federal
2 or state law;

3 (g) Determine that the rule does not impose more stringent
4 performance requirements on private entities than on public entities
5 unless required to do so by federal or state law;

6 (h) Determine if the rule differs from any federal regulation or
7 statute applicable to the same activity or subject matter and, if so,
8 determine that the difference is justified by the following:

9 (i) A state statute that explicitly allows the agency to differ
10 from federal standards; or

11 (ii) Substantial evidence that the difference is necessary to
12 achieve the general goals and specific objectives stated under (a) of
13 this subsection; and

14 (i) Coordinate the rule, to the maximum extent practicable, with
15 other federal, state, and local laws applicable to the same activity or
16 subject matter.

17 ~~((+2))~~ (3) In making its determinations pursuant to subsection
18 ~~((+1))~~ (2)(b) through (h) of this section, the agency shall place in
19 the rule-making file documentation of sufficient quantity and quality
20 so as to persuade a reasonable person that the determinations are
21 justified.

22 ~~((+3))~~ (4) Before adopting rules described in subsection ~~((+5))~~
23 (6) of this section, an agency shall place in the rule-making file a
24 rule implementation plan for rules filed under each adopting order.
25 The plan shall describe how the agency intends to:

26 (a) Implement and enforce the rule, including a description of the
27 resources the agency intends to use;

28 (b) Inform and educate affected persons about the rule;

29 (c) Promote and assist voluntary compliance; and

30 (d) Evaluate whether the rule achieves the purpose for which it was
31 adopted, including, to the maximum extent practicable, the use of
32 interim milestones to assess progress and the use of objectively
33 measurable outcomes.

34 ~~((+4))~~ (5) After adopting a rule described in subsection ~~((+5))~~
35 (6) of this section regulating the same activity or subject matter as
36 another provision of federal or state law, an agency shall do all of
37 the following:

1 (a) Coordinate implementation and enforcement of the rule with the
2 other federal and state entities regulating the same activity or
3 subject matter by making every effort to do one or more of the
4 following:

- 5 (i) Deferring to the other entity;
- 6 (ii) Designating a lead agency; or
- 7 (iii) Entering into an agreement with the other entities specifying
8 how the agency and entities will coordinate implementation and
9 enforcement.

10 If the agency is unable to comply with this subsection (~~(4)~~)
11 (5)(a), the agency shall report to the legislature pursuant to (b) of
12 this subsection;

13 (b) Report to the joint administrative rules review committee:

14 (i) The existence of any overlap or duplication of other federal or
15 state laws, any differences from federal law, and any known overlap,
16 duplication, or conflict with local laws; and

17 (ii) Make recommendations for any legislation that may be necessary
18 to eliminate or mitigate any adverse effects of such overlap,
19 duplication, or difference.

20 (~~(5)~~) (6)(a) Except as provided in (b) of this subsection, this
21 section applies to:

22 (i) Significant legislative rules of the departments of ecology,
23 labor and industries, health, revenue, social and health services, and
24 natural resources, the employment security department, the forest
25 practices board, the office of the insurance commissioner, and to the
26 legislative rules of the department of fish and wildlife implementing
27 chapter 77.55 RCW; and

28 (ii) Any rule of any agency, if this section is voluntarily made
29 applicable to the rule by the agency, or is made applicable to the rule
30 by a majority vote of the joint administrative rules review committee
31 within forty-five days of receiving the notice of proposed rule making
32 under RCW 34.05.320.

33 (b) This section does not apply to:

34 (i) Emergency rules adopted under RCW 34.05.350;
35 (ii) Rules relating only to internal governmental operations that
36 are not subject to violation by a nongovernment party;

37 (iii) Rules adopting or incorporating by reference without material
38 change federal statutes or regulations, Washington state statutes,

1 rules of other Washington state agencies, shoreline master programs
2 other than those programs governing shorelines of statewide
3 significance, or, as referenced by Washington state law, national
4 consensus codes that generally establish industry standards, if the
5 material adopted or incorporated regulates the same subject matter and
6 conduct as the adopting or incorporating rule;

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

10 (v) Rules the content of which is explicitly and specifically
11 dictated by statute;

12 (vi) Rules that set or adjust fees or rates pursuant to legislative
13 standards;

14 (vii) Rules of the department of social and health services
15 relating only to client medical or financial eligibility and rules
16 concerning liability for care of dependents; or

17 (viii) Rules of the department of revenue that adopt a uniform
18 expiration date for reseller permits as authorized in RCW 82.32.780 and
19 82.32.783.

20 (c) For purposes of this subsection:

21 (i) A "procedural rule" is a rule that adopts, amends, or repeals
22 (A) any procedure, practice, or requirement relating to any agency
23 hearings; (B) any filing or related process requirement for making
24 application to an agency for a license or permit; or (C) any policy
25 statement pertaining to the consistent internal operations of an
26 agency.

27 (ii) An "interpretive rule" is a rule, the violation of which does
28 not subject a person to a penalty or sanction, that sets forth the
29 agency's interpretation of statutory provisions it administers.

30 (iii) A "significant legislative rule" is a rule other than a
31 procedural or interpretive rule that (A) adopts substantive provisions
32 of law pursuant to delegated legislative authority, the violation of
33 which subjects a violator of such rule to a penalty or sanction; (B)
34 establishes, alters, or revokes any qualification or standard for the
35 issuance, suspension, or revocation of a license or permit; or (C)
36 adopts a new, or makes significant amendments to, a policy or
37 regulatory program.

1 (d) In the notice of proposed rule making under RCW 34.05.320, an
2 agency shall state whether this section applies to the proposed rule
3 pursuant to (a)(i) of this subsection, or if the agency will apply this
4 section voluntarily.

5 ((+6+)) (7) By January 31, 1996, and by January 31st of each even-
6 numbered year thereafter, the office of financial management, after
7 consulting with state agencies, counties, and cities, and business,
8 labor, and environmental organizations, shall report to the governor
9 and the legislature regarding the effects of this section on the
10 regulatory system in this state. The report shall document:

11 (a) The rules proposed to which this section applied and to the
12 extent possible, how compliance with this section affected the
13 substance of the rule, if any, that the agency ultimately adopted;

14 (b) The costs incurred by state agencies in complying with this
15 section;

16 (c) Any legal action maintained based upon the alleged failure of
17 any agency to comply with this section, the costs to the state of such
18 action, and the result;

19 (d) The extent to which this section has adversely affected the
20 capacity of agencies to fulfill their legislatively prescribed mission;

21 (e) The extent to which this section has improved the acceptability
22 of state rules to those regulated; and

23 (f) Any other information considered by the office of financial
24 management to be useful in evaluating the effect of this section.

25 NEW SECTION. **Sec. 7.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately."

33 Correct the title.

EFFECT: Strikes the underlying bill. Suspends agency rule making

until July 1, 2014, or until the economic and revenue forecast council reports for three consecutive quarters that state revenue collections have increased above the official forecast. Makes exceptions if a rule is needed: To implement a federal law; to implement the terms of a governor-declared state of emergency; to respond to a public health emergency by the Department of Health; to set the times for the taking of wildlife, fish, or shellfish; or as specifically directed through legislation.

--- END ---