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## Environment Committee

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### HB 1014

**Brief Description:** Establishing a peer review process to ensure robust economic analysis of department of ecology administrative rules.

**Sponsors:** Representatives Shea, Taylor, Holy, Short, McCaslin, Pike, Buys, Haler and Young.

#### Brief Summary of Bill

- Requires the Department of Ecology (ECY) to seek peer review of the small business economic impact statements and cost-benefit analyses that the ECY conducts in conjunction with the adoption of agency rules.
- Requires the ECY to construct optimistic and pessimistic scenarios of the probable costs and benefits of rules, taking into account feedback received during the peer review process.
- Prohibits the ECY from adopting a rule whose probable benefits do not outweigh its probable costs, with a greater mathematical weighting given to pessimistic low-benefit and high-cost scenarios.

**Hearing Date:** 1/9/17

**Staff:** Jacob Lipson (786-7196).

#### Background:

The Administrative Procedures Act (APA) establishes a framework for the issuance of administrative rules by state agencies. Under the APA, prior to the adoption of a final agency rule, state agencies must publish the text of a draft version of the rule and must accept oral and written public comment on that draft rule. State agencies are required to respond to public comments on their draft rule prior to the adoption of a final rule, but are not required to amend the draft rule in response to every public comment if agencies explain why particular comments or categories of comments are not being considered.

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For certain agency rules, agencies must complete and publish two types of economic analyses in support of their rules: cost-benefit analyses and small business economic impact statements. In order to issue a rule, an agency must determine that the rule's benefits exceed its costs, taking into account both qualitative and quantitative criteria. The preliminary cost-benefit analysis of a proposed rule must be made available before the public hearing at which the agency accepts public comment on the draft rule. A final cost-benefit analysis must then be finished at the time that the final rule is adopted.

The types of significant rulemaking by the Department of Ecology (ECY) that require the publication of a cost-benefit analysis include non-emergency rules that:

- adopt, under delegated legislative authority, substantive requirements with penalties for noncompliance;
- establish, alter, or revoke any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- result in significant amendments to an existing policy or program.

Independent from cost-benefit analysis requirements, agencies must publish small business economic impact statements for rules that will impose more than minor costs on businesses. A small business economic impact statement must include analysis of the rule's costs, a consideration of whether the rule will cause businesses to lose revenue, and whether the rule will have a disproportionate impact on small businesses. The agency must also take steps to reduce the rule's costs on small businesses and must involve small businesses in rule development processes. If an agency rule is identified to impose disproportionate impacts on small businesses, the agency is directed, where legal and feasible within the bounds of the authorizing statute, to reduce the costs imposed on small businesses by the rule. Small business economic impact statements must be published at the same time as the notice of a public hearing on the draft administrative rule.

State agencies are required to follow specified procedures when procuring goods and services. Contracts for goods and services by state agencies generally must be made available under a competitive solicitation process, although many types of contracts are exempt from competitive solicitation requirements. Agencies must provide public notice through a state registration system when a contract is available for competitive solicitation. Agencies must select the lowest responsible and responsive bidder on a contract offered through the competitive solicitation process. A responsible bidder on a contract is one who has the ability, capacity, and skill to perform the service required, can meet the specified timelines, and has character, integrity, and other enumerated traits.

### **Summary of Bill:**

Before the Department of Ecology (ECY) finalizes a preliminary cost-benefit analysis or small business economic impact statement, it must put out drafts of those economic analyses for peer review. If nobody offers to provide peer review without cost to the ECY within 30 days of the opportunity being posted, the ECY must put the peer review opportunity up for bid consistent with state competitive solicitation procurement procedures. The ECY must select a peer reviewer who is a responsible bidder under the state competitive solicitation criteria, but also based on the peer reviewer's subject matter familiarity, experience in carrying out and critiquing economic analyses, and ability to provide objective, independent, and critical review. The focus

of the peer review must be the reasonableness of the models, calculations, and assumptions contained in the ECY's economic analysis. The ECY must post publicly all peer review it receives on its economic analyses.

The ECY must accept and respond to peer review feedback from qualified professionals, who are defined as persons with subject-matter expertise and graduate degrees in related fields. Taking into account the feedback from qualified professionals in the peer review, the ECY must revise its draft preliminary cost-benefit analysis and small business economic impact analysis to include optimistic and pessimistic scenarios that derive from reasonable low-cost and high-cost assumptions and modeling choices. The ECY is directed to attempt to construct optimistic and pessimistic cost-benefit scenarios that cover a 95% confidence interval, meaning that there would be a 95% chance that the policy, as implemented, will have net costs or benefits somewhere between the optimistic and pessimistic scenarios. The optimistic and pessimistic scenarios must also be updated for the final cost-benefit analysis that is published at the time of a final rule adoption; however, the ECY is not required to seek a second round of peer review for the final cost-benefit analysis.

The ECY is prohibited from adopting a rule whose probable benefits do not exceed its probable costs. For ECY rules, probable benefits and costs are measured using a mathematical formula that gives greater weight to the pessimistic scenario than to the optimistic scenario: Instead of a single estimate of benefits that must outweigh a single estimate of costs, in order for the agency to have authority to adopt the rule the optimistic scenario must produce positive net benefits (benefits minus costs) that have a greater value than the absolute value of any negative net benefits in the pessimistic scenario.

**Appropriation:** None.

**Fiscal Note:** Available.

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