
HOUSE BILL 1014

State of Washington 65th Legislature 2017 Regular Session

By Representatives Shea, Taylor, Holy, Short, McCaslin, and Pike

Prefiled 12/05/16.

1 AN ACT Relating to establishing a peer review process to ensure
2 robust economic analysis of department of ecology administrative
3 rules; amending RCW 19.85.030; adding new sections to chapter 34.05
4 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that
7 environmental administrative rules frequently significantly affect
8 the state's economy. In recognition of the economic impacts of
9 environmental regulations, state law already requires the department
10 of ecology, as well as certain other state agencies, to produce
11 economic analyses of major agency rules. Currently, these economic
12 analyses are completed by the staff of the very same state agency
13 that seeks to adopt the rule, creating a misplaced incentive in favor
14 of economic analyses that support the proposed rules.

15 (2) Even the most academically robust and most objective forward-
16 looking economic analyses must rely on a variety of assumptions and
17 model inputs. The ability of models to precisely depict future
18 economic impacts is inescapably limited by the variability,
19 randomness, and uncertainty that influence how policies unfold in the
20 real world. However, economic analyses that rely on a narrow set of
21 parameters will be less able to forecast economic costs and benefits

1 than similar analyses that incorporate a range of scenarios that
2 include both optimistic and pessimistic assumptions.

3 (3) Therefore, it is the intent of the legislature to improve the
4 robustness of department of ecology administrative rule economic
5 analyses by creating a peer review process that produces analyses
6 that better reflect the range of possible economic impacts of
7 administrative rules. Furthermore, it is the intent of the
8 legislature to direct the department of ecology to err on the side of
9 only adopting an administrative rule if its benefits appear far
10 likelier than not to outweigh its costs, taking into consideration
11 the range of possible outcomes evaluated by the department in its
12 economic analysis of a proposed rule.

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

15 (1) Prior to making available a preliminary cost-benefit analysis
16 under RCW 34.05.328(1)(c) or finalizing a small business economic
17 impact statement under RCW 19.85.030, the department of ecology shall
18 solicit peer review of the draft economic analyses by qualified
19 professionals. The peer review solicitation must be announced on the
20 same internet web page as the notice of the department's proposed
21 rule pursuant to RCW 34.05.320, and must also be posted consistent
22 with the requirements of RCW 39.26.150.

23 (2)(a) The department of ecology must accept and respond to
24 feedback from any qualified professional who offers to provide peer
25 review of the department's draft analysis cost to the department. The
26 department of ecology must accept feedback from qualified
27 professionals for thirty days after a draft economic analysis is
28 first made available for peer review under this subsection before it
29 determines whether it is necessary to contract for a peer review
30 under (b) of this subsection.

31 (b) If no qualified professionals respond to the solicitation by
32 offering to provide a complete and thorough peer review of the draft
33 analysis without cost to the department, the department of ecology
34 must contract, consistent with the requirements of chapter 39.26 RCW,
35 for a complete and thorough peer review by a qualified professional.
36 In addition to meeting the requirements of a responsible bidder
37 consistent with RCW 39.26.160, the department must select a peer
38 reviewer with the following attributes:

1 (i) Expertise as demonstrated by the publication of cost-benefit
2 analyses or similar economic studies;

3 (ii) Demonstrated experience in critiquing the economic analyses
4 of others;

5 (iii) Demonstrated professional familiarity with the subject
6 matter of the rule; and

7 (iv) An ability to provide objective, independent, and critical
8 review of the draft economic analysis.

9 (c) If no qualified professionals respond to the department of
10 ecology's solicitation for peer review under the terms of (a) or (b)
11 of this subsection, a peer review is not required in order for the
12 economic analyses to be finalized or in order for the rule-making
13 process to proceed.

14 (3) All peer review feedback received by the department must be
15 made public on the same internet web page as the notice of the
16 department's proposed rule under RCW 34.05.320.

17 (4) A peer review by a qualified professional must focus on the
18 reasonableness of the models, calculations, and assumptions
19 incorporated into the department of ecology's draft economic
20 analysis. The peer review must identify any assumptions or modeling
21 choices for which there are plausible alternative modeling choices or
22 plausible alternative assumptions or ranges of alternative
23 assumptions that would result in a more optimistic or pessimistic
24 forecast of probable costs or benefits.

25 (5)(a) Once the department of ecology has closed the period of
26 peer review feedback under subsection (2)(a) of this section or
27 received the final work product of a contracted peer review under
28 subsection (2)(b) of this section, the department of ecology must
29 revise the draft economic analyses to incorporate the feedback
30 received during the peer review process.

31 (b) Based on specific suggestions or criticisms contained in the
32 peer review feedback, the economic analyses must be revised to
33 include at least two alternative scenario estimates as follows:

34 (i) A cost-benefit analysis must include at least one pessimistic
35 scenario constructed from reasonable assumptions and modeling choices
36 that would produce comparatively high probable costs and
37 comparatively low probable benefits, and at least one optimistic
38 scenario constructed from reasonable assumptions and modeling choices
39 that would produce comparatively low probable costs and comparatively
40 high probable benefits.

1 (ii) A small business economic impact statement must include at
2 least one pessimistic scenario constructed from reasonable
3 assumptions and modeling choices that would produce comparatively
4 high probable costs, and at least one optimistic scenario constructed
5 from reasonable assumptions and modeling choices that would produce
6 comparatively low probable costs.

7 (c) The optimistic scenarios and the pessimistic scenarios may
8 derive from modeling choices or assumptions used in the department of
9 ecology's draft economic analyses or that were suggested by qualified
10 professional peer reviewers as alternatives to the department's
11 initial parameter choices.

12 (d) In developing the optimistic and pessimistic scenarios, the
13 department of ecology shall attempt to select parameter values and
14 modeling choices that result in a ninety-five percent confidence
15 interval between the most optimistic and most pessimistic scenario
16 estimates, such that there is a five percent chance that the economic
17 benefit and cost outcomes of implementing the rule would fall outside
18 of the interval between the most optimistic and pessimistic scenario
19 estimates.

20 (6) The department of ecology must incorporate both the
21 optimistic and pessimistic economic impact scenarios into the final
22 cost-benefit analysis under RCW 34.05.328. In the final cost-benefit
23 analysis, the department of ecology must make amendments where
24 appropriate to the preliminary analysis that reflect any changes
25 between the draft rule and the final rule. However, the department of
26 ecology is not required to conduct a separate peer review process for
27 the final cost-benefit analysis.

28 (7) The definitions in this subsection apply throughout this
29 section unless the context clearly requires otherwise.

30 (a) "Economic analysis" or "economic analyses" means a small
31 business economic impact statement produced by the department of
32 ecology pursuant to chapter 19.85 RCW or a preliminary cost-benefit
33 analysis or cost-benefit analysis produced by the department of
34 ecology pursuant to this chapter.

35 (b) "Qualified professional" means a person employed by the
36 federal government, a different state agency, an academic
37 institution, or an independent for-profit or nonprofit organization
38 who has:

39 (i) Earned a graduate degree in economics, public policy, or a
40 related field; and

1 (ii) Demonstrated familiarity with the subject matter of the
2 proposed administrative rule via academic publications or
3 professional experience.

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

6 Consistent with RCW 34.05.328(1)(d), the department of ecology
7 may not adopt a rule whose probable benefits are less than its
8 probable costs. For purposes of determining the probable benefits and
9 the probable costs of a proposed rule, the department of ecology must
10 use the arithmetic mean of the following two addends:

11 (1) The most pessimistic scenario estimate described in section
12 2(5) of this act; and

13 (2) The arithmetic mean of the most optimistic and pessimistic
14 scenario estimates described in section 2(5) of this act.

15 **Sec. 4.** RCW 19.85.030 and 2011 c 249 s 2 are each amended to
16 read as follows:

17 (1)(a) In the adoption of a rule under chapter 34.05 RCW, an
18 agency shall prepare a small business economic impact statement: (i)
19 If the proposed rule will impose more than minor costs on businesses
20 in an industry; or (ii) if requested to do so by a majority vote of
21 the joint administrative rules review committee within forty-five
22 days of receiving the notice of proposed rule making under RCW
23 34.05.320. However, if the agency has completed the pilot rule
24 process as defined by RCW 34.05.313 before filing the notice of a
25 proposed rule, the agency is not required to prepare a small business
26 economic impact statement.

27 (b) An agency must prepare the small business economic impact
28 statement in accordance with RCW 19.85.040, and file it with the code
29 reviser along with the notice required under RCW 34.05.320. An agency
30 shall file a statement prepared at the request of the joint
31 administrative rules review committee with the code reviser upon its
32 completion before the adoption of the rule. An agency must provide a
33 copy of the small business economic impact statement to any person
34 requesting it.

35 (2) Based upon the extent of disproportionate impact on small
36 business identified in the statement prepared under RCW 19.85.040,
37 the agency shall, where legal and feasible in meeting the stated
38 objectives of the statutes upon which the rule is based, reduce the

1 costs imposed by the rule on small businesses. The agency must
2 consider, without limitation, each of the following methods of
3 reducing the impact of the proposed rule on small businesses:

4 (a) Reducing, modifying, or eliminating substantive regulatory
5 requirements;

6 (b) Simplifying, reducing, or eliminating recordkeeping and
7 reporting requirements;

8 (c) Reducing the frequency of inspections;

9 (d) Delaying compliance timetables;

10 (e) Reducing or modifying fine schedules for noncompliance; or

11 (f) Any other mitigation techniques including those suggested by
12 small businesses or small business advocates.

13 (3) If the agency determines it cannot reduce the costs imposed
14 by the rule on small businesses, the agency must provide a clear
15 explanation of why it has made that determination and include that
16 statement with its filing of the proposed rule pursuant to RCW
17 34.05.320.

18 (4)(a) All small business economic impact statements are subject
19 to selective review by the joint administrative rules review
20 committee pursuant to RCW 34.05.630.

21 (b) Any person affected by a proposed rule where there is a small
22 business economic impact statement may petition the joint
23 administrative rules review committee for review pursuant to the
24 procedure in RCW 34.05.655.

25 (5) Small business economic impact statements produced by the
26 department of ecology must be consistent with the requirements of
27 section 2 of this act.

--- END ---