HB 1589 – Point of Order

In ruling on the point of order by Senator Short that HB 1589 is improperly before the Senate, as it violates Senate Rule 26, the President finds and rules as follows:

Senate Rule 26 is identical to Article II, Section 37 of the Washington State Constitution, and provides that, “No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.”

Please bear with the President, as it appears that this is a matter of first impression, and this will be a lengthy explanation.

First, and most importantly, the President believes that everyone on this floor can agree that our Legislature has some of the finest professional drafters anywhere. The following remarks have nothing to do with Legislative staff or their work.

There is no other way of saying this clearly. The President is troubled as he observes that the drafting and construction of this bill is very simply a hot mess.

Courts looking at potential violations of the prohibition on amending by reference have used the following test:

1. Is the new bill such a complete act that the scope of the rights or duties created or affected by the bill can be determined without referring to any other statute?

And

1. Would a straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment?

Turning to HB 1589:

There are multiple planning requirements for utilities located in various statutes spread across the RCW’s. Section 3 of HB 1589 authorizes the utilities and transportation commission (UTC) to allow the consolidation of these multiple planning requirements into a single plan approved by the UTC, but only for “large combination utilities”.

Critically, these large combination utilities are no longer required to file the individual plans that become part of this consolidation. The various other planning statutes continue to provide that the individual plans are required for all utilities – with no exemption for large combination utilities. Their very specific requirements and timelines remain in statute without amendment in this bill.

While Section 3, Subsection 2(a) provides that, “The statutorily required contents of any plan consolidated into an integrated system plan must be met by the integrated system plan,” the President is troubled that the existing planning requirements still remain unamended in the various RCW’s.

Turning to the first question for whether a bill is attempting to amend without setting forth provisions in full – Is HB 1589 so complete that one can determine the rights and duties without referring to other statutes? The answer is no. Section 3 calls out a number of statutory chapters that “may” be affected and says that the statutes affected are not limited to that very list. The President simply cannot look at HB 1589 and know which plans the UTC is being given the authority to consolidate, and which statutory requirements will be waived based on this new rulemaking.

On question two – would any of the rights or duties under existing statutes be rendered erroneous by HB 1589? The answer is yes. There are plans in various statutes. Those statutes provide requirements for filing and there is nothing in the bill that amends those statutes to allow the UTC to consolidate the plans and remove the requirement for a large combination utility to file the plan.

Again, the purpose of the rule is not to restrict the Senate as to content. The goals of this bill can certainly be achieved by the Senate, but it must be drafted correctly.

The President would like to emphasize that there is a way to repair this bill. It merely needs to be drafted to include those sections of law that HB 1589 proposes to amend, and clearly amend them to allow the UTC to do rule making to consolidate the plans for large combination utilities.

The President also cautions that this opinion is not an opening to object to every bill on this basis. Many bills affect the reading of other statutes in some way, but do not rise to the level of a violation of Rule 26. This bill is unique. It is simply outside the boundaries of normal drafting standards. The President encourages those who endeavor to draft legislation to listen to the advice of our legislative staff.

For these reasons the President finds that Senator Short’s point is well taken, and that HB 1589 in its current form is in violation of Senate Rule 26 and is not properly before the Senate.