

2 **SSB 5088** - H COMM AMD **ADOPTED 4-9-93**  
3 By Committee on State Government

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that while the 1988  
8 Administrative Procedure Act expanded public participation in the  
9 agency rule-making process, there continue to be instances when  
10 participants have developed adversarial relationships with each other,  
11 resulting in the inability to identify all of the issues, the failure  
12 to focus on solutions to problems, unnecessary delays, litigation, and  
13 added cost to the agency, affected parties, and the public in general.

14 When interested parties work together, it is possible to negotiate  
15 development of a rule that is acceptable to all affected, and that  
16 conforms to the intent of the statute the rule is intended to  
17 implement.

18 After a rule is adopted, unanticipated negative impacts may emerge.  
19 Examples include excessive costs of administration for the agency and  
20 compliance by affected parties, technical conditions that may be  
21 physically or economically unfeasible to meet, problems of  
22 interpretation due to lack of clarity, and reporting requirements that  
23 duplicate or conflict with those already in place.

24 It is therefore the intent of the legislature to encourage flexible  
25 approaches to developing administrative rules, including but not  
26 limited to negotiated rule making and a process for testing the  
27 feasibility of adopted rules, often called the pilot rule process.  
28 However, nothing in this act shall be construed to create any mandatory  
29 duty for an agency to use the procedures in RCW 34.05.310 or section 4  
30 of this act in any particular instance of rule making. Agencies shall  
31 determine, in their discretion, when it is appropriate to use these  
32 procedures.

33 **Sec. 2.** RCW 34.05.310 and 1989 c 175 s 5 are each amended to read  
34 as follows:

1       ~~((1) In addition to seeking information by other methods, an~~  
2 ~~agency, before publication of a notice of a proposed rule adoption~~  
3 ~~under RCW 34.05.320, is encouraged to solicit comments from the public~~  
4 ~~on a subject of possible rule making under active consideration within~~  
5 ~~the agency, by causing notice to be published in the state register of~~  
6 ~~the subject matter and indicating where, when, and how persons may~~  
7 ~~comment.~~

8       ~~(2) Each agency may appoint committees to comment, before~~  
9 ~~publication of a notice of proposed rule adoption under RCW 34.05.320,~~  
10 ~~on the subject of a possible rule making action under active~~  
11 ~~consideration within the agency.~~

12       ~~(3) Each agency shall designate a rules coordinator, who shall have~~  
13 ~~knowledge of the subjects of rules being proposed or prepared within~~  
14 ~~the agency for proposal, maintain the records of any such action, and~~  
15 ~~respond to public inquiries about possible or proposed rules and the~~  
16 ~~identity of agency personnel working, reviewing, or commenting on them.~~  
17 ~~The office and mailing address of the rules coordinator shall be~~  
18 ~~published in the state register at the time of designation and in the~~  
19 ~~first issue of each calendar year thereafter for the duration of the~~  
20 ~~designation. The rules coordinator may be an employee of another~~  
21 ~~agency.)) To meet the intent of providing greater public access to~~  
22 ~~administrative rule making and to promote consensus among interested~~  
23 ~~parties, agencies are encouraged to:~~

24       ~~(1) Solicit comments from the public on a subject of possible rule~~  
25 ~~making before publication of a notice of proposed rule adoption under~~  
26 ~~RCW 34.05.320. This process can be accomplished by having a notice~~  
27 ~~published in the state register of the subject under active~~  
28 ~~consideration and indicating where, when, and how persons may comment;~~  
29 ~~and~~

30       ~~(2) Develop and use new procedures for reaching agreement among~~  
31 ~~interested parties before publication of notice and the adoption~~  
32 ~~hearing on a proposed rule. Examples of new procedures include, but~~  
33 ~~are not limited to:~~

34       ~~(a) Identifying individuals and organizations that have a~~  
35 ~~recognized interest in or will be significantly affected by the~~  
36 ~~adoption of the proposed rule;~~

37       ~~(b) Soliciting participation by persons who are capable, willing,~~  
38 ~~and appropriately authorized to enter into such negotiations;~~

1 (c) Assuring that participants fully recognize the consequences of  
2 not participating in the process, are committed to negotiate in good  
3 faith, and recognize the alternatives available to other parties;

4 (d) Establishing guidelines to encourage consideration of all  
5 pertinent issues, to set reasonable completion deadlines, and to  
6 provide fair and objective settlement of disputes that may arise;

7 (e) Agreeing on a reasonable time period during which the agency  
8 will be bound to the rule resulting from the negotiations without  
9 substantive amendment; and

10 (f) Providing a mechanism by which one or more parties may withdraw  
11 from the process or the negotiations may be terminated if it appears  
12 that consensus cannot be reached on a draft rule that accommodates the  
13 needs of the agency, interested parties, and the general public and  
14 conforms to the legislative intent of the statute that the rule is  
15 intended to implement.

16 NEW SECTION. Sec. 3. Each agency shall designate a rules  
17 coordinator, who shall have knowledge of the subjects of rules being  
18 proposed or prepared within the agency for proposal, maintain the  
19 records of any such action, and respond to public inquiries about  
20 possible or proposed rules and the identity of agency personnel  
21 working, reviewing, or commenting on them. The office and mailing  
22 address of the rules coordinator shall be published in the state  
23 register at the time of designation and in the first issue of each  
24 calendar year thereafter for the duration of the designation. The  
25 rules coordinator may be an employee of another agency.

26 NEW SECTION. Sec. 4. If, during development of a rule or after  
27 its adoption, an agency determines that implementation may produce  
28 unreasonable economic, procedural, or technical burdens, agencies are  
29 encouraged to develop methods for measuring or testing the feasibility  
30 of compliance with the rule, including the use of voluntary pilot study  
31 groups. Measuring and testing methods should emphasize public notice,  
32 participation by persons who have a recognized interest in or are  
33 significantly affected by the adoption of the proposed rule, a high  
34 level of involvement from agency management, consensus on issues and  
35 procedures among participants in the pilot group, assurance of  
36 fairness, and reasonable completion dates, and a process by which one

1 or more parties may withdraw from the process or the process may be  
2 terminated if consensus cannot be reached on the rule.

3 The findings of the pilot project should be widely shared and,  
4 where appropriate, adopted as amendments to the rule.

5 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act are each added  
6 to chapter 34.05 RCW under the subchapter heading "rule-making  
7 procedures." "

8 EFFECT: Clarifies that the use of these procedures is optional.  
9 The intent section is not added to the Administrative Procedure Act,  
10 but will remain uncodified.

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