

# HOUSE BILL REPORT

## SSB 5088

As Reported By House Committee On:  
State Government

**Title:** An act relating to flexible approaches to developing administrative rules.

**Brief Description:** Authorizing flexible approaches to developing administrative rules.

**Sponsors:** Senate Committee on Government Operations  
(originally sponsored by Senators McCaslin and Barr).

**Brief History:**

Reported by House Committee on:  
State Government, March 23, 1993, DPA.

### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Anderson, Chair; Reams, Ranking Minority Member; Vance, Assistant Ranking Minority Member; Campbell; Conway; Dyer; King; and Pruitt.

**Staff:** Bonnie Austin (786-7135).

**Background:** Under the state Administrative Procedures Act (APA), agencies are encouraged to solicit public comments on the subject of possible rule making action prior to publishing notice of the proposed rule adoption. Agencies are also authorized under the APA to appoint committees to comment on the subject of possible rule making action under active consideration within an agency.

In "negotiated rule making," agencies identify parties potentially affected by a possible rule and negotiate toward consensus before the formal proposal is filed for public notice and hearing. Negotiated rule making is used in federal rule making.

In "pilot rule making," preliminary rules are tested on a group of affected parties, and adjustments are made to the rules to make them more workable. This process was used by the Department of Ecology in the implementation of rules requiring facility operators to adopt hazardous waste reduction plans.

**Summary of Amended Bill:** Agencies are encouraged to develop and use new procedures for reaching agreement on the subject of possible rule making action prior to publishing notice of the proposed rule adoption. Examples of new procedures used in negotiated rule making are listed.

If an agency determines that implementation of a proposed or adopted rule may produce unreasonable economic, procedural, or technical burdens, agencies are encouraged to develop methods for testing the feasibility of compliance with the rules, including the use of voluntary pilot study groups. Suggested testing elements are detailed. Where appropriate, findings of pilot projects should be adopted as amendments to the rules.

**Amended Bill Compared to Substitute Bill:** The amended bill clarifies that the use of pilot or negotiated rule making is optional, subject to agency discretion. Technical changes are made.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The use of negotiated rule making is standard protocol for most environmental agencies. An amendment should be added clarifying that the use of these procedures is optional. Pilot rule making is beneficial because it brings out unforeseen elements in application. The Department of Ecology has learned that it is important to do up-front stakeholder work prior to developing the proposed rule. This takes more time, but it is worth it in the long run. The Department of Ecology pilot project implementing hazardous waste reduction rules was extremely successful and resulted in modification of the rules to reflect the findings of the pilot project.

**Testimony Against:** None.

**Witnesses:** Bruce Wishart, Sierra Club (pro); Tony Meinhardt, Independent Business Association (pro); and Karen Sell and Stan Springer, Department of Ecology (pro).