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HOUSE BILL 2880

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State of Washington                      53rd Legislature                      1994 Regular Session

By Representatives Moak, Edmondson, Bray, Rayburn, Jones and Kremen

Read first time 01/28/94. Referred to Committee on State Government.

1            AN ACT Relating to agency rule making; amending RCW 34.05.310; and  
2 adding a new section to chapter 34.05 RCW.

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

4            **Sec. 1.** RCW 34.05.310 and 1993 c 202 s 2 are each amended to read  
5 as follows:

6            (1) To meet the intent of providing greater public access to  
7 administrative rule making and to promote consensus among interested  
8 parties, agencies ~~((are encouraged to:~~

9            ~~(1))~~ shall solicit comments from the public on a subject of  
10 possible rule making before publication of a notice of proposed rule  
11 adoption under RCW 34.05.320. ~~((This process can be accomplished by  
12 having a notice published in the state register of the subject under  
13 active consideration and indicating where, when, and how persons may  
14 comment; and))~~ The agency shall prepare a statement of intent that:

15            (a) States the specific statutory authority for the new rule;

16            (b) Identifies the reasons the new rule is needed;

17            (c) Identifies the goals of the new rule;

1 (d) Describes the process by which the rule will be developed,  
2 including, but not limited to, negotiated rule making, pilot rule  
3 making, or agency study; and

4 (e) Specifies the process by which interested parties can provide  
5 input into the formulation of the new rule.

6 The statement of intent shall be published in the state register  
7 and shall be sent to all identifiable interested parties, including,  
8 but not limited to, umbrella groups, interest groups, specific  
9 businesses, the business assistance center, chambers of commerce, local  
10 governments, state agencies, and any other appropriate body.

11 (2) Agencies are encouraged to develop and use new procedures for  
12 reaching agreement among interested parties before publication of  
13 notice and the adoption hearing on a proposed rule. Examples of new  
14 procedures include, but are not limited to:

15 (a) Negotiated rule making which includes:

16 (i) Identifying individuals and organizations that have a  
17 recognized interest in or will be significantly affected by the  
18 adoption of the proposed rule;

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

21 ~~((c))~~ (iii) Assuring that participants fully recognize the  
22 consequences of not participating in the process, are committed to  
23 negotiate in good faith, and recognize the alternatives available to  
24 other parties;

25 ~~((d))~~ (iv) Establishing guidelines to encourage consideration of  
26 all pertinent issues, to set reasonable completion deadlines, and to  
27 provide fair and objective settlement of disputes that may arise;

28 ~~((e))~~ (v) Agreeing on a reasonable time period during which the  
29 agency will be bound to the rule resulting from the negotiations  
30 without substantive amendment; and

31 ~~((f))~~ (vi) Providing a mechanism by which one or more parties may  
32 withdraw from the process or the negotiations may be terminated if it  
33 appears that consensus cannot be reached on a draft rule that  
34 accommodates the needs of the agency, interested parties, and the  
35 general public and conforms to the legislative intent of the statute  
36 that the rule is intended to implement; and

37 (b) Pilot rule making which includes testing the draft of a  
38 proposed rule through the use of volunteer pilot study groups in  
39 various areas and circumstances.

1       (3)(a) Agencies must make a determination whether negotiated rule  
2 making, pilot rule making, or another process for generating input from  
3 interested parties prior to development of the rule is appropriate.

4       (b) Agencies must include a written justification in the rule-  
5 making file if an opportunity for interested parties to participate in  
6 the rule-making process prior to publication of the proposed rule has  
7 not been provided.

8       NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW  
9 to read as follows:

10       (1) Any agency promulgating a new rule must first conduct an  
11 analysis to determine what other entities, federal, state, or local,  
12 are already regulating the same activity. If other entities are, in  
13 fact, regulating the same activity, agencies must consider if (a) a  
14 modification of existing regulatory activities will accomplish the goal  
15 without the need for promulgating new rules, (b) the efforts of the  
16 regulating entities can be combined or coordinated to meet the goals of  
17 all jurisdictions without adding a compliance burden on those who are  
18 regulated, and (c) an overlap or conflict exists.

19       (2) Agencies are specifically authorized to enter into "interagency  
20 agreements" with other state, federal, or local regulatory bodies.  
21 Interagency agreements must contain the following elements:

22       (a) A clear identification of the components of regulatory activity  
23 that will be covered by the agreement;

24       (b) The duration of the agreement, and a mechanism by which an  
25 agreement may be terminated or renegotiated;

26       (c) The designation of which entity shall serve as the "lead" for  
27 each component. The lead entity shall have responsibility for  
28 coordinating activities of other entities and authority for making the  
29 final decision within that component; and

30       (d) The manner in which funding and resources shall be divided.

31       (3) An interagency agreement must be submitted to the governor for  
32 approval. The governor shall consider, among other criteria, whether  
33 the agreement will make compliance easier for regulated activities,  
34 whether the agreement complies with legislative intent, and whether the  
35 goals of the regulation are satisfied adequately.

36       (4) Agencies may request an independent arbitrator from the  
37 attorney general to preside over the negotiations at any point in the  
38 development of the interagency agreement.

1 (5) If an interagency agreement is not achieved within a six-month  
2 period after the commencement of negotiations, or if an unresolved  
3 conflict or overlap between entities exists that has not been resolved  
4 through an interagency agreement, the agencies initiating the proposed  
5 rule must suspend any further action on the rule and notify the  
6 governor and the legislature of the existence of an impasse or  
7 conflict.

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