

1 **ESSB 5671 - H AMD 548 ADOPTED 4-14-97**

2 By Representative Lambert

3 On page 6, after line 23, insert the following:

4 **"Sec. 3.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
5 read 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 shall solicit comments from the public on a subject  
9 of possible rule making before filing with the code reviser a notice of  
10 proposed rule making under RCW 34.05.320. The agency shall prepare a  
11 statement of inquiry that:

12 (a) Identifies the specific statute or statutes authorizing the  
13 agency to adopt rules on this subject;

14 (b) Discusses why rules on this subject may be needed and what  
15 they might accomplish;

16 (c) Identifies other federal and state agencies that regulate this  
17 subject, and describes the process whereby the agency would coordinate  
18 the contemplated rule with these agencies;

19 (d) Discusses the process by which the rule might be developed,  
20 including, but not limited to, negotiated rule making, pilot rule  
21 making, or agency study;

22 (e) Specifies the process by which interested parties can  
23 effectively participate in the decision to adopt a new rule and  
24 formulation of a proposed rule before its publication.

25 (2) (a) The statement of inquiry shall be filed with the code  
26 reviser for publication in the state register at least thirty days  
27 before the date the agency files notice of proposed rule making under  
28 RCW 34.05.320 and shall be sent to any party that has requested receipt  
29 of the agency's statements of inquiry.

30 (b) The statement of inquiry shall also be sent to the chair of  
31 the appropriate standing committees and the majority and minority  
32 leaders of the house and senate for comment on the legislative intent  
33 of the statute that the rule implements. Any comments submitted by the

1 chairs or leaders shall become part of the record of any subsequent  
2 rule making hearing.

3 ~~((+2+))~~(3) Agencies are encouraged to develop and use new  
4 procedures for reaching agreement among interested parties before  
5 publication of notice and the adoption hearing on a proposed rule.  
6 Examples of new procedures include, but are not limited to:

7 (a) Negotiated rule making by which representatives of an agency  
8 and of the interests that are affected by a subject of rule making,  
9 including, where appropriate, county and city representatives, seek to  
10 reach consensus on the terms of the proposed rule and on the process by  
11 which it is negotiated; and

12 (b) Pilot rule making which includes testing the feasibility of  
13 complying with or administering draft new rules or draft amendments to  
14 existing rules through the use of volunteer pilot groups in various  
15 areas and circumstances, as provided in RCW 34.05.313 or as otherwise  
16 provided by the agency.

17 ~~((+3+))~~(4)(a) An agency must make a determination whether  
18 negotiated rule making, pilot rule making, or another process for  
19 generating participation from interested parties prior to development  
20 of the rule is appropriate.

21 (b) An agency must include a written justification in the rule-  
22 making file if an opportunity for interested parties to participate in  
23 the rule-making process prior to publication of the proposed rule has  
24 not been provided.

25 ~~((+4+))~~(5) This section does not apply to:

26 (a) Emergency rules adopted under RCW 34.05.350;

27 (b) Rules relating only to internal governmental operations that  
28 are not subject to violation by a nongovernment party;

29 (c) Rules adopting or incorporating by reference without material  
30 change federal statutes or regulations, Washington state statutes,  
31 rules of other Washington state agencies, shoreline master programs  
32 other than those programs governing shorelines of state-wide  
33 significance, or, as referenced by Washington state law, national  
34 consensus codes that generally establish industry standards, if the  
35 material adopted or incorporated regulates the same subject matter and  
36 conduct as the adopting or incorporating rule;

- 1 (d) Rules that only correct typographical errors, make address or  
2 name changes, or clarify language of a rule without changing its  
3 effect;
- 4 (e) Rules the content of which is explicitly and specifically  
5 dictated by statute;
- 6 (f) Rules that set or adjust fees or rates pursuant to legislative  
7 standards; or
- 8 (g) Rules that adopt, amend, or repeal:
- 9 (i) A procedure, practice, or requirement relating to agency  
10 hearings; or
- 11 (ii) A filing or related process requirement for applying to an  
12 agency for a license or permit."
- 13 Renumber the remaining sections and correct the title.

**EFFECT:** When an agency solicits comments on a subject of possible rule-making, it must sent notice to the chair of the appropriate standing committees and to leadership for any comment on the legislative intent of the underlying statute. Any comments submitted must be made part of the record.