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**SUBSTITUTE SENATE BILL 5803**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senators Finkbeiner and McCaslin; by request of Department of Revenue)

Read first time 03/05/97.

1       AN ACT Relating to the distribution of rules notices; amending RCW  
2 34.05.230, 34.05.310, and 34.05.320; and adding a new section to  
3 chapter 34.05 RCW.

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

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW  
6 to read as follows:

7       In order to provide the greatest possible access to agency  
8 documents to the most people as quickly as possible, agencies are  
9 encouraged to make their rule, interpretative, and policy information  
10 available via electronic mail or fax as well as through the mail.  
11 Agencies that have the capacity to transmit electronically may ask  
12 persons who are on mailing lists for copies of interpretive statements,  
13 policy statements, preproposal statements of inquiry, and notices of  
14 proposed rule making, whether they would like to receive the notices  
15 electronically.

16       For purposes of this chapter, "electronic distribution" or  
17 "electronically" means distribution by electronic mail or fax.  
18 Electronic distribution to persons who request it may substitute for  
19 mailed copies required under this chapter.

1       **Sec. 2.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to read  
2 as follows:

3       (1) If the adoption of rules is not feasible and practicable, an  
4 agency is encouraged to advise the public of its current opinions,  
5 approaches, and likely courses of action by means of interpretive or  
6 policy statements. Current interpretive and policy statements are  
7 advisory only. To better inform and involve the public, an agency is  
8 encouraged to convert long-standing interpretive and policy statements  
9 into rules.

10       (2) A person may petition an agency requesting the conversion of  
11 interpretive and policy statements into rules. Upon submission, the  
12 agency shall notify the joint administrative rules review committee of  
13 the petition. Within sixty days after submission of a petition, the  
14 agency shall either deny the petition in writing, stating its reasons  
15 for the denial, or initiate rule-making proceedings in accordance with  
16 this chapter.

17       (3) Each agency shall maintain a roster or rosters of interested  
18 persons, consisting of persons who have requested in writing to be  
19 notified of all interpretive and policy statements issued by that  
20 agency. The agency may establish different rosters by general subject  
21 area. Each agency shall update the roster or rosters once each year  
22 and eliminate persons who do not indicate a desire to continue on the  
23 roster. Whenever an agency issues an interpretive or policy statement,  
24 it shall send a copy of the statement to each person listed on the  
25 roster or rosters, either electronically or by mail. The agency may  
26 charge a nominal fee to the interested person for this service.

27       (4) Whenever an agency issues an interpretive or policy statement,  
28 it shall submit to the code reviser for publication in the Washington  
29 State Register a statement describing the subject matter of the  
30 interpretive or policy statement, and listing the person at the agency  
31 from whom a copy of the interpretive or policy statement may be  
32 obtained.

33       **Sec. 3.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
34 read as follows:

35       (1) To meet the intent of providing greater public access to  
36 administrative rule making and to promote consensus among interested  
37 parties, agencies shall solicit comments from the public on a subject  
38 of possible rule making before filing with the code reviser a notice of

1 proposed rule making under RCW 34.05.320. The agency shall prepare a  
2 statement of inquiry that:

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

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

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

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

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

16 The statement of inquiry shall be filed with the code reviser for  
17 publication in the state register at least thirty days before the date  
18 the agency files notice of proposed rule making under RCW 34.05.320 and  
19 shall be sent, either electronically or by mail, to any party that has  
20 requested receipt of the agency's statements of inquiry. If  
21 distributed electronically, the agency is not required to transmit the  
22 actual notice form but shall send all the information contained in the  
23 notice.

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

28 (a) Negotiated rule making by which representatives of an agency  
29 and of the interests that are affected by a subject of rule making,  
30 including, where appropriate, county and city representatives, seek to  
31 reach consensus on the terms of the proposed rule and on the process by  
32 which it is negotiated; and

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

38 (3)(a) An agency must make a determination whether negotiated rule  
39 making, pilot rule making, or another process for generating

1 participation from interested parties prior to development of the rule  
2 is appropriate.

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

7 (4) This section does not apply to:

8 (a) Emergency rules adopted under RCW 34.05.350;

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

11 (c) Rules adopting or incorporating by reference without material  
12 change federal statutes or regulations, Washington state statutes,  
13 rules of other Washington state agencies, shoreline master programs  
14 other than those programs governing shorelines of state-wide  
15 significance, or, as referenced by Washington state law, national  
16 consensus codes that generally establish industry standards, if the  
17 material adopted or incorporated regulates the same subject matter and  
18 conduct as the adopting or incorporating rule;

19 (d) Rules that only correct typographical errors, make address or  
20 name changes, or clarify language of a rule without changing its  
21 effect;

22 (e) Rules the content of which is explicitly and specifically  
23 dictated by statute;

24 (f) Rules that set or adjust fees or rates pursuant to legislative  
25 standards; or

26 (g) Rules that adopt, amend, or repeal:

27 (i) A procedure, practice, or requirement relating to agency  
28 hearings; or

29 (ii) A filing or related process requirement for applying to an  
30 agency for a license or permit.

31 **Sec. 4.** RCW 34.05.320 and 1995 c 403 s 302 are each amended to  
32 read as follows:

33 (1) At least twenty days before the rule-making hearing at which  
34 the agency receives public comment regarding adoption of a rule, the  
35 agency shall cause notice of the hearing to be published in the state  
36 register. The publication constitutes the proposal of a rule. The  
37 notice shall include all of the following:

1 (a) A title, a description of the rule's purpose, and any other  
2 information which may be of assistance in identifying the rule or its  
3 purpose;

4 (b) Citations of the statutory authority for adopting the rule and  
5 the specific statute the rule is intended to implement;

6 (c) A summary of the rule and a statement of the reasons supporting  
7 the proposed action;

8 (d) The agency personnel, with their office location and telephone  
9 number, who are responsible for the drafting, implementation, and  
10 enforcement of the rule;

11 (e) The name of the person or organization, whether private,  
12 public, or governmental, proposing the rule;

13 (f) Agency comments or recommendations, if any, regarding statutory  
14 language, implementation, enforcement, and fiscal matters pertaining to  
15 the rule;

16 (g) Whether the rule is necessary as the result of federal law or  
17 federal or state court action, and if so, a copy of such law or court  
18 decision shall be attached to the purpose statement;

19 (h) When, where, and how persons may present their views on the  
20 proposed rule;

21 (i) The date on which the agency intends to adopt the rule;

22 (j) A short explanation of the rule, its purpose, and anticipated  
23 effects, including in the case of a proposal that would modify existing  
24 rules, a short description of the changes the proposal would make;

25 (k) A copy of the small business economic impact statement prepared  
26 under chapter 19.85 RCW, or an explanation for why the agency did not  
27 prepare the statement; and

28 (l) A statement indicating whether RCW 34.05.328 applies to the  
29 rule adoption.

30 (2) Upon filing notice of the proposed rule with the code reviser,  
31 the adopting agency shall have copies of the notice on file and  
32 available for public inspection and shall forward three copies of the  
33 notice to the rules review committee.

34 (3) No later than three days after its publication in the state  
35 register, the agency shall cause a copy of the notice of proposed rule  
36 adoption to be ~~((mailed))~~ sent, either electronically or by mail, to  
37 each person, city, and county that has made a request to the agency for  
38 a ~~((mailed))~~ copy of such notices. An agency may charge for the actual  
39 cost of providing a requesting party mailed copies of these notices.

1           (4) In addition to the notice required by subsections (1) and (2)  
2 of this section, an institution of higher education shall cause the  
3 notice to be published in the campus or standard newspaper of the  
4 institution at least seven days before the rule-making hearing.

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