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ENGROSSED SUBSTITUTE HOUSE BILL 2123

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State of Washington

56th Legislature

1999 Regular Session

By House Committee on State Government (originally sponsored by Representatives Cox, Grant, McMorris, Romero, D. Schmidt and Doumit)

Read first time 03/02/1999.

1 AN ACT Relating to expedited rule making; amending RCW 34.05.230,  
2 34.05.310, and 34.05.356; repealing RCW 34.05.354; and providing an  
3 effective date.

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

5 **Sec. 1.** RCW 34.05.230 and 1997 c 409 s 202 are each amended to  
6 read as follows:

7 (1) ~~((An agency may file notice for the expedited adoption of rules~~  
8 ~~in accordance with the procedures set forth in this section for rules~~  
9 ~~meeting any one of the following criteria:~~

10 (a) ~~The proposed rules relate only to internal governmental~~  
11 ~~operations that are not subject to violation by a person;~~

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



1 rule making must be preceded by a statement substantially in the form  
2 provided in subsection (2) of this section. The notice must also  
3 include an explanation of the reasons the agency believes the expedited  
4 adoption of the rule is appropriate.

5 (4) The code reviser shall publish the text of all rules proposed  
6 for expedited adoption along with the notice required in this section  
7 in a separate section of the Washington State Register. Once the text  
8 of the proposed rules has been published in the Washington State  
9 Register, the only changes that an agency may make in the text of these  
10 proposed rules before their final adoption are to correct typographical  
11 errors.

12 (5) Any person may file a written objection to the expedited  
13 adoption of a rule. The objection must be filed with the agency rules  
14 coordinator within forty five days after the notice of the proposed  
15 expedited rule making has been published in the Washington State  
16 Register. A person who has filed a written objection to the expedited  
17 adoption of a rule may withdraw the objection.

18 (6) If no written objections to the expedited adoption of a rule  
19 are filed with the agency within forty five days after the notice of  
20 proposed expedited rule making is published, or if all objections that  
21 have been filed are withdrawn by the persons filing the objections, the  
22 agency may enter an order adopting the rule without further notice or  
23 a public hearing. The order must be published in the manner required  
24 by this chapter for any other agency order adopting, amending, or  
25 repealing a rule.

26 (7) If a written notice of objection to the expedited adoption of  
27 the rule is timely filed with the agency and is not withdrawn, the  
28 notice of proposed expedited rule making published under this section  
29 is considered a statement of inquiry for the purposes of RCW 34.05.310,  
30 and the agency may initiate further rule adoption proceedings in  
31 accordance with this chapter.

32 (8) Subsections (1) through (8) of this section expire on December  
33 31, 2000.

34 an-[An])) An agency is encouraged to advise the public of its  
35 current opinions, approaches, and likely courses of action by means of  
36 interpretive or policy statements. Current interpretive and policy  
37 statements are advisory only. To better inform and involve the public,  
38 an agency is encouraged to convert long-standing interpretive and  
39 policy statements into rules.

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

8 ~~((11))~~ (3) Each agency shall maintain a roster of interested  
9 persons, consisting of persons who have requested in writing to be  
10 notified of all interpretive and policy statements issued by that  
11 agency. Each agency shall update the roster once each year and  
12 eliminate persons who do not indicate a desire to continue on the  
13 roster. Whenever an agency issues an interpretive or policy statement,  
14 it shall send a copy of the statement to each person listed on the  
15 roster. The agency may charge a nominal fee to the interested person  
16 for this service.

17 ~~((12))~~ (4) Whenever an agency issues an interpretive or policy  
18 statement, it shall submit to the code reviser for publication in the  
19 Washington State Register a statement describing the subject matter of  
20 the interpretive or policy statement, and listing the person at the  
21 agency from whom a copy of the interpretive or policy statement may be  
22 obtained.

23 **Sec. 2.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
24 read as follows:

25 (1) To meet the intent of providing greater public access to  
26 administrative rule making and to promote consensus among interested  
27 parties, agencies shall solicit comments from the public on a subject  
28 of possible rule making before filing with the code reviser a notice of  
29 proposed rule making under RCW 34.05.320. The agency shall prepare a  
30 statement of inquiry that:

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

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

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

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

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

7 The statement of inquiry shall be filed with the code reviser ((for  
8 ~~publication~~) and published in the state register at least thirty days  
9 before the date the agency files notice of proposed rule making under  
10 RCW 34.05.320 and shall be sent to any party that has requested receipt  
11 of the agency's statements of inquiry.

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

16 (a) Negotiated rule making by which representatives of an agency  
17 and of the interests that are affected by a subject of rule making,  
18 including, where appropriate, county and city representatives, seek to  
19 reach consensus on the terms of the proposed rule and on the process by  
20 which it is negotiated; and

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

26 (3)(a) An agency must make a determination whether negotiated rule  
27 making, pilot rule making, or another process for generating  
28 participation from interested parties prior to development of the rule  
29 is appropriate.

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

34 (4) This section does not apply to:

35 (a) Emergency rules adopted under RCW 34.05.350;

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

38 ~~(c) Rules adopting or incorporating by reference without material  
39 change federal statutes or regulations, Washington state statutes,~~

1 rules of other Washington state agencies, shoreline master programs  
2 other than those programs governing shorelines of state-wide  
3 significance, or, as referenced by Washington state law, national  
4 consensus codes that generally establish industry standards, if the  
5 material adopted or incorporated regulates the same subject matter and  
6 conduct as the adopting or incorporating rule;

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

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

12 (f)) Rules that can be adopted or repealed using expedited rule  
13 making under RCW 34.05.356;

14 (c) Rules that set or adjust fees or rates pursuant to legislative  
15 standards; or

16 ((g)) (d) Rules that adopt, amend, or repeal:

17 (i) A procedure, practice, or requirement relating to agency  
18 hearings; or

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

21 **Sec. 3.** RCW 34.05.356 and 1998 c 280 s 2 are each amended to read  
22 as follows:

23 (1) An agency may file notice for the expedited adoption of rules  
24 in accordance with the procedures set forth in this section for rules  
25 meeting any one of the following criteria:

26 (a) The proposed rules relate only to internal governmental  
27 operations that are not subject to violation by a person;

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

36 (c) The proposed rules only correct typographical errors, make  
37 address or name changes, or clarify language of a rule without changing  
38 its effect;

1 (d) The content of the proposed rules is explicitly and  
2 specifically dictated by statute;

3 (e) The proposed rules have been the subject of negotiated rule  
4 making, pilot rule making, or some other process that involved  
5 substantial participation by interested parties before the development  
6 of the proposed rule; or

7 (f) The proposed rule is being amended after a review under RCW  
8 34.05.328.

9 (2) An agency may file notice for the expedited repeal of rules  
10 under the procedures set forth in this section for rules meeting any  
11 one of the following criteria:

12 (a) The statute on which the rule is based has been repealed and  
13 has not been replaced by another statute providing statutory authority  
14 for the rule;

15 (b) The statute on which the rule is based has been declared  
16 unconstitutional by a court with jurisdiction, there is a final  
17 judgment, and no statute has been enacted to replace the  
18 unconstitutional statute;

19 (c) The rule is no longer necessary because of changed  
20 circumstances; or

21 (d) Other rules of the agency or of another agency govern the same  
22 activity as the rule, making the rule redundant.

23 (3) The expedited rule-making process must follow the requirements  
24 for rule making set forth in RCW 34.05.320, except that the agency is  
25 not required to prepare a small business economic impact statement  
26 under RCW 19.85.025, a statement indicating whether the rule  
27 constitutes a significant legislative rule under RCW  
28 34.05.328(~~((6)(c)(iii))~~) (5)(c)(iii), or a significant legislative rule  
29 analysis under RCW 34.05.328. An agency is not required to prepare  
30 statements of inquiry under RCW 34.05.310 or conduct a hearing for the  
31 expedited (~~(adoption of rules)~~) rule making. The notice for the  
32 expedited (~~(adoption of rules)~~) rule making must contain a statement in  
33 at least ten-point type, that is substantially in the following form:

34

#### NOTICE

35

THIS RULE IS BEING PROPOSED (~~(TO BE ADOPTED USING)~~)

36

UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE

37

NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL

38

BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE

1 CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO  
2 THIS (~~(RULE BEING ADOPTED USING)~~) USE OF THE EXPEDITED RULE-  
3 MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND  
4 THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY  
5 (INSERT DATE).

6 (~~(+3)~~) (4) The agency shall send a copy of the notice of the  
7 proposed expedited rule making to any person who has requested  
8 notification of proposals for (~~(the)~~) expedited (~~(adoption of rules)~~)  
9 rule making or of regular agency rule making, as well as the joint  
10 administrative rules review committee, within three days after its  
11 publication in the Washington State Register. An agency may charge for  
12 the actual cost of providing a requesting party mailed copies of these  
13 notices. The notice of the proposed expedited rule making must be  
14 preceded by a statement substantially in the form provided in  
15 subsection (~~(+2)~~) (3) of this section. The notice must also include  
16 an explanation of the reasons the agency believes the expedited  
17 (~~(adoption of the)~~) rule-making process is appropriate.

18 (~~(+4)~~) (5) The code reviser shall publish the text of all rules  
19 proposed for expedited adoption, and the citation and caption of all  
20 rules proposed for expedited repeal, along with the notice required in  
21 this section in a separate section of the Washington State Register.  
22 Once the (~~(text of the proposed rules)~~) notice of expedited rule making  
23 has been published in the Washington State Register, the only changes  
24 that an agency may make in the (~~(text of these proposed rules)~~) noticed  
25 materials before their final adoption or repeal are to correct  
26 typographical errors.

27 (~~(+5)~~) (6) Any person may file a written objection to the  
28 expedited (~~(adoption of a)~~) rule making. The objection must be filed  
29 with the agency rules coordinator within forty-five days after the  
30 notice of the proposed expedited rule making has been published in the  
31 Washington State Register. A person who has filed a written objection  
32 to the expedited (~~(adoption of a)~~) rule making may withdraw the  
33 objection.

34 (~~(+6)~~) (7) If no written objections to the expedited (~~(adoption of~~  
35 ~~a)~~) rule making are filed with the agency within forty-five days after  
36 the notice of proposed expedited rule making is published, or if all  
37 objections that have been filed are withdrawn by the persons filing the  
38 objections, the agency may enter an order adopting or repealing the  
39 rule without further notice or a public hearing. The order must be

1 published in the manner required by this chapter for any other agency  
2 order adopting, amending, or repealing a rule.

3 ~~((7))~~ (8) If a written notice of objection to the expedited  
4 ~~((adoption of the))~~ rule making is timely filed with the agency and is  
5 not withdrawn, the notice of proposed expedited rule making published  
6 under this section is considered a statement of inquiry for the  
7 purposes of RCW 34.05.310, and the agency may initiate further ~~((rule~~  
8 ~~adoption))~~ rule-making proceedings in accordance with this chapter.

9 ~~((8) This section expires December 31, 2000.)~~

10 NEW SECTION. **Sec. 4.** RCW 34.05.354 (Expedited repeal) and 1998 c  
11 280 s 6, 1997 c 409 s 208, & 1995 c 403 s 701 are each repealed.

12 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2000.

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