

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1323

Chapter 126, Laws of 1997

55th Legislature
1997 Regular Session

AGENCY RULES--ELECTRONIC DISTRIBUTION

EFFECTIVE DATE: 7/27/97

Passed by the House March 12, 1997
Yeas 97 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 10, 1997
Yeas 48 Nays 0

BRAD OWEN
President of the Senate

Approved April 22, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1323** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 22, 1997 - 4:06 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1323

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Government Reform & Land Use (originally sponsored by Representatives D. Schmidt, Scott, Wensman, Morris, Costa and Dunn; by request of Department of Revenue)

Read first time 03/04/97.

1 AN ACT Relating to the distribution of rules notices; amending RCW
2 34.05.010; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) In order to provide the greatest
5 possible access to agency documents to the most people, agencies are
6 encouraged to make their rule, interpretive, and policy information
7 available through electronic distribution as well as through the
8 regular mail. Agencies that have the capacity to transmit
9 electronically may ask persons who are on mailing lists or rosters for
10 copies of interpretive statements, policy statements, preproposal
11 statements of inquiry, and other similar notices whether they would
12 like to receive the notices electronically.

13 (2) Electronic distribution to persons who request it may
14 substitute for mailed copies related to rule making or policy or
15 interpretive statements. If a notice is distributed electronically,
16 the agency is not required to transmit the actual notice form but must
17 send all the information contained in the notice.

1 (3) Agencies which maintain mailing lists or rosters for any
2 notices relating to rule making or policy or interpretive statements
3 may establish different rosters or lists by general subject area.

4 **Sec. 2.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to read
5 as follows:

6 The definitions set forth in this section shall apply throughout
7 this chapter, unless the context clearly requires otherwise.

8 (1) "Adjudicative proceeding" means a proceeding before an agency
9 in which an opportunity for hearing before that agency is required by
10 statute or constitutional right before or after the entry of an order
11 by the agency. Adjudicative proceedings also include all cases of
12 licensing and rate making in which an application for a license or rate
13 change is denied except as limited by RCW 66.08.150, or a license is
14 revoked, suspended, or modified, or in which the granting of an
15 application is contested by a person having standing to contest under
16 the law.

17 (2) "Agency" means any state board, commission, department,
18 institution of higher education, or officer, authorized by law to make
19 rules or to conduct adjudicative proceedings, except those in the
20 legislative or judicial branches, the governor, or the attorney general
21 except to the extent otherwise required by law and any local
22 governmental entity that may request the appointment of an
23 administrative law judge under chapter 42.41 RCW.

24 (3) "Agency action" means licensing, the implementation or
25 enforcement of a statute, the adoption or application of an agency rule
26 or order, the imposition of sanctions, or the granting or withholding
27 of benefits.

28 Agency action does not include an agency decision regarding (a)
29 contracting or procurement of goods, services, public works, and the
30 purchase, lease, or acquisition by any other means, including eminent
31 domain, of real estate, as well as all activities necessarily related
32 to those functions, or (b) determinations as to the sufficiency of a
33 showing of interest filed in support of a representation petition, or
34 mediation or conciliation of labor disputes or arbitration of labor
35 disputes under a collective bargaining law or similar statute, or (c)
36 any sale, lease, contract, or other proprietary decision in the
37 management of public lands or real property interests, or (d) the
38 granting of a license, franchise, or permission for the use of

1 trademarks, symbols, and similar property owned or controlled by the
2 agency.

3 (4) "Agency head" means the individual or body of individuals in
4 whom the ultimate legal authority of the agency is vested by any
5 provision of law. If the agency head is a body of individuals, a
6 majority of those individuals constitutes the agency head.

7 (5) "Entry" of an order means the signing of the order by all
8 persons who are to sign the order, as an official act indicating that
9 the order is to be effective.

10 (6) "Filing" of a document that is required to be filed with an
11 agency means delivery of the document to a place designated by the
12 agency by rule for receipt of official documents, or in the absence of
13 such designation, at the office of the agency head.

14 (7) "Institutions of higher education" are the University of
15 Washington, Washington State University, Central Washington University,
16 Eastern Washington University, Western Washington University, The
17 Evergreen State College, the various community colleges, and the
18 governing boards of each of the above, and the various colleges,
19 divisions, departments, or offices authorized by the governing board of
20 the institution involved to act for the institution, all of which are
21 sometimes referred to in this chapter as "institutions."

22 (8) "Interpretive statement" means a written expression of the
23 opinion of an agency, entitled an interpretive statement by the agency
24 head or its designee, as to the meaning of a statute or other provision
25 of law, of a court decision, or of an agency order.

26 (9)(a) "License" means a franchise, permit, certification,
27 approval, registration, charter, or similar form of authorization
28 required by law, but does not include (i) a license required solely for
29 revenue purposes, or (ii) a certification of an exclusive bargaining
30 representative, or similar status, under a collective bargaining law or
31 similar statute, or (iii) a license, franchise, or permission for use
32 of trademarks, symbols, and similar property owned or controlled by the
33 agency.

34 (b) "Licensing" includes the agency process respecting the
35 issuance, denial, revocation, suspension, or modification of a license.

36 (10) "Mail" or "send," for purposes of any notice relating to rule
37 making or policy or interpretive statements, means regular mail or
38 electronic distribution, as provided in section 1 of this act.

1 "Electronic distribution" or "electronically" means distribution by
2 electronic mail or facsimile mail.

3 (11)(a) "Order," without further qualification, means a written
4 statement of particular applicability that finally determines the legal
5 rights, duties, privileges, immunities, or other legal interests of a
6 specific person or persons.

7 (b) "Order of adoption" means the official written statement by
8 which an agency adopts, amends, or repeals a rule.

9 ~~((11))~~ (12) "Party to agency proceedings," or "party" in a
10 context so indicating, means:

11 (a) A person to whom the agency action is specifically directed; or

12 (b) A person named as a party to the agency proceeding or allowed
13 to intervene or participate as a party in the agency proceeding.

14 ~~((12))~~ (13) "Party to judicial review or civil enforcement
15 proceedings," or "party" in a context so indicating, means:

16 (a) A person who files a petition for a judicial review or civil
17 enforcement proceeding; or

18 (b) A person named as a party in a judicial review or civil
19 enforcement proceeding, or allowed to participate as a party in a
20 judicial review or civil enforcement proceeding.

21 ~~((13))~~ (14) "Person" means any individual, partnership,
22 corporation, association, governmental subdivision or unit thereof, or
23 public or private organization or entity of any character, and includes
24 another agency.

25 ~~((14))~~ (15) "Policy statement" means a written description of the
26 current approach of an agency, entitled a policy statement by the
27 agency head or its designee, to implementation of a statute or other
28 provision of law, of a court decision, or of an agency order, including
29 where appropriate the agency's current practice, procedure, or method
30 of action based upon that approach.

31 ~~((15))~~ (16) "Rule" means any agency order, directive, or
32 regulation of general applicability (a) the violation of which subjects
33 a person to a penalty or administrative sanction; (b) which
34 establishes, alters, or revokes any procedure, practice, or requirement
35 relating to agency hearings; (c) which establishes, alters, or revokes
36 any qualification or requirement relating to the enjoyment of benefits
37 or privileges conferred by law; (d) which establishes, alters, or
38 revokes any qualifications or standards for the issuance, suspension,
39 or revocation of licenses to pursue any commercial activity, trade, or

1 profession; or (e) which establishes, alters, or revokes any mandatory
2 standards for any product or material which must be met before
3 distribution or sale. The term includes the amendment or repeal of a
4 prior rule, but does not include (i) statements concerning only the
5 internal management of an agency and not affecting private rights or
6 procedures available to the public, (ii) declaratory rulings issued
7 pursuant to RCW 34.05.240, (iii) traffic restrictions for motor
8 vehicles, bicyclists, and pedestrians established by the secretary of
9 transportation or his designee where notice of such restrictions is
10 given by official traffic control devices, or (iv) rules of
11 institutions of higher education involving standards of admission,
12 academic advancement, academic credit, graduation and the granting of
13 degrees, employment relationships, or fiscal processes.

14 (~~(16)~~) (17) "Rules review committee" or "committee" means the
15 joint administrative rules review committee created pursuant to RCW
16 34.05.610 for the purpose of selectively reviewing existing and
17 proposed rules of state agencies.

18 (~~(17)~~) (18) "Rule making" means the process for formulation and
19 adoption of a rule.

20 (~~(18)~~) (19) "Service," except as otherwise provided in this
21 chapter, means posting in the United States mail, properly addressed,
22 postage prepaid, or personal service. Service by mail is complete upon
23 deposit in the United States mail. Agencies may, by rule, authorize
24 service by electronic telefacsimile transmission, where copies are
25 mailed simultaneously, or by commercial parcel delivery company.

Passed the House March 12, 1997.

Passed the Senate April 10, 1997.

Approved by the Governor April 22, 1997.

Filed in Office of Secretary of State April 22, 1997.