

# ***ANALYSIS OF HB 1897***

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***House Agriculture & Ecology Committee  
22, 1999***

***February***

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Relates to the authority of Air Pollution Control Authorities to adopt rules.
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## **BACKGROUND:**

The Washington clean air act authorizes the creation of air pollution control authorities in each county to address and prevent air pollution within the county. Multi-county air pollution control authorities may also be formed. An authority must be activated by the county to operate. Activated authorities are deemed municipal corporations and are not deemed to be state agencies. Activated authorities have specific powers and duties, including the authority to adopt their own rules and regulations.

In adopting rules and regulations, activated authorities must comply with the Open Public Meetings Act (chapter 42.30 RCW), provide notice of proposed rules (RCW 34.05.320), provide various opportunities for public participation as long as such opportunities do not conflict with the Open Public Meetings Act (34.05.325), comply with certain rule-making procedures except that rules are not required to be published in the Washington Administrative Code (RCW 34.05.340 through RCW 34.05.380, and chapter 34.08 RCW), and provide for judicial review under the Administrative Procedures Act (Part V of chapter 34.05 RCW).

The Department of Ecology is currently required to adopt as significant legislative rules any rules that exceed the requirements of the federal clean air act (RCW 70.94.145). This section expires on July 1, 1999.

A significant legislative rule is defined as a rule other than a procedural or interpretive rule that (A) adopts significant provisions of law pursuant to delegated legislative authority, the violation of which entails a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program (RCW 34.05.328(5)(c)(iii)). A significant legislative rule requires more analysis than a rule which is not a significant

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*Prepared for the House Agriculture and Ecology Committee  
by Carole Richmond (786-7114)  
Office of Program Research*

legislative rule. The requirements pursuant to significant legislative rule-making were adopted as part of the Regulatory Reform Act of 1995.

Significant legislative rules require the following analysis:

- (a) the general goal and the specific standards of the statute that the rule implements;
- (b) a determination that the rule is needed to achieve the identified goal and objectives;
- (c) a determination that the probable benefits of the rule are greater than its probable costs, taking into account both qualitative and quantitative costs and benefits;
- (d) a determination that the rule being adopted is the least burdensome after considering alternative versions of the rule;
- (e) a determination that compliance with the rule would not require the person to whom it applies to be out of compliance with another federal or state law;
- (f) a determination that the rule does not impose more stringent performance requirements on private entities than on public entities; and
- (g) a determination of whether the rule differs from any federal regulation or statute applicable to the same activity or subject, and, if so, determine that the difference is justified.

The rule-adopting agency must also provide documentation of these determinations in a rule-making file, and the documentation must persuade a reasonable person that the rule is justified. The rule-adopting agency must also file a rule-implementation plan that describes how the agency intends to: implement and enforce the rule, including a description of the resources the agency intends to use; inform and educate affected persons about the rule; promote and assist voluntary compliance; and evaluate whether the rule achieves the purpose for which it was adopted.

Significant legislative rule-making requirements apply to the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and rules of the department of fish and wildlife implementing chapter 75.20 RCW (hydraulic project approval). Significant legislative rule-making requirements do not apply to certain types of rules, such as emergency rules.

**SUMMARY:**

In adopting rules and regulations, air pollution control authorities are required to comply with the provisions for significant legislative rule-making, and also with the Regulatory Fairness Act (chapter 19.85 RCW), which requires that disproportionate impacts of rules on small businesses be mitigated.