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**SUBSTITUTE SENATE BILL 5403**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on State & Local Government (originally sponsored by Senators Patterson and Haugen; by request of Governor Locke)

READ FIRST TIME 02/12/01.

1 AN ACT Relating to reauthorizing the expedited rule adoption  
2 process; amending RCW 34.05.230; adding a new section to chapter 34.05  
3 RCW; and repealing RCW 34.05.354.

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

4       ~~(d) The content of the proposed rules is explicitly and~~  
5 ~~specifically dictated by statute;~~

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

10       ~~(f) The proposed rule is being amended after a review under RCW~~  
11 ~~34.05.328 or section 210 of this act.~~

12       ~~(2) The expedited rule-making process must follow the requirements~~  
13 ~~for rule making set forth in RCW 34.05.320, except that the agency is~~  
14 ~~not required to prepare a small business economic impact statement~~  
15 ~~under RCW 19.85.025, a statement indicating whether the rule~~  
16 ~~constitutes a significant legislative rule under RCW~~  
17 ~~34.05.328(5)(c)(iii), or a significant legislative rule analysis under~~  
18 ~~RCW 34.05.328. An agency is not required to prepare statements of~~  
19 ~~inquiry under RCW 34.05.310 or conduct a hearing for the expedited~~  
20 ~~adoption of rules. The notice for the expedited adoption of rules must~~  
21 ~~contain a statement in at least ten point type, that is substantially~~  
22 ~~in the following form:~~

23

**NOTICE**

24       ~~THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN~~  
25 ~~EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR~~  
26 ~~THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS~~  
27 ~~ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA~~  
28 ~~FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE~~  
29 ~~BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST~~  
30 ~~EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO~~  
31 ~~(INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).~~

32       ~~(3) The agency shall send a copy of the notice of the proposed~~  
33 ~~expedited rule making to any person who has requested notification of~~  
34 ~~proposals for the expedited adoption of rules or of agency rule making,~~  
35 ~~as well as the joint administrative rules review committee, within~~  
36 ~~three days after its publication in the Washington State Register. An~~  
37 ~~agency may charge for the actual cost of providing a requesting party~~  
38 ~~mailed copies of these notices. The notice of the proposed expedited~~

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 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW  
24 to read as follows:

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

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

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

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

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

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

10 (f) The proposed rule is being amended after a review under RCW  
11 34.05.328.

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

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

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

22 (c) The rule is no longer necessary because of changed  
23 circumstances; or

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

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

37

**NOTICE**

1           THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-  
2           MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO  
3           HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT  
4           STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A  
5           SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE  
6           EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS  
7           IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS)  
8           AND RECEIVED BY (INSERT DATE).

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

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

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

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

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

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

9 (9) As used in this section, "expedited rule making" includes both  
10 the expedited adoption of rules and the expedited repeal of rules.

11 NEW SECTION. **Sec. 3.** RCW 34.05.354 (Expedited repeal) and 1998 c  
12 280 s 6, 1997 c 409 s 208, & 1995 c 403 s 701 are each repealed.

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