

2 **SB 6430** - S AMD - 000216  
3 By Senator Ludwig

4 On page 1, beginning on line 4, strike everything after the  
5 enacting clause and insert the following:

6 "**Sec. 1.** RCW 34.05.310 and 1993 c 202 s 2 are each amended to read  
7 as follows:

8 (1) To meet the intent of providing greater public access to  
9 administrative rule making and to promote consensus among interested  
10 parties, agencies ~~((are encouraged to:~~

11 ~~(+))) shall solicit~~ comments from the public on a subject of  
12 possible rule making before publication of a notice of proposed rule  
13 adoption under RCW 34.05.320. ~~((This process can be accomplished by  
14 having a notice published in the state register of the subject under  
15 active consideration and indicating where, when, and how persons may  
16 comment; and))~~ The agency shall prepare a statement of intent that:

17 (a) States the specific statutory authority for the new rule;

18 (b) Identifies the reasons the new rule is needed;

19 (c) Identifies the goals of the new rule;

20 (d) Describes the process by which the rule will be developed,  
21 including, but not limited to, negotiated rule making, pilot rule  
22 making, or agency study; and

23 (e) Specifies the process by which interested parties can  
24 effectively participate in the formulation of the new rule.

25 The statement of intent shall be filed with the code reviser for  
26 publication in the state register and shall be sent to identifiable  
27 interested parties. Interested parties may include, but are not  
28 limited to, trade associations, interest groups, specific businesses,  
29 the business assistance center, chambers of commerce, local  
30 governments, labor organizations, environmental groups, consumer  
31 protection groups, citizen organizations, state agencies, and any other  
32 appropriate entity.

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

1 (a) Negotiated rule making which includes:

2 (i) Identifying individuals and organizations that have a  
3 recognized interest in or will be significantly affected by the  
4 adoption of the proposed rule;

5 (~~(b)~~) (ii) Soliciting participation by persons who are capable,  
6 willing, and appropriately authorized to enter into such negotiations;

7 (~~(c)~~) (iii) Assuring that participants fully recognize the  
8 consequences of not participating in the process, are committed to  
9 negotiate in good faith, and recognize the alternatives available to  
10 other parties;

11 (~~(d)~~) (iv) Establishing guidelines to encourage consideration of  
12 all pertinent issues, to set reasonable completion deadlines, and to  
13 provide fair and objective settlement of disputes that may arise;

14 (~~(e)~~) (v) Agreeing on a reasonable time period during which the  
15 agency will be bound to the rule resulting from the negotiations  
16 without substantive amendment; and

17 (~~(f)~~) (vi) Providing a mechanism by which one or more parties may  
18 withdraw from the process or the negotiations may be terminated if it  
19 appears that consensus cannot be reached on a draft rule that  
20 accommodates the needs of the agency, interested parties, and the  
21 general public and conforms to the legislative intent of the statute  
22 that the rule is intended to implement; and

23 (b) Pilot rule making which includes testing the draft of a  
24 proposed rule through the use of volunteer pilot study groups in  
25 various areas and circumstances.

26 (3)(a) Agencies 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) Agencies 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 NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW  
35 to read as follows:

36 (1) Any state agency promulgating a new rule must first conduct an  
37 analysis to determine what other state agencies are already regulating  
38 the same activity or subject matter. If other agencies are, in fact,

1 regulating the same activity or subject matter, agencies must consider  
2 if (a) a modification of existing regulatory activities will accomplish  
3 the goal without the need for promulgating new rules, (b) the efforts  
4 of the regulating agencies can be combined or coordinated to meet the  
5 goals of all jurisdictions without adding a compliance burden on those  
6 who are regulated, and (c) an overlap or conflict exists.

7 (2) If more than one agency, or division of an agency, is  
8 regulating the same activity or subject matter, the state agencies  
9 involved shall negotiate an "interagency agreement" with other  
10 appropriate state regulatory bodies. Interagency agreements must  
11 contain the following elements:

12 (a) A clear identification of the components of regulatory activity  
13 that will be covered by the agreement;

14 (b) The duration of the agreement, and a mechanism by which an  
15 agreement may be terminated or renegotiated;

16 (c) The designation of which agency shall serve as the "lead" for  
17 each component. The lead agency shall have responsibility for  
18 coordinating activities of other entities and authority for making the  
19 final decision within that component; and

20 (d) The manner in which funding and resources shall be divided.

21 (3) An interagency agreement must be submitted to the governor for  
22 approval. The governor shall consider, among other criteria, whether  
23 the agreement will make compliance easier for regulated activities,  
24 whether the agreement complies with legislative intent, and whether the  
25 goals of the regulation are satisfied adequately.

26 (4) Agencies may request an independent arbitrator from the  
27 attorney general to preside over the negotiations at any point in the  
28 development of the interagency agreement.

29 (5) If an interagency agreement is not achieved, or if an  
30 unresolved conflict or overlap between entities exists that has not  
31 been resolved through an interagency agreement, the agency initiating  
32 the proposed rule shall notify the governor and the legislature of the  
33 existence of an impasse or conflict."

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