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**SUBSTITUTE SENATE BILL 5088**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senators McCaslin and Barr)

Read first time 02/10/93.

1 AN ACT Relating to flexible approaches to developing administrative  
2 rules; amending RCW 34.05.310; and adding new sections to chapter 34.05  
3 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that while the 1988  
6 Administrative Procedure Act expanded public participation in the  
7 agency rule-making process, there continue to be instances when  
8 participants have developed adversarial relationships with each other,  
9 resulting in the inability to identify all of the issues, the failure  
10 to focus on solutions to problems, unnecessary delays, litigation, and  
11 added cost to the agency, affected parties, and the public in general.

12 When interested parties work together, it is possible to negotiate  
13 development of a rule that is acceptable to all affected, and that  
14 conforms to the intent of the statute the rule is intended to  
15 implement.

16 After a rule is adopted, unanticipated negative impacts may emerge.  
17 Examples include excessive costs of administration for the agency and  
18 compliance by affected parties, technical conditions that may be  
19 physically or economically unfeasible to meet, problems of

1 interpretation due to lack of clarity, and reporting requirements that  
2 duplicate or conflict with those already in place.

3 It is therefore the intent of the legislature to encourage flexible  
4 approaches to developing administrative rules, including but not  
5 limited to negotiated rule making and a process for testing the  
6 feasibility of adopted rules, often called the pilot rule process.

7 **Sec. 2.** RCW 34.05.310 and 1989 c 175 s 5 are each amended to read  
8 as follows:

9 ~~((1) In addition to seeking information by other methods, an  
10 agency, before publication of a notice of a proposed rule adoption  
11 under RCW 34.05.320, is encouraged to solicit comments from the public  
12 on a subject of possible rule making under active consideration within  
13 the agency, by causing notice to be published in the state register of  
14 the subject matter and indicating where, when, and how persons may  
15 comment.~~

16 ~~(2) Each agency may appoint committees to comment, before  
17 publication of a notice of proposed rule adoption under RCW 34.05.320,  
18 on the subject of a possible rule making action under active  
19 consideration within the agency.~~

20 ~~(3) Each agency shall designate a rules coordinator, who shall have  
21 knowledge of the subjects of rules being proposed or prepared within  
22 the agency for proposal, maintain the records of any such action, and  
23 respond to public inquiries about possible or proposed rules and the  
24 identity of agency personnel working, reviewing, or commenting on them.  
25 The office and mailing address of the rules coordinator shall be  
26 published in the state register at the time of designation and in the  
27 first issue of each calendar year thereafter for the duration of the  
28 designation. The rules coordinator may be an employee of another  
29 agency.)) To meet the intent of providing greater public access to  
30 administrative rule making and to promote consensus among interested  
31 parties, agencies are encouraged to:~~

32 (1) Solicit comments from the public on a subject of possible rule  
33 making before publication of a notice of proposed rule adoption under  
34 RCW 34.05.320. This process can be accomplished by having a notice  
35 published in the state register of the subject under active  
36 consideration and indicating where, when, and how persons may comment;  
37 and

1       (2) Develop and use new procedures for reaching agreement among  
2 interested parties before publication of notice and the adoption  
3 hearing on a proposed rule. Examples of new procedures include, but  
4 are not limited to:

5       (a) Identifying individuals and organizations that have a  
6 recognized interest in or will be significantly affected by the  
7 adoption of the proposed rule;

8       (b) Soliciting participation by persons who are capable, willing,  
9 and appropriately authorized to enter into such negotiations;

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

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

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

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

25       NEW SECTION. Sec. 3. Each agency shall designate a rules  
26 coordinator, who shall have knowledge of the subjects of rules being  
27 proposed or prepared within the agency for proposal, maintain the  
28 records of any such action, and respond to public inquiries about  
29 possible or proposed rules and the identity of agency personnel  
30 working, reviewing, or commenting on them. The office and mailing  
31 address of the rules coordinator shall be published in the state  
32 register at the time of designation and in the first issue of each  
33 calendar year thereafter for the duration of the designation. The  
34 rules coordinator may be an employee of another agency.

35       NEW SECTION. Sec. 4. If, during development of a rule or after  
36 its adoption, an agency determines that implementation may produce  
37 unreasonable economic, procedural, or technical burdens, agencies are

1 encouraged to develop methods for measuring or testing the feasibility  
2 of compliance with the rule, including the use of voluntary pilot study  
3 groups. Measuring and testing methods should emphasize public notice,  
4 participation by persons who have a recognized interest in or are  
5 significantly affected by the adoption of the proposed rule, a high  
6 level of involvement from agency management, consensus on issues and  
7 procedures among participants in the pilot group, assurance of  
8 fairness, and reasonable completion dates, and a process by which one  
9 or more parties may withdraw from the process or the process may be  
10 terminated if consensus cannot be reached on the rule.

11 The findings of the pilot project should be widely shared and,  
12 where appropriate, adopted as amendments to the rule.

13 NEW SECTION. **Sec. 5.** Sections 1, 3, and 4 of this act are each  
14 added to chapter 34.05 RCW under the subchapter heading "rule-making  
15 procedures."

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