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**SUBSTITUTE HOUSE BILL 1897**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Agriculture & Ecology (originally sponsored by Representatives G. Chandler, Linville and Schoesler)

Read first time 03/02/1999.

1 AN ACT Relating to air pollution control authority's rule-making  
2 authority; and amending RCW 70.94.141.

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

4 **Sec. 1.** RCW 70.94.141 and 1991 c 199 s 706 are each amended to  
5 read as follows:

6 The board of any activated authority in addition to any other  
7 powers vested in them by law, shall have power to:

8 (1) Adopt, amend and repeal its own rules and regulations,  
9 implementing this chapter and consistent with it, after consideration  
10 at a public hearing held in accordance with chapter 42.30 RCW. The  
11 rule-making process shall be consistent with, but not limited to, the  
12 following:

13 (a) Rules (~~and regulations~~) shall (~~also~~) be adopted in  
14 accordance with the notice and adoption procedures set forth in RCW  
15 34.05.320, those provisions of RCW 34.05.325 that are not in conflict  
16 with chapter 42.30 RCW, and with the procedures of RCW 34.05.340,  
17 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that  
18 rules shall not be published in the Washington Administrative Code.

1 (b) The board shall prepare a small business economic impact  
2 statement pursuant to the requirements of chapter 19.85 RCW;

3 (c) Before adopting a rule that:

4 (i) Adopts substantive provisions of law pursuant to delegated  
5 authority under this chapter, the violation of which subjects a  
6 violator of such rule to a penalty or sanction;

7 (ii) Establishes, alters, or revokes any qualification or standard  
8 for the issuance, suspension, or revocation of a license or permit;

9 (iii) Adopts a new, or makes significant amendments to, a policy or  
10 regulatory program; or

11 (iv) Adopts any provisions of law, rules, regulations, or standards  
12 from other states or authorities, the board shall:

13 (A) Clearly state in detail the general goals and specific  
14 objectives of the rule being adopted;

15 (B) Determine that the rule is needed to maintain compliance with  
16 this chapter, and analyze alternatives to rule making and the  
17 consequences of not adopting the rule;

18 (C) Determine that the probable benefits of the rule are greater  
19 than its probable costs, taking into account both the qualitative and  
20 quantitative benefits and costs;

21 (D) Determine, after considering alternative versions of the rule  
22 and the analysis required under (c)(iv)(B) and (C) of this subsection,  
23 that the rule being adopted is the least burdensome alternative for  
24 those required to comply with it;

25 (E) Determine that the rule does not require those to whom it  
26 applies to take an action that violates requirements of another federal  
27 or state law, or local ordinance;

28 (F) Determine that the rule does not impose more stringent  
29 performance requirements on private entities than on public entities  
30 unless required to do so by federal or state law;

31 (G) Determine if the rule differs from any state statute or rule  
32 applicable to the same activity or subject matter and, if so, determine  
33 by substantial evidence that the difference is necessary to maintain  
34 compliance with this chapter;

35 (H) The board shall place in the rule-making file documentation of  
36 sufficient quantity and quality so as to persuade a reasonable person  
37 that the determinations required above are justified;

1       (d) Judicial review of rules adopted by an authority shall be in  
2 accordance with Part V of chapter 34.05 RCW. An air pollution control  
3 authority shall not be deemed to be a state agency.

4       (2) Hold hearings relating to any aspect of or matter in the  
5 administration of this chapter not prohibited by the provisions of  
6 chapter 62, Laws of 1970 ex. sess. and in connection therewith issue  
7 subpoenas to compel the attendance of witnesses and the production of  
8 evidence, administer oaths and take the testimony of any person under  
9 oath.

10       (3) Issue such orders as may be necessary to effectuate the  
11 purposes of this chapter and enforce the same by all appropriate  
12 administrative and judicial proceedings subject to the rights of appeal  
13 as provided in chapter 62, Laws of 1970 ex. sess.

14       (4) Require access to records, books, files and other information  
15 specific to the control, recovery or release of air contaminants into  
16 the atmosphere.

17       (5) Secure necessary scientific, technical, administrative and  
18 operational services, including laboratory facilities, by contract or  
19 otherwise.

20       (6) Prepare and develop a comprehensive plan or plans for the  
21 prevention, abatement and control of air pollution within its  
22 jurisdiction.

23       (7) Encourage voluntary cooperation by persons or affected groups  
24 to achieve the purposes of this chapter.

25       (8) Encourage and conduct studies, investigation and research  
26 relating to air pollution and its causes, effects, prevention,  
27 abatement and control.

28       (9) Collect and disseminate information and conduct educational and  
29 training programs relating to air pollution.

30       (10) Advise, consult, cooperate and contract with agencies and  
31 departments and the educational institutions of the state, other  
32 political subdivisions, industries, other states, interstate or  
33 interlocal agencies, and the United States government, and with  
34 interested persons or groups.

35       (11) Consult, upon request, with any person proposing to construct,  
36 install, or otherwise acquire an air contaminant source or device or  
37 system for the control thereof, concerning the efficacy of such device  
38 or system, or the air pollution problems which may be related to the  
39 source, device or system. Nothing in any such consultation shall be

1 construed to relieve any person from compliance with this chapter,  
2 ordinances, resolutions, rules and regulations in force pursuant  
3 thereto, or any other provision of law.

4 (12) Accept, receive, disburse and administer grants or other funds  
5 or gifts from any source, including public and private agencies and the  
6 United States government for the purpose of carrying out any of the  
7 functions of this chapter.

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