
SENATE BILL 5088

State of Washington

53rd Legislature

1993 Regular Session

By Senators McCaslin and Barr

Read first time 01/13/93. Referred to Committee on Government Operations.

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) Creating advisory groups for specific rule development; and

6 (b) Establishing processes for negotiated rule making that identify
7 and solicit participation by parties who should be included, provide
8 adequate and timely public notice, assure that all pertinent issues are
9 addressed, set reasonable completion deadlines, establish guidelines
10 for fair and objective settlement of disputes that may arise, and
11 concentrate on developing a draft rule that accommodates the needs of
12 interested parties while still conforming to the legislative intent of
13 the underlying statute.

14 NEW SECTION. Sec. 3. Each agency shall designate a rules
15 coordinator, who shall have knowledge of the subjects of rules being
16 proposed or prepared within the agency for proposal, maintain the
17 records of any such action, and respond to public inquiries about
18 possible or proposed rules and the identity of agency personnel
19 working, reviewing, or commenting on them. The office and mailing
20 address of the rules coordinator shall be published in the state
21 register at the time of designation and in the first issue of each
22 calendar year thereafter for the duration of the designation. The
23 rules coordinator may be an employee of another agency.

24 NEW SECTION. Sec. 4. If, during development of a rule or after
25 its adoption, an agency determines that implementation may produce
26 unreasonable economic, procedural, or technical burdens, agencies are
27 encouraged to develop methods for measuring or testing the feasibility
28 of compliance with the rule, including the use of voluntary pilot study
29 groups. Measuring and testing methods should emphasize public notice,
30 broad participation, a high level of involvement from agency
31 management, consensus on issues and procedures among participants in
32 the pilot group, assurance of fairness, and reasonable completion
33 dates.

34 The findings of the pilot project should be widely shared and,
35 where appropriate, incorporated as amendments to the rule.

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

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