

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5088

Chapter 202, Laws of 1993

53rd Legislature
1993 Regular Session

ADMINISTRATIVE RULES--ADOPTION OF FLEXIBLE
APPROACHES TO DEVELOPING

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 19, 1993
YEAS 40 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House April 9, 1993
YEAS 91 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved May 6, 1993

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5088** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

May 6, 1993 - 1:20 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5088

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

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; adding new sections to chapter 34.05
3 RCW; and creating a new section.

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 However, nothing in this act shall be construed to create any mandatory
8 duty for an agency to use the procedures in RCW 34.05.310 or section 4
9 of this act in any particular instance of rule making. Agencies shall
10 determine, in their discretion, when it is appropriate to use these
11 procedures.

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

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

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

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

37 (1) Solicit comments from the public on a subject of possible rule
38 making before publication of a notice of proposed rule adoption under

1 RCW 34.05.320. This process can be accomplished by having a notice
2 published in the state register of the subject under active
3 consideration and indicating where, when, and how persons may comment;
4 and

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 4.** If, during development of a rule or after
2 its adoption, an agency determines that implementation may produce
3 unreasonable economic, procedural, or technical burdens, agencies are
4 encouraged to develop methods for measuring or testing the feasibility
5 of compliance with the rule, including the use of voluntary pilot study
6 groups. Measuring and testing methods should emphasize public notice,
7 participation by persons who have a recognized interest in or are
8 significantly affected by the adoption of the proposed rule, a high
9 level of involvement from agency management, consensus on issues and
10 procedures among participants in the pilot group, assurance of
11 fairness, and reasonable completion dates, and a process by which one
12 or more parties may withdraw from the process or the process may be
13 terminated if consensus cannot be reached on the rule.

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

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

Passed the Senate April 19, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 6, 1993.

Filed in Office of Secretary of State May 6, 1993.