

# Overview of Procedural and Substantive Laws

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# Legal overview

- Interplay of legislative and executive branch
- Leg. – laws; Code Rev – RCW's
- Commission/Department created by legislative action

# History

1933 - 1987

## Department of Fisheries

- *Title 75 RCW; managed food fish and shellfish (WAC 220)*

## Department of Game

- *Title 77 RCW; managed game fish and wildlife (WAC 232)*

# History

1987 – Legislative Change

Department of Game

to

Department of Wildlife

# History

1994 - Merger

Department of Fisheries

and

Department of Wildlife

to

Department of Fish and Wildlife

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# History

- 1995
- Referendum Bill No. 45
- Laws of Wash. 1995, 1<sup>st</sup> sp.s c 2, § 1 (Referendum Bill No. 45, approved Nov. 7, 1995)

# Legal overview

- Statutes - legislative direction
- Agencies – only express statutory authority and nec. implied
- Commission may further clarify RCW by adoption of rules
- Rules are dependant on statutory authority (RCW)

# Procedural laws

- Open Public Meetings Act (OPMA)
- Administrative Procedure Act (APA)
- Public Records Act (PRA)
- Ethics in Public Service



# Open Public Meetings Act

- RCW 42.30 – leg. decl. – spirit
- Comm’s, boards, – “peoples” bus.
- People not yield sovereignty to agencies
- Agencies serve people
- Actions/deliberations taken openly

# Open Public Meetings Act

- Multi-member bodies, not directors
- Req's prior notice & public access
- Public may see, not necessarily be heard
- Given Leg. decl – liberal constr.

# Open Public Meetings Act

- Applies to “governing body”
- Meeting of a quorum – must be open
- Less than quorum
  - Delegated authority – governing body
  - No authority, mtg may be closed
  - Can opt to open
  - Committees

# Open Public Meetings Act

- Executive sessions
  - Narrow exceptions to open mtg requirement – strict constr.
  - Legal advice, personnel qualifications and perf. review
- Conference calls – ok if pub. access
- Chain t-calls or e-mails - violations

# Other Meetings

- Regular vs. Special mtgs
- Joint meetings
  - ◆ Oregon Fish and Wildlife Comm.
  - ◆ Tribes
- Annual meeting with Governor

# Administrative Procedure Act

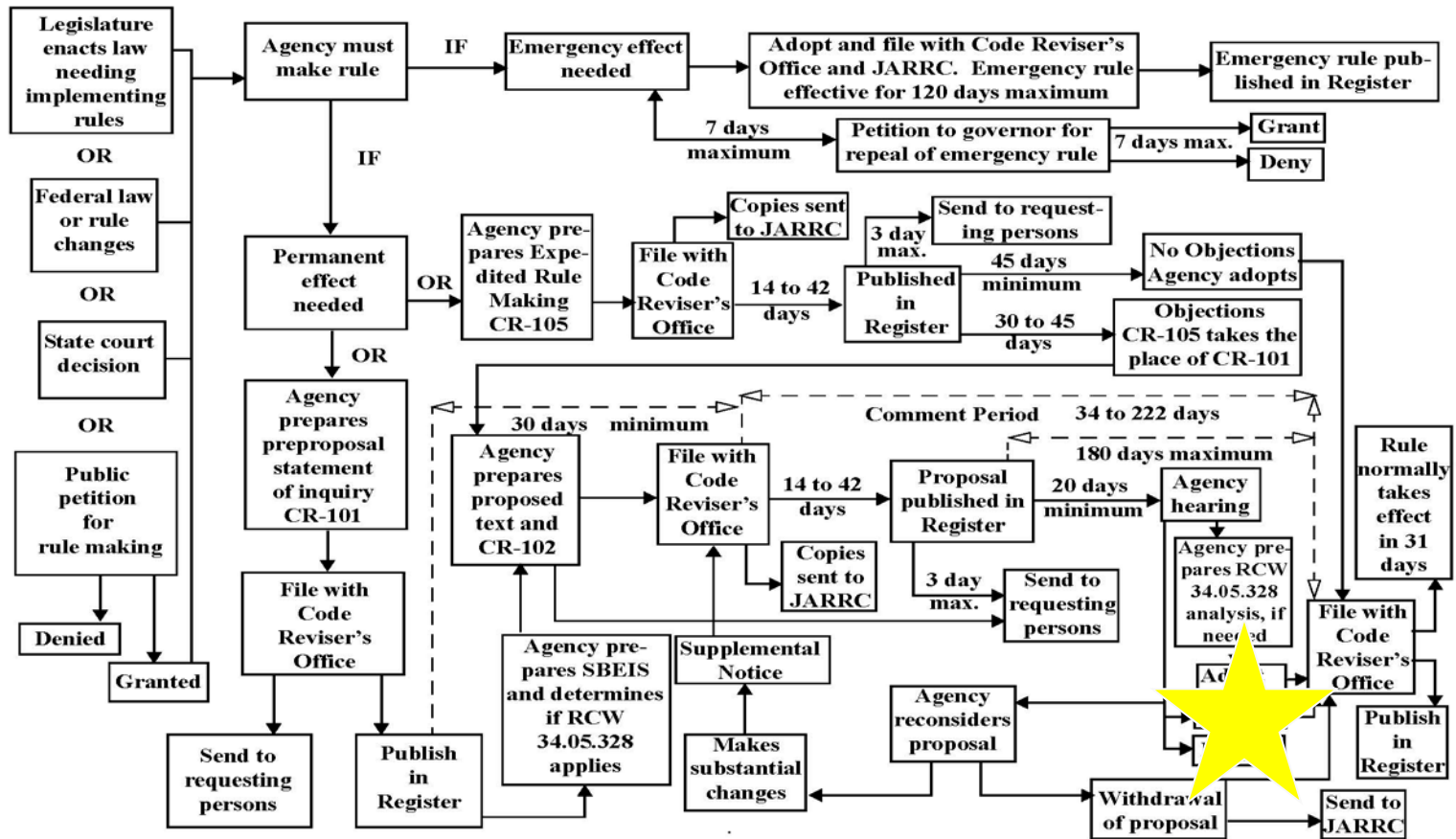
- Rule-makings: notice and comment
- Adj hrg: fairness and due process
- Procedures for rule-making and adj hearings

# Administrative Procedure Act

- Code Reviser Forms
- Proposed rule
- Written comment
- Must hold oral public hearing
- Must consider comments
- Adoption; when effective
- Variation from Proposed rule
- Permanent; emergency rules

# Detailed Development Process

## RULE-MAKING PROCESS



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# Public Records Act

- All official mediums -public records
- Duty to keep; record retention schedule
- Duty to provide; penalties and costs
- Keep Commission info separate
- Send things to Executive Assistant

# Substantive Laws

- Title 77 RCW Fish and Wildlife Code
- Other state laws
  - State Environmental Policy Act (SEPA)
  - Interstate Compacts
- Federal laws
  - Treaties
  - Endangered Species Act (ESA)
  - Marine Mammal Protection Act

# Title 77 RCW

- Many (26) chapters
- General organization, nat. resources
- Licenses, fishing, enforcement
- Habitat, sal. recovery, damages
- Hatchery, lands, others

# Typical Actions of the Commission

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# Rule Adoption

## Rules grant or restrict privilege

- e.g., fishing seasons vs. internal commission policy on allocation
- Some regularly scheduled
- Some one time only

## Delegated Authority

- Emergency rules (Director)

# Rule Adoption, cont'd

- Rules - exact and clear
- Rules are enforceable
  - Penalty, crim. punishment (infraction to felony), forfeiture
- Voting - 5 affirmative votes
  - (other actions need majority of quorum (5))

# Washington Administrative Code (WAC)

- WAC chapter 220 (old Fisheries)
- WAC chapter 232 (old Wildlife)
  - WAC 232-28-619

# Other Commission Actions

- Budget and Legislative
  - Oversight/Approval
- Policy adoption
- Director appointment/review
- Specific statutory duties



# Other Actions, cont'd

- Annual meeting with Governor
- Land transactions
- Requests for information or briefings from Department (a.k.a. “blue sheets”)
- Delegation of Authority

# Ethics in Public Service

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# Legislative Declaration

- Govt power derived from people
- Ethics are foundation of good govt
- Special public trust to honesty/integ.
- Citizens expect highest ethical behvr
- Govt officers subj to sanctions/media
- But higher duty to pub. accountability
- Liberal construction

# Why Particularly Important

- Law
- Public interest and media scrutiny
- Act applies personally
- Role of AGO
  - Represent and staff EEB
  - Complaint/investigation process
  - What is interest of Commission/Depart.

# Good News

- EEB Executive Director
  - Very accessible
  - Quick informal opinions
  - better to ask for information than forgiveness
- Advisory Opinions
- Department resources

# Ethics vs. Ethics Act

- Core Ethical Principles
  - Objectivity
  - Selflessness
  - Stewardship
  - Transparency
  - Integrity
- Act establishes the minimum standards

# Objectivity

- State officers must place the public's interest before any private interest or outside obligation

# Overarching Statute

- A state officer or state employee may not have a financial interest or engage in any activity that is in conflict with the proper discharge of the officer's or employee's official duties.

RCW 42.52.020



# No Interest in Conflict w/ Official Duties

- No financial interests in transactions
  - Contracts, sales, purchases, - not leg./rules
- No assisting in transactions
- No compensation for outside activities related

# Conflicts Raise Ethics Act Issues for Comm. Members

- RCW 42.52.903 – Act does not prevent Commissioners serving if legislature so directed in establishing the entity.
- Recusal on individual matters

# Selflessness

- State officers may not make decisions in order to gain financially or receive other benefits for themselves, their family, or friends

# Use of State Position for Special Privileges

- A state officer may not use his or her state position to secure special privileges or to grant exemptions to benefit himself, herself, family members, or other persons.

# Gifts

A Commissioner may not accept **any thing of economic value** as a gift, if it could reasonably be expected to influence the performance or nonperformance of the officer's or employee's official duties.

# Not “Gifts”

- Items from family, friends when clear beyond a reasonable doubt not part of design for Commissioner influence
- Items related to outside business; exchanges at social events
- Awards for acad. or scientific ach.;
- Other very specific items

# Section 4

- Sec. 4 – regulators, more restrictive
- Nominal value (pens/notepads)
- Tokens - awards, trophy, plaques
- Informational material, subscriptions
- Food/beverages at hosted receptions (stand and eat)

# Sec 4 May Not Accept:

- Flowers
- Valuable gifts
- Food and beverages when meals
- Reasonable expenses (travel, room & meals) for speech or seminar
- Most gifts even if less than \$50



# Stewardship

- Public officers and employees have a duty to conserve public resources and funds against misuse and abuse

# Use Of State Resources

- Officer may not use state resources – the office, money, property, or personnel – for personal or others benefit.

# STRICTLY Prohibited Use of Public Resources

- Outside business interests
- Commercial uses
- Political activities, including lobbying

# Transparency

- Public officers must practice open and accountable government. They should be as open as possible about their decisions and actions, and protect truly confidential information
- Other statutes: OPMA, Disclosure, APA

# Confidential Information

A state officer or state employee may not disclose confidential information to an unauthorized person.

# Integrity

- Public officers should not place themselves under any obligation to outside individuals or organizations that might influence them in performance of their duties

# Compensation for Official Duty

- No state officer may ask for or receive compensation, gift, etc. from a source other than State of Washington for performing official duty.

# Questions?

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