

2 **SB 6242** - S AMD - 000143

3 By Senators Moore, Sheldon, Gaspard, Vognild and Snyder

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 44.04 RCW
8 to read as follows:

9 (1) The legislature recognizes that clear grants of rule-making
10 authority are necessary for efficient and effective regulatory programs
11 and accountability in governmental decision making, and that the agency
12 granted rule-making authority should be the most competent to exercise
13 jurisdiction over the subject matter. It is therefore the
14 legislature's purpose to establish processes to ensure that existing
15 and future laws provide clear and appropriate rule-making authority.

16 (2) The standing committees of the legislature shall selectively
17 review legislative grants of rule-making authority to determine: (a)
18 Whether the authority granted is clear and as intended; (b) whether the
19 legislative intent is specific and includes defined objectives; and (c)
20 whether the grant of authority is consistent with and not duplicative
21 of grants to other agencies. In performing such a review, priority
22 shall be given to grants of rule-making authority to the department of
23 revenue, the employment security department, the department of ecology,
24 the department of labor and industries, the department of health, the
25 department of licensing, and the department of fish and wildlife.

26 In those instances where the review identifies statutes that do not
27 meet these criteria, corrective legislation shall be prepared that
28 clarifies, narrows, or repeals the grants of rule-making authority.

29 (3) The senate and the house of representatives shall ensure that
30 bills introduced that grant rule-making authority to state agencies
31 contain clear and specific direction regarding the authority granted.

32 (4) Appropriate standing committees of the senate and house of
33 representatives shall prepare a regulatory note as part of the bill
34 report on each bill before the committee that grants rule-making
35 authority to a state agency. The regulatory note shall identify if
36 rule making is required or authorized by the bill, describe the nature

1 of the rule making, identify agencies to which rule making is
2 delegated, and identify any other agencies that have rule-making
3 authority over the same activity or subject matter.

4 **Sec. 2.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
5 read as follows:

6 (1) Each agency shall maintain an official rule-making file for
7 each rule that it (a) proposes by publication in the state register, or
8 (b) adopts. The file and materials incorporated by reference shall be
9 available for public inspection.

10 (2) The agency rule-making file shall contain all of the following:

11 (a) Copies of all publications in the state register with respect
12 to the rule or the proceeding upon which the rule is based;

13 (b) Copies of any portions of the agency's public rule-making
14 docket containing entries relating to the rule or the proceeding on
15 which the rule is based;

16 (c) All written petitions, requests, submissions, and comments
17 received by the agency and all other written material regarded by the
18 agency as important to adoption of the rule or the proceeding on which
19 the rule is based;

20 (d) Any official transcript of oral presentations made in the
21 proceeding on which the rule is based or, if not transcribed, any tape
22 recording or stenographic record of them, and any memorandum prepared
23 by a presiding official summarizing the contents of those
24 presentations;

25 (e) The concise explanatory statement required by RCW 34.05.355;

26 (f) All petitions for exceptions to, amendment of, or repeal or
27 suspension of, the rule; (~~and~~)

28 (g) Citations to all data, factual information, studies, or reports
29 on which the agency relies in the adoption of the rule, indicating
30 where such data, factual information, studies, or reports are available
31 for review by the public;

32 (h) The written summary and response required by RCW 34.05.325(6);
33 and

34 (i) Any other material placed in the file by the agency.

35 (3) Internal agency documents are exempt from inclusion in the
36 rule-making file under subsection (2) of this section to the extent
37 they constitute preliminary drafts, notes, recommendations, and intra-
38 agency memoranda in which opinions are expressed or policies formulated

1 or recommended, except that a specific document is not exempt from
2 inclusion when it is publicly cited by an agency in connection with its
3 decision.

4 (4) Upon judicial review, the file required by this section
5 constitutes the official agency rule-making file with respect to that
6 rule. Unless otherwise required by another provision of law, the
7 official agency rule-making file need not be the exclusive basis for
8 agency action on that rule.

9 **Sec. 3.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read
10 as follows:

11 (1) If an agency for good cause finds:

12 (a) That immediate adoption, amendment, or repeal of a rule is
13 necessary for the preservation of the public health, safety, or general
14 welfare, and that observing the time requirements of notice and
15 opportunity to comment upon adoption of a permanent rule would be
16 contrary to the public interest; or

17 (b) That state or federal law or federal rule or a federal deadline
18 for state receipt of federal funds requires immediate adoption of a
19 rule,

20 the agency may dispense with those requirements and adopt, amend, or
21 repeal the rule on an emergency basis. The agency's finding and a
22 concise statement of the reasons for its finding shall be incorporated
23 in the order for adoption of the emergency rule or amendment filed with
24 the office of the code reviser under RCW 34.05.380 and with the rules
25 review committee.

26 (2) An emergency rule adopted under this section takes effect upon
27 filing with the code reviser, unless a later date is specified in the
28 order of adoption, and may not remain in effect for longer than one
29 hundred twenty days after filing. Identical or substantially similar
30 emergency rules may not be adopted in sequence unless conditions have
31 changed or the agency has filed notice of its intent to adopt the rule
32 as a permanent rule, and is actively undertaking the appropriate
33 procedures to adopt the rule as a permanent rule. This section does
34 not relieve any agency from compliance with any law requiring that its
35 permanent rules be approved by designated persons or bodies before they
36 become effective.

37 (3) Within seven days after the rule is adopted, any person may
38 petition the governor requesting the immediate repeal of a rule adopted

1 on an emergency basis by any agency headed by a nonelected official.
2 Within seven days after submission of the petition, the governor shall
3 either deny the petition in writing, stating his or her reasons for the
4 denial, or order the immediate repeal of the rule. In ruling on the
5 petition, the governor shall consider only whether the conditions in
6 subsection (1) of this section were met such that adoption of the rule
7 on an emergency basis was necessary. If the governor orders the repeal
8 of the emergency rule, any agency action based on that rule is void.
9 This subsection shall not be construed to prohibit adoption of any rule
10 as a permanent rule.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 34.05 RCW
12 to read as follows:

13 (1) In addition to other requirements imposed by law, an agency may
14 not adopt a rule the violation of which subjects a person to a penalty
15 or administrative sanction; that establishes, alters, or revokes a
16 qualification or standard for the issuance, suspension, or revocation
17 of a license to pursue a commercial activity, trade, or profession; or
18 that establishes, alters, or revokes a mandatory standard for a product
19 or material that must be met before distribution or sale, unless:

20 (a) The rule is needed;

21 (b) The likely benefits of the rule justify its likely costs;

22 (c) There are no alternatives to the rule that would be as
23 effective but less burdensome on those required to comply;

24 (d) Any fee imposed is reasonable and related to the cost of
25 administration;

26 (e) The rule is clearly and simply stated, so that it can be
27 understood by persons required to comply;

28 (f) The rule does not conflict with, or unless necessary to achieve
29 the objectives of the statute upon which the rule is based, overlap, or
30 duplicate any other provision of federal, state, or local law;

31 (g) The rule does not, unless necessary to achieve the objectives
32 of the statute upon which the rule is based, differ from any provision
33 of federal law regulating the same activity or subject matter;

34 (h) The rule does not, unless necessary to achieve the objectives
35 of the statute upon which the rule is based, differ in its application
36 to public and private entities.

37 (2) Nothing in subsection (1) of this section shall be construed to
38 change the existing standard of judicial review of agency rule making.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 34.05 RCW
2 to read as follows:

3 (1) Upon adoption of any rule covered by section 4 of this act, an
4 agency shall have a plan to: (a) Inform and educate affected persons
5 about the rule; (b) promote voluntary compliance; and (c) evaluate
6 whether the rule achieves the purpose for which it was adopted.

7 (2) Upon the adoption of a rule covered by section 4 of this act
8 regulating the same activity or subject matter as another provision of
9 federal, state, or local law, an agency shall do all of the following:

10 (a) Provide to the business assistance center a list citing by
11 reference the other federal, state, and local laws that regulate the
12 same activity or subject matter;

13 (b) Coordinate implementation and enforcement of the rule with the
14 other federal, state, and local entities regulating the same activity
15 or subject matter by doing one or more of the following: (i) Deferring
16 to the other entity; (ii) designating a lead agency; or (iii) entering
17 into an agreement with the other entities specifying how the agency and
18 entities will coordinate implementation and enforcement. If the agency
19 is unable to meet this requirement, the agency shall report to the
20 legislature pursuant to (c) of this subsection;

21 (c) Report to the chief clerk of the house of representatives and
22 the secretary of the senate regarding: (i) The existence of any
23 overlap or duplication of other federal, state, or local laws, and any
24 differences from federal law; (ii) legislation that may be necessary to
25 eliminate or mitigate any adverse effects of such overlap, duplication,
26 or difference; and (iii) legislation that may be necessary to
27 facilitate coordination with appropriate governmental entities
28 regulating the same activity or subject matter.

29 **Sec. 6.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
30 read as follows:

31 (1) Any person may petition an agency requesting the adoption,
32 amendment, or repeal of any rule. Each agency may prescribe by rule
33 the form for such petitions and the procedure for their submission,
34 consideration, and disposition. Within sixty days after submission of
35 a petition, the agency shall ~~((+1))~~ (a) either deny the petition in
36 writing, stating its reasons for the denial, or ~~((+2))~~ (b) initiate
37 rule-making proceedings in accordance with this chapter.

38 (2) If an agency headed by a nonelected official denies a petition

1 to repeal or amend a rule submitted under subsection (1) of this
2 section, the petitioner, within thirty days of the denial, may appeal
3 the denial to the governor. The petitioner may file notice of the
4 appeal with the code reviser for publication in the Washington State
5 Register. Within sixty days after receiving the appeal, the governor
6 shall either reject the appeal in writing, stating his or her reasons
7 for the rejection, or order the agency to initiate rule-making
8 proceedings in accordance with this chapter. In deciding on the
9 appeal, among other factors the governor should consider:

10 (a) Whether the agency complied with sections 4 and 5 of this act;

11 (b) Whether the agency has established an adequate internal rules
12 review process, allowing public participation, and has subjected the
13 rule to that review;

14 (c) The nature of complaints and other comments received from the
15 public concerning the rule;

16 (d) Whether the rule conflicts with, overlaps, or duplicates any
17 other provision of federal, state, or local law and, if so, whether the
18 agency has taken steps to mitigate any adverse effects of the conflict,
19 overlap, or duplication;

20 (e) The extent to which technology, social or economic conditions,
21 or other relevant factors have changed since the rule was adopted, and
22 whether, given those changes, the rule continues to be necessary and
23 appropriate;

24 (f) Whether the statute that the rule implements has been amended
25 or repealed by the legislature, or ruled invalid by a court.

26 (3) The governor's office shall provide a copy of the governor's
27 ruling under subsection (2) of this section to anyone upon request.

28 **Sec. 7.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read
29 as follows:

30 (1) The agency shall make a good faith effort to insure that the
31 information on the proposed rule published pursuant to RCW 34.05.320
32 accurately reflects the rule to be presented and considered at the oral
33 hearing on the rule. Written comment about a proposed rule, including
34 supporting data, shall be accepted by an agency if received no later
35 than the time and date specified in the notice, or such later time and
36 date established at the rule-making hearing.

37 (2) The agency shall provide an opportunity for oral comment to be
38 received by the agency in a rule-making hearing.

1 (3) If the agency possesses equipment capable of receiving
2 telefacsimile transmissions or recorded telephonic communications, the
3 agency may provide in its notice of hearing filed under RCW 34.05.320
4 that interested parties may comment on proposed rules by these means.
5 If the agency chooses to receive comments by these means, the notice of
6 hearing shall provide instructions for making such comments, including,
7 but not limited to, appropriate telephone numbers to be used; the date
8 and time by which comments must be received; required methods to verify
9 the receipt and authenticity of the comments; and any limitations on
10 the number of pages for telefacsimile transmission comments and on the
11 minutes of tape recorded comments. The agency shall accept comments
12 received by these means for inclusion in the official record if the
13 comments are made in accordance with the agency's instructions.

14 (4) The agency head, a member of the agency head, or a presiding
15 officer designated by the agency head shall preside at the rule-making
16 hearing. Rule-making hearings shall be open to the public. The agency
17 shall cause a record to be made of the hearing by stenographic,
18 mechanical, or electronic means. Unless the agency head presides or is
19 present at substantially all the hearings, the presiding official shall
20 prepare a memorandum for consideration by the agency head, summarizing
21 the contents of the presentations made at the rule-making hearing. The
22 summarizing memorandum is a public document and shall be made available
23 to any person in accordance with chapter 42.17 RCW.

24 (5) Rule-making hearings are legislative in character and shall be
25 reasonably conducted by the presiding official to afford interested
26 persons the opportunity to present comment. Rule-making hearings may
27 be continued to a later time and place established on the record
28 without publication of further notice under RCW 34.05.320.

29 (6) Before the adoption of a final rule, an agency shall prepare a
30 written summary of all comments received regarding the proposed rule,
31 and a substantive response to the comments by category or subject
32 matter, indicating how the final rule reflects agency consideration of
33 the comments, or why it fails to do so. The agency shall provide the
34 written summary and response to any person upon request or from whom
35 the agency received comment.

36 **Sec. 8.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
37 read as follows:

38 ((1+)) At the time it files an adopted rule with the code reviser

1 or within thirty days thereafter, an agency shall place into the rule-
2 making file maintained under RCW 34.05.370 a concise explanatory
3 statement about the rule, identifying ~~((a))~~ (1) the agency's reasons
4 for adopting the rule, and ~~((b))~~ (2) a description of any difference
5 between the text of the proposed rule as published in the register and
6 the text of the rule as adopted, other than editing changes, stating
7 the reasons for change.

8 ~~((2) Upon the request of any interested person within thirty days
9 after adoption of a rule, the agency shall issue a concise statement of
10 the principal reasons for overruling the considerations urged against
11 its adoption.))~~

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.85 RCW
13 to read as follows:

14 The legislature finds that administrative rules adopted by state
15 agencies can have a disproportionate impact on the state's small
16 businesses because of the size of those businesses. This
17 disproportionate impact reduces competition, innovation, employment,
18 and new employment opportunities, and threatens the very existence of
19 some small businesses. The legislature therefore enacts the regulatory
20 fairness act, chapter . . . , Laws of 1994 (this act), with the intent
21 of reducing the disproportionate impact of state administrative rules
22 on small business.

23 **Sec. 10.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to
24 read as follows:

25 Unless the context clearly indicates otherwise, the definitions in
26 this section apply through this chapter.

27 (1) "Small business" means any business entity, including a sole
28 proprietorship, corporation, partnership, or other legal entity, that
29 is owned and operated independently from all other businesses, that has
30 the purpose of making a profit, and that has fifty or fewer employees.

31 (2) "Small business economic impact statement" means a statement
32 meeting the requirements of RCW 19.85.040 prepared by a state agency
33 pursuant to RCW 19.85.030.

34 (3) "Industry" means all of the businesses in this state in any one
35 ~~((three-digit))~~ four-digit standard industrial classification as
36 published by the United States department of commerce.

1 **Sec. 11.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
2 each reenacted and amended to read as follows:

3 ~~((In the adoption of any rule pursuant to RCW 34.05.320 that will
4 have an economic impact on more than twenty percent of all industries,
5 or more than ten percent of any one industry, the adopting agency:~~

6 ~~(1) Shall reduce the economic impact of the rule on small business
7 by doing one or more of the following when it is legal and feasible in
8 meeting the stated objective of the statutes which are the basis of the
9 proposed rule:~~

10 ~~(a) Establish differing compliance or reporting requirements or
11 timetables for small businesses;~~

12 ~~(b) Clarify, consolidate, or simplify the compliance and reporting
13 requirements under the rule for small businesses;~~

14 ~~(c) Establish performance rather than design standards;~~

15 ~~(d) Exempt small businesses from any or all requirements of the
16 rule;~~

17 ~~(2) Shall prepare a small business economic impact statement in
18 accordance with RCW 19.85.040 and file such statement with the code
19 reviser along with the notice required under RCW 34.05.320;~~

20 ~~(3))~~ (1) In the adoption of a rule under RCW 34.05.320, an agency
21 shall prepare a small business economic impact statement: (a) If the
22 proposed rule will impose more than minor costs on businesses in an
23 industry; or (b) if requested to do so by a majority vote of the joint
24 administrative rules review committee within thirty days after notice
25 of the proposed rule is published in the state register.

26 An agency shall prepare the small business economic impact
27 statement in accordance with RCW 19.85.040, and file it with the code
28 reviser along with the notice required under RCW 34.05.320. An agency
29 shall file a statement prepared at the request of the joint
30 administrative rules review committee with the code reviser upon its
31 completion before the adoption of the rule. An agency shall provide a
32 copy of the small business economic impact statement to any person
33 requesting it.

34 An agency may request assistance from the business assistance
35 center in the preparation of the small business economic impact
36 statement.

37 (2) A proposed rule will impose more than minor costs on businesses
38 in an industry when the costs imposed will equal or exceed 0.1 percent
39 of the average yearly profit for businesses in that industry. The

1 business assistance center shall develop guidelines to assist agencies
2 in determining whether a proposed rule will impose such costs. The
3 business assistance center may review an agency determination that a
4 proposed rule will not impose such costs, and shall advise the joint
5 administrative rules review committee on disputes involving agency
6 determinations under this section.

7 (3) Based upon the extent of disproportionate impact on small
8 business identified in the statement prepared under RCW 19.85.040, the
9 agency shall, unless reasonable justification exists to do otherwise,
10 reduce the costs imposed by the rule on small businesses. Methods to
11 reduce the costs on small businesses may include, but are not limited
12 to:

13 (a) Reducing, modifying, or eliminating substantive regulatory
14 requirements;

15 (b) Establishing performance rather than design standards;

16 (c) Simplifying, reducing, or eliminating recordkeeping and
17 reporting requirements;

18 (d) Reducing the frequency of inspections;

19 (e) Delaying compliance timetables; or

20 (f) Reducing or modifying fine schedules for noncompliance.

21 **Sec. 12.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
22 each reenacted and amended to read as follows:

23 (1) A small business economic impact statement must include a brief
24 description of the reporting, recordkeeping, and other compliance
25 requirements of the proposed rule, and the kinds of professional
26 services that a small business is likely to need in order to comply
27 with such requirements. (~~A small business economic impact statement~~)
28 It shall analyze(~~(, based on existing data,)~~) the costs of compliance
29 for businesses required to comply with the (~~(provisions of a)~~) proposed
30 rule adopted pursuant to RCW 34.05.320, including costs of equipment,
31 supplies, labor, lost sales or revenue, and increased administrative
32 costs(~~(, and)~~). To determine whether the proposed rule will have a
33 disproportionate impact on small businesses, the impact statement must
34 compare (~~(to the greatest extent possible)~~) the cost of compliance for
35 small business with the cost of compliance for the ten percent of
36 (~~(firms which)~~) businesses that are the largest businesses required to
37 comply with the proposed (~~(new or amendatory)~~) rules(~~(. The small~~
38 business economic impact statement shall use)) using one or more of the

1 following as a basis for comparing costs:

2 ~~((1))~~ (a) Cost per employee;

3 ~~((2))~~ (b) Cost per hour of labor; or

4 ~~((3))~~ (c) Cost per one hundred dollars of sales(~~(+~~

5 ~~(4) Any combination of (1), (2), or (3)).~~

6 (2) A small business economic impact statement must also include:

7 (a) A statement of the steps taken by the agency to reduce the
8 costs of the rule on small businesses as required by RCW 19.85.030(3),
9 or reasonable justification for not doing so, addressing, at a minimum,
10 each of the options listed in RCW 19.85.030(3);

11 (b) A description of how the agency will involve small businesses
12 in the development of the rule; and

13 (c) A list of industries that will be required to comply with the
14 rule.

15 (3) To obtain information for purposes of this section, an agency
16 may survey a representative sample of affected businesses or trade
17 associations and should, whenever possible, appoint a committee under
18 RCW 34.05.310(2) to assist in the accurate assessment of the costs of
19 a proposed rule, and the means to reduce the costs imposed on small
20 business.

21 NEW SECTION. Sec. 13. A new section is added to chapter 19.85 RCW
22 to read as follows:

23 Unless so requested by a majority vote of the joint administrative
24 rules review committee under RCW 19.85.030, an agency is not required
25 to comply with this chapter when adopting any rule solely for the
26 purpose of conformity or compliance, or both, with federal law. In
27 lieu of the statement required under RCW 19.85.030, the agency shall
28 file a statement citing, with specificity, the federal law with which
29 the rule is being adopted to conform or comply, and describing the
30 consequences to the state if the rule is not adopted.

31 **Sec. 14.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read
32 as follows:

33 (1) At least twenty days before the rule-making hearing at which
34 the agency receives public comment regarding adoption of a rule, the
35 agency shall cause notice of the hearing to be published in the state
36 register. The publication constitutes the proposal of a rule. The
37 notice shall include all of the following:

1 (a) A title, a description of the rule's purpose, and any other
2 information which may be of assistance in identifying the rule or its
3 purpose;

4 (b) Citations of the statutory authority for adopting the rule and
5 the specific statute the rule is intended to implement;

6 (c) A summary of the rule and a statement of the reasons supporting
7 the proposed action;

8 (d) The agency personnel, with their office location and telephone
9 number, who are responsible for the drafting, implementation, and
10 enforcement of the rule;

11 (e) The name of the person or organization, whether private,
12 public, or governmental, proposing the rule;

13 (f) Agency comments or recommendations, if any, regarding statutory
14 language, implementation, enforcement, and fiscal matters pertaining to
15 the rule;

16 (g) Whether the rule is necessary as the result of federal law or
17 federal or state court action, and if so, a copy of such law or court
18 decision shall be attached to the purpose statement;

19 (h) When, where, and how persons may present their views on the
20 proposed rule;

21 (i) The date on which the agency intends to adopt the rule;

22 (j) A short explanation of the rule, its purpose, and anticipated
23 effects, including in the case of a proposal that would modify existing
24 rules, a short description of the changes the proposal would make; and

25 (k) A statement indicating how a person can obtain a copy of the
26 small business economic impact statement(, if applicable, and a
27 statement of steps taken to minimize the economic impact in accordance
28 with RCW 19.85.030)) prepared under chapter 19.85 RCW, or an
29 explanation for why the agency did not prepare the statement.

30 (2) Upon filing notice of the proposed rule with the code reviser,
31 the adopting agency shall have copies of the notice on file and
32 available for public inspection and shall forward three copies of the
33 notice to the rules review committee.

34 (3) No later than three days after its publication in the state
35 register, the agency shall cause a copy of the notice of proposed rule
36 adoption to be mailed to each person who has made a request to the
37 agency for a mailed copy of such notices. An agency may charge for the
38 actual cost of providing individual mailed copies of these notices.

39 (4) In addition to the notice required by subsections (1) and (2)

1 of this section, an institution of higher education shall cause the
2 notice to be published in the campus or standard newspaper of the
3 institution at least seven days before the rule-making hearing.

4 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.31 RCW
5 to read as follows:

6 To assist state agencies in reducing regulatory costs to small
7 business and to promote greater public participation in the rule-making
8 process, the business assistance center shall:

9 (1) Develop agency guidelines for the preparation of a small
10 business economic impact statement and compliance with chapter 19.85
11 RCW;

12 (2) Review and provide comments to agencies on draft or final small
13 business economic impact statements;

14 (3) Advise the joint administrative rules review committee on
15 whether an agency reasonably assessed the costs of a proposed rule and
16 reduced the costs for small business as required by chapter 19.85 RCW;
17 and

18 (4) Organize and chair a state rules coordinating committee,
19 consisting of agency rules coordinators and interested members of the
20 public, to develop an education and training program that includes,
21 among other components, a component that addresses voluntary
22 compliance, for agency personnel responsible for rule development and
23 implementation. The business assistance center shall submit
24 recommendations to the department of personnel for an administrative
25 procedures training program that is based on the sharing of interagency
26 resources.

27 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 19.85.010 and 1982 c 6 s 1;

30 (2) RCW 19.85.060 and 1989 c 374 s 5; and

31 (3) RCW 19.85.080 and 1992 c 197 s 2.

32 **Sec. 17.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
33 read as follows:

34 Whenever a majority of the members of the rules review committee
35 determines that a proposed rule is not within the intent of the
36 legislature as expressed in the statute which the rule implements, or

1 that an agency may not be adopting a proposed rule in accordance with
2 all applicable provisions of law, including section 4 of this act and
3 chapter 19.85 RCW, the committee shall give the affected agency written
4 notice of its decision. The notice shall be given at least seven days
5 prior to any hearing scheduled for consideration of or adoption of the
6 proposed rule pursuant to RCW 34.05.320. The notice shall include a
7 statement of the review committee's findings and the reasons therefor.
8 When the agency holds a hearing on the proposed rule, the agency shall
9 consider the review committee's decision.

10 **Sec. 18.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read
11 as follows:

12 (1) All rules required to be filed pursuant to RCW 34.05.380, and
13 emergency rules adopted pursuant to RCW 34.05.350, are subject to
14 selective review by the legislature.

15 (2) The rules review committee may review an agency's use of policy
16 statements, guidelines, and issuances that are of general
17 applicability, or their equivalents to determine whether or not an
18 agency has failed to adopt a rule or whether they are within the intent
19 of the legislature as expressed by the governing statute.

20 (3) If the rules review committee finds by a majority vote of its
21 members: (a) That an existing rule is not within the intent of the
22 legislature as expressed by the statute which the rule implements, (b)
23 that the rule has not been adopted in accordance with all applicable
24 provisions of law, including section 4 of this act and chapter 19.85
25 RCW, (c) that an agency is using a policy statement, guideline, or
26 issuance in place of a rule, or (d) that the policy statement,
27 guideline, or issuance is outside of legislative intent, the agency
28 affected shall be notified of such finding and the reasons therefor.
29 Within thirty days of the receipt of the rules review committee's
30 notice, the agency shall file notice of a hearing on the rules review
31 committee's finding with the code reviser and mail notice to all
32 persons who have made timely request of the agency for advance notice
33 of its rule-making proceedings as provided in RCW 34.05.320. The
34 agency's notice shall include the rules review committee's findings and
35 reasons therefor, and shall be published in the Washington state
36 register in accordance with the provisions of chapter 34.08 RCW.

37 (4) The agency shall consider fully all written and oral
38 submissions regarding (a) whether the rule in question is within the

1 intent of the legislature as expressed by the statute which the rule
2 implements, (b) whether the rule was adopted in accordance with all
3 applicable provisions of law, including section 4 of this act and
4 chapter 19.85 RCW, (c) whether the agency is using a policy statement,
5 guideline, or issuance in place of a rule, or (d) whether the policy
6 statement, guideline, or issuance is within the legislative intent.

7 **Sec. 19.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
8 as follows:

9 (1) Within seven days of an agency hearing held after notification
10 of the agency by the rules review committee pursuant to RCW 34.05.620
11 or 34.05.630, the affected agency shall notify the committee of its
12 action on a proposed or existing rule to which the committee objected
13 or on a committee finding of the agency's failure to adopt rules. If
14 the rules review committee determines, by a majority vote of its
15 members, that the agency has failed to provide for the required
16 hearings or notice of its action to the committee, the committee may
17 file notice of its objections, together with a concise statement of the
18 reasons therefor, with the code reviser within thirty days of such
19 determination.

20 (2) If the rules review committee finds, by a majority vote of its
21 members: (a) That the proposed or existing rule in question has not
22 been modified, amended, withdrawn, or repealed by the agency so as to
23 conform with the intent of the legislature, or (b) that an existing
24 rule was not adopted in accordance with all applicable provisions of
25 law, including section 4 of this act and chapter 19.85 RCW, or (c) that
26 the agency is using a policy statement, guideline, or issuance in place
27 of a rule, or that the policy statement, guideline, or issuance is
28 outside of the legislative intent, the rules review committee may,
29 within thirty days from notification by the agency of its action, file
30 with the code reviser notice of its objections together with a concise
31 statement of the reasons therefor. Such notice and statement shall
32 also be provided to the agency by the rules review committee.

33 (3) If the rules review committee makes an adverse finding under
34 subsection (2) of this section, the committee may, by a two-thirds vote
35 of its members, recommend suspension of an existing rule. Within seven
36 days of such vote the committee shall transmit to the appropriate
37 standing committees of the legislature, the governor, the code reviser,
38 and the agency written notice of its objection and recommended

1 suspension and the concise reasons therefor. Within thirty days of
2 receipt of the notice, the governor shall transmit to the committee,
3 the code reviser, and the agency written approval or disapproval of the
4 recommended suspension. If the suspension is approved by the governor,
5 it is effective from the date of that approval and continues until
6 ninety days after the expiration of the next regular legislative
7 session.

8 (4) If the governor disapproves the recommendation of the rules
9 review committee to suspend the rule, the transmittal of such decision,
10 along with the findings of the rules review committee, shall be treated
11 by the agency as a petition by the rules review committee to repeal the
12 rule under RCW 34.05.330.

13 (5) The code reviser shall publish transmittals from the rules
14 review committee or the governor issued pursuant to subsection (1),
15 (2), or (3) of this section in the Washington state register and shall
16 publish in the next supplement and compilation of the Washington
17 Administrative Code a reference to the committee's objection or
18 recommended suspension and the governor's action on it and to the issue
19 of the Washington state register in which the full text thereof
20 appears.

21 ~~((+5+))~~ (6) An election by the rules review committee to recommend
22 suspension of a rule, whether or not the suspension is approved by the
23 governor, establishes a presumption in any subsequent judicial review
24 of the rule that the rule is invalid. The burden of demonstrating the
25 rule's validity is then on the adopting agency.

26 (7) The reference shall be removed from a rule published in the
27 Washington Administrative Code if a subsequent adjudicatory proceeding
28 determines that the rule is within the intent of the legislature or was
29 adopted in accordance with all applicable laws, whichever was the
30 objection of the rules review committee.

31 **Sec. 20.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
32 read as follows:

33 Except as provided in RCW 34.05.640(6), it is the express policy of
34 the legislature that establishment of procedures for review of
35 administrative rules by the legislature and the notice of objection
36 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to
37 establish a presumption as to the legality or constitutionality of a
38 rule in any subsequent judicial proceedings interpreting such rules.

1 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
2 each repealed:

- 3 (1) RCW 34.05.670 and 1992 c 197 s 3; and
4 (2) RCW 34.05.680 and 1992 c 197 s 4.

5 NEW SECTION. **Sec. 22.** The department of community, trade, and
6 economic development shall develop a standardized format for reporting
7 information that is commonly required from the public by state and
8 local government agencies for permits, licenses, approvals, and
9 services. In the development of the format, the department shall work
10 in conjunction with representatives from state and local government
11 agencies and representatives of the business community.

12 The department shall submit the standardized format together with
13 recommendations for implementation to the legislature by December 31,
14 1994.

15 NEW SECTION. **Sec. 23.** A new section is added to chapter 34.05 RCW
16 to read as follows:

17 (1) This section applies only to the department of revenue, the
18 employment security department, the department of ecology, the
19 department of labor and industries, the department of health, the
20 department of licensing, and the department of fish and wildlife.

21 (2) An agency listed in subsection (1) of this section may
22 immediately impose a penalty otherwise provided for by law for a
23 violation of a statute or administrative rule by a business entity only
24 if the entity on which the penalty will be imposed has: (a) Previously
25 violated the same statute or rule; or (b) willfully violated the
26 statute or rule. Where a penalty is otherwise provided, but may not be
27 imposed under this subsection, the agency shall issue a statement of
28 deficiency.

29 (3) A statement of deficiency shall specify: (a) The particular
30 rule violated; (b) the steps the entity must take to comply with the
31 rule; (c) agency personnel designated by the agency to provide
32 technical assistance regarding compliance with the rule; and (d) a date
33 by which the entity is required to comply with the rule. The date
34 specified shall provide a reasonable period of time for the entity to
35 comply with the rule, considering the size of the entity, its available
36 resources, and the threat posed by the violation. If the entity fails
37 to comply with the rule by the date specified, it shall be subject to

1 the penalty otherwise provided in law.

2 (4) Subsection (2) of this section shall not apply to any violation
3 that places a person in danger of death or substantial bodily harm, is
4 causing or is likely to cause significant environmental harm, or has
5 caused or is likely to cause physical damage to the property of others
6 in an amount exceeding one thousand dollars. With regard to a statute
7 or rule requiring the payment of a tax, subsection (1) of this section
8 shall not apply when a business entity has paid less than eighty-five
9 percent of the tax actually owed.

10 (5) The state, the agency, and officers or employees of the state
11 shall not be liable for damages to any person to the extent that
12 liability is asserted to arise from the technical assistance provided
13 under this section, or if liability is asserted to arise from the
14 failure of the agency to supply technical assistance.

15 (6) Where a state agency has been delegated authority to enforce
16 federal rules, the agency shall submit a written petition to the
17 appropriate federal agency for authorization to comply with this
18 section for all inspections while retaining the state's federal
19 delegation. In such cases, this section applies only to the extent
20 authorized by the appropriate federal agency.

21 NEW SECTION. **Sec. 24.** A new section is added to chapter 4.84 RCW
22 to read as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout sections 24 through 26 and 27 of this
25 act.

26 (1) "Agency" means agency as defined by chapter 34.05 RCW.

27 (2) "Fees and other expenses" includes the reasonable expenses of
28 expert witnesses, the reasonable cost of a study, analysis, engineering
29 report, test, or project that is found by the court to be necessary for
30 the preparation of the party's case, and reasonable attorneys' fees.
31 Reasonable attorneys' fees shall be based on the prevailing market
32 rates for the kind and quality of services furnished, except that (a)
33 no expert witness may be compensated at a rate in excess of the highest
34 rates of compensation for expert witnesses paid by the state of
35 Washington, and (b) attorneys' fees shall not be awarded in excess of
36 one hundred fifty dollars per hour unless the court determines that an
37 increase in the cost of living or a special factor, such as the limited
38 availability of qualified attorneys for the proceedings involved,

1 justifies a higher fee.

2 (3) "Judicial review" means a judicial review as defined by chapter
3 34.05 RCW.

4 (4) "Qualified party" means (a) an individual whose net worth did
5 not exceed one million dollars at the time the initial petition for
6 judicial review was filed; (b) a sole owner of an unincorporated
7 business, or a partnership, corporation, association, or organization
8 whose net worth did not exceed five million dollars at the time the
9 initial petition for judicial review was filed, except that an
10 organization described in section 501(c)(3) of the federal internal
11 revenue code of 1954 as exempt from taxation under section 501(a) of
12 the code and a cooperative association as defined in section 15(a) of
13 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
14 party regardless of the net worth of such organization or cooperative
15 association; or (c) a sole owner of an unincorporated business, or a
16 partnership, corporation, association, or organization, having not more
17 than one hundred employees at the time the initial petition for
18 judicial review was filed.

19 (5) "Rule" means a rule as defined by chapter 34.05 RCW.

20 NEW SECTION. **Sec. 25.** A new section is added to chapter 4.84 RCW
21 to read as follows:

22 If upon judicial review a rule is declared invalid and the party
23 that challenged the rule is a qualified party, the party shall be
24 awarded fees and other expenses not to exceed ten thousand dollars.
25 This section does not apply unless all parties to the action
26 challenging the rule are qualified parties. If two or more qualified
27 parties join in an action challenging a rule, the fees and expenses
28 awarded shall not in total exceed ten thousand dollars.

29 NEW SECTION. **Sec. 26.** A new section is added to chapter 4.84 RCW
30 to read as follows:

31 Fees and other expenses awarded under section 25 of this act shall
32 be paid by the agency that adopted the invalid rule from operating
33 funds appropriated to the agency within sixty days. Agencies paying
34 fees and other expenses pursuant to section 25 of this act shall report
35 all payments to the office of financial management within five days of
36 paying the fees and other expenses. Fees and other expenses awarded by
37 the court shall be subject to chapter 39.76 RCW and shall be deemed

1 payable on the date the court announces the award.

2 NEW SECTION. **Sec. 27.** A new section is added to chapter 43.88 RCW
3 to read as follows:

4 The office of financial management shall report annually to the
5 legislature on the amount of fees and other expenses awarded during the
6 preceding fiscal year under section 25 of this act. The report shall
7 describe the number, nature, and amount of the awards, the claims
8 involved in the controversy, and other relevant information that may
9 aid the legislature in evaluating the scope and impact of the awards.

10 NEW SECTION. **Sec. 28.** Section 10 of this act shall take effect
11 July 1, 1994.

12 NEW SECTION. **Sec. 29.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected."

16 **SB 6242** - S AMD

17 By Senators Moore, Sheldon, Gaspard, Vognild and Snyder

18

19 On page 1, line 2 of the title, after "reform;" strike the
20 remainder of the title and insert "amending RCW 34.05.370, 34.05.350,
21 34.05.330, 34.05.325, 34.05.355, 19.85.020, 34.05.320, 34.05.620,
22 34.05.630, 34.05.640, and 34.05.660; reenacting and amending RCW
23 19.85.030 and 19.85.040; adding a new section to chapter 44.04 RCW;
24 adding new sections to chapter 34.05 RCW; adding new sections to
25 chapter 19.85 RCW; adding a new section to chapter 43.31 RCW; adding
26 new sections to chapter 4.84 RCW; adding a new section to chapter 43.88
27 RCW; creating a new section; repealing RCW 19.85.010, 19.85.060,
28 19.85.080, 34.05.670, and 34.05.680; prescribing penalties; and
29 providing an effective date."

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