
SUBSTITUTE HOUSE BILL 1010

State of Washington**54th Legislature****1995 Regular Session**

By House Committee on Government Operations (originally sponsored by Representatives Reams, Horn, Lisk, Cairnes, Dyer, Van Luven, Ballasiotes, Buck, Casada, D. Schmidt, B. Thomas, Chandler, L. Thomas, Brumsickle, Sehlin, Sherstad, Carlson, Benton, Skinner, Kremen, Hargrove, Cooke, Delvin, Schoesler, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Hickel, Backlund, Crouse, Elliot, Pennington, Mastin, Carrell, Mitchell, K. Schmidt, Chappell, Basich, Grant, Smith, Robertson, Foreman, Honeyford, Pelesky, Blanton, Koster, Lambert, Mulliken, Boldt, McMorris, Clements, Fuhrman, Campbell, Sheldon, Huff, Mielke, Talcott, Silver, McMahan, Stevens, Morris and Hymes)

Read first time 01/17/95. Referred to Committee on .

1 AN ACT Relating to regulatory reform; amending RCW 43.70.040,
2 82.01.060, 46.01.110, 50.12.010, 76.09.040, 77.04.090, 48.02.060,
3 34.05.570, 34.05.310, 34.05.313, 34.05.370, 34.05.380, 34.05.330,
4 19.85.030, 34.05.010, 34.05.320, 34.05.350, 34.05.610, 34.05.620,
5 34.05.630, 34.05.640, 34.05.650, 34.05.660, 42.40.010, 42.40.020,
6 42.40.030, 43.31.086, and 43.180.110; adding a new section to chapter
7 43.12 RCW; adding new sections to chapter 43.20A RCW; adding new
8 sections to chapter 43.21A RCW; adding new sections to chapter 43.22
9 RCW; adding new sections to chapter 43.24 RCW; adding a new section to
10 chapter 50.12 RCW; adding new sections to chapter 34.05 RCW; adding a
11 new section to chapter 19.85 RCW; adding a new section to chapter 43.30
12 RCW; adding a new section to chapter 43.70 RCW; adding a new section to
13 chapter 43.300 RCW; adding a new section to chapter 48.02 RCW; adding
14 a new section to chapter 50.08 RCW; adding a new section to chapter
15 76.09 RCW; adding a new section to chapter 82.01 RCW; adding new
16 sections to chapter 4.84 RCW; adding a new section to chapter 43.88
17 RCW; adding a new chapter to Title 44 RCW; creating new sections;
18 recodifying RCW 34.05.610, 34.05.620, 34.05.630, 34.05.640, 34.05.650,
19 and 34.05.660; repealing RCW 43.21A.080, 50.12.040, and 19.85.060;
20 prescribing penalties; and providing for submission of this act to a
21 vote of the people.

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

2 **PART 1**

3 **GRANTS OF RULE-MAKING AUTHORITY**

4 NEW SECTION. **Sec. 101.** (1) The legislature recognizes that clear
5 and specific grants of rule-making authority are necessary for
6 accountability in decision making by governmental agencies, and that an
7 agency should exercise jurisdiction and adopt rules over a subject
8 matter only if it has obvious and explicit rule-making authority to do
9 so. It is therefore the legislature's purpose to ensure that future
10 rules exist only pursuant to clear and appropriate rule-making
11 authority.

12 (2) The legislature further finds that state agencies have adopted
13 administrative rules without clear authority to do so from the
14 legislature, relying on general grants of authority rather than
15 specific legislative policy direction. This has resulted in agency-
16 initiated policy that has been adopted without the benefit of the
17 public dialogue and accountability inherent to the legislative process.
18 It is therefore the intent of the legislature to eliminate reliance on
19 general grants of authority, limit certain agency rule making to those
20 matters specifically authorized by the legislature, and that grants of
21 rule-making authority be narrowly construed.

22 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.12
23 RCW to read as follows:

24 The commissioner of public lands may adopt, in accordance with
25 chapter 34.05 RCW, rules or policy statements, other than emergency
26 rules, only:

27 (1) As specifically required by federal law, and only to the extent
28 specifically required; or

29 (2) As specifically authorized, and only to the extent specifically
30 authorized, by the legislature.

31 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.20A
32 RCW to read as follows:

33 The secretary may adopt, in accordance with chapter 34.05 RCW,
34 rules or policy statements, other than emergency rules, only:

- 1 (1) As specifically required by federal law, and only to the extent
2 specifically required; or
3 (2) As specifically authorized, and only to the extent specifically
4 authorized, by the legislature.

5 **Sec. 104.** RCW 43.70.040 and 1989 1st ex.s. c 9 s 106 are each
6 amended to read as follows:

7 In addition to any other powers granted the secretary, the
8 secretary may:

9 (1) Adopt, in accordance with chapter 34.05 RCW, rules (~~((necessary~~
10 ~~to carry out the provisions of this act))~~ or policy statements, other
11 than emergency rules, only:

12 (a) As specifically required, and only to the extent specifically
13 required, by federal law; or

14 (b) As specifically authorized, and only to the extent specifically
15 authorized, by the legislature;

16 (2) Appoint such advisory committees as may be necessary to carry
17 out the provisions of (~~(this act))~~ chapter 9, Laws of 1989 1st ex.
18 sess. Members of such advisory committees are authorized to receive
19 travel expenses in accordance with RCW 43.03.050 and 43.03.060. The
20 secretary and the board of health shall review each advisory committee
21 within their jurisdiction and each statutory advisory committee on a
22 biennial basis to determine if such advisory committee is needed. The
23 criteria specified in RCW 43.131.070 shall be used to determine whether
24 or not each advisory committee shall be continued;

25 (3) Undertake studies, research, and analysis necessary to carry
26 out the provisions of (~~(this act))~~ chapter 9, Laws of 1989 1st ex.
27 sess. in accordance with RCW 43.70.050;

28 (4) Delegate powers, duties, and functions of the department to
29 employees of the department as the secretary deems necessary to carry
30 out the provisions of (~~(this act))~~ chapter 9, Laws of 1989 1st ex.
31 sess.;

32 (5) Enter into contracts on behalf of the department to carry out
33 the purposes of (~~(this act))~~ chapter 9, Laws of 1989 1st ex. sess.;

34 (6) Act for the state in the initiation of, or the participation
35 in, any intergovernmental program to the purposes of (~~(this act))~~
36 chapter 9, Laws of 1989 1st ex. sess.; or

37 (7) Accept gifts, grants, or other funds.

1 **Sec. 105.** RCW 82.01.060 and 1977 c 75 s 92 are each amended to
2 read as follows:

3 The director of revenue, hereinafter in (~~this 1967 amendatory~~
4 ~~act~~) chapter 26, Laws of 1967 ex. sess. referred to as the director,
5 through the department of revenue, hereinafter in (~~this 1967~~
6 ~~amendatory act~~) chapter 26, Laws of 1967 ex. sess. referred to as the
7 department, shall:

8 (1) Assess and collect all taxes and administer all programs
9 relating to taxes which are the responsibility of the tax commission at
10 the time (~~this 1967 amendatory act~~) chapter 26, Laws of 1967 ex.
11 sess. takes effect or which the legislature may hereafter make the
12 responsibility of the director or of the department;

13 (2) (~~Make, adopt and publish such rules and regulations as he may~~
14 ~~deem necessary or desirable to carry out the powers and duties imposed~~
15 ~~upon him or the department by the legislature:— PROVIDED, That~~) The
16 director of revenue may adopt, in accordance with chapter 34.05 RCW,
17 rules or policy statements, other than emergency rules, only:

18 (a) As specifically required by federal law, and only to the extent
19 specifically required; or

20 (b) As specifically authorized, and only to the extent specifically
21 authorized, by the legislature;

22 (3) Rules (~~and regulations~~) adopted by the tax commission prior
23 to the effective date of this (~~1967 amendatory~~) 1995 act shall remain
24 in force until such time as they may be revised or rescinded by the
25 director;

26 (~~(+3)~~) (4) Provide by general (~~regulations~~) rules for an
27 adequate system of departmental review of the actions of the department
28 or of its officers and employees in the assessment or collection of
29 taxes;

30 (~~(+4)~~) (5) Maintain a tax research section with sufficient
31 technical, clerical and other employees to conduct constant observation
32 and investigation of the effectiveness and adequacy of the revenue laws
33 of this state and of the sister states in order to assist the governor,
34 the legislature and the director in estimation of revenue, analysis of
35 tax measures, and determination of the administrative feasibility of
36 proposed tax legislation and allied problems;

37 (~~(+5)~~) (6) Recommend to the governor such amendments, changes in,
38 and modifications of the revenue laws as seem proper and requisite to

1 remedy injustice and irregularities in taxation, and to facilitate the
2 assessment and collection of taxes in the most economical manner.

3 NEW SECTION. **Sec. 106.** A new section is added to chapter 43.21A
4 RCW to read as follows:

5 The director of the department of ecology may adopt, in accordance
6 with chapter 34.05 RCW, rules or policy statements, other than
7 emergency rules, only:

8 (1) As specifically required by federal law, and only to the extent
9 specifically required; or

10 (2) As specifically authorized, and only to the extent specifically
11 authorized, by the legislature.

12 NEW SECTION. **Sec. 107.** A new section is added to chapter 43.22
13 RCW to read as follows:

14 The director of the department of labor and industries may adopt,
15 in accordance with chapter 34.05 RCW, rules or policy statements, other
16 than emergency rules, only:

17 (1) As specifically required by federal law, and only to the extent
18 specifically required; or

19 (2) As specifically authorized, and only to the extent specifically
20 authorized, by the legislature.

21 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.24
22 RCW to read as follows:

23 The director of the department of licensing may adopt, in
24 accordance with chapter 34.05 RCW, rules or policy statements, other
25 than emergency rules, only:

26 (1) As specifically required by federal law, and only to the extent
27 specifically required; or

28 (2) As specifically authorized, and only to the extent specifically
29 authorized, by the legislature.

30 **Sec. 109.** RCW 46.01.110 and 1979 c 158 s 120 are each amended to
31 read as follows:

32 The director of licensing is hereby authorized to adopt (~~and~~
33 ~~enforce such reasonable rules and regulations as may be consistent with~~
34 ~~and~~)), in accordance with chapter 34.05 RCW, rules or policy
35 statements, other than emergency rules, only:

1 (1) As specifically required by federal law, and only to the extent
2 specifically required; or

3 (2) As specifically authorized, and only to the extent specifically
4 authorized, by the legislature.

5 The rules shall be necessary to carry out the provisions relating
6 to vehicle licenses, certificates of ownership and license registration
7 and drivers' licenses not in conflict with the provisions of Title 46
8 RCW.

9 **Sec. 110.** RCW 50.12.010 and 1977 c 75 s 75 are each amended to
10 read as follows:

11 The commissioner shall administer this title. He or she shall have
12 the power and authority to ~~((adopt, amend, or rescind such rules and~~
13 ~~regulations, to))~~ employ ~~((such))~~ persons, make ~~((such))~~ expenditures,
14 require ~~((such))~~ reports, make ~~((such))~~ investigations, and take
15 ~~((such))~~ other actions, not including the adoption, amendment, or
16 rescission of rules or policy statements other than emergency rules, as
17 he or she deems necessary or suitable to that end. ~~((Such rules and~~
18 ~~regulations shall be effective upon publication and in the manner, not~~
19 ~~inconsistent with the provisions of this title, which the commissioner~~
20 ~~shall prescribe.))~~ The commissioner, in accordance with the provisions
21 of this title, shall determine the organization and methods of
22 procedure of the divisions referred to in this title, and shall have an
23 official seal which shall be judicially noticed. The commissioner
24 shall submit to the governor a report covering the administration and
25 operation of this title during the preceding fiscal year, July 1
26 through June 30, and shall make ~~((such))~~ recommendations for amendments
27 to this title as he or she deems proper. ~~((Such))~~ The report shall
28 include a balance sheet of the moneys in the fund in which there shall
29 be provided, if possible, a reserve against the liability in future
30 years to pay benefits in excess of the then current contributions,
31 which reserve shall be set up by the commissioner in accordance with
32 accepted actuarial principles on the basis of statistics of employment,
33 business activity, and other relevant factors for the longest possible
34 period. Whenever the commissioner believes that a change in
35 contribution or benefit rates will become necessary to protect the
36 solvency of the fund, he or she shall promptly ~~((so))~~ inform the
37 governor and legislature and make recommendations with respect thereto.

1 NEW SECTION. **Sec. 111.** A new section is added to chapter 50.12
2 RCW to read as follows:

3 The commissioner of the employment security department may adopt,
4 in accordance with chapter 34.05 RCW, rules or policy statements, other
5 than emergency rules, only:

6 (1) As specifically required by federal law, and only to the extent
7 specifically required; or

8 (2) As specifically authorized, and only to the extent specifically
9 authorized, by the legislature.

10 **Sec. 112.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
11 read as follows:

12 (~~((1) Where necessary to accomplish the purposes and policies~~
13 ~~stated in RCW 76.09.010, and to implement the provisions of this~~
14 ~~chapter,)) The board shall ((promulgate)) adopt forest practices
15 ~~((regulations))~~ rules or policy statements, other than emergency rules,
16 pursuant to chapter 34.05 RCW and in accordance with the procedures
17 enumerated in this section:~~

18 (a) As specifically required by federal law, and only to the extent
19 specifically required; or

20 (b) As specifically authorized, and only to the extent specifically
21 authorized, by the legislature.

22 (2) The board shall adopt rules that:

23 (a) Establish minimum standards for forest practices;

24 (b) Provide procedures for the voluntary development of resource
25 management plans which may be adopted as an alternative to the minimum
26 standards in (a) of this subsection if the plan is consistent with the
27 purposes and policies stated in RCW 76.09.010 and the plan meets or
28 exceeds the objectives of the minimum standards;

29 (c) Set forth necessary administrative provisions; and

30 (d) Establish procedures for the collection and administration of
31 forest practice fees as set forth by this chapter.

32 Forest practices (~~((regulations))~~) rules pertaining to water quality
33 protection shall be (~~((promulgated))~~) adopted individually by the board
34 and by the department of ecology after they have reached agreement with
35 respect thereto. All other forest practices (~~((regulations))~~) rules
36 shall be (~~((promulgated))~~) adopted by the board.

37 Forest practices regulations shall be administered and enforced by
38 the department except as otherwise provided in this chapter. Such

1 regulations shall be promulgated and administered so as to give
2 consideration to all purposes and policies set forth in RCW 76.09.010.

3 ~~((+2))~~ (3) The board shall prepare proposed forest practices
4 ~~((regulations))~~ rules. In addition to any forest practices
5 ~~((regulations))~~ rules relating to water quality protection proposed by
6 the board, the department of ecology shall prepare proposed forest
7 practices ~~((regulations))~~ rules relating to water quality protection.

8 Prior to initiating the rule making process, the proposed
9 ~~((regulations))~~ rules shall be submitted for review and comments to the
10 department of fish and wildlife and to the counties of the state.
11 After receipt of the proposed forest practices ~~((regulations))~~ rules,
12 the department of fish and wildlife and the counties of the state shall
13 have thirty days in which to review and submit comments to the board,
14 and to the department of ecology with respect to its proposed
15 ~~((regulations))~~ rules relating to water quality protection. After the
16 expiration of such thirty day period the board and the department of
17 ecology shall jointly hold one or more hearings on the proposed
18 ~~((regulations))~~ rules pursuant to chapter 34.05 RCW. At such
19 hearing(s) any county may propose specific forest practices
20 ~~((regulations))~~ rules relating to problems existing within such county.
21 The board and the department of ecology may adopt such proposals if
22 they find the proposals are consistent with the purposes and policies
23 of this chapter.

24 **Sec. 113.** RCW 77.04.090 and 1984 c 240 s 1 are each amended to
25 read as follows:

26 The commission shall adopt ~~((permanent rules and amendments to or
27 repeals of existing rules))~~, in accordance with chapter 34.05 RCW,
28 rules or policy statements, other than emergency rules, only:

29 (1) As specifically required by federal law, and only to the extent
30 specifically required; or

31 (2) As specifically authorized, and only to the extent specifically
32 authorized, by the legislature, by approval of four members by
33 resolution, entered and recorded in the minutes of the commission. The
34 commission shall adopt emergency rules by approval of four members.
35 The commission or the director, when adopting emergency rules under RCW
36 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.
37 Judicial notice shall be taken of the rules filed and published as
38 provided in RCW 34.05.380 and 34.05.210.

1 A copy of an emergency rule, certified as a true copy by a member
2 of the commission, the director, or by a person authorized in writing
3 by the director to make the certification, is admissible in court as
4 prima facie evidence of the adoption and validity of the rule.

5 NEW SECTION. **Sec. 114.** The following acts or parts of acts are
6 each repealed:

- 7 (1) RCW 43.21A.080 and 1970 ex.s. c 62 s 8; and
8 (2) RCW 50.12.040 and 1973 1st ex.s. c 158 s 3 & 1945 c 35 s 43.

9 **Sec. 115.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
10 read as follows:

11 (1) The commissioner shall have the authority expressly conferred
12 upon him or her by or reasonably implied from the provisions of this
13 code.

14 (2) The commissioner shall execute his or her duties and shall
15 enforce the provisions of this code.

16 (3) The commissioner may:

17 (a) (~~Make reasonable rules and regulations for effectuating any~~
18 ~~provision of this code, except those relating to his election,~~
19 ~~qualifications, or compensation. No such rules and regulations shall~~
20 ~~be effective prior to their being filed for public inspection in the~~
21 ~~commissioner's office)) Adopt, in accordance with chapter 34.05 RCW,
22 rules or policy statements, other than emergency rules, only:~~

23 (i) As specifically required by federal law, and only to the extent
24 specifically required; or

25 (ii) As specifically authorized, and only to the extent
26 specifically authorized, by the legislature.

27 (b) Conduct investigations to determine whether any person has
28 violated any provision of this code.

29 (c) Conduct examinations, investigations, hearings, in addition to
30 those specifically provided for, useful and proper for the efficient
31 administration of any provision of this code.

32 **Sec. 116.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to
33 read as follows:

34 (1) Generally. Except to the extent that this chapter or another
35 statute provides otherwise:

1 (a) The burden of demonstrating the invalidity of agency action is
2 on the party asserting invalidity;

3 (b) The validity of agency action shall be determined in accordance
4 with the standards of review provided in this section, as applied to
5 the agency action at the time it was taken;

6 (c) The court shall make a separate and distinct ruling on each
7 material issue on which the court's decision is based; and

8 (d) The court shall grant relief only if it determines that a
9 person seeking judicial relief has been substantially prejudiced by the
10 action complained of.

11 (2) Review of rules. (a) A rule may be reviewed by petition for
12 declaratory judgment filed pursuant to this subsection or in the
13 context of any other review proceeding under this section. In an
14 action challenging the validity of a rule, the agency shall be made a
15 party to the proceeding.

16 (b) The validity of any rule may be determined upon petition for a
17 declaratory judgment addressed to the superior court of Thurston
18 county, when it appears that the rule, or its threatened application,
19 interferes with or impairs or immediately threatens to interfere with
20 or impair the legal rights or privileges of the petitioner. The
21 declaratory judgment order may be entered whether or not the petitioner
22 has first requested the agency to pass upon the validity of the rule in
23 question.

24 (c) In a proceeding involving review of a rule, the court shall
25 declare the rule invalid only if it finds that: ~~((it))~~ The rule
26 violates constitutional provisions~~((τ))~~; the rule exceeds the statutory
27 authority of the agency~~((τ))~~; the rule was adopted without compliance
28 with statutory rule-making procedures~~((τ or could not conceivably have~~
29 ~~been the product of a rational decision-maker))~~; the factual basis for
30 the rule under RCW 34.05.370(2)(i) is not supported by substantial
31 evidence; or the rule is arbitrary or capricious. Grants of rule-
32 making authority to an agency by the legislature shall be narrowly
33 construed.

34 (3) Review of agency orders in adjudicative proceedings. The court
35 shall grant relief from an agency order in an adjudicative proceeding
36 only if it determines that:

37 (a) The order, or the statute or rule on which the order is based,
38 is in violation of constitutional provisions on its face or as applied;

1 (b) The order is outside the statutory authority or jurisdiction of
2 the agency conferred by any provision of law;

3 (c) The agency has engaged in unlawful procedure or decision-making
4 process, or has failed to follow a prescribed procedure;

5 (d) The agency has erroneously interpreted or applied the law;

6 (e) The order is not supported by evidence that is substantial when
7 viewed in light of the whole record before the court, which includes
8 the agency record for judicial review, supplemented by any additional
9 evidence received by the court under this chapter;

10 (f) The agency has not decided all issues requiring resolution by
11 the agency;

12 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
13 was made and was improperly denied or, if no motion was made, facts are
14 shown to support the grant of such a motion that were not known and
15 were not reasonably discoverable by the challenging party at the
16 appropriate time for making such a motion;

17 (h) The order is inconsistent with a rule of the agency unless the
18 agency explains the inconsistency by stating facts and reasons to
19 demonstrate a rational basis for inconsistency; or

20 (i) The order is arbitrary or capricious.

21 (4) Review of other agency action.

22 (a) All agency action not reviewable under subsection (2) or (3) of
23 this section shall be reviewed under this subsection.

24 (b) A person whose rights are violated by an agency's failure to
25 perform a duty that is required by law to be performed may file a
26 petition for review pursuant to RCW 34.05.514, seeking an order
27 pursuant to this subsection requiring performance. Within twenty days
28 after service of the petition for review, the agency shall file and
29 serve an answer to the petition, made in the same manner as an answer
30 to a complaint in a civil action. The court may hear evidence,
31 pursuant to RCW 34.05.562, on material issues of fact raised by the
32 petition and answer.

33 (c) Relief for persons aggrieved by the performance of an agency
34 action, including the exercise of discretion, or an action under (b) of
35 this subsection can be granted only if the court determines that the
36 action is:

37 (i) Unconstitutional;

38 (ii) Outside the statutory authority of the agency or the authority
39 conferred by a provision of law;

- 1 (iii) Arbitrary or capricious; or
2 (iv) Taken by persons who were not properly constituted as agency
3 officials lawfully entitled to take such action.

4 **PART 2**

5 **RULE-MAKING REQUIREMENTS**

6 **Sec. 201.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to
7 read as follows:

8 (1) To meet the intent of providing greater public access to
9 administrative rule making and to promote consensus among interested
10 parties, agencies shall solicit comments from the public on a subject
11 of possible rule making before publication of a notice of proposed rule
12 adoption under RCW 34.05.320. The agency shall prepare a statement of
13 intent that:

14 (a) States the specific statutory authority for the new rule;

15 (b) Identifies the reasons the new rule is needed;

16 (c) Identifies the goals of the new rule;

17 (d) Identifies other agencies that have rule-making authority over
18 the activity or subject matter of the new rule, and describes the
19 process for coordination with those agencies;

20 (e) Describes the process by which the rule will be developed,
21 including, but not limited to, negotiated rule making, pilot rule
22 making, or agency study; and

23 ~~((e))~~ (f) Specifies the process by which interested parties can
24 effectively participate in the formulation of the new rule.

25 The statement of intent shall be filed with the code reviser for
26 publication in the state register and shall be sent to any party that
27 has requested receipt of the agency's statements of intent.

28 (2) Agencies are encouraged to develop and use new procedures for
29 reaching agreement among interested parties before publication of
30 notice and the adoption hearing on a proposed rule. Examples of new
31 procedures include, but are not limited to:

32 (a) Negotiated rule making which includes:

33 (i) Identifying individuals and organizations that have a
34 recognized interest in or will be significantly affected by the
35 adoption of the proposed rule;

36 (ii) Soliciting participation by persons who are capable, willing,
37 and appropriately authorized to enter into such negotiations;

1 (iii) Assuring that participants fully recognize the consequences
2 of not participating in the process, are committed to negotiate in good
3 faith, and recognize the alternatives available to other parties;

4 (iv) Establishing guidelines to encourage consideration of all
5 pertinent issues, to set reasonable completion deadlines, and to
6 provide fair and objective settlement of disputes that may arise;

7 (v) Agreeing on a reasonable time period during which the agency
8 will be bound to the rule resulting from the negotiations without
9 substantive amendment; and

10 (vi) Providing a mechanism by which one or more parties may
11 withdraw from the process or the negotiations may be terminated if it
12 appears that consensus cannot be reached on a draft rule that
13 accommodates the needs of the agency, interested parties, and the
14 general public and conforms to the legislative intent of the statute
15 that the rule is intended to implement; and

16 (b) Pilot rule making which includes testing the draft of a
17 proposed rule through the use of volunteer pilot study groups in
18 various areas and circumstances.

19 (3)(a) An agency must make a determination whether negotiated rule
20 making, pilot rule making, or another process for generating
21 participation from interested parties prior to development of the rule
22 is appropriate.

23 (b) An agency must include a written justification in the rule-
24 making file if an opportunity for interested parties to participate in
25 the rule-making process prior to publication of the proposed rule has
26 not been provided.

27 **Sec. 202.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to
28 read as follows:

29 ~~((If-))~~ (1) During the development of a rule or after its adoption,
30 an agency ~~((determines that implementation may produce unreasonable~~
31 ~~economic, procedural, or technical burdens, agencies are encouraged~~
32 ~~to))~~ may develop methods for measuring or testing the feasibility of
33 ((compliance)) complying with or administering the rule~~((, including~~
34 ~~the use of voluntary pilot study groups))~~ and for identifying simple,
35 efficient, and economical alternatives for achieving the goal of the
36 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot
37 project shall include public notice, participation by ~~((persons who~~
38 ~~have a recognized interest in or are significantly affected by the~~

1 ~~adoption of the proposed rule))~~ volunteers who are or will be subject
2 to the rule, a high level of involvement from agency management,
3 ~~((consensus on issues and procedures among participants in the pilot~~
4 ~~group, assurance of fairness, and))~~ reasonable completion dates, and a
5 process by which one or more parties may withdraw from the process or
6 the process may be terminated ((if consensus cannot be reached on the
7 rule)). Volunteers who agree to test a rule and attempt to meet the
8 requirements of the draft rule, to report periodically to the proposing
9 agency on the extent of their ability to meet the requirements of the
10 draft rule, and to make recommendations for improving the draft rule
11 shall not be obligated to comply fully with the rule being tested nor
12 be subject to any enforcement action or other sanction for failing to
13 comply with the requirements of the draft rule.

14 (2) An agency conducting a pilot rule project authorized under
15 subsection (1) of this section may waive one or more provisions of
16 agency rules otherwise applicable to participants in such a pilot
17 project if the agency first determines that such a waiver is in the
18 public interest and necessary to conduct the project. Such a waiver
19 may be only for a stated period of time, not to exceed the duration of
20 the project.

21 (3) The findings of the pilot project should be widely shared and,
22 where appropriate, adopted as amendments to the rule.

23 (4) If an agency conducts a pilot rule project in lieu of meeting
24 the requirements of the regulatory fairness act, chapter 19.85 RCW, the
25 agency shall ensure the following conditions are met:

26 (a) If over ten small businesses are affected, there shall be at
27 least ten small businesses in the test group and at least one-half of
28 the volunteers participating in the pilot test group shall be small
29 businesses.

30 (b)(i) If there are at least one hundred businesses affected, the
31 participation by small businesses in the test group shall be as
32 follows:

33 (A) Not less than twenty percent of the small businesses must
34 employ twenty-six to fifty employees;

35 (B) Not less than twenty percent of the small businesses must
36 employ eleven to twenty-six employees, and

37 (C) Not less than twenty percent of the small businesses must
38 employ zero to ten employees.

1 (ii) If there do not exist a sufficient number of small businesses
2 in each size category set forth in (b)(i) of this subsection willing to
3 participate in the pilot project to meet the minimum requirements of
4 that subsection, then the agency must comply with this section to the
5 maximum extent practicable.

6 (c) The agency may not terminate the pilot project before
7 completion.

8 (d) Before filing the notice of proposed rule making pursuant to
9 RCW 34.05.320, the agency must prepare a report of the pilot rule
10 project that includes:

11 (i) A description of the difficulties small businesses had in
12 complying with the pilot rule;

13 (ii) A list of the recommended revisions to the rule to make
14 compliance with the rule easier or to reduce the cost of compliance
15 with the rule by the small businesses participating in the pilot rule
16 project; and

17 (iii) A written statement explaining the options it considered to
18 resolve each of the difficulties described and a statement explaining
19 its reasons for not including a recommendation by the pilot test group
20 to revise the rule.

21 **Sec. 203.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to
22 read as follows:

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

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

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

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

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

37 (d) Any official transcript of oral presentations made in the
38 proceeding on which the rule is based or, if not transcribed, any tape

1 recording or stenographic record of them, and any memorandum prepared
2 by a presiding official summarizing the contents of those
3 presentations;

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

5 (f) All petitions for exceptions to, amendment of, or repeal or
6 suspension of, the rule;

7 (g) Citations to data, factual information, studies, or reports on
8 which the agency relies in the adoption of the rule, indicating where
9 such data, factual information, studies, or reports are available for
10 review by the public;

11 (h) The written summary and response required by RCW 34.05.325(6);
12 (~~and~~)

13 (i) Evidence that the rule is: Authorized or required, citing
14 statutory authority; necessary; cost-effective; consistent with, and
15 not duplicated by, other federal, state, or local laws; enforceable;
16 targeted; measurable, quantifying intended results; the least
17 burdensome alternative; and not in excess of federal law unless
18 authorized by state statute; and

19 (j) Any other material placed in the file by the agency.

20 (3) Internal agency documents are exempt from inclusion in the
21 rule-making file under subsection (2) of this section to the extent
22 they constitute preliminary drafts, notes, recommendations, and intra-
23 agency memoranda in which opinions are expressed or policies formulated
24 or recommended, except that a specific document is not exempt from
25 inclusion when it is publicly cited by an agency in connection with its
26 decision.

27 (4) Upon judicial review, the file required by this section
28 constitutes the official agency rule-making file with respect to that
29 rule. (~~Unless otherwise required by another provision of law,~~) The
30 official agency rule-making file (~~need not be~~) is the exclusive basis
31 for agency action on that rule.

32 NEW SECTION. Sec. 204. A new section is added to chapter 34.05
33 RCW to read as follows:

34 (1) Upon adoption of a rule, an agency shall: (a) Inform and
35 educate affected persons about the rule; and (b) promote voluntary
36 compliance.

1 (2) Upon the adoption of a rule regulating the same activity or
2 subject matter as another provision of federal, state, or local law, an
3 agency shall do all of the following:

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

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

15 (c) Report to the chief clerk of the house of representatives and
16 the secretary of the senate regarding legislation that may be necessary
17 to eliminate or mitigate the adverse effects of any overlap or
18 duplication or difference from federal law, and to facilitate
19 coordination with appropriate governmental entities.

20 **Sec. 205.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to
21 read as follows:

22 (1) Each agency shall file in the office of the code reviser a
23 certified copy of all rules it adopts, except for rules contained in
24 tariffs filed with or published by the Washington utilities and
25 transportation commission. The code reviser shall place upon each rule
26 a notation of the time and date of filing and shall keep a permanent
27 register of filed rules open to public inspection. In filing a rule,
28 each agency shall use the standard form prescribed for this purpose by
29 the code reviser.

30 (2) Emergency rules adopted under RCW 34.05.350 become effective
31 upon filing unless a later date is specified in the order of adoption.
32 All other rules become effective upon the expiration of thirty days
33 after the date of filing, unless a later date is required by statute or
34 specified in the order of adoption.

35 (3) A rule may become effective immediately upon its filing with
36 the code reviser or on any subsequent date earlier than that
37 established by subsection (2) of this section, if the agency
38 establishes that effective date in the adopting order and finds that:

1 (a) Such action is required by the state or federal Constitution,
2 a statute, or court order;

3 (b) The rule only delays the effective date of another rule that is
4 not yet effective; or

5 (c) The earlier effective date is necessary because of imminent
6 peril to the public health, safety, or welfare.

7 The finding and a brief statement of the reasons therefor required
8 by this subsection shall be made a part of the order adopting the rule.

9 (4) With respect to a rule made effective pursuant to subsection
10 (3) of this section, each agency shall make reasonable efforts to make
11 the effective date known to persons who may be affected by it.

12 (5) No rule, adopted by any of the following agencies, is effective
13 for more than seven years after its adoption or seven years after the
14 effective date of this section, whichever is later: Department of
15 ecology, employment security department, department of labor and
16 industries, department of revenue, department of licensing, department
17 of health, department of fish and wildlife, forest practices board,
18 commissioner of public lands, department of social and health services,
19 or the office of the insurance commissioner. A rule made ineffective
20 under this subsection may be readopted according to the procedures
21 established in this chapter.

22 NEW SECTION. Sec. 206. A new section is added to chapter 34.05
23 RCW to read as follows:

24 The department of ecology, employment security department,
25 department of labor and industries, department of revenue, department
26 of licensing, department of health, department of fish and wildlife,
27 forest practices board, commissioner of public lands, department of
28 social and health services, and the office of the insurance
29 commissioner shall review their respective rules as follows:

30 (1) Fifty percent of their rules existing on the effective date of
31 this section shall be reviewed within three years of the effective date
32 of this section;

33 (2) Eighty percent of their rules existing on the effective date of
34 this section shall be reviewed within five years of the effective date
35 of this section; and

36 (3) One hundred percent of their rules existing on the effective
37 date of this section shall be reviewed within seven years of the
38 effective date of this section.

1 **Sec. 207.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
2 read as follows:

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

10 (2) If any agency named in RCW 43.17.010 denies a petition to
11 repeal or amend a rule submitted under subsection (1) of this section,
12 the petitioner may appeal the denial to the governor. The petitioner
13 may file notice of the appeal with the code reviser for publication in
14 the Washington State Register. Within sixty days after receiving the
15 appeal, the governor shall either reject the appeal in writing, stating
16 his or her reasons for the rejection, or order the agency to initiate
17 rule-making proceedings in accordance with this chapter. In ruling on
18 the appeal, the governor shall consider:

19 (a) Whether the rule was adopted in compliance with RCW
20 34.05.370(2)(i);

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

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

26 (d) Whether the rule exceeds specific federal requirements or
27 specific legislative authority, or conflicts with, overlaps, or
28 duplicates any other provision of federal, state, or local law and, if
29 so, whether the agency has taken steps to mitigate any adverse effects
30 of the excess, conflict, overlap, or duplication;

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

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

37 (3) The governor shall file a copy of the rejection or order in
38 subsection (2) of this section with the regulatory oversight committee

1 and with the code reviser for publication in the Washington State
2 Register.

3 **PART 3**

4 **REGULATORY FAIRNESS**

5 **Sec. 301.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to
6 read as follows:

7 (1) ~~((In the adoption of any rule pursuant to RCW 34.05.320 that~~
8 ~~will impose more than minor costs on more than twenty percent of all~~
9 ~~industries, or more than ten percent of any one industry, the adopting~~
10 ~~agency:~~

11 (a) ~~Shall reduce the economic impact of the rule on small business~~
12 ~~by doing one or more of the following when it is legal and feasible in~~
13 ~~meeting the stated objective of the statutes which are the basis of the~~
14 ~~proposed rule:~~

15 (i) ~~Establish differing compliance or reporting requirements or~~
16 ~~timetables for small businesses;~~

17 (ii) ~~Clarify, consolidate, or simplify the compliance and reporting~~
18 ~~requirements under the rule for small businesses;~~

19 (iii) ~~Establish performance rather than design standards;~~

20 (iv) ~~Exempt small businesses from any or all requirements of the~~
21 ~~rule;~~

22 (v) ~~Reduce or modify fine schedules for noncompliance; and~~

23 (vi) ~~Other mitigation techniques;~~

24 (b) ~~Before filing notice of a proposed rule, shall prepare a small~~
25 ~~business economic impact statement in accordance with RCW 19.85.040 and~~
26 ~~file notice of how the person can obtain the statement with the code~~
27 ~~reviser as part of the notice required under RCW 34.05.320.~~

28 (2) ~~If requested to do so by a majority vote of the joint~~
29 ~~administrative rules review committee within thirty days after notice~~
30 ~~of the proposed rule is published in the state register, an agency~~
31 ~~shall prepare a small business economic impact statement on the~~
32 ~~proposed rule before adoption of the rule. Upon completion, an agency~~
33 ~~shall provide a copy of the small business economic impact statement to~~
34 ~~any person requesting it.~~

35 (3)) In the adoption of a rule under RCW 34.05.320, an agency
36 shall prepare a small business economic impact statement: (a) If the
37 proposed rule will impose more than minor costs on businesses in an

1 industry; or (b) if requested to do so by a majority vote of the
2 legislative regulatory oversight committee within thirty days after
3 notice of the proposed rule is published in the state register.
4 However, if the agency has completed the pilot rule process as defined
5 by RCW 34.05.313 before filing the notice of a proposed rule, the
6 agency is not required to prepare a small business economic impact
7 statement.

8 An agency shall prepare the small business economic impact
9 statement in accordance with RCW 19.85.040, and file it with the code
10 reviser along with the notice required under RCW 34.05.320. An agency
11 shall file a statement prepared at the request of the legislative
12 regulatory oversight committee with the code reviser upon its
13 completion before the adoption of the rule. An agency shall provide a
14 copy of the small business economic impact statement to any person
15 requesting it.

16 An agency may request assistance from the business assistance
17 center in the preparation of the small business economic impact
18 statement.

19 ~~((4) The business assistance center shall develop guidelines to~~
20 ~~assist agencies in determining whether a proposed rule will impose more~~
21 ~~than minor costs on businesses in an industry and therefore require~~
22 ~~preparation of a small business economic impact statement. The~~
23 ~~business assistance center may review an agency determination that a~~
24 ~~proposed rule will not impose such costs, and shall advise the joint~~
25 ~~administrative rules review committee on disputes involving agency~~
26 ~~determinations under this section.))~~

27 (2) A proposed rule will impose more than minor costs on businesses
28 in an industry when the costs imposed will equal or exceed 0.1 percent
29 of the average yearly profit for businesses in that industry. The
30 business assistance center shall develop guidelines to assist agencies
31 in determining whether a proposed rule will impose such costs. The
32 business assistance center may review an agency determination that a
33 proposed rule will not impose such costs, and shall advise the
34 legislative regulatory oversight committee on disputes involving agency
35 determinations under this section.

36 (3) Based upon the extent of disproportionate impact on small
37 business identified in the statement prepared under RCW 19.85.040, the
38 agency shall, if legal and possible to do so, reduce the costs imposed

1 by the rule on small businesses. Methods to reduce the costs on small
2 businesses may include, but are not limited to:

3 (a) Reducing, modifying, or eliminating substantive regulatory
4 requirements;

5 (b) Simplifying, reducing, or eliminating recordkeeping and
6 reporting requirements;

7 (c) Reducing the frequency of inspections;

8 (d) Delaying compliance timetables;

9 (e) Reducing or modifying fine schedules for noncompliance; or

10 (f) Any other mitigation techniques.

11 NEW SECTION. Sec. 302. A new section is added to chapter 19.85
12 RCW to read as follows:

13 Unless so requested by a majority vote of the legislative
14 regulatory oversight committee under RCW 19.85.030, an agency is not
15 required to comply with this chapter when adopting any rule solely for
16 the purpose of conformity or compliance, or both, with federal law or
17 regulations. In lieu of the statement required under RCW 19.85.030,
18 the agency shall file a statement citing, with specificity, the federal
19 law or regulation with which the rule is being adopted to conform or
20 comply, and describing the consequences to the state if the rule is not
21 adopted.

22 NEW SECTION. Sec. 303. RCW 19.85.060 and 1989 c 374 s 5 are each
23 repealed.

24 **PART 4**

25 **LEGISLATIVE REVIEW OF RULES**

26 **Sec. 401.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to
27 read as follows:

28 The definitions set forth in this section shall apply throughout
29 this chapter, unless the context clearly requires otherwise.

30 (1) "Adjudicative proceeding" means a proceeding before an agency
31 in which an opportunity for hearing before that agency is required by
32 statute or constitutional right before or after the entry of an order
33 by the agency. Adjudicative proceedings also include all cases of
34 licensing and rate making in which an application for a license or rate
35 change is denied except as limited by RCW 66.08.150, or a license is

1 revoked, suspended, or modified, or in which the granting of an
2 application is contested by a person having standing to contest under
3 the law.

4 (2) "Agency" means any state board, commission, department,
5 institution of higher education, or officer, authorized by law to make
6 rules or to conduct adjudicative proceedings, except those in the
7 legislative or judicial branches, the governor, or the attorney general
8 except to the extent otherwise required by law and any local
9 governmental entity that may request the appointment of an
10 administrative law judge under chapter 42.41 RCW.

11 (3) "Agency action" means licensing, the implementation or
12 enforcement of a statute, the adoption or application of an agency rule
13 or order, the imposition of sanctions, or the granting or withholding
14 of benefits.

15 Agency action does not include an agency decision regarding (a)
16 contracting or procurement of goods, services, public works, and the
17 purchase, lease, or acquisition by any other means, including eminent
18 domain, of real estate, as well as all activities necessarily related
19 to those functions, or (b) determinations as to the sufficiency of a
20 showing of interest filed in support of a representation petition, or
21 mediation or conciliation of labor disputes or arbitration of labor
22 disputes under a collective bargaining law or similar statute, or (c)
23 any sale, lease, contract, or other proprietary decision in the
24 management of public lands or real property interests, or (d) the
25 granting of a license, franchise, or permission for the use of
26 trademarks, symbols, and similar property owned or controlled by the
27 agency.

28 (4) "Agency head" means the individual or body of individuals in
29 whom the ultimate legal authority of the agency is vested by any
30 provision of law. If the agency head is a body of individuals, a
31 majority of those individuals constitutes the agency head.

32 (5) "Entry" of an order means the signing of the order by all
33 persons who are to sign the order, as an official act indicating that
34 the order is to be effective.

35 (6) "Filing" of a document that is required to be filed with an
36 agency means delivery of the document to a place designated by the
37 agency by rule for receipt of official documents, or in the absence of
38 such designation, at the office of the agency head.

1 (7) "Institutions of higher education" are the University of
2 Washington, Washington State University, Central Washington University,
3 Eastern Washington University, Western Washington University, The
4 Evergreen State College, the various community colleges, and the
5 governing boards of each of the above, and the various colleges,
6 divisions, departments, or offices authorized by the governing board of
7 the institution involved to act for the institution, all of which are
8 sometimes referred to in this chapter as "institutions."

9 (8) "Interpretive statement" means a written expression of the
10 opinion of an agency, entitled an interpretive statement by the agency
11 head or its designee, as to the meaning of a statute or other provision
12 of law, of a court decision, or of an agency order.

13 (9)(a) "License" means a franchise, permit, certification,
14 approval, registration, charter, or similar form of authorization
15 required by law, but does not include (i) a license required solely for
16 revenue purposes, or (ii) a certification of an exclusive bargaining
17 representative, or similar status, under a collective bargaining law or
18 similar statute, or (iii) a license, franchise, or permission for use
19 of trademarks, symbols, and similar property owned or controlled by the
20 agency.

21 (b) "Licensing" includes the agency process respecting the
22 issuance, denial, revocation, suspension, or modification of a license.

23 (10)(a) "Order," without further qualification, means a written
24 statement of particular applicability that finally determines the legal
25 rights, duties, privileges, immunities, or other legal interests of a
26 specific person or persons.

27 (b) "Order of adoption" means the official written statement by
28 which an agency adopts, amends, or repeals a rule.

29 (11) "Party to agency proceedings," or "party" in a context so
30 indicating, means:

31 (a) A person to whom the agency action is specifically directed; or

32 (b) A person named as a party to the agency proceeding or allowed
33 to intervene or participate as a party in the agency proceeding.

34 (12) "Party to judicial review or civil enforcement proceedings,"
35 or "party" in a context so indicating, means:

36 (a) A person who files a petition for a judicial review or civil
37 enforcement proceeding; or

1 (b) A person named as a party in a judicial review or civil
2 enforcement proceeding, or allowed to participate as a party in a
3 judicial review or civil enforcement proceeding.

4 (13) "Person" means any individual, partnership, corporation,
5 association, governmental subdivision or unit thereof, or public or
6 private organization or entity of any character, and includes another
7 agency.

8 (14) "Policy statement" means a written description of the current
9 approach of an agency, entitled a policy statement by the agency head
10 or its designee, to implementation of a statute or other provision of
11 law, of a court decision, or of an agency order, including where
12 appropriate the agency's current practice, procedure, or method of
13 action based upon that approach.

14 (15) "Regulatory oversight committee" or "committee" means the
15 legislative regulatory oversight committee created in RCW 34.05.610 (as
16 recodified by this act) for the purposes of selectively reviewing
17 existing and proposed rules of state agencies.

18 (16) "Rule" means any agency order, directive, or regulation of
19 general applicability (a) the violation of which subjects a person to
20 a penalty or administrative sanction; (b) which establishes, alters, or
21 revokes any procedure, practice, or requirement relating to agency
22 hearings; (c) which establishes, alters, or revokes any qualification
23 or requirement relating to the enjoyment of benefits or privileges
24 conferred by law; (d) which establishes, alters, or revokes any
25 qualifications or standards for the issuance, suspension, or revocation
26 of licenses to pursue any commercial activity, trade, or profession; or
27 (e) which establishes, alters, or revokes any mandatory standards for
28 any product or material which must be met before distribution or sale.
29 The term includes the amendment or repeal of a prior rule, but does not
30 include (i) statements concerning only the internal management of an
31 agency and not affecting private rights or procedures available to the
32 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,
33 (iii) traffic restrictions for motor vehicles, bicyclists, and
34 pedestrians established by the secretary of transportation or his
35 designee where notice of such restrictions is given by official traffic
36 control devices, or (iv) rules of institutions of higher education
37 involving standards of admission, academic advancement, academic
38 credit, graduation and the granting of degrees, employment
39 relationships, or fiscal processes.

1 (~~(16) "Rules review committee" or "committee" means the joint~~
2 ~~administrative rules review committee created pursuant to RCW 34.05.610~~
3 ~~for the purpose of selectively reviewing existing and proposed rules of~~
4 ~~state agencies.))~~

5 (17) "Rule making" means the process for formulation and adoption
6 of a rule.

7 (18) "Service," except as otherwise provided in this chapter, means
8 posting in the United States mail, properly addressed, postage prepaid,
9 or personal service. Service by mail is complete upon deposit in the
10 United States mail. Agencies may, by rule, authorize service by
11 electronic telefacsimile transmission, where copies are mailed
12 simultaneously, or by commercial parcel delivery company.

13 **Sec. 402.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to
14 read as follows:

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

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

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

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

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

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

32 (f) Agency comments or recommendations, if any, regarding statutory
33 language, implementation, enforcement, and fiscal matters pertaining to
34 the rule;

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

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

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

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

7 (k) A statement indicating how a person can obtain a copy of the
8 small business economic impact statement prepared under chapter 19.85
9 RCW, or an explanation for why the agency did not prepare the
10 statement.

11 (2) Upon filing notice of the proposed rule with the code reviser,
12 the adopting agency shall have copies of the notice on file and
13 available for public inspection and shall forward three copies of the
14 notice to the ~~((rules review))~~ regulatory oversight committee. The
15 adopting agency shall also forward to the regulatory oversight
16 committee three copies of the proposed rule and the evidence required
17 under RCW 34.05.370(2)(i).

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

23 (4) In addition to the notice required by subsections (1) and (2)
24 of this section, an institution of higher education shall cause the
25 notice to be published in the campus or standard newspaper of the
26 institution at least seven days before the rule-making hearing.

27 NEW SECTION. Sec. 403. The regulatory oversight committee shall
28 not render a decision on a rule unless a quorum is present. A quorum
29 shall consist of at least five members of the committee. Once a quorum
30 is established, a majority of the quorum may render any decision except
31 a suspension recommendation. A recommendation to suspend a rule under
32 RCW 34.05.640 shall require a majority vote of the entire membership of
33 the regulatory oversight committee.

34 NEW SECTION. Sec. 404. Upon receipt of a proposed rule under RCW
35 34.05.320(2) and upon the review of an existing rule under RCW
36 34.05.630 (as recodified by this act), the regulatory oversight
37 committee shall forward the rule to the appropriate standing committee

1 of the legislature for initial review. The standing committee shall
2 make a recommendation on the rule within sixty days of the referral by
3 the regulatory oversight committee and forward that recommendation to
4 the regulatory oversight committee.

5 NEW SECTION. **Sec. 405.** (1) Any person potentially impacted by a
6 proposed rule or currently impacted by an existing rule may petition
7 the regulatory oversight committee for a review of that rule. Within
8 thirty days of the receipt of the petition, the regulatory oversight
9 committee shall acknowledge receipt of the petition and describe the
10 initial action taken. If the regulatory oversight committee rejects
11 the petition, a written statement of the reasons for rejection shall be
12 included.

13 (2) Within ninety days of receipt of the petition, the regulatory
14 oversight committee shall make a final decision on the rule.

15 NEW SECTION. **Sec. 406.** Any individual employed or holding office
16 in any department or agency of state government may submit rules
17 warranting review to the regulatory oversight committee. Any such
18 state employee is protected under chapter 42.40 RCW.

19 **Sec. 407.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
20 read as follows:

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

22 (a) That immediate adoption, amendment, or repeal of a rule is
23 necessary for the preservation of the public health, safety, or general
24 welfare, and that observing the time requirements of notice and
25 opportunity to comment upon adoption of a permanent rule would be
26 contrary to the public interest; or

27 (b) That state or federal law or federal rule or a federal deadline
28 for state receipt of federal funds requires immediate adoption of a
29 rule,

30 the agency may dispense with those requirements and adopt, amend, or
31 repeal the rule on an emergency basis. The agency's finding and a
32 concise statement of the reasons for its finding shall be incorporated
33 in the order for adoption of the emergency rule or amendment filed with
34 the office of the code reviser under RCW 34.05.380 and with the ((rules
35 review)) regulatory oversight committee.

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

12 (3) Within seven days after the rule is adopted, any person may
13 petition the governor requesting the immediate repeal of a rule adopted
14 on an emergency basis by any department listed in RCW 43.17.010.
15 Within seven days after submission of the petition, the governor shall
16 either deny the petition in writing, stating his or her reasons for the
17 denial, or order the immediate repeal of the rule. In ruling on the
18 petition, the governor shall consider only whether the conditions in
19 subsection (1) of this section were met such that adoption of the rule
20 on an emergency basis was necessary. If the governor orders the repeal
21 of the emergency rule, any sanction imposed based on that rule is void.
22 This subsection shall not be construed to prohibit adoption of any rule
23 as a permanent rule.

24 ~~(4) ((In adopting an emergency rule, the agency shall comply with~~
25 ~~section 4 of this act or provide a written explanation for its failure~~
26 ~~to do so.))~~ Prior to adopting an emergency rule, an agency shall
27 comply with the requirements of RCW 34.05.370(2)(i) or provide in
28 writing a reasonable justification for failing to do so. The written
29 justification shall be incorporated into the order of adoption.

30 NEW SECTION. **Sec. 408.** Unless the context clearly requires
31 otherwise, the definitions in RCW 34.05.010 apply throughout this
32 chapter.

33 **Sec. 409.** RCW 34.05.610 and 1988 c 288 s 601 are each amended to
34 read as follows:

35 (1) There is hereby created a ~~((joint administrative rules review))~~
36 regulatory oversight committee which shall be a bipartisan committee
37 consisting of four senators and four representatives from the state

1 legislature. The senate members of the committee shall be appointed by
2 the president of the senate, and the house members of the committee
3 shall be appointed by the speaker of the house. Not more than two
4 members from each house may be from the same political party. All
5 appointments to the committee are subject to approval by the caucuses
6 to which the appointed members belong.

7 (2) Members shall be appointed as soon as possible after the
8 legislature convenes in regular session in an odd-numbered year, and
9 their terms shall extend until their successors are appointed and
10 qualified at the next regular session of the legislature in an odd-
11 numbered year or until such members no longer serve in the legislature,
12 whichever occurs first. Members may be reappointed to a committee.

13 (3) The president of the senate shall appoint the chairperson in
14 even-numbered years and the vice chairperson in odd-numbered years from
15 among committee membership. The speaker of the house shall appoint the
16 chairperson in odd-numbered years and the vice chairperson in even-
17 numbered years from among committee membership. Such appointments
18 shall be made in January of each year as soon as possible after a
19 legislative session convenes.

20 (4) A vacancy on the committee shall be filled by appointment of a
21 legislator from the same political party as the original appointment.
22 The appropriate appointing authority shall make the appointment within
23 thirty days of the vacancy occurring.

24 **Sec. 410.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to
25 read as follows:

26 Whenever ~~((a majority of the members of))~~ the ~~((rules review))~~
27 regulatory oversight committee determines that a proposed rule is not
28 within the intent of the legislature as expressed in the statute which
29 the rule implements, or that an agency may not be adopting a proposed
30 rule in accordance with all applicable provisions of law, including
31 ~~((section 4 of this act and))~~ chapter 19.85 RCW, the committee shall
32 give the affected agency written notice of its decision. The notice
33 shall be given at least seven days prior to any hearing scheduled for
34 consideration of or adoption of the proposed rule pursuant to RCW
35 34.05.320. The notice shall include a statement of the ~~((review))~~
36 committee's findings and the reasons therefor. When the agency holds
37 a hearing on the proposed rule, the agency shall consider the
38 ~~((review))~~ committee's decision.

1 **Sec. 411.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to
2 read as follows:

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

6 (2) The ~~((rules review))~~ regulatory oversight committee may review
7 an agency's use of policy statements, guidelines, and issuances that
8 are of general applicability, or their equivalents to determine whether
9 or not an agency has failed to adopt a rule or whether they are within
10 the intent of the legislature as expressed by the governing statute.

11 (3) If the ~~((rules review))~~ regulatory oversight committee finds
12 ~~((by a majority vote of its members))~~: (a) That an existing rule is
13 not within the intent of the legislature as expressed by the statute
14 which the rule implements, (b) that the rule has not been adopted in
15 accordance with all applicable provisions of law, including ~~((section~~
16 ~~4 of this act if the rule was adopted after the effective date of~~
17 ~~section 4 of this act and))~~ chapter 19.85 RCW, (c) that an agency is
18 using a policy statement, guideline, or issuance in place of a rule, or
19 (d) that the policy statement, guideline, or issuance is outside of
20 legislative intent, the agency affected shall be notified of such
21 finding and the reasons therefor. Within thirty days of the receipt of
22 the ~~((rules review))~~ regulatory oversight committee's notice, the
23 agency shall file notice of a hearing on the ~~((rules review))~~
24 regulatory oversight committee's finding with the code reviser and mail
25 notice to all persons who have made timely request of the agency for
26 advance notice of its rule-making proceedings as provided in RCW
27 34.05.320. The agency's notice shall include the ~~((rules review))~~
28 regulatory oversight committee's findings and reasons therefor, and
29 shall be published in the Washington state register in accordance with
30 the provisions of chapter 34.08 RCW.

31 (4) The agency shall consider fully all written and oral
32 submissions regarding (a) whether the rule in question is within the
33 intent of the legislature as expressed by the statute which the rule
34 implements, (b) whether the rule was adopted in accordance with all
35 applicable provisions of law, including ~~((section 4 of this act if the~~
36 ~~rule was adopted after the effective date of section 4 of this act~~
37 ~~and))~~ chapter 19.85 RCW, (c) whether the agency is using a policy
38 statement, guideline, or issuance in place of a rule, or (d) whether

1 the policy statement, guideline, or issuance is within the legislative
2 intent.

3 **Sec. 412.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to
4 read as follows:

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

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

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

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

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

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

22 (6) The reference shall be removed from a rule published in the
23 Washington Administrative Code if a subsequent adjudicatory proceeding
24 determines that the rule is within the intent of the legislature or was
25 adopted in accordance with all applicable laws, whichever was the
26 objection of the ((rules review)) regulatory oversight committee.

27 **Sec. 413.** RCW 34.05.650 and 1988 c 288 s 605 are each amended to
28 read as follows:

29 The ((rules review)) regulatory oversight committee may recommend
30 to the legislature that the original enabling legislation serving as
31 authority for the adoption of any rule reviewed by the committee be
32 amended or repealed in such manner as the committee deems advisable.
33 The committee may submit its recommendation in the form of request
34 legislation.

35 **Sec. 414.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
36 read as follows:

1 (1) Except as provided in subsection (2) of this section, it is the
2 express policy of the legislature that establishment of procedures for
3 review of administrative rules by the legislature and the notice of
4 objection required by RCW 34.05.630(2) and 34.05.640(2) (each as
5 recodified by this act) in no way serves to establish a presumption as
6 to the legality or constitutionality of a rule in any subsequent
7 judicial proceedings interpreting such rules.

8 (2) An election by the regulatory oversight committee to recommend
9 suspension of a rule, whether or not the suspension is approved by the
10 governor, establishes a presumption in any subsequent judicial review
11 of the rule that the rule is invalid. The burden of demonstrating the
12 rule's validity is then on the adopting agency.

13 NEW SECTION. Sec. 415. (1) The regulatory oversight committee may
14 make reports from time to time to the members of the legislature and to
15 the public with respect to any of its findings or recommendations. The
16 committee shall keep complete minutes of its meetings.

17 (2) The committee may establish ad hoc advisory boards, including
18 but not limited to, ad hoc economics or science advisory boards to
19 assist the committee in its rules review functions.

20 (3) The committee may hire staff as needed to perform functions
21 under this chapter.

22 NEW SECTION. Sec. 416. In the discharge of any duty imposed under
23 this chapter, the regulatory oversight committee or any personnel under
24 its authority may examine and inspect all properties, equipment,
25 facilities, files, records, and accounts of any state office,
26 department, institution, board, committee, commission, or agency, and
27 administer oaths, issue subpoenas, compel the attendance of witnesses
28 and the production of any papers, books, accounts, documents, and
29 testimony, and cause the deposition of witnesses, either residing
30 within or without the state, to be taken in the manner prescribed by
31 law for taking depositions in civil actions in the superior courts.

32 NEW SECTION. Sec. 417. In case of the failure on the part of any
33 person to comply with any subpoena issued in behalf of the regulatory
34 oversight committee, or on the refusal of any witness to testify to any
35 matters regarding which he or she may be lawfully interrogated, it is
36 the duty of the superior court of any county, or of the judge thereof,

1 on application of the committee, to compel obedience by proceedings for
2 contempt, as in the case of disobedience of the requirements of a
3 subpoena issued from the court or a refusal to testify in the court.

4 **Sec. 418.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to
5 read as follows:

6 It is the policy of the legislature that employees should be
7 encouraged to disclose, to the extent not expressly prohibited by law,
8 improper governmental actions, and it is the intent of the legislature
9 to protect the rights of state employees making these disclosures. It
10 is also the policy of the legislature that employees should be
11 encouraged to identify rules warranting review or provide information
12 to the legislative regulatory oversight committee, and it is the intent
13 of the legislature to protect the rights of these employees.

14 **Sec. 419.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to
15 read as follows:

16 As used in this chapter, the terms defined in this section shall
17 have the meanings indicated unless the context clearly requires
18 otherwise.

19 (1) "Auditor" means the office of the state auditor.

20 (2) "Employee" means any individual employed or holding office in
21 any department or agency of state government.

22 (3)(a) "Improper governmental action" means any action by an
23 employee:

24 (i) Which is undertaken in the performance of the employee's
25 official duties, whether or not the action is within the scope of the
26 employee's employment; and

27 (ii) Which is in violation of any state law or rule, is an abuse of
28 authority, is of substantial and specific danger to the public health
29 or safety, or is a gross waste of public funds.

30 (b) "Improper governmental action" does not include personnel
31 actions including but not limited to employee grievances, complaints,
32 appointments, promotions, transfers, assignments, reassignments,
33 reinstatements, restorations, reemployments, performance evaluations,
34 reductions in pay, dismissals, suspensions, demotions, violations of
35 the state civil service law, alleged labor agreement violations,
36 reprimands, or any action which may be taken under chapter 41.06 ((or

1 28B.16)) RCW, or other disciplinary action except as provided in RCW
2 42.40.030.

3 (4) "Use of official authority or influence" includes taking,
4 directing others to take, recommending, processing, or approving any
5 personnel action such as an appointment, promotion, transfer,
6 assignment, reassignment, reinstatement, restoration, reemployment,
7 performance evaluation, or any adverse action under chapter 41.06 ((~~or~~
8 28B.16)) RCW, or other disciplinary action.

9 (5) "Whistleblower" means an employee who in good faith reports
10 alleged improper governmental action to the auditor, initiating an
11 investigation under RCW 42.40.040. For purposes of the provisions of
12 this chapter and chapter 49.60 RCW relating to reprisals and
13 retaliatory action, the term "whistleblower" also means: (a) An
14 employee who in good faith provides information to the auditor in
15 connection with an investigation under RCW 42.40.040 and an employee
16 who is believed to have reported alleged improper governmental action
17 to the auditor or to have provided information to the auditor in
18 connection with an investigation under RCW 42.40.040 but who, in fact,
19 has not reported such action or provided such information; or (b) an
20 employee who in good faith identifies rules warranting review or
21 provides information to the legislative regulatory oversight committee,
22 and an employee who is believed to have identified rules warranting
23 review or provided information to the legislative regulatory oversight
24 committee but who, in fact, has not done so.

25 **Sec. 420.** RCW 42.40.030 and 1989 c 284 s 2 are each amended to
26 read as follows:

27 (1) An employee shall not directly or indirectly use or attempt to
28 use the employee's official authority or influence for the purpose of
29 intimidating, threatening, coercing, commanding, influencing, or
30 attempting to intimidate, threaten, coerce, command, or influence any
31 individual for the purpose of interfering with the right of the
32 individual to: (a) Disclose to the auditor (or representative thereof)
33 information concerning improper governmental action; or (b) identify
34 rules warranting review or provide information to the legislative
35 regulatory oversight committee.

36 (2) Nothing in this section authorizes an individual to disclose
37 information otherwise prohibited by law.

1 **Sec. 421.** RCW 43.31.086 and 1994 c 249 s 15 are each amended to
2 read as follows:

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

6 (1) Develop agency guidelines for the preparation of a small
7 business economic impact statement and compliance with chapter 19.85
8 RCW;

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

11 (3) Advise the (~~joint administrative rules review~~) legislative
12 regulatory oversight committee on whether an agency reasonably assessed
13 the costs of a proposed rule and reduced the costs for small business
14 as required by chapter 19.85 RCW; and

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

24 **Sec. 422.** RCW 43.180.110 and 1983 c 161 s 11 are each amended to
25 read as follows:

26 The commission shall submit the initial policies adopted under RCW
27 43.180.090 and 43.180.100 to the chief clerk of the house and the
28 secretary of the senate for transmittal to and review by the
29 appropriate standing committees and the (~~joint administrative rules~~
30 ~~review~~) legislative regulatory oversight committee. By January 1,
31 1984, the commission shall have adopted policies in the form of rules
32 (~~and regulations~~) under chapter 34.05 RCW. Such rules (~~and~~
33 ~~regulations~~) may only be changed or revised in accordance with chapter
34 34.05 RCW.

35

PART 5

36

TECHNICAL ASSISTANCE

1 NEW SECTION. **Sec. 501.** A new section is added to chapter 34.05

2 RCW to read as follows:

3 (1) An agency listed in subsection (6) of this section may
4 immediately impose a penalty otherwise provided for by law for a
5 violation of an administrative rule only if the entity on which the
6 penalty will be imposed has willfully violated the rule. Where a
7 penalty is otherwise provided, but may not be imposed under this
8 subsection, the agency shall issue a statement of deficiency.

9 (2) A statement of deficiency shall specify: (a) The particular
10 rule violated; (b) suggestions on actions the entity may take to comply
11 with the rule; (c) agency personnel designated by the agency to provide
12 technical assistance regarding compliance with the rule; and (d) a
13 negotiated date when the entity will be revisited by technical
14 assistance personnel. At the revisit, technical assistance personnel
15 shall assess compliance, make further recommendations for action, and
16 set a date for compliance. The date specified shall provide a
17 reasonable period of time for the entity to comply with the rule,
18 considering the size of the entity, its available resources, and the
19 threat posed by the violation. If the entity fails to comply with the
20 rule by the date specified, it shall be subject to the penalty
21 otherwise provided in law.

22 (3) Subsection (1) of this section shall not apply to any violation
23 that places a person in danger of death or substantial bodily harm, is
24 causing or is likely to cause significant environmental harm, or has
25 caused or is likely to cause physical damage to the property of others
26 in an amount exceeding one thousand dollars.

27 (4) The state, the agency, and officers or employees of the state
28 shall not be liable for damages to any person to the extent that
29 liability is asserted to arise from the technical assistance provided
30 under this section, or if liability is asserted to arise from the
31 failure of the agency to supply technical assistance.

32 (5) Where a state agency has been delegated authority to enforce
33 federal laws and regulations, the agency shall submit a written
34 petition to the appropriate federal agency for authorization to comply
35 with this section for all inspections while retaining the state's
36 federal delegation. If the federal agency fails to provide the
37 authorization, the agency shall comply with this section in all
38 inspections except the minimum number of inspections required by the

1 federal government for the program delegated to the state of Washington
2 for enforcement.

3 (6) This section shall apply to the departments of health, labor
4 and industries, ecology, revenue, licensing, social and health
5 services, natural resources when enforcing chapter 76.09 RCW and rules
6 of the commissioner of public lands, and fish and wildlife, the
7 employment security department, and the office of insurance
8 commissioner.

9 (7) Technical assistance personnel in the departments of health,
10 labor and industries, ecology, revenue, licensing, social and health
11 services, natural resources enforcing chapter 76.09 RCW and rules of
12 the commissioner of public lands, and fish and wildlife, the employment
13 security department, and the office of insurance commissioner are
14 authorized to impose a penalty for the violation of an administrative
15 rule when: (a) A determination is made that the violation was willful
16 or meets one of the criteria listed in subsection (3) of this section;
17 or (b) on or after the compliance date provided for under subsection
18 (2) of this section.

19 (8) As used in subsections (1) and (7) of this section, an entity
20 acts "willfully" when the owner or operator: (a) Is aware of a fact,
21 facts, or circumstances or result described by a rule defining a
22 violation; or (b) has information which would lead a reasonable person
23 to believe that facts exist which facts are described by a rule
24 defining a violation.

25 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.20A
26 RCW to read as follows:

27 (1) All enforcement personnel positions in the department shall be
28 abolished. These positions shall be converted to technical assistance
29 positions.

30 (2) This section shall not apply where enforcement personnel are
31 required to maintain state authority to administer a federally
32 delegated program.

33 NEW SECTION. **Sec. 503.** A new section is added to chapter 43.21A
34 RCW to read as follows:

35 (1) All enforcement personnel positions in the department shall be
36 abolished. These positions shall be converted to technical assistance
37 personnel positions.

1 (2) This section shall not apply where enforcement personnel are
2 required to maintain state authority to administer a federally
3 delegated program.

4 NEW SECTION. **Sec. 504.** A new section is added to chapter 43.22
5 RCW to read as follows:

6 (1) All enforcement personnel positions in the department of labor
7 and industries shall be abolished. These positions shall be converted
8 to technical assistance personnel positions.

9 (2) This section shall not apply where enforcement personnel are
10 required to maintain state authority to administer a federally
11 delegated program.

12 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.24
13 RCW to read as follows:

14 (1) All enforcement personnel positions in the department of
15 licensing shall be abolished. These positions shall be converted to
16 technical assistance personnel positions.

17 (2) This section shall not apply where enforcement personnel are
18 required to maintain state authority to administer a federally
19 delegated program.

20 NEW SECTION. **Sec. 506.** A new section is added to chapter 43.30
21 RCW to read as follows:

22 (1) All enforcement personnel positions in the department that
23 pertain to the enforcement of rules adopted by the commissioner of
24 public lands shall be abolished. These positions shall be converted to
25 technical assistance positions.

26 (2) This section shall not apply where enforcement personnel are
27 required to maintain state authority to administer a federally
28 delegated program.

29 NEW SECTION. **Sec. 507.** A new section is added to chapter 43.70
30 RCW to read as follows:

31 (1) All enforcement personnel positions in the department shall be
32 abolished. These positions shall be converted to technical assistance
33 personnel positions.

1 (2) This section shall not apply where enforcement personnel are
2 required to maintain state authority to administer a federally
3 delegated program.

4 NEW SECTION. **Sec. 508.** A new section is added to chapter 43.300
5 RCW to read as follows:

6 (1) All enforcement personnel positions in the department shall be
7 abolished. These positions shall be converted to technical assistance
8 personnel positions.

9 (2) This section shall not apply where enforcement personnel are
10 required to maintain state authority to administer a federally
11 delegated program.

12 NEW SECTION. **Sec. 509.** A new section is added to chapter 48.02
13 RCW to read as follows:

14 (1) All enforcement personnel positions in the office of the
15 insurance commissioner shall be abolished. These positions shall be
16 converted to technical assistance personnel positions.

17 (2) This section shall not apply where enforcement personnel are
18 required to maintain state authority to administer a federally
19 delegated program.

20 NEW SECTION. **Sec. 510.** A new section is added to chapter 50.08
21 RCW to read as follows:

22 (1) All enforcement personnel positions in the employment security
23 department shall be abolished. These positions shall be converted to
24 technical assistance personnel positions.

25 (2) This section shall not apply where enforcement personnel are
26 required to maintain state authority to administer a federally
27 delegated program.

28 NEW SECTION. **Sec. 511.** A new section is added to chapter 76.09
29 RCW to read as follows:

30 (1) All forest practices enforcement personnel positions in the
31 department shall be abolished. These positions shall be converted to
32 technical assistance positions.

33 (2) This section shall not apply where enforcement personnel are
34 required to maintain state authority to administer a federally
35 delegated program.

1 organization described in section 501(c)(3) of the federal internal
2 revenue code of 1954 as exempt from taxation under section 501(a) of
3 the code and a cooperative association as defined in section 15(a) of
4 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
5 party regardless of the net worth of such organization or cooperative
6 association; or (c) a sole owner of an unincorporated business, or a
7 partnership, corporation, association, or organization, having not more
8 than one hundred employees at the time the initial petition for
9 judicial review was filed.

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

11 NEW SECTION. **Sec. 602.** A new section is added to chapter 4.84 RCW
12 to read as follows:

13 If upon judicial review a rule is declared invalid and the party
14 that challenged the rule is a qualified party, the party shall be
15 awarded fees and other expenses not to exceed ten thousand dollars.

16 NEW SECTION. **Sec. 603.** A new section is added to chapter 4.84 RCW
17 to read as follows:

18 Fees and other expenses awarded under section 602 of this act shall
19 be paid by the agency that adopted the invalid rule from operating
20 funds appropriated to the agency within sixty days. Agencies paying
21 fees and other expenses pursuant to section 602 of this act shall
22 report all payments to the office of financial management within five
23 days of paying the fees and other expenses. Fees and other expenses
24 awarded by the court shall be subject to chapter 39.76 RCW and shall be
25 deemed payable on the date the court announces the award.

26 NEW SECTION. **Sec. 604.** A new section is added to chapter 43.88
27 RCW to read as follows:

28 The office of financial management shall report annually to the
29 legislature on the amount of fees and other expenses awarded during the
30 preceding fiscal year under section 602 of this act. The report shall
31 describe the number, nature, and amount of the awards, the claims
32 involved in the controversy, and other relevant information that may
33 aid the legislature in evaluating the scope and impact of the awards.

34 **PART 7**
35 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 701.** (1) The following sections are each
2 recodified as a new chapter in Title 44 RCW:

3 RCW 34.05.610

4 RCW 34.05.620

5 RCW 34.05.630

6 RCW 34.05.640

7 RCW 34.05.650

8 RCW 34.05.660

9 (2) Sections 403 through 406, 408, and 415 through 417 of this act
10 are each added to the chapter created in this section.

11 NEW SECTION. **Sec. 702.** This act shall apply prospectively only
12 and not retroactively. Rules adopted and filed with the code reviser
13 prior to the effective date of this act shall be subject to judicial
14 review under the statutory authority and statutory rule-making
15 procedures existing at the time the rule was adopted.

16 NEW SECTION. **Sec. 703.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 704.** This act shall be submitted to the people
21 for their adoption and ratification, or rejection, at the next
22 succeeding general election to be held in this state, in accordance
23 with Article II, section 1 of the state Constitution, as amended, and
24 the laws adopted to facilitate the operation thereof.

--- END ---