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SECOND SUBSTITUTE HOUSE BILL 2221

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State of Washington

54th Legislature

1996 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Reams, Schoesler, Mastin, Koster, Campbell, Horn, L. Thomas, Sheahan, D. Schmidt, Elliot, Mitchell, Thompson, Stevens, Goldsmith, Backlund, Hargrove and McMahan)

Read first time 02/05/96.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,  
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 34.05.350, 34.05.380,  
3 34.05.328, 34.05.230, 34.05.570, 4.84.340, and 43.41.110; adding a new  
4 section to chapter 43.22 RCW; adding new sections to chapter 34.05 RCW;  
5 adding a new section to chapter 4.84 RCW; adding a new chapter to Title  
6 43 RCW; creating a new section; and declaring an emergency.

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

8

**PART I**

9

**GRANTS OF RULE-MAKING AUTHORITY**

10 **Sec. 101.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to  
11 read as follows:

12 (1) The legislature hereby finds and declares that the forest land  
13 resources are among the most valuable of all resources in the state;  
14 that a viable forest products industry is of prime importance to the  
15 state's economy; that it is in the public interest for public and  
16 private commercial forest lands to be managed consistent with sound  
17 policies of natural resource protection; that coincident with  
18 maintenance of a viable forest products industry, it is important to

1 afford protection to forest soils, fisheries, wildlife, water quantity  
2 and quality, air quality, recreation, and scenic beauty.

3 (2) The legislature further finds and declares it to be in the  
4 public interest of this state to create and maintain through the  
5 adoption of this chapter a comprehensive state-wide system of laws and  
6 forest practices regulations which will achieve the following purposes  
7 and policies:

8 (a) Afford protection to, promote, foster and encourage timber  
9 growth, and require such minimum reforestation of commercial tree  
10 species on forest lands as will reasonably utilize the timber growing  
11 capacity of the soil following current timber harvest;

12 (b) Afford protection to forest soils and public resources by  
13 utilizing all reasonable methods of technology in conducting forest  
14 practices;

15 (c) Recognize both the public and private interest in the  
16 profitable growing and harvesting of timber;

17 (d) Promote efficiency by permitting maximum operating freedom  
18 consistent with the other purposes and policies stated herein;

19 (e) Provide for regulation of forest practices so as to avoid  
20 unnecessary duplication in such regulation;

21 (f) Provide for interagency input and intergovernmental and tribal  
22 coordination and cooperation;

23 (g) Achieve compliance with all applicable requirements of federal  
24 and state law with respect to nonpoint sources of water pollution from  
25 forest practices;

26 (h) To consider reasonable land use planning goals and concepts  
27 contained in local comprehensive plans and zoning regulations; and

28 (i) Foster cooperation among managers of public resources, forest  
29 landowners, Indian tribes and the citizens of the state.

30 The authority of the board to adopt forest practices rules is  
31 prescribed by this subsection (2) and RCW 76.09.040. The board may not  
32 adopt forest practices rules based solely on any other section of law  
33 stating a statute's intent or purpose, on the enabling provisions of  
34 the statute establishing the agency, or on any combination of such  
35 provisions.

36 (3) The legislature further finds and declares that it is also in  
37 the public interest of the state to encourage forest landowners to  
38 undertake corrective and remedial action to reduce the impact of mass  
39 earth movements and fluvial processes.

1 (4) The legislature further finds and declares that it is in the  
2 public interest that the applicants for state forest practice permits  
3 should assist in paying for the cost of review and permitting necessary  
4 for the environmental protection of these resources.

5 **Sec. 102.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to  
6 read as follows:

7 (1) Where necessary to accomplish the purposes and policies  
8 specifically stated in RCW 76.09.010(2), and to implement the  
9 provisions of this chapter, the board shall (~~promulgate~~) adopt forest  
10 practices (~~regulations~~) rules pursuant to chapter 34.05 RCW and in  
11 accordance with the procedures enumerated in this section that:

12 (a) Establish minimum standards for forest practices;

13 (b) Provide procedures for the voluntary development of resource  
14 management plans which may be adopted as an alternative to the minimum  
15 standards in (a) of this subsection if the plan is consistent with the  
16 purposes and policies specifically stated in RCW 76.09.010(2) and the  
17 plan meets or exceeds the objectives of the minimum standards;

18 (c) Set forth necessary administrative provisions; and

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

21 Forest practices (~~regulations~~) rules pertaining to water quality  
22 protection shall be (~~promulgated~~) adopted individually by the board  
23 and by the department of ecology after they have reached agreement with  
24 respect thereto. All other forest practices (~~regulations~~) rules  
25 shall be (~~promulgated~~) adopted by the board.

26 Forest practices (~~regulations~~) rules shall be administered and  
27 enforced by the department except as otherwise provided in this  
28 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted  
29 and administered so as to give consideration to all purposes and  
30 policies specifically set forth in RCW 76.09.010(2).

31 (~~(2)~~) (3) The board shall prepare proposed forest practices  
32 (~~regulations~~) rules. In addition to any forest practices  
33 (~~regulations~~) rules relating to water quality protection proposed by  
34 the board, the department of ecology shall prepare proposed forest  
35 practices (~~regulations~~) rules relating to water quality protection.

36 Prior to initiating the rule making process, the proposed  
37 (~~regulations~~) rules shall be submitted for review and comments to the  
38 department of fish and wildlife and to the counties of the state.

1 After receipt of the proposed forest practices (~~((regulations))~~) rules,  
2 the department of fish and wildlife and the counties of the state shall  
3 have thirty days in which to review and submit comments to the board,  
4 and to the department of ecology with respect to its proposed  
5 (~~((regulations))~~) rules relating to water quality protection. After the  
6 expiration of such thirty day period the board and the department of  
7 ecology shall jointly hold one or more hearings on the proposed  
8 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such  
9 hearing(s) any county may propose specific forest practices  
10 (~~((regulations))~~) rules relating to problems existing within such county.  
11 The board and the department of ecology may adopt such proposals if  
12 they find the proposals are consistent with the purposes and policies  
13 of this chapter.

14 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.22  
15 RCW to read as follows:

16 For rules adopted after the effective date of this section, the  
17 director of the department of labor and industries may not rely solely  
18 on a statute's statement of intent or purpose, on the enabling  
19 provisions of the statute establishing the agency, or on any  
20 combination of such provisions, for statutory authority to adopt any  
21 rule: PROVIDED, That this section shall not apply to rules adopted  
22 pursuant to chapter 39.12 RCW.

23 **Sec. 104.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to  
24 read as follows:

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

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

30 (3) The commissioner may:

31 (a) Make reasonable rules and regulations for effectuating any  
32 provision of this code, except those relating to his or her election,  
33 qualifications, or compensation: PROVIDED, That the commissioner may  
34 not adopt rules after the effective date of this section that are based  
35 solely on this statute, or on a statute's statement of intent or  
36 purpose, or on the enabling provisions of the statute establishing the  
37 agency, or any combination of such provisions, for statutory authority

1 to adopt any rule, except rules defining or clarifying terms in, or  
2 procedures necessary to the implementation of a statute. No such rules  
3 and regulations shall be effective prior to their being filed for  
4 public inspection in the commissioner's office.

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

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

10 **Sec. 105.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to  
11 read as follows:

12 The insurance commissioner shall make reasonable regulations in aid  
13 of the administration of this chapter which may include, but shall not  
14 be limited to regulations concerning the maintenance of adequate  
15 insurance, bonds, or cash deposits, information required of  
16 registrants, and methods of expediting speedy and fair payments to  
17 claimants: PROVIDED, That the commissioner may not adopt rules after  
18 the effective date of this section that are based solely on this  
19 section, a statute's statement of intent or purpose, or on the enabling  
20 provisions of the statute establishing the agency, or any combination  
21 of such provisions, for statutory authority to adopt any rule, except  
22 rules defining or clarifying terms in, or procedures necessary to the  
23 implementation of a statute.

24 NEW SECTION. **Sec. 106.** A new section is added to chapter 34.05  
25 RCW under the subchapter heading "Part III" to read as follows:

26 No board or commission established under Title 18 RCW whose sole  
27 function is to perform regulatory or licensing functions with respect  
28 to a specific profession or occupation, other than a health-related  
29 profession or occupation, may adopt or enforce a rule that establishes  
30 education requirements in excess of a baccalaureate degree in order to  
31 qualify for licensing unless those requirements are mandated by  
32 statute.

33 **Sec. 107.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each  
34 amended to read as follows:

35 The commissioner may adopt, in accordance with the provisions of  
36 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)

1 rules and regulations as necessary or proper to carry out the  
2 provisions of this chapter: PROVIDED, That the commissioner may not  
3 adopt rules after the effective date of this section that are based  
4 solely on this section, a statute's statement of intent or purpose, or  
5 on the enabling provisions of the statute establishing the agency, or  
6 any combination of such provisions, for statutory authority to adopt  
7 any rule, except rules defining or clarifying terms in, or procedures  
8 necessary to the implementation of a statute. Nothing in this chapter  
9 shall be construed to prohibit the commissioner from requiring changes  
10 in procedures previously approved by ~~((him))~~ the commissioner.

11 **PART II**

12 **RULE-MAKING REQUIREMENTS**

13 **Sec. 201.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to  
14 read as follows:

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

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

21 (b) That state or federal law or federal rule or a federal deadline  
22 for state receipt of federal funds requires immediate adoption of a  
23 rule,

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

30 (2) An emergency rule adopted under this section takes effect upon  
31 filing with the code reviser, unless a later date is specified in the  
32 order of adoption, and may not remain in effect for longer than one  
33 hundred twenty days after filing. Identical or substantially similar  
34 emergency rules may not be adopted in sequence unless conditions have  
35 changed or the agency has filed notice of its intent to adopt the rule  
36 as a permanent rule, and is actively undertaking the appropriate  
37 procedures to adopt the rule as a permanent rule. This section does

1 not relieve any agency from compliance with any law requiring that its  
2 permanent rules be approved by designated persons or bodies before they  
3 become effective.

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

16 (4) In adopting an emergency rule, the agency shall comply with  
17 section 4 of this act or provide a written explanation for its failure  
18 to do so.

19 **Sec. 202.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to  
20 read as follows:

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

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

34 (3) A rule may become effective immediately upon its filing with  
35 the code reviser or on any subsequent date earlier than that  
36 established by subsection (2) of this section, if the agency  
37 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 social and health services, department of fish  
18 and wildlife, or the office of the insurance commissioner. A rule made  
19 ineffective under this subsection may be readopted according to the  
20 procedures established in this chapter.

21 **Sec. 203.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to  
22 read as follows:

23 (1) Before adopting a rule described in subsection (5) of this  
24 section, an agency shall:

25 (a) Clearly state in detail the general goals and specific  
26 objectives of the statute that the rule implements;

27 (b) Determine that the rule is needed to achieve the general goals  
28 and specific objectives stated under (a) of this subsection, and  
29 analyze alternatives to rule making and the consequences of not  
30 adopting the rule;

31 (c) Determine that the probable benefits of the rule are greater  
32 than its probable costs, taking into account both the qualitative and  
33 quantitative benefits and costs and the specific directives of the  
34 statute being implemented;

35 (d) Determine, after considering alternative versions of the rule  
36 and the analysis required under (b) and (c) of this subsection, that  
37 the rule being adopted is the least burdensome alternative for those

1 required to comply with it that will achieve the general goals and  
2 specific objectives stated under (a) of this subsection;

3 (e) Determine that the rule does not require those to whom it  
4 applies to take an action that violates requirements of another federal  
5 or state law;

6 (f) Determine that the rule does not impose more stringent  
7 performance requirements on private entities than on public entities  
8 unless required to do so by federal or state law;

9 (g) Determine if the rule differs from any federal regulation or  
10 statute applicable to the same activity or subject matter and, if so,  
11 determine that the difference is justified by the following:

12 (i) A state statute that explicitly allows the agency to differ  
13 from federal standards; or

14 (ii) Substantial evidence that the difference is necessary to  
15 achieve the general goals and specific objectives stated under (a) of  
16 this subsection; and

17 (h) Coordinate the rule, to the maximum extent practicable, with  
18 other federal, state, and local laws applicable to the same activity or  
19 subject matter.

20 (2) In making its determinations pursuant to subsection (1) (b)  
21 through (g) of this section, the agency shall place in the rule-making  
22 file documentation of sufficient quantity and quality so as to persuade  
23 a reasonable person that the determinations are justified.

24 (3) Before adopting rules described in subsection (5) of this  
25 section, an agency shall place in the rule-making file a rule  
26 implementation plan for rules filed under each adopting order. The  
27 plan shall describe how the agency intends to:

28 (a) Implement and enforce the rule, including a description of the  
29 resources the agency intends to use;

30 (b) Inform and educate affected persons about the rule;

31 (c) Promote and assist voluntary compliance; and

32 (d) Evaluate whether the rule achieves the purpose for which it was  
33 adopted, including, to the maximum extent practicable, the use of  
34 interim milestones to assess progress and the use of objectively  
35 measurable outcomes.

36 (4) After adopting a rule described in subsection (5) of this  
37 section regulating the same activity or subject matter as another  
38 provision of federal or state law, an agency shall do all of the  
39 following:

1 (a) Provide to the business assistance center a list citing by  
2 reference the other federal and state laws that regulate the same  
3 activity or subject matter;

4 (b) Coordinate implementation and enforcement of the rule with the  
5 other federal and state entities regulating the same activity or  
6 subject matter by making every effort to do one or more of the  
7 following:

8 (i) Deferring to the other entity;

9 (ii) Designating a lead agency; or

10 (iii) Entering into an agreement with the other entities specifying  
11 how the agency and entities will coordinate implementation and  
12 enforcement.

13 If the agency is unable to comply with this subsection (4)(b), the  
14 agency shall report to the legislature pursuant to (c) of this  
15 subsection;

16 (c) Report to the joint administrative rules review committee:

17 (i) The existence of any overlap or duplication of other federal or  
18 state laws, any differences from federal law, and any known overlap,  
19 duplication, or conflict with local laws; and

20 (ii) Make recommendations for any legislation that may be necessary  
21 to eliminate or mitigate any adverse effects of such overlap,  
22 duplication, or difference.

23 (5)(a) Except as provided in (b) of this subsection, this section  
24 applies to:

25 (i) Significant legislative rules of the departments of ecology,  
26 labor and industries, health, social and health services, revenue, and  
27 natural resources, the employment security department, the forest  
28 practices board, the office of the insurance commissioner, and to the  
29 legislative rules of the department of fish and wildlife implementing  
30 chapter 75.20 RCW; and

31 (ii) Any rule of any agency, if this section is voluntarily made  
32 applicable to the rule by the agency, or is made applicable to the rule  
33 by a majority vote of the joint administrative rules review committee  
34 within forty-five days of receiving the notice of proposed rule making  
35 under RCW 34.05.320.

36 (b) This section does not apply to:

37 (i) Emergency rules adopted under RCW 34.05.350;

38 (ii) Rules relating only to internal governmental operations that  
39 are not subject to violation by a nongovernment party;

1 (iii) Rules adopting or incorporating by reference without material  
2 change federal statutes or regulations, Washington state statutes,  
3 rules of other Washington state agencies, shoreline master programs  
4 other than those programs governing shorelines of state-wide  
5 significance, or, as referenced by Washington state law, national  
6 consensus codes that generally establish industry standards, if the  
7 material adopted or incorporated regulates the same subject matter and  
8 conduct as the adopting or incorporating rule;

9 (iv) Rules that only correct typographical errors, make address or  
10 name changes, or clarify language of a rule without changing its  
11 effect;

12 (v) Rules the content of which is explicitly and specifically  
13 dictated by statute; or

14 (vi) Rules that set or adjust fees or rates pursuant to legislative  
15 standards.

16 (c) For purposes of this subsection:

17 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
18 (A) any procedure, practice, or requirement relating to any agency  
19 hearings; (B) any filing or related process requirement for making  
20 application to an agency for a license or permit; or (C) any policy  
21 statement pertaining to the consistent internal operations of an  
22 agency.

23 (ii) An "interpretive rule" is a rule, the violation of which does  
24 not subject a person to a penalty or sanction, that sets forth the  
25 agency's interpretation of statutory provisions it administers.

26 (iii) A "significant legislative rule" is a rule other than a  
27 procedural or interpretive rule that (A) adopts substantive provisions  
28 of law pursuant to delegated legislative authority, the violation of  
29 which subjects a violator of such rule to a penalty or sanction; (B)  
30 establishes, alters, or revokes any qualification or standard for the  
31 issuance, suspension, or revocation of a license or permit; or (C)  
32 adopts a new, or makes significant amendments to, a policy or  
33 regulatory program.

34 (d) In the notice of proposed rule making under RCW 34.05.320, an  
35 agency shall state whether this section applies to the proposed rule  
36 pursuant to (a)(i) of this subsection, or if the agency will apply this  
37 section voluntarily.

38 (6) By January 31, 1996, and by January 31st of each even-numbered  
39 year thereafter, the office of financial management, after consulting

1 with state agencies, counties, and cities, and business, labor, and  
2 environmental organizations, shall report to the governor and the  
3 legislature regarding the effects of this section on the regulatory  
4 system in this state. The report shall document:

5 (a) The rules proposed to which this section applied and to the  
6 extent possible, how compliance with this section affected the  
7 substance of the rule, if any, that the agency ultimately adopted;

8 (b) The costs incurred by state agencies in complying with this  
9 section;

10 (c) Any legal action maintained based upon the alleged failure of  
11 any agency to comply with this section, the costs to the state of such  
12 action, and the result;

13 (d) The extent to which this section has adversely affected the  
14 capacity of agencies to fulfill their legislatively prescribed mission;

15 (e) The extent to which this section has improved the acceptability  
16 of state rules to those regulated; and

17 (f) Any other information considered by the office of financial  
18 management to be useful in evaluating the effect of this section.

19 NEW SECTION. **Sec. 204.** A new section is added to chapter 34.05  
20 RCW under the subchapter heading "Part III" to read as follows:

21 (1) Each agency subject to RCW 34.05.380(5) shall submit to the  
22 code reviser, no later than June 30th of each year, according to  
23 procedures and time lines established by the code reviser, rules that  
24 it determines can be readopted through an expedited process provided  
25 for in this subsection. An agency shall file a copy of a preproposal  
26 notice of inquiry, as provided in RCW 34.05.310(1), that identifies the  
27 rule as one that is proposed for expedited readoption. An agency may  
28 propose the expedited readoption of rules which are unopposed for  
29 expedited readoption.

30 (2) The agency shall send a copy of the preproposal notice of  
31 inquiry to any person who has requested notification of copies of  
32 proposals for the expedited readoption of rules or of agency rule  
33 making. The preproposal notice of inquiry shall include a statement  
34 that any person who objects to the readoption of the rule must file a  
35 written objection to the readoption within thirty days after the  
36 preproposal notice of inquiry is published. The notice of inquiry  
37 shall also include an explanation of the reasons the agency believes  
38 the expedited readoption of the rule is appropriate. The code reviser

1 shall publish all rules proposed for expedited readoption in a separate  
2 section of a regular edition of the Washington state register or in a  
3 special edition of the Washington state register. The publication  
4 shall be not later than July 31st of each year, or in the first  
5 register published after that date.

6 (3) Any person may file a written objection to the expedited  
7 readoption of a rule. The notice shall be filed with the agency rules  
8 coordinator within thirty days after the notice of inquiry has been  
9 published in the Washington state register. The written objection need  
10 not state the reason for objecting to the expedited readoption of the  
11 rule.

12 (4) If no written objections to the expedited readoption of a rule  
13 are filed with an agency within thirty days after the preproposal  
14 notice of inquiry is published, the agency may enter an order  
15 readopting the rule without further notice or an opportunity for a  
16 public hearing. The order shall be published in the manner required in  
17 this chapter for any other order of an agency adopting, amending, or  
18 repealing a rule.

19 (5) If a written objection to the expedited readoption of a rule is  
20 filed with the agency within thirty days after the notice of inquiry  
21 has been published, the preproposal notice of inquiry published  
22 pursuant to this section shall be considered a preproposal notice of  
23 inquiry for the purposes of RCW 34.05.310(1) and the agency may  
24 initiate rule adoption proceedings in accordance with the procedures of  
25 this chapter.

26 NEW SECTION. **Sec. 205.** A new section is added to chapter 34.05  
27 RCW under the subchapter heading "Part III" to read as follows:

28 The department of ecology, employment security department,  
29 department of labor and industries, department of revenue, department  
30 of licensing, department of health, department of social and health  
31 services, department of fish and wildlife, and the office of the  
32 insurance commissioner shall review their respective rules within seven  
33 years of the effective date of this section.

34 NEW SECTION. **Sec. 206.** A new section is added to chapter 34.05  
35 RCW under the subchapter heading "Part III" to read as follows:

36 Each state agency shall prepare an annual fiscal year agenda for  
37 significant legislative rules under development. The agenda shall be

1 adopted not later than June 30th. The agenda shall be made available  
2 upon request to any person and shall be published by the agency in the  
3 Washington State Register. The agenda shall also be submitted to the  
4 director of financial management and to any other state agency that may  
5 reasonably be expected to have an interest in the subject of rules that  
6 will be developed.

7 NEW SECTION. **Sec. 207.** A new section is added to chapter 34.05  
8 RCW under the subchapter heading "Part III" to read as follows:

9 Any agency having rules that postpone full compliance with their  
10 requirements beyond ninety days after the effective date of this  
11 section shall prepare a small business economic impact statement, as  
12 defined in RCW 19.85.020(2), on such rules before requiring full  
13 compliance with the rules.

14 NEW SECTION. **Sec. 208.** A new section is added to chapter 34.05  
15 RCW under the subchapter heading "Part III" to read as follows:

16 (1) The legislature finds that when agencies use interpretive  
17 statements, policy statements, and directives instead of adopting  
18 rules, public notice and participation suffers. The legislature  
19 recognizes that the regulatory reform act was enacted to allow for  
20 responsible rule making and increase the public's opportunity to have  
21 input on the development of a rule. The legislature therefore declares  
22 that it is in the public interest to put limits on the use of agency  
23 interpretive statements, policy statements, and directives.

24 (2) An agency must cause to be published in the state register the  
25 subject matter of any new interpretive statement, policy statement, or  
26 directive at least twenty days before it takes effect.

27 (3) An agency must make the full text of a new interpretive  
28 statement, policy statement, or directive available at the public  
29 libraries throughout the state.

30 **Sec. 209.** RCW 34.05.230 and 1995 c 403 s 702 are each amended to  
31 read as follows:

32 (1) If the adoption of rules is not feasible and practicable, an  
33 agency is encouraged to advise the public of its current opinions,  
34 approaches, and likely courses of action by means of interpretive or  
35 policy statements. Current interpretive and policy statements are

1 advisory only. An agency is encouraged to convert long-standing  
2 interpretive and policy statements into rules.

3 (2) A person may petition an agency requesting the conversion of  
4 interpretive and policy statements into rules. Upon submission, the  
5 agency shall notify the joint administrative rules review committee of  
6 the petition. Within sixty days after submission of a petition, the  
7 agency shall either deny the petition in writing, stating its reasons  
8 for the denial, or initiate rule-making proceedings in accordance with  
9 this chapter.

10 (3) Each agency shall maintain a roster of interested persons,  
11 consisting of persons who have requested in writing to be notified of  
12 all interpretive and policy statements issued by that agency. Each  
13 agency shall update the roster once each year and eliminate persons who  
14 do not indicate a desire to continue on the roster. Whenever an agency  
15 issues an interpretive or policy statement, it shall send a copy of the  
16 statement to each person listed on the roster. The agency may charge  
17 a nominal fee to the interested person for this service.

18 (4) No agency interpretive statement, policy statement, or  
19 directive shall be admissible in evidence in any action relative to an  
20 interpretation of state law where the agency is not a party to the  
21 action.

22 **PART III**  
23 **JUDICIAL REVIEW**

24 **Sec. 301.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
25 read as follows:

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

28 (a) Except as provided in subsection (2) of this section, the  
29 burden of demonstrating the invalidity of agency action is on the party  
30 asserting invalidity;

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

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

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

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

9 (b) The validity of any rule may be determined upon petition for a  
10 declaratory judgment addressed to the superior court of Thurston  
11 county, when it appears that the rule, or its threatened application,  
12 interferes with or impairs or immediately threatens to interfere with  
13 or impair the legal rights or privileges of the petitioner. The burden  
14 of demonstrating the validity of any rule is on the agency. The  
15 declaratory judgment order may be entered whether or not the petitioner  
16 has first requested the agency to pass upon the validity of the rule in  
17 question.

18 (c) In a proceeding involving review of a rule, the court shall  
19 declare the rule invalid only if it finds that: The rule violates  
20 constitutional provisions; the rule exceeds the statutory authority of  
21 the agency; the rule was adopted without compliance with statutory  
22 rule-making procedures; or the rule is arbitrary and capricious.

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

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

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

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

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

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

37 (f) The agency has not decided all issues requiring resolution by  
38 the agency;

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

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

9 (i) The order is arbitrary or capricious.

10 (4) Review of other agency action.

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

13 (b) A person whose rights are violated by an agency's failure to  
14 perform a duty that is required by law to be performed may file a  
15 petition for review pursuant to RCW 34.05.514, seeking an order  
16 pursuant to this subsection requiring performance. Within twenty days  
17 after service of the petition for review, the agency shall file and  
18 serve an answer to the petition, made in the same manner as an answer  
19 to a complaint in a civil action. The court may hear evidence,  
20 pursuant to RCW 34.05.562, on material issues of fact raised by the  
21 petition and answer.

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

26 (i) Unconstitutional;

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

29 (iii) Arbitrary or capricious; or

30 (iv) Taken by persons who were not properly constituted as agency  
31 officials lawfully entitled to take such action.

#### 32 PART IV

#### 33 FEES AND EXPENSES

34 NEW SECTION. **Sec. 401.** A new section is added to chapter 4.84 RCW  
35 to read as follows:

36 If an agency chooses to appeal a decision of the superior court  
37 rendered under chapter 34.05 RCW, the agency shall pay the subsequent

1 fees and other expenses incurred by the qualified party or parties that  
2 prevailed in superior court. The amount awarded to a qualified party  
3 in an appeal under this section may not exceed the amount that may be  
4 awarded by a superior court to a qualified party under RCW 4.84.350.  
5 Payment of any fees and other expenses under this chapter shall be paid  
6 out of moneys from the agency's appropriation for administration and  
7 support services and not out of moneys for program activities or  
8 service delivery.

9 **Sec. 402.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to  
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout RCW 4.84.340 through 4.84.360 and section  
13 401 of this act.

14 (1) "Agency" means any state board, commission, department,  
15 institution of higher education, or officer, authorized by law to make  
16 rules or to conduct adjudicative proceedings, except those in the  
17 legislative or judicial branches, the governor, or the attorney general  
18 except to the extent otherwise required by law.

19 (2) "Agency action" means agency action as defined by chapter 34.05  
20 RCW.

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

34 (4) "Judicial review" means a judicial review as defined by chapter  
35 34.05 RCW.

36 (5) "Qualified party" means (a) an individual whose net worth did  
37 not exceed one million dollars at the time the initial petition for  
38 judicial review was filed or (b) a sole owner of an unincorporated

1 business, or a partnership, corporation, association, or organization  
2 whose net worth did not exceed five million dollars at the time the  
3 initial petition for judicial review was filed, except that an  
4 organization described in section 501(c)(3) of the federal internal  
5 revenue code of 1954 as exempt from taxation under section 501(a) of  
6 the code and a cooperative association as defined in section 15(a) of  
7 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party  
8 regardless of the net worth of such organization or cooperative  
9 association.

10 **PART V**

11 **REGULATORY IMPACT NOTES**

12 **Sec. 501.** RCW 43.41.110 and 1981 2nd ex.s. c 4 s 13 are each  
13 amended to read as follows:

14 The office of financial management shall:

15 (1) Provide technical assistance to the governor and the  
16 legislature in identifying needs and in planning to meet those needs  
17 through state programs and a plan for expenditures.

18 (2) Perform the comprehensive planning functions and processes  
19 necessary or advisable for state program planning and development,  
20 preparation of the budget, inter-departmental and inter-governmental  
21 coordination and cooperation, and determination of state capital  
22 improvement requirements.

23 (3) Provide assistance and coordination to state agencies and  
24 departments in their preparation of plans and programs.

25 (4) Provide general coordination and review of plans in functional  
26 areas of state government as may be necessary for receipt of federal or  
27 state funds.

28 (5) Participate with other states or subdivisions thereof in  
29 interstate planning.

30 (6) Encourage educational and research programs that further  
31 planning and provide administrative and technical services therefor.

32 (7) Carry out the provisions of RCW 43.62.010 through 43.62.050  
33 relating to the state census.

34 (8) Be the official state participant in the federal-state  
35 cooperative program for local population estimates and as such certify  
36 all city and county special censuses to be considered in the allocation  
37 of state and federal revenues.

1 (9) Be the official state center for processing and dissemination  
2 of federal decennial or quinquennial census data in cooperation with  
3 other state agencies.

4 (10) Be the official state agency certifying annexations,  
5 incorporations, or disincorporations to the United States bureau of the  
6 census.

7 (11) Review all United States bureau of the census population  
8 estimates used for federal revenue sharing purposes and provide a  
9 liaison for local governments with the United States bureau of the  
10 census in adjusting or correcting revenue sharing population estimates.

11 (12) Provide fiscal notes depicting the expected fiscal impact of  
12 proposed legislation in accordance with chapter 43.88A RCW.

13 (13) Provide regulatory impact notes depicting the expected  
14 regulatory impact of proposed legislation on businesses in accordance  
15 with sections 502 through 506 of this act.

16 (14) Be the official state agency to estimate and manage the cash  
17 flow of all public funds as provided in chapter 43.88 RCW. To this  
18 end, the office shall adopt such rules as are necessary to manage the  
19 cash flow of public funds.

20 NEW SECTION. Sec. 502. The legislature hereby recognizes the  
21 necessity of developing a uniform and coordinated procedure for  
22 determining the expected regulatory impact of bills and resolutions on  
23 businesses. The legislature also recognizes that developing the  
24 statements of regulatory impact, which shall be known as regulatory  
25 impact notes, requires the designation of a state agency to be  
26 principally responsible for the notes.

27 NEW SECTION. Sec. 503. (1) The office of financial management  
28 shall, in cooperation with appropriate legislative committees and  
29 legislative staff, establish a procedure to provide regulatory impact  
30 notes on the expected impact of bills and resolutions that increase or  
31 decrease regulations on the operation of businesses subject to the  
32 state's business and occupation taxes levied in chapter 82.04 RCW.

33 (2) A regulatory impact note shall be prepared on the basis of a  
34 sample of businesses that are regulated by the bill or resolution. The  
35 regulatory impact note shall contain an estimate of the fiscal impact  
36 to the affected businesses for the biennium in which the bill or  
37 resolution will take effect as well as a cumulative forecast of the

1 fiscal impact for the succeeding two fiscal years. If it is determined  
2 that no dollar estimate is possible, the regulatory impact note shall  
3 contain a statement to that effect.

4 (3) In establishing the regulatory impact procedure called for  
5 under this chapter, the office of financial management shall coordinate  
6 the development of regulatory impact notes with all state agencies  
7 affected.

8 NEW SECTION. **Sec. 504.** (1) After a regulatory impact note that  
9 depicts the expected regulatory impact of a bill or resolution is  
10 prepared and approved as to form, accuracy, and completeness by the  
11 office of financial management, copies shall be filed immediately with:

12 (a) The chair of the committee to which the bill or resolution was  
13 referred upon introduction in the house of origin;

14 (b) The senate committee on ways and means, or its successor; and

15 (c) The house of representatives committees on revenue and  
16 appropriations, or their successors.

17 (2) Whenever possible, the regulatory impact note shall be provided  
18 before or at the time the bill or resolution is first heard by the  
19 committee of reference in the house of origin.

20 (3) If a regulatory impact note has been prepared for a bill or  
21 resolution, a copy of the regulatory impact note shall be placed in the  
22 bill books or otherwise attached to the bill or resolution and shall  
23 remain with the bill or resolution throughout the legislative process  
24 insofar as possible.

25 NEW SECTION. **Sec. 505.** If requested by a legislator, the office  
26 of financial management shall also provide a regulatory impact note on  
27 a legislative proposal. The regulatory impact note shall be returned  
28 to the requesting legislator, and copies shall be filed with the  
29 appropriate legislative committees under section 504 of this act at the  
30 time the proposed legislation is introduced in either house.

31 NEW SECTION. **Sec. 506.** Nothing in this chapter prevents either  
32 house of the legislature from acting on a bill or resolution before it  
33 as otherwise provided by the state Constitution, by law, and by the  
34 rules and joint rules of the senate and house of representatives, nor  
35 shall the lack of a regulatory impact note as provided in this chapter

1 or an error in the accuracy of the note affect the validity of a  
2 measure otherwise duly passed by the legislature.

3 **PART VI**  
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 601.** Part headings used in this act do not  
6 constitute any part of the law.

7 NEW SECTION. **Sec. 602.** Sections 502 through 506 of this act shall  
8 constitute a new chapter in Title 43 RCW.

9 NEW SECTION. **Sec. 603.** Section 208 of this act is necessary for  
10 the immediate preservation of the public peace, health, or safety, or  
11 support of the state government and its existing public institutions,  
12 and shall take effect immediately.

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