

2 **E2SHB 1032** - S COMM AMD
3 By Committee on Government Operations

4 NOT ADOPTED 4/17/97

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

7 "PART I
8 GRANTS OF RULE-MAKING AUTHORITY

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

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

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

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

29 (b) Afford protection to forest soils and public resources by
30 utilizing all reasonable methods of technology in conducting forest
31 practices;

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

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

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

3 (f) Provide for interagency input and intergovernmental and tribal
4 coordination and cooperation;

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

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

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

12 The authority of the board to adopt forest practices rules is
13 prescribed by this subsection (2) and RCW 76.09.040. After the
14 effective date of this act, the board may not adopt forest practices
15 rules based solely on any other section of law stating a statute's
16 intent or purpose, on the enabling provisions of the statute
17 establishing the agency, or on any combination of those provisions.

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

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

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

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

33 (a) Establish minimum standards for forest practices;

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

1 (c) Set forth necessary administrative provisions; and
2 (d) Establish procedures for the collection and administration of
3 forest practice fees as set forth by this chapter.

4 Forest practices (~~((regulations))~~) rules pertaining to water quality
5 protection shall be (~~((promulgated))~~) adopted individually by the board
6 and by the department of ecology after they have reached agreement with
7 respect thereto. All other forest practices (~~((regulations))~~) rules
8 shall be (~~((promulgated))~~) adopted by the board.

9 Forest practices (~~((regulations))~~) rules shall be administered and
10 enforced by the department except as otherwise provided in this
11 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted
12 and administered so as to give consideration to all purposes and
13 policies specifically set forth in RCW 76.09.010(2).

14 (2) The board shall prepare proposed forest practices
15 (~~((regulations))~~) rules. In addition to any forest practices
16 (~~((regulations))~~) rules relating to water quality protection proposed by
17 the board, the department of ecology shall prepare proposed forest
18 practices (~~((regulations))~~) rules relating to water quality protection.

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

35 NEW SECTION. Sec. 103. A new section is added to chapter 43.22
36 RCW to read as follows:

37 For rules adopted after the effective date of this act, the
38 director of the department of labor and industries may not rely solely

1 on a statute's statement of intent or purpose, on the enabling
2 provisions of the statute establishing the agency, or on any
3 combination of those provisions, for statutory authority to adopt any
4 rule. This section does not apply to rules adopted under chapter 39.12
5 RCW.

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

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

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

13 (3) The commissioner may:

14 (a) Make reasonable rules and regulations for effectuating any
15 provision of this code, except those relating to his or her election,
16 qualifications, or compensation. However, the commissioner may not
17 adopt rules after the effective date of this act that are based solely
18 on this statute, or on a statute's statement of intent or purpose, or
19 on the enabling provisions of the statute establishing the agency, or
20 any combination of those provisions, for statutory authority to adopt
21 any rule, except rules defining or clarifying terms in, or procedures
22 necessary to the implementation of a statute. No such rules and
23 regulations shall be effective prior to their being filed for public
24 inspection in the commissioner's office.

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

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

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

32 The insurance commissioner shall make reasonable regulations in aid
33 of the administration of this chapter which may include, but shall not
34 be limited to regulations concerning the maintenance of adequate
35 insurance, bonds, or cash deposits, information required of
36 registrants, and methods of expediting speedy and fair payments to
37 claimants. However, the commissioner may not adopt rules after the

1 effective date of this act that are based solely on this section, a
2 statute's statement of intent or purpose, or on the enabling provisions
3 of the statute establishing the agency, or any combination of those
4 provisions, for statutory authority to adopt any rule, except rules
5 defining or clarifying terms in, or procedures necessary to the
6 implementation of a statute.

7 **Sec. 106.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
8 amended to read as follows:

9 The commissioner may adopt, in accordance with the provisions of
10 the Administrative Procedure Act, chapter 34.05 RCW, (~~promulgate~~)
11 rules and regulations as necessary or proper to carry out the
12 provisions of this chapter. However, the commissioner may not adopt
13 rules after the effective date of this act that are based solely on
14 this section, a statute's statement of intent or purpose, or on the
15 enabling provisions of the statute establishing the agency, or any
16 combination of those provisions, for statutory authority to adopt any
17 rule, except rules defining or clarifying terms in, or procedures
18 necessary to the implementation of a statute. Nothing in this chapter
19 shall be construed to prohibit the commissioner from requiring changes
20 in procedures previously approved by (~~him~~) the commissioner.

21 **Sec. 107.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
22 read as follows:

23 (1) No person engaged in the business of insurance shall engage in
24 unfair methods of competition or in unfair or deceptive acts or
25 practices in the conduct of such business as such methods, acts, or
26 practices are defined pursuant to subsection (2) of this section.

27 (2) In addition to such unfair methods and unfair or deceptive acts
28 or practices as are expressly defined and prohibited by this code, the
29 commissioner may from time to time by regulation promulgated pursuant
30 to chapter 34.05 RCW, define other methods of competition and other
31 acts and practices in the conduct of such business reasonably found by
32 the commissioner to be unfair or deceptive after a review of all
33 comments received during the notice and comment rule-making period.

34 (3)(a) In defining other methods of competition and other acts and
35 practices in the conduct of such business to be unfair or deceptive,
36 and after reviewing all comments and documents received during the
37 notice and comment rule-making period, the commissioner shall identify

1 his or her reasons for defining the method of competition or other act
2 or practice in the conduct of insurance to be unfair or deceptive and
3 shall include a statement outlining these reasons as part of the
4 adopted rule.

5 (b) The commissioner shall include a detailed description of facts
6 upon which he or she relied and of facts upon which he or she failed to
7 rely, in defining the method of competition or other act or practice in
8 the conduct of insurance to be unfair or deceptive, in the concise
9 explanatory statement prepared under RCW 34.05.325(6).

10 (c) Upon appeal the superior court shall review the findings of
11 fact upon which the regulation is based de novo on the record.

12 (4) No such regulation shall be made effective prior to the
13 expiration of thirty days after the date of the order by which it is
14 promulgated.

15 ~~((+4))~~ (5) If the commissioner has cause to believe that any
16 person is violating any such regulation, the commissioner may order
17 such person to cease and desist therefrom. The commissioner shall
18 deliver such order to such person direct or mail it to the person by
19 registered mail with return receipt requested. If the person violates
20 the order after expiration of ten days after the cease and desist order
21 has been received by him or her, he or she may be fined by the
22 commissioner a sum not to exceed two hundred and fifty dollars for each
23 violation committed thereafter.

24 ~~((+5))~~ (6) If any such regulation is violated, the commissioner
25 may take such other or additional action as is permitted under the
26 insurance code for violation of a regulation.

27 **PART II**

28 **RULE-MAKING REQUIREMENTS**

29 **Sec. 201.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to
30 read as follows:

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

33 (1) "Adjudicative proceeding" means a proceeding before an agency
34 in which an opportunity for hearing before that agency is required by
35 statute or constitutional right before or after the entry of an order
36 by the agency. Adjudicative proceedings also include all cases of
37 licensing and rate making in which an application for a license or rate

1 change is denied except as limited by RCW 66.08.150, or a license is
2 revoked, suspended, or modified, or in which the granting of an
3 application is contested by a person having standing to contest under
4 the law.

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

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

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

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

33 (5) "De facto rule" means an issuance not adopted under Part III of
34 this chapter that the agency uses to (a) subject a person to a penalty
35 or administrative sanction; (b) establish, alter, or revoke a
36 procedure, practice, or requirement relating to agency hearings; (c)
37 establish, alter, or revoke a qualification or requirement relating to
38 the enjoyment of a benefit or privilege conferred by law; (d)
39 establish, alter, or revoke a qualification or standard for the

1 issuance, suspension, or revocation of a license to pursue a commercial
2 activity, trade, or profession; or (e) establish, alter, or revoke
3 mandatory standards for a product or material that must be met before
4 distribution or sale. The term does not include (i) statements
5 concerning only the internal management of an agency and not affecting
6 private rights or procedures available to the public, (ii) declaratory
7 rulings issued under RCW 34.05.240, (iii) traffic restrictions for
8 motor vehicles, bicyclists, and pedestrians established by the
9 secretary of transportation or his or her designee where notice of the
10 restrictions is given by official traffic control devices, or (iv)
11 rules of institutions of higher education involving standards of
12 admission, academic advancement, academic credit, graduation and the
13 granting of degrees, employment relationships, or fiscal processes.

14 (6) "Entry" of an order means the signing of the order by all
15 persons who are to sign the order, as an official act indicating that
16 the order is to be effective.

17 (~~(6)~~) (7) "Filing" of a document that is required to be filed
18 with an agency means delivery of the document to a place designated by
19 the agency by rule for receipt of official documents, or in the absence
20 of such designation, at the office of the agency head.

21 (~~(7)~~) (8) "Institutions of higher education" are the University
22 of Washington, Washington State University, Central Washington
23 University, Eastern Washington University, Western Washington
24 University, The Evergreen State College, the various community
25 colleges, and the governing boards of each of the above, and the
26 various colleges, divisions, departments, or offices authorized by the
27 governing board of the institution involved to act for the institution,
28 all of which are sometimes referred to in this chapter as
29 "institutions."

30 (~~(8)~~) (9) "Interpretive statement" means a written expression of
31 the opinion of an agency, entitled an interpretive statement by the
32 agency head or its designee, as to the meaning of a statute or other
33 provision of law, of a court decision, or of an agency order.

34 (~~(9)~~) (10) "Issuance" means a written document of general
35 applicability issued by an agency that is available to the public. It
36 includes, but is not limited to, an agency order of adoption, bulletin,
37 directive, policy statement, interpretive statement, guideline, letter,
38 memorandum, rule, or de facto rule. "Issuance" does not include final
39 agency orders issued after an adjudicative proceeding under Part IV of

1 this chapter, tax determinations of precedential value issued by the
2 department of revenue, or documents entitled "technical assistance
3 document".

4 (11)(a) "License" means a franchise, permit, certification,
5 approval, registration, charter, or similar form of authorization
6 required by law, but does not include (i) a license required solely for
7 revenue purposes, or (ii) a certification of an exclusive bargaining
8 representative, or similar status, under a collective bargaining law or
9 similar statute, or (iii) a license, franchise, or permission for use
10 of trademarks, symbols, and similar property owned or controlled by the
11 agency.

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

14 ~~((+10))~~ (12)(a) "Order," without further qualification, means a
15 written statement of particular applicability that finally determines
16 the legal rights, duties, privileges, immunities, or other legal
17 interests of a specific person or persons.

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

20 ~~((+11))~~ (13) "Party to agency proceedings," or "party" in a
21 context so indicating, means:

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

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

25 ~~((+12))~~ (14) "Party to judicial review or civil enforcement
26 proceedings," or "party" in a context so indicating, means:

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

29 (b) A person named as a party in a judicial review or civil
30 enforcement proceeding, or allowed to participate as a party in a
31 judicial review or civil enforcement proceeding.

32 ~~((+13))~~ (15) "Person" means any individual, partnership,
33 corporation, association, governmental subdivision or unit thereof, or
34 public or private organization or entity of any character, and includes
35 another agency.

36 ~~((+14))~~ (16) "Policy statement" means a written description of the
37 current approach of an agency, entitled a policy statement by the
38 agency head or its designee, to implementation of a statute or other
39 provision of law, of a court decision, or of an agency order, including

1 where appropriate the agency's current practice, procedure, or method
2 of action based upon that approach.

3 ~~((15))~~ (17) "Rule" means any ~~((agency order, directive, or~~
4 ~~regulation of general applicability (a) the violation of which subjects~~
5 ~~a person to a penalty or administrative sanction; (b) which~~
6 ~~establishes, alters, or revokes any procedure, practice, or requirement~~
7 ~~relating to agency hearings; (c) which establishes, alters, or revokes~~
8 ~~any qualification or requirement relating to the enjoyment of benefits~~
9 ~~or privileges conferred by law; (d) which establishes, alters, or~~
10 ~~revokes any qualifications or standards for the issuance, suspension,~~
11 ~~or revocation of licenses to pursue any commercial activity, trade, or~~
12 ~~profession; or (e) which establishes, alters, or revokes any mandatory~~
13 ~~standards for any product or material which must be met before~~
14 ~~distribution or sale)) issuance adopted under Part III of this chapter.~~
15 The term includes the amendment or repeal of a prior rule ~~((, but does~~
16 ~~not include (i) statements concerning only the internal management of~~
17 ~~an agency and not affecting private rights or procedures available to~~
18 ~~the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,~~
19 ~~(iii) traffic restrictions for motor vehicles, bicyclists, and~~
20 ~~pedestrians established by the secretary of transportation or his~~
21 ~~designee where notice of such restrictions is given by official traffic~~
22 ~~control devices, or (iv) rules of institutions of higher education~~
23 ~~involving standards of admission, academic advancement, academic~~
24 ~~credit, graduation and the granting of degrees, employment~~
25 ~~relationships, or fiscal processes)).~~

26 ~~((16))~~ (18) "Rules review committee" or "committee" means the
27 joint administrative rules review committee created pursuant to RCW
28 34.05.610 ~~((for the purpose of selectively reviewing existing and~~
29 ~~proposed rules of state agencies)).~~

30 ~~((17))~~ (19) "Rule making" means the process for formulation and
31 adoption of a rule.

32 ~~((18))~~ (20) "Service," except as otherwise provided in this
33 chapter, means posting in the United States mail, properly addressed,
34 postage prepaid, or personal service. Service by mail is complete upon
35 deposit in the United States mail. Agencies may, by rule, authorize
36 service by electronic telefacsimile transmission, where copies are
37 mailed simultaneously, or by commercial parcel delivery company.

1 **Sec. 202.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to
2 read as follows:

3 ~~((If the adoption of rules is not feasible and practicable,))~~
4 An agency is encouraged to advise the public of its current opinions,
5 approaches, and likely courses of action by means of ((interpretive or
6 policy statements. — Current interpretive and policy statements))
7 issuances. Unless adopted under Part III of this chapter or exempted
8 under the definition of de facto rule, these issuances are advisory
9 only. ((To better inform and involve the public, an agency is
10 encouraged to convert long-standing interpretive and policy statements
11 into rules.))

12 (2) A person may petition an agency ~~((requesting the conversion of~~
13 ~~interpretive and policy statements into rules))~~ to adopt an issuance as
14 a rule. Upon submission, the agency shall notify the joint
15 administrative rules review committee of the petition. A person may
16 petition an agency requesting the repeal or withdrawal of an
17 interpretive or policy statement. Within sixty days after submission
18 of ~~((a))~~ either type of petition, the agency shall either deny the
19 petition in writing, stating its reasons for the denial, or initiate
20 rule-making proceedings in accordance with this chapter.

21 (3) Each agency shall maintain a roster of interested persons,
22 consisting of persons who have requested in writing to be notified of
23 all interpretive and policy statements issued by that agency. Each
24 agency shall update the roster once each year and eliminate persons who
25 do not indicate a desire to continue on the roster. Whenever an agency
26 issues an interpretive or policy statement, it shall send a copy of the
27 statement to each person listed on the roster. The agency may charge
28 a nominal fee to the interested person for this service.

29 (4) Whenever an agency issues an interpretive or policy statement,
30 it shall submit to the code reviser for publication in the Washington
31 State Register a statement describing the subject matter of the
32 interpretive or policy statement, and listing the person at the agency
33 from whom a copy of the interpretive or policy statement may be
34 obtained.

35 NEW SECTION. **Sec. 203.** A new section is added to chapter 34.05
36 RCW under the subchapter heading "Part III" to read as follows:

37 In lieu of regular mail, an agency may send the contents of any
38 notice pertaining to rule making required under this chapter by

1 electronic mail or facsimile mail if requested in writing by the person
2 entitled to receive the notice.

3 **Sec. 204.** RCW 34.05.325 and 1995 c 403 s 304 are each amended to
4 read as follows:

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

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

14 (3) If the agency possesses equipment capable of receiving
15 electronic mail, telefacsimile transmissions, or recorded telephonic
16 communications, the agency (~~may~~) shall provide in its notice of
17 hearing filed under RCW 34.05.320 that interested parties may comment
18 on proposed rules by these means. If the agency (~~chooses~~) is able to
19 receive comments by these means, the notice of hearing shall provide
20 instructions for making such comments, including, but not limited to,
21 appropriate telephone numbers to be used; the date and time by which
22 comments must be received; required methods to verify the receipt and
23 authenticity of the comments; and any limitations on the number of
24 pages for telefacsimile transmission or electronic mail comments and on
25 the minutes of tape recorded comments. The agency shall accept
26 comments received by these means for inclusion in the (~~official~~
27 ~~record~~) rule-making file established under RCW 34.05.370 if the
28 comments are made in accordance with the agency's instructions.

29 (4) The agency head, a member of the agency head, or a presiding
30 officer designated by the agency head shall preside at the rule-making
31 hearing. Rule-making hearings shall be open to the public. The agency
32 shall cause a record to be made of the hearing by stenographic,
33 mechanical, or electronic means. Unless the agency head presides or is
34 present at substantially all the hearings, the presiding official shall
35 prepare a memorandum for consideration by the agency head, summarizing
36 the contents of the presentations made at the rule-making hearing. The
37 summarizing memorandum is a public document and shall be made available
38 to any person in accordance with chapter 42.17 RCW.

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

6 (6)(a) Before it files an adopted rule with the code reviser, an
7 agency shall prepare a concise explanatory statement of the rule:

8 (i) Identifying the agency's reasons for adopting the rule;

9 (ii) Describing differences between the text of the proposed rule
10 as published in the register and the text of the rule as adopted, other
11 than editing changes, stating the reasons for differences; and

12 (iii) Summarizing all comments received regarding the proposed
13 rule, and responding to the comments by category or subject matter,
14 indicating how the final rule reflects agency consideration of the
15 comments, or why it fails to do so.

16 (b) The agency shall provide the concise explanatory statement to
17 any person upon request or from whom the agency received comment.

18 **Sec. 205.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
19 read as follows:

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

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

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

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

32 (d) Determine, after considering alternative versions of the rule
33 and the analysis required under (b) and (c) of this subsection, that
34 the rule being adopted is the least burdensome alternative for those
35 required to comply with it that will achieve the general goals and
36 specific objectives stated under (a) of this subsection;

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

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

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

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

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

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

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

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

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

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

29 (c) Promote and assist voluntary compliance; and

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

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

38 (a) Provide to the (~~business assistance center~~) department of
39 community, trade, and economic development a list citing by reference

1 the other federal and state laws that regulate the same activity or
2 subject matter;

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

7 (i) Deferring to the other entity;

8 (ii) Designating a lead agency; or

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

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

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

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

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

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

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

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

35 (b) This section does not apply to:

36 (i) Emergency rules adopted under RCW 34.05.350;

37 (ii) Rules relating only to internal governmental operations that
38 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; or

16 (vii) Rules of the department of social and health services
17 relating only to client medical or financial eligibility and rules
18 concerning liability for care of dependents.

19 (c) For purposes of this subsection:

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

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

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

37 (d) In the notice of proposed rule making under RCW 34.05.320, an
38 agency shall state whether this section applies to the proposed rule

1 pursuant to (a)(i) of this subsection, or if the agency will apply this
2 section voluntarily.

3 (6) By January 31, 1996, and by January 31st of each even-numbered
4 year thereafter, the office of financial management, after consulting
5 with state agencies, counties, and cities, and business, labor, and
6 environmental organizations, shall report to the governor and the
7 legislature regarding the effects of this section on the regulatory
8 system in this state. The report shall document:

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

12 (b) The costs incurred by state agencies in complying with this
13 section;

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

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

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

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

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

25 Each state agency shall prepare a semiannual agenda for rules under
26 development. The agency shall file the agenda with the code reviser
27 for publication in the state register not later than January 31st and
28 July 31st of each year. Not later than three days after its
29 publication in the state register, the agency shall send a copy of the
30 agenda to each person who has requested receipt of a copy of the
31 agenda. The agency shall also submit the agenda to the director of
32 financial management, the rules review committee, and any other state
33 agency that may reasonably be expected to have an interest in the
34 subject of rules that will be developed.

35 **Sec. 207.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
36 read as follows:

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

1 (a) That immediate adoption, amendment, or repeal of a rule is
2 necessary for the preservation of ((the)) public health((~~or~~)) or safety,
3 ((~~or general welfare,~~)) and that observing the time requirements of
4 notice and opportunity to comment upon adoption of a permanent rule
5 would be contrary to the public interest. However, the department of
6 agriculture may adopt an emergency rule if the failure to adopt the
7 rule on an emergency basis would result in substantial reduction of
8 commodity value or substantial economic detriment, and the department
9 of fish and wildlife may adopt emergency rules governing seasons and
10 harvest limits for recreational and commercial fishing and recreational
11 hunting; or

12 (b) That state or federal law or federal rule or a federal deadline
13 for state receipt of federal funds requires immediate adoption of a
14 rule,
15 the agency may dispense with those requirements and adopt, amend, or
16 repeal the rule on an emergency basis. The agency's finding and a
17 concise statement of the reasons for its finding shall be incorporated
18 in the order for adoption of the emergency rule or amendment filed with
19 the office of the code reviser under RCW 34.05.380 and with the rules
20 review committee.

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

32 (3) Within seven days after the rule is adopted, any person may
33 petition the governor requesting the immediate repeal of a rule adopted
34 on an emergency basis by any department listed in RCW 43.17.010.
35 Within seven days after submission of the petition, the governor shall
36 either deny the petition in writing, stating his or her reasons for the
37 denial, or order the immediate repeal of the rule. In ruling on the
38 petition, the governor shall consider only whether the conditions in
39 subsection (1) of this section were met such that adoption of the rule

1 on an emergency basis was necessary. If the governor orders the repeal
2 of the emergency rule, any sanction imposed based on that rule is void.
3 This subsection shall not be construed to prohibit adoption of any rule
4 as a permanent rule.

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

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

10 (1) An agency may file notice for the expedited adoption of rules
11 in accordance with the procedures set forth in this section for rules
12 meeting any one of the following criteria:

13 (a) The proposed rules relate only to internal governmental
14 operations that are not subject to violation by a person;

15 (b) The proposed rules adopt or incorporate by reference without
16 material change federal statutes or regulations, Washington state
17 statutes, rules of other Washington state agencies, shoreline master
18 programs other than those programs governing shorelines of state-wide
19 significance, or, as referenced by Washington state law, national
20 consensus codes that generally establish industry standards, if the
21 material adopted or incorporated regulates the same subject matter and
22 conduct as the adopting or incorporating rule;

23 (c) The proposed rules only correct typographical errors, make
24 address or name changes, or clarify language of a rule without changing
25 its effect;

26 (d) The content of the proposed rules is explicitly and
27 specifically dictated by statute;

28 (e) The proposed rules have been the subject of negotiated rule
29 making, pilot rule making, or some other process that involved
30 substantial participation by interested parties before the development
31 of the proposed rule; or

32 (f) The proposed rule is being amended after a review under RCW
33 34.05.328 or section 212 of this act.

34 (2) The expedited rule-making process must follow the requirements
35 for rule making set forth in RCW 34.05.320, except that the agency is
36 not required to prepare a small business economic impact statement
37 under RCW 19.85.025, a statement indicating whether the rule
38 constitutes a significant legislative rule under RCW

1 34.05.328(5)(c)(iii), or a significant legislative rule analysis under
2 RCW 34.05.328. An agency is not required to prepare statements of
3 inquiry under RCW 34.05.310 or conduct a hearing for the expedited
4 adoption of rules. The notice for the expedited adoption of rules must
5 contain a statement in at least ten-point type, that is substantially
6 in the following form:

7 **NOTICE**

8 THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN
9 EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR
10 THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS
11 ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA
12 FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE
13 BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST
14 EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO
15 (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

16 (3) The agency shall send a copy of the notice of the proposed
17 expedited rule making to any person who has requested notification of
18 proposals for the expedited adoption of rules or of agency rule making,
19 as well as the joint administrative rules review committee, within
20 three days after its publication in the Washington State Register. An
21 agency may charge for the actual cost of providing a requesting party
22 mailed copies of these notices. The notice of the proposed expedited
23 rule making must be preceded by a statement substantially in the form
24 provided in subsection (2) of this section. The notice must also
25 include an explanation of the reasons the agency believes the expedited
26 adoption of the rule is appropriate.

27 (4) The code reviser shall publish the text of all rules proposed
28 for expedited adoption along with the notice required in this section
29 in a separate section of the Washington State Register. Once the text
30 of the proposed rules has been published in the Washington State
31 Register, the only changes that an agency may make in the text of these
32 proposed rules before their final adoption are to correct typographical
33 errors.

34 (5) Any person may file a written objection to the expedited
35 adoption of a rule. The objection must be filed with the agency rules
36 coordinator within forty-five days after the notice of the proposed
37 expedited rule making has been published in the Washington State

1 Register. A person who has filed a written objection to the expedited
2 adoption of a rule may withdraw the objection.

3 (6) If no written objections to the expedited adoption of a rule
4 are filed with the agency within forty-five days after the notice of
5 proposed expedited rule making is published, or if all objections that
6 have been filed are withdrawn by the persons filing the objections, the
7 agency may enter an order adopting the rule without further notice or
8 a public hearing. The order must be published in the manner required
9 by this chapter for any other agency order adopting, amending, or
10 repealing a rule.

11 (7) If a written notice of objection to the expedited adoption of
12 the rule is timely filed with the agency and is not withdrawn, the
13 notice of proposed expedited rule making published under this section
14 is considered a statement of inquiry for the purposes of RCW 34.05.310,
15 and the agency may initiate further rule adoption proceedings in
16 accordance with this chapter.

17 (8) This section expires on December 31, 2000.

18 **Sec. 209.** RCW 34.05.354 and 1995 c 403 s 701 are each amended to
19 read as follows:

20 (1) Not later than (~~June 30th~~) April 1st or October 1st of each
21 year, each agency shall submit to the code reviser, according to
22 procedures and time lines established by the code reviser, rules that
23 it determines should be repealed by the expedited repeal procedures
24 provided for in this section. An agency shall file a copy of a
25 preproposal notice of inquiry, as provided in RCW 34.05.310(1), that
26 identifies the rule as one that is proposed for expedited repeal.

27 (2) An agency may propose the expedited repeal of rules meeting one
28 or more of the following criteria:

29 (a) The statute on which the rule is based has been repealed and
30 has not been replaced by another statute providing statutory authority
31 for the rule;

32 (b) The statute on which the rule is based has been declared
33 unconstitutional by a court with jurisdiction, there is a final
34 judgment, and no statute has been enacted to replace the
35 unconstitutional statute;

36 (c) The rule is no longer necessary because of changed
37 circumstances; or

1 (d) Other rules of the agency or of another agency govern the same
2 activity as the rule, making the rule redundant.

3 (3) The agency shall also send a copy of the preproposal notice of
4 inquiry to any person who has requested notification of copies of
5 proposals for the expedited repeal of rules or of agency rule making.
6 The preproposal notice of inquiry shall include a statement that any
7 person who objects to the repeal of the rule must file a written
8 objection to the repeal within thirty days after the preproposal notice
9 of inquiry is published. The notice of inquiry shall also include an
10 explanation of the reasons the agency believes the expedited repeal of
11 the rule is appropriate.

12 (4) The code reviser shall publish all rules proposed for expedited
13 repeal in a separate section of a regular edition of the Washington
14 state register or in a special edition of the Washington state
15 register. The publication shall be not later than ((July)) May 31st or
16 November 30th of each year, or in the first register published after
17 that date.

18 (5) Any person may file a written objection to the expedited repeal
19 of a rule. The notice shall be filed with the agency rules coordinator
20 within thirty days after the notice of inquiry has been published in
21 the Washington state register. The written objection need not state
22 any reason for objecting to the expedited repeal of the rule.

23 (6) If no written objections to the expedited repeal of a rule are
24 filed with the agency within thirty days after the preproposal notice
25 of inquiry is published, the agency may enter an order repealing the
26 rule without further notice or an opportunity for a public hearing.
27 The order shall be published in the manner required by this chapter for
28 any other order of the agency adopting, amending, or repealing a rule.
29 If a written objection to the expedited repeal of the rule is filed
30 with the agency within thirty days after the notice of inquiry has been
31 published, the preproposal notice of inquiry published pursuant to this
32 section shall be considered a preproposal notice of inquiry for the
33 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
34 proceedings in accordance with the provisions of this chapter.

35 **Sec. 210.** RCW 34.05.360 and 1988 c 288 s 311 are each amended to
36 read as follows:

37 The order of adoption by which each rule is adopted by an agency
38 shall contain all of the following:

- 1 (1) The date the agency adopted the rule;
- 2 (2) A concise statement of the purpose of the rule;
- 3 (3) A reference to all rules repealed, amended, or suspended by the
- 4 rule;
- 5 (4) A reference to the specific statutory or other authority
- 6 authorizing adoption of the rule;
- 7 (5) The governor's signature approving the adopted rule, if the
- 8 agency head is appointed by, and serves at the pleasure of, the
- 9 governor;
- 10 (6) Any findings required by any provision of law as a precondition
- 11 to adoption or effectiveness of the rule; and
- 12 ((+6)) (7) The effective date of the rule if other than that
- 13 specified in RCW 34.05.380(2).

14 NEW SECTION. Sec. 211. A new section is added to chapter 34.05

15 RCW under the subchapter heading "Part III" to read as follows:

16 Any agency having rules that postpone full compliance with their

17 requirements beyond ninety days after the effective date of this act

18 shall prepare a small business economic impact statement, as defined in

19 RCW 19.85.020(2), on such rules before requiring full compliance with

20 the rules.

21 NEW SECTION. Sec. 212. A new section is added to chapter 34.05

22 RCW under the subchapter heading "Part III" to read as follows:

23 (1) No rule, adopted by an agency before the effective date of this

24 act, is effective for more than seven years after the effective date of

25 this act, unless it has been reviewed under the procedures established

26 in this chapter.

27 (2) Each agency shall review its rules existing on the effective

28 date of this act as follows:

29 (a) Fifty percent of the rules must be reviewed within three years

30 of the effective date of this act;

31 (b) Eighty percent of the rules must be reviewed within five years

32 of the effective date of this act;

33 (c) One hundred percent of the rules must be reviewed within seven

34 years of the effective date of this act.

35 (3) In reviewing a rule, the agency shall determine whether the

36 rule is:

37 (a) Unclear or difficult to understand;

1 (b) Written or being implemented in a way that does not conform
2 with the intent of the legislature as expressed by the statute that the
3 rule implements;

4 (c) Duplicative of, inconsistent with, or in conflict with other
5 state, federal, or local rules or statutes;

6 (d) Excessively costly or outdated in the methods prescribed;

7 (e) Unauthorized because the authorizing statute has since been
8 repealed or amended; or

9 (f) No longer necessary to meet the purposes of the statute that it
10 implements.

11 (4) The agency shall place in a rules review file documentation
12 sufficient to show that the agency considered the criteria in
13 subsection (3) of this section in reviewing a rule. If the
14 documentation shows that the rule review results in no affirmative
15 response to any of the criteria, the agency may retain the rule. If
16 the rule has an affirmative response to any of the criteria, the agency
17 shall amend the rule to meet the criteria or repeal the rule. The
18 agency may use the expedited procedures under this chapter to amend or
19 repeal the rule. If the criteria are not met and the agency has not
20 amended the rule to meet the criteria, the agency may not rely on the
21 rule for any agency action beginning seven years after the effective
22 date of this act.

23 NEW SECTION. **Sec. 213.** A new section is added to chapter 34.05
24 RCW under the subchapter heading "Part III" to read as follows:

25 (1) No rule, adopted by any agency after the effective date of this
26 act, is effective for more than seven years after the rule is adopted,
27 unless the rule has been reviewed under the procedure in this
28 subsection. An agency shall review a rule to evaluate:

29 (a) Achievement of the goals and objectives of the rule;

30 (b) Technological changes that impact the implementation of or
31 compliance with the rule;

32 (c) Controversy surrounding the implementation or enforcement of
33 the rule, stating the nature of the controversy;

34 (d) The outcome of any court challenges to the validity of the rule
35 or its authority to draft the rule;

36 (e) Actual costs or changes undergone by the regulated community;
37 and

1 (f) Laws or other rules passed since the rule was adopted that are
2 in conflict, impact its implementation, or render the rule obsolete.

3 The agency shall place in a rules review file documentation
4 sufficient to show that the agency conducted the review under this
5 section.

6 (2) Those rules certified to the legislature by the governor to
7 have undergone executive rules review by July 31, 2001, are subject to
8 review under subsection (1) of this section beginning July 31, 2001,
9 and may be effective for no more than seven years after that date
10 unless so reviewed.

11 **Sec. 214.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to
12 read as follows:

13 (1) Each agency shall file in the office of the code reviser a
14 certified copy of all rules it adopts, except for rules contained in
15 tariffs filed with or published by the Washington utilities and
16 transportation commission. An agency, the head of which is appointed
17 by, and serves at the pleasure of, the governor, shall not file, and
18 the code reviser shall not accept, a nonemergency rule that does not
19 bear the governor's signature approving the rule. The code reviser
20 shall place upon each rule a notation of the time and date of filing
21 and shall keep a permanent register of filed rules open to public
22 inspection. In filing a rule, each agency shall use the standard form
23 prescribed for this purpose by the code reviser.

24 (2) Emergency rules adopted under RCW 34.05.350 become effective
25 upon filing unless a later date is specified in the order of adoption.
26 All other rules become effective upon the expiration of thirty days
27 after the date of filing, unless a later date is required by statute or
28 specified in the order of adoption.

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

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

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

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

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

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

6 **Sec. 215.** RCW 82.32.410 and 1991 c 330 s 2 are each amended to
7 read as follows:

8 (1) The director may designate certain written determinations as
9 precedents.

10 (a) By rule adopted pursuant to chapter 34.05 RCW, the director
11 shall adopt criteria which he or she shall use to decide whether a
12 determination is precedential. These criteria shall include, but not
13 be limited to, whether the determination clarifies an unsettled
14 interpretation of Title 82 RCW or where the determination modifies or
15 clarifies an earlier interpretation.

16 (b) Written determinations designated as precedents by the director
17 shall be indexed by subject matter. The determinations and indexes
18 shall be made available for public inspection and shall be published by
19 the department.

20 (c) The department shall disclose any written determination upon
21 which it relies to support any assessment of tax, interest, or penalty
22 against such taxpayer, after making the deletions provided by
23 subsection (2) of this section.

24 (2) Before making a written determination available for public
25 inspection under subsection (1) of this section, the department shall
26 delete:

27 (a) The names, addresses, and other identifying details of the
28 person to whom the written determination pertains and of another person
29 identified in the written determination; and

30 (b) Information the disclosure of which is specifically prohibited
31 by any statute applicable to the department of revenue, and the
32 department may also delete other information exempted from disclosure
33 by chapter 42.17 RCW or any other statute applicable to the department
34 of revenue.

35 **Sec. 216.** RCW 19.85.025 and 1995 c 403 s 401 are each amended to
36 read as follows:

1 (1) Unless an agency receives a written objection to the expedited
2 repeal of a rule, this chapter does not apply to a rule proposed for
3 expedited repeal pursuant to RCW 34.05.354. If an agency receives a
4 written objection to expedited repeal of the rule, this chapter applies
5 to the rule-making proceeding.

6 (2) This chapter does not apply to a rule proposed for expedited
7 adoption under section 208 of this act, unless a written objection is
8 timely filed with the agency and the objection is not withdrawn.

9 (3) This chapter does not apply to the adoption of a rule described
10 in RCW 34.05.310(4).

11 (~~(3)~~) (4) An agency is not required to prepare a separate small
12 business economic impact statement under RCW 19.85.040 if it prepared
13 an analysis under RCW 34.05.328 that meets the requirements of a small
14 business economic impact statement, and if the agency reduced the costs
15 imposed by the rule on small business to the extent required by RCW
16 19.85.030(3). The portion of the analysis that meets the requirements
17 of RCW 19.85.040 shall be filed with the code reviser and provided to
18 any person requesting it in lieu of a separate small business economic
19 impact statement.

20 NEW SECTION. Sec. 217. (1) The legislature finds that there are
21 state rules on the same subject adopted by more than one state agency.
22 The legislature further finds that this situation places an undue
23 hardship on those regulated by rules issued by more than one state
24 agency on the same subject since the regulated individuals must
25 determine what the combined requirements of the rules from the multiple
26 agencies are and how to comply with the requirements of one agency
27 without violating the requirements of another agency.

28 (2) The department of community, trade, and economic development
29 shall, in close cooperation with the office of the governor, the
30 directors or their designees of all state agencies as appropriate,
31 effected stakeholders, and such other participants as the director of
32 community, trade, and economic development deems appropriate, design
33 and implement a pilot project on a single subject for the consolidation
34 of all rules adopted by any state agency that regulate that same
35 activity or subject matter. The goal of the pilot project is to
36 consolidate these rules into one rule or set of rules that will be the
37 sole and conclusive source of all regulation affecting that activity or
38 subject matter.

1 The department of community, trade, and economic development shall
2 submit a report to the legislature and the governor no later than
3 November 30, 1999. The report must include the activity or subject
4 matter selected by a consensus of the participants, a list of the
5 agencies and their rules that regulate that activity or subject matter,
6 the sole and conclusive rule or set of rules that result from the
7 consolidation of the various agencies' rules, the reasons why no sole
8 and conclusive rule or set of rules could be formulated, if applicable,
9 and any other matters the director deems helpful.

10 **PART III**
11 **JUDICIAL REVIEW**

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

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

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

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

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

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

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

32 (b) The validity of any rule may be determined upon petition for a
33 declaratory judgment addressed to the superior court of Thurston
34 county, when it appears that the rule, or its threatened application,
35 interferes with or impairs or immediately threatens to interfere with
36 or impair the legal rights or privileges of the petitioner. When the
37 validity of a rule is challenged, after the petitioner has identified

1 the defects in the rule, the burden of going forward with the evidence
2 is on the agency. The declaratory judgment order may be entered
3 whether or not the petitioner has first requested the agency to pass
4 upon the validity of the rule in question.

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

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

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

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

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

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

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

24 (f) The agency has not decided all issues requiring resolution by
25 the agency;

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

31 (h) The order is inconsistent with a rule of the agency unless the
32 agency explains the inconsistency by stating facts and reasons to
33 demonstrate a rational basis for inconsistency; (~~(i)~~)

34 (i) The order is arbitrary or capricious; or

35 (j) The order is based on a de facto rule.

36 (4) Review of other agency action.

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

1 (b) A person whose rights are violated by an agency's failure to
2 perform a duty that is required by law to be performed may file a
3 petition for review pursuant to RCW 34.05.514, seeking an order
4 pursuant to this subsection requiring performance. Within twenty days
5 after service of the petition for review, the agency shall file and
6 serve an answer to the petition, made in the same manner as an answer
7 to a complaint in a civil action. The court may hear evidence,
8 pursuant to RCW 34.05.562, on material issues of fact raised by the
9 petition and answer.

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

14 (i) Unconstitutional;

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

17 (iii) Arbitrary or capricious; ~~((or))~~

18 (iv) Taken by persons who were not properly constituted as agency
19 officials lawfully entitled to take such action; or

20 (v) Based on a de facto rule.

21 **Sec. 302.** RCW 34.05.534 and 1995 c 403 s 803 are each amended to
22 read as follows:

23 A person may file a petition for judicial review under this chapter
24 only after exhausting all administrative remedies available within the
25 agency whose action is being challenged, or available within any other
26 agency authorized to exercise administrative review, except:

27 (1) A petitioner for judicial review of a rule need not have
28 participated in the rule-making proceeding upon which that rule is
29 based, have petitioned for its amendment or repeal, have petitioned the
30 joint administrative rules review committee for its review, or have
31 appealed a petition for amendment or repeal to the governor;

32 (2) A petitioner for judicial review need not exhaust
33 administrative remedies to the extent that this chapter or any other
34 statute states that exhaustion is not required; or

35 (3) The court may relieve a petitioner of the requirement to
36 exhaust any or all administrative remedies upon a showing that:

37 (a) The remedies would be patently inadequate;

38 (b) The exhaustion of remedies would be futile; or

1 (c) The grave irreparable harm that would result from having to
2 exhaust administrative remedies would clearly outweigh the public
3 policy requiring exhaustion of administrative remedies.

4 **Sec. 303.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each
5 amended to read as follows:

6 (1) The commissioner may hold a hearing for any purpose within the
7 scope of this code as he or she may deem necessary. The commissioner
8 shall hold a hearing:

9 (a) If required by any provision of this code; or

10 (b) Upon written demand for a hearing made by any person aggrieved
11 by any act, threatened act, or failure of the commissioner to act, if
12 such failure is deemed an act under any provision of this code, or by
13 any report, promulgation, or order of the commissioner other than an
14 order on a hearing of which such person was given actual notice or at
15 which such person appeared as a party, or order pursuant to the order
16 on such hearing.

17 (2) Any such demand for a hearing shall specify in what respects
18 such person is so aggrieved and the grounds to be relied upon as basis
19 for the relief to be demanded at the hearing.

20 (3) Unless a person aggrieved by a written order of the
21 commissioner demands a hearing thereon within ninety days after
22 receiving notice of such order, or in the case of a licensee under
23 Title 48 RCW within ninety days after the commissioner has mailed the
24 order to the licensee at the most recent address shown in the
25 commissioner's licensing records for the licensee, the right to such
26 hearing shall conclusively be deemed to have been waived.

27 (4) If a hearing is demanded by a licensee whose license has been
28 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall
29 hold such hearing demanded within thirty days after receipt of the
30 demand or within thirty days of the effective date of a temporary
31 license suspension issued after such demand, unless postponed by mutual
32 consent.

33 (5) A hearing held under this section must be conducted by an
34 administrative law judge unless the person demanding the hearing agrees
35 in writing to have an employee of the commissioner conduct the hearing.

36 **Sec. 304.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
37 as follows:

1 (~~(4)~~) (3) The agency shall consider fully all written and oral
2 submissions regarding (a) whether the rule in question is within the
3 intent of the legislature as expressed by the statute (~~(which)~~) that
4 the rule implements, (b) whether the rule was adopted in accordance
5 with all applicable provisions of law, or (c) whether (~~the agency is~~
6 ~~using a policy or interpretive statement in place of a~~) an agency
7 issuance is a de facto rule.

8 **Sec. 402.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to
9 read as follows:

10 (1) Within seven days of an agency hearing held after notification
11 of the agency by the rules review committee pursuant to RCW 34.05.620
12 or 34.05.630, the affected agency shall notify the committee of its
13 intended action on a proposed or existing rule or issuance to which the
14 committee objected (~~(or on a committee finding of the agency's failure~~
15 ~~to adopt rules)~~).

16 (2) If the rules review committee finds by a majority vote of its
17 members: (a) That the proposed or existing rule in question will not
18 be modified, amended, withdrawn, or repealed by the agency so as to
19 conform with the intent of the legislature, (b) that an existing rule
20 was not adopted in accordance with all applicable provisions of law, or
21 (c) that the agency will not modify or withdraw a de facto rule, or
22 replace (~~(the policy or interpretive statement)~~) it with a rule, the
23 rules review committee may, within thirty days from notification by the
24 agency of its intended action, file with the code reviser notice of its
25 objections together with a concise statement of the reasons therefor.
26 Such notice and statement shall also be provided to the agency by the
27 rules review committee.

28 (3) If the rules review committee makes an adverse finding
29 regarding an existing rule under subsection (2)(a) or (b) of this
30 section or a de facto rule under subsection (2)(c) of this section, the
31 committee may, by a majority vote of its members, recommend suspension
32 of the rule. Within seven days of such vote the committee shall
33 transmit to the appropriate standing committees of the legislature, the
34 governor, the code reviser, and the agency written notice of its
35 objection and recommended suspension and the concise reasons therefor.
36 Within thirty days of receipt of the notice, the governor shall
37 transmit to the committee, the code reviser, and the agency written
38 approval or disapproval of the recommended suspension. If the

1 suspension is approved by the governor, it is effective from the date
2 of that approval and continues until ninety days after the expiration
3 of the next regular legislative session.

4 (4) The code reviser shall publish transmittals from the rules
5 review committee or the governor issued pursuant to subsection (2) or
6 (3) of this section in the Washington state register and shall publish
7 in the next supplement and compilation of the Washington Administrative
8 Code a reference to the committee's objection or recommended suspension
9 and the governor's action on it and to the issue of the Washington
10 state register in which the full text thereof appears. If the
11 transmittal relates to a de facto rule, the code reviser shall publish
12 the reference within the Washington State Register and the Washington
13 Administrative Code in a location that addresses the most relevant
14 subject matter.

15 (5) The reference shall be removed from a rule published in the
16 Washington Administrative Code if a subsequent adjudicatory proceeding
17 determines that the rule is within the intent of the legislature or was
18 adopted in accordance with all applicable laws, whichever was the
19 objection of the rules review committee.

20 **Sec. 403.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to
21 read as follows:

22 (1) Any person may petition the rules review committee for a review
23 of a proposed or existing rule or ~~((a policy or interpretive~~
24 ~~statement))~~ other issuance. Within thirty days of the receipt of the
25 petition, the rules review committee shall acknowledge receipt of the
26 petition and describe any initial action taken. If the rules review
27 committee rejects the petition, a written statement of the reasons for
28 rejection shall be included.

29 (2) A person may petition the rules review committee under
30 subsection (1) of this section requesting review of an existing rule
31 only if the person has petitioned the agency to amend or repeal the
32 rule under RCW 34.05.330(1) and such petition was denied.

33 (3) A petition for review of a rule under subsection (1) of this
34 section shall:

35 (a) Identify with specificity the proposed or existing rule to be
36 reviewed;

37 (b) Identify the specific statute identified by the agency as
38 authorizing the rule, the specific statute which the rule interprets or

1 implements, and, if applicable, the specific statute the department is
2 alleged not to have followed in adopting the rule;

3 (c) State the reasons why the petitioner believes that the rule is
4 not within the intent of the legislature, or that its adoption was not
5 or is not in accordance with law, and provide documentation to support
6 these statements;

7 (d) Identify any known judicial action regarding the rule or
8 statutes identified in the petition.

9 A petition to review an existing rule shall also include a copy of
10 the agency's denial of a petition to amend or repeal the rule issued
11 under RCW 34.05.330(1) and, if available, a copy of the governor's
12 denial issued under RCW 34.05.330(3).

13 (4) A petition for review of ~~((a policy or interpretive statement))~~
14 an issuance other than a proposed or existing rule under subsection (1)
15 of this section shall:

16 (a) Identify the specific ~~((statement))~~ issuance to be reviewed;

17 (b) ~~((Identify the specific statute which the rule interprets or
18 implements;~~

19 ~~((c))~~ State the reasons why the petitioner believes that the
20 ~~((statement))~~ issuance meets the definition of a de facto rule under
21 RCW 34.05.010 ~~((and should have been adopted according to the
22 procedures of this chapter));~~

23 ~~((d))~~ (c) Identify any known judicial action regarding the
24 ~~((statement))~~ issuance or statutes identified in the petition.

25 (5) Within ninety days of receipt of the petition, the rules review
26 committee shall make a final decision on the rule or other issuance for
27 which the petition for review was not previously rejected.

28 **Sec. 404.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
29 read as follows:

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

37 (2) If the joint administrative rules review committee recommends
38 to the governor that an existing rule be suspended because it does not

1 conform with the intent of the legislature or was not adopted in
2 accordance with all applicable provisions of law, the recommendation
3 establishes a rebuttable presumption in a proceeding challenging the
4 validity of the rule that the rule is invalid. The burden of
5 demonstrating the validity of the rule is then on the adopting agency.

6 **PART V**
7 **FEES AND EXPENSES**

8 **Sec. 501.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to
9 read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout RCW 4.84.340 through 4.84.360.

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

17 (2) "Agency action" means agency action as defined by chapter 34.05
18 RCW.

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

32 (4) "Judicial review" means ~~((a) judicial review as defined by~~
33 ~~chapter 34.05 RCW))~~ review of an agency action in the superior court
34 and courts of appeal.

35 (5) "Qualified party" means (a) an individual whose net worth did
36 not exceed ~~((one))~~ two million dollars at the time the initial petition
37 for 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~~) seven million dollars at the
3 time the 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 **Sec. 502.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to
11 read as follows:

12 (1) Except as otherwise specifically provided by statute, a court
13 shall award a qualified party that prevails in a judicial review of an
14 agency action fees and other expenses incurred in the judicial review,
15 including reasonable attorneys' fees, unless the court finds that (~~the~~
16 ~~agency action was substantially justified or that~~) circumstances make
17 an award grossly unjust. A qualified party shall be considered to have
18 prevailed if the qualified party obtained relief on a significant issue
19 that achieves some benefit that the qualified party sought.

20 (2) The amount awarded a qualified party under subsection (1) of
21 this section shall not exceed (~~twenty-five~~) fifty thousand dollars
22 for the fees and other expenses incurred in superior court, and fifty
23 thousand dollars for the fees and other expenses incurred in each court
24 of appeal to a maximum of seventy-five thousand dollars. Subsection
25 (1) of this section shall not apply unless all parties challenging the
26 agency action are qualified parties. If two or more qualified parties
27 join in an action, the award in total shall not exceed (~~twenty-five~~)
28 fifty thousand dollars in the superior court and fifty thousand dollars
29 in each court of appeal to a maximum of seventy-five thousand dollars.
30 The court, in its discretion, may reduce the amount to be awarded
31 pursuant to subsection (1) of this section, or deny any award, to the
32 extent that a qualified party during the course of the proceedings
33 engaged in conduct that unduly or unreasonably protracted the final
34 resolution of the matter in controversy.

35 (3) A party who is awarded fees and other expenses by the superior
36 court or by any court of appeal is entitled to those fees and expenses,
37 regardless of whether the party ultimately prevails in a final
38 resolution of the matter.

1 (3) Each local agency shall maintain and make available for public
2 inspection and copying a current index providing identifying
3 information as to the following records issued, adopted, or promulgated
4 after January 1, 1973:

5 (a) Final opinions, including concurring and dissenting opinions,
6 as well as orders, made in the adjudication of cases;

7 (b) Those statements of policy and interpretations of policy,
8 statute, and the Constitution which have been adopted by the agency;

9 (c) Administrative staff manuals and instructions to staff that
10 affect a member of the public;

11 (d) Planning policies and goals, and interim and final planning
12 decisions;

13 (e) Factual staff reports and studies, factual consultant's reports
14 and studies, scientific reports and studies, and any other factual
15 information derived from tests, studies, reports, or surveys, whether
16 conducted by public employees or others; and

17 (f) Correspondence, and materials referred to therein, by and with
18 the agency relating to any regulatory, supervisory, or enforcement
19 responsibilities of the agency, whereby the agency determines, or
20 opines upon, or is asked to determine or opine upon, the rights of the
21 state, the public, a subdivision of state government, or of any private
22 party.

23 (4) A local agency need not maintain such an index, if to do so
24 would be unduly burdensome, but it shall in that event:

25 (a) Issue and publish a formal order specifying the reasons why and
26 the extent to which compliance would unduly burden or interfere with
27 agency operations; and

28 (b) Make available for public inspection and copying all indexes
29 maintained for agency use.

30 (5) Each state agency shall, by rule, establish and implement a
31 system of indexing for the identification and location of the following
32 records:

33 (a) All records issued before July 1, 1990, for which the agency
34 has maintained an index;

35 (b) Final orders entered after June 30, 1990, that are issued in
36 adjudicative proceedings as defined in RCW 34.05.010((1)) and that
37 contain an analysis or decision of substantial importance to the agency
38 in carrying out its duties;

1 (c) Declaratory orders entered after June 30, 1990, that are issued
2 pursuant to RCW 34.05.240 and that contain an analysis or decision of
3 substantial importance to the agency in carrying out its duties;

4 (d) Interpretive statements as defined in RCW 34.05.010(~~((8))~~) that
5 were entered after June 30, 1990; and

6 (e) Policy statements as defined in RCW 34.05.010(~~((14))~~) that were
7 entered after June 30, 1990.

8 Rules establishing systems of indexing shall include, but not be
9 limited to, requirements for the form and content of the index, its
10 location and availability to the public, and the schedule for revising
11 or updating the index. State agencies that have maintained indexes for
12 records issued before July 1, 1990, shall continue to make such indexes
13 available for public inspection and copying. Information in such
14 indexes may be incorporated into indexes prepared pursuant to this
15 subsection. State agencies may satisfy the requirements of this
16 subsection by making available to the public indexes prepared by other
17 parties but actually used by the agency in its operations. State
18 agencies shall make indexes available for public inspection and
19 copying. State agencies may charge a fee to cover the actual costs of
20 providing individual mailed copies of indexes.

21 (6) A public record may be relied on, used, or cited as precedent
22 by an agency against a party other than an agency and it may be invoked
23 by the agency for any other purpose only if«

24 (a) It has been indexed in an index available to the public; or

25 (b) Parties affected have timely notice (actual or constructive) of
26 the terms thereof.

27 (7) Each agency shall establish, maintain, and make available for
28 public inspection and copying a statement of the actual per page cost
29 or other costs, if any, that it charges for providing photocopies of
30 public records and a statement of the factors and manner used to
31 determine the actual per page cost or other costs, if any.

32 (a) In determining the actual per page cost for providing
33 photocopies of public records, an agency may include all costs directly
34 incident to copying such public records including the actual cost of
35 the paper and the per page cost for use of agency copying equipment.
36 In determining other actual costs for providing photocopies of public
37 records, an agency may include all costs directly incident to shipping
38 such public records, including the cost of postage or delivery charges
39 and the cost of any container or envelope used.

1 (b) In determining the actual per page cost or other costs for
2 providing copies of public records, an agency may not include staff
3 salaries, benefits, or other general administrative or overhead
4 charges, unless those costs are directly related to the actual cost of
5 copying the public records. Staff time to copy and mail the requested
6 public records may be included in an agency's costs.

7 (8) An agency need not calculate the actual per page cost or other
8 costs it charges for providing photocopies of public records if to do
9 so would be unduly burdensome, but in that event: The agency may not
10 charge in excess of fifteen cents per page for photocopies of public
11 records or for the use of agency equipment to photocopy public records
12 and the actual postage or delivery charge and the cost of any container
13 or envelope used to mail the public records to the requestor.

14 (9) This chapter shall not be construed as giving authority to any
15 agency, the office of the secretary of the senate, or the office of the
16 chief clerk of the house of representatives to give, sell or provide
17 access to lists of individuals requested for commercial purposes, and
18 agencies, the office of the secretary of the senate, and the office of
19 the chief clerk of the house of representatives shall not do so unless
20 specifically authorized or directed by law: PROVIDED, HOWEVER, That
21 lists of applicants for professional licenses and of professional
22 licensees shall be made available to those professional associations or
23 educational organizations recognized by their professional licensing or
24 examination board, upon payment of a reasonable charge therefor:
25 PROVIDED FURTHER, That such recognition may be refused only for a good
26 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
27 the Administrative Procedure Act.

28 **Sec. 602.** RCW 51.04.030 and 1994 c 164 s 25 are each amended to
29 read as follows:

30 The director shall supervise the providing of prompt and efficient
31 care and treatment, including care provided by physician assistants
32 governed by the provisions of chapters 18.57A and 18.71A RCW, acting
33 under a supervising physician, and including chiropractic care, to
34 workers injured during the course of their employment at the least cost
35 consistent with promptness and efficiency, without discrimination or
36 favoritism, and with as great uniformity as the various and diverse
37 surrounding circumstances and locations of industries will permit and
38 to that end shall, from time to time, establish and adopt and supervise

1 the administration of printed forms, rules, regulations, and practices
2 for the furnishing of such care and treatment: PROVIDED, That, the
3 department may recommend to an injured worker particular health care
4 services and providers where specialized treatment is indicated or
5 where cost effective payment levels or rates are obtained by the
6 department: AND PROVIDED FURTHER, That the department may enter into
7 contracts for goods and services including, but not limited to, durable
8 medical equipment so long as state-wide access to quality service is
9 maintained for injured workers.

10 The director shall, in consultation with interested persons,
11 establish and, in his or her discretion, periodically change as may be
12 necessary, and make available a fee schedule of the maximum charges to
13 be made by any physician, surgeon, chiropractor, hospital, druggist,
14 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,
15 acting under a supervising physician or other agency or person
16 rendering services to injured workers. The department shall coordinate
17 with other state purchasers of health care services to establish as
18 much consistency and uniformity in billing and coding practices as
19 possible, taking into account the unique requirements and differences
20 between programs. No service covered under this title shall be charged
21 or paid at a rate or rates exceeding those specified in such fee
22 schedule, and no contract providing for greater fees shall be valid as
23 to the excess. The establishment of such a schedule, exclusive of
24 conversion factors, does not constitute "agency action" as used in RCW
25 34.05.010(~~(+3)~~), nor does such a fee schedule constitute a "de facto
26 rule" as used in RCW 34.05.010(~~(+15)~~).

27 The director or self-insurer, as the case may be, shall make a
28 record of the commencement of every disability and the termination
29 thereof and, when bills are rendered for the care and treatment of
30 injured workers, shall approve and pay those which conform to the
31 adopted rules, regulations, established fee schedules, and practices of
32 the director and may reject any bill or item thereof incurred in
33 violation of the principles laid down in this section or the rules,
34 regulations, or the established fee schedules and rules and regulations
35 adopted under it.

36 NEW SECTION. **Sec. 603.** A new section is added to chapter 43.17
37 RCW to read as follows:

1 (1) An agency, prior to releasing a final report or study regarding
2 management by a county, city, town, special purpose district, or other
3 unit of local government of a program delegated to the local government
4 by the agency or for which the agency has regulatory responsibility,
5 shall provide copies of a draft of the report or study at least two
6 weeks in advance of the release of the final report or study to the
7 legislative body of the local government. The agency shall, at the
8 request of a local government legislative body, meet with the
9 legislative body before the release of a final report or study
10 regarding the management of such a program.

11 (2) For purposes of this section, "agency" means an office,
12 department, board, commission, or other unit of state government, other
13 than a unit of state government headed by a separately elected
14 official.

15 NEW SECTION. **Sec. 604.** A new section is added to chapter 43.05
16 RCW to read as follows:

17 When issuing a citation or other written finding that a person has
18 violated a statute, rule, or order, the agency shall include with the
19 citation or other written finding the text of the specific statute or
20 statutes granting the agency the authority to regulate the subject
21 matter of the citation or other written finding.

22 **Sec. 605.** RCW 50.13.060 and 1996 c 79 s 1 are each amended to read
23 as follows:

24 (1) Governmental agencies, including law enforcement agencies,
25 prosecuting agencies, and the executive branch, whether state, local,
26 or federal shall have access to information or records deemed private
27 and confidential under this chapter if the information or records are
28 needed by the agency for official purposes and:

29 (a) The agency submits an application in writing to the employment
30 security department for the records or information containing a
31 statement of the official purposes for which the information or records
32 are needed and specific identification of the records or information
33 sought from the department; and

34 (b) The director, commissioner, chief executive, or other official
35 of the agency has verified the need for the specific information in
36 writing either on the application or on a separate document; and

1 (c) The agency requesting access has served a copy of the
2 application for records or information on the individual or employing
3 unit whose records or information are sought and has provided the
4 department with proof of service. Service shall be made in a manner
5 which conforms to the civil rules for superior court. The requesting
6 agency shall include with the copy of the application a statement to
7 the effect that the individual or employing unit may contact the public
8 records officer of the employment security department to state any
9 objections to the release of the records or information. The
10 employment security department shall not act upon the application of
11 the requesting agency until at least five days after service on the
12 concerned individual or employing unit. The employment security
13 department shall consider any objections raised by the concerned
14 individual or employing unit in deciding whether the requesting agency
15 needs the information or records for official purposes.

16 (2) The requirements of subsections (1) and (8) of this section
17 shall not apply to the state legislative branch. The state legislature
18 shall have access to information or records deemed private and
19 confidential under this chapter, if the legislature or a legislative
20 committee finds that the information or records are necessary and for
21 official purposes. If the employment security department does not make
22 information or records available as provided in this subsection, the
23 legislature may exercise its authority granted by chapter 44.16 RCW.

24 (3) In cases of emergency the governmental agency requesting access
25 shall not be required to formally comply with the provisions of
26 subsection (1) of this section at the time of the request if the
27 procedures required by subsection (1) of this section are complied with
28 by the requesting agency following the receipt of any records or
29 information deemed private and confidential under this chapter. An
30 emergency is defined as a situation in which irreparable harm or damage
31 could occur if records or information are not released immediately.

32 (4) The requirements of subsection (1)(c) of this section shall not
33 apply to governmental agencies where the procedures would frustrate the
34 investigation of possible violations of criminal laws or to the release
35 of employing unit names, addresses, number of employees, and aggregate
36 employer wage data for the purpose of state governmental agencies
37 preparing small business economic impact statements under chapter 19.85
38 RCW or preparing cost-benefit analyses under RCW 34.05.328(1)(c).
39 Information provided by the department and held to be private and

1 confidential under state or federal laws must not be misused or
2 released to unauthorized parties. A person who misuses such
3 information or releases such information to unauthorized parties is
4 subject to the sanctions in RCW 50.13.080.

5 (5) Governmental agencies shall have access to certain records or
6 information, limited to such items as names, addresses, social security
7 numbers, and general information about benefit entitlement or employer
8 information possessed by the department, for comparison purposes with
9 records or information possessed by the requesting agency to detect
10 improper or fraudulent claims, or to determine potential tax liability
11 or employer compliance with registration and licensing requirements.
12 In those cases the governmental agency shall not be required to comply
13 with subsection (1)(c) of this section, but the requirements of the
14 remainder of subsection (1) must be satisfied.

15 (6) Governmental agencies may have access to certain records and
16 information, limited to employer information possessed by the
17 department for purposes authorized in chapter 50.38 RCW. Access to
18 these records and information is limited to only those individuals
19 conducting authorized statistical analysis, research, and evaluation
20 studies. Only in cases consistent with the purposes of chapter 50.38
21 RCW are government agencies not required to comply with subsection
22 (1)(c) of this section, but the requirements of the remainder of
23 subsection (1) of this section must be satisfied. Information provided
24 by the department and held to be private and confidential under state
25 or federal laws shall not be misused or released to unauthorized
26 parties subject to the sanctions in RCW 50.13.080.

27 (7) Disclosure to governmental agencies of information or records
28 obtained by the employment security department from the federal
29 government shall be governed by any applicable federal law or any
30 agreement between the federal government and the employment security
31 department where so required by federal law. When federal law does not
32 apply to the records or information state law shall control.

33 (8) The disclosure of any records or information by a governmental
34 agency which has obtained the records or information under this section
35 is prohibited unless the disclosure is directly connected to the
36 official purpose for which the records or information were obtained.

37 (9) In conducting periodic salary or fringe benefit studies
38 pursuant to law, the department of personnel shall have access to
39 records of the employment security department as may be required for

1 such studies. For such purposes, the requirements of subsection (1)(c)
2 of this section need not apply.

3 NEW SECTION. **Sec. 606.** The code reviser shall study the
4 feasibility of accepting agency rule filings in an electronic format.
5 The study must include consideration of the benefits to be achieved by
6 electronic filing compared to the costs that electronic filing would
7 entail. The code reviser may consult with the office of financial
8 management, state agencies, and the general public in conducting the
9 study. The code reviser shall report to the legislature and the
10 governor by July 1, 1998, on the results of this study.

11 NEW SECTION. **Sec. 607.** Part headings used in this act do not
12 constitute any part of the law.

13 NEW SECTION. **Sec. 608.** Section 605 of this act is necessary for
14 the immediate preservation of the public peace, health, or safety, or
15 support of the state government and its existing public institutions,
16 and takes effect immediately.

17 NEW SECTION. **Sec. 609.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected."

21 **E2SHB 1032** - S COMM AMD
22 By Committee on Government Operations

23 NOT ADOPTED 4/17/97

24 In line 1 of the title, after "reform;" strike the remainder of the
25 title and insert "amending RCW 76.09.010, 76.09.040, 48.02.060,
26 48.44.050, 48.46.200, 48.30.010, 34.05.010, 34.05.230, 34.05.325,
27 34.05.328, 34.05.350, 34.05.354, 34.05.360, 34.05.380, 82.32.410,
28 19.85.025, 34.05.570, 34.05.534, 48.04.010, 34.12.040, 34.05.630,
29 34.05.640, 34.05.655, 34.05.660, 4.84.340, 4.84.350, 4.84.360,
30 51.04.030, and 50.13.060; reenacting and amending RCW 42.17.260; adding
31 a new section to chapter 43.22 RCW; adding new sections to chapter
32 34.05 RCW; adding a new section to chapter 43.17 RCW; adding a new

1 section to chapter 43.05 RCW; creating new sections; providing an
2 expiration date; and declaring an emergency."

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