

**SUBSTITUTE HOUSE BILL 1032**

**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Government Reform & Land Use (originally sponsored by Representatives Reams, Mulliken, Thompson, McMorris, Koster, DeBolt, D. Sommers, Boldt, Hickel, Sheahan, Buck, Schoesler, Honeyford, Mitchell, D. Schmidt, Sherstad, L. Thomas, Dunn, Dyer, Mielke, Cairnes, Robertson and Backlund)

Read first time 01/21/97.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,  
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 82.32.300, 48.30.010,  
3 34.05.350, 34.05.328, 34.05.310, 34.05.010, 34.05.230, 82.32.410,  
4 34.05.325, 34.05.354, 19.85.025, 34.05.570, 34.05.534, 48.04.010,  
5 34.12.040, 34.05.630, 34.05.640, 34.05.655, 34.05.660, 4.84.360,  
6 4.84.340, and 43.41.110; adding a new section to chapter 43.22 RCW;  
7 adding new sections to chapter 34.05 RCW; adding a new section to  
8 chapter 4.84 RCW; adding a new section to chapter 43.17 RCW; adding a  
9 new section to chapter 43.05 RCW; adding a new chapter to Title 43 RCW;  
10 creating a new section; and providing an expiration date.

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

**PART I**

**GRANTS OF RULE-MAKING AUTHORITY**

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

16 (1) The legislature hereby finds and declares that the forest land  
17 resources are among the most valuable of all resources in the state;  
18 that a viable forest products industry is of prime importance to the

1 state's economy; that it is in the public interest for public and  
2 private commercial forest lands to be managed consistent with sound  
3 policies of natural resource protection; that coincident with  
4 maintenance of a viable forest products industry, it is important to  
5 afford protection to forest soils, fisheries, wildlife, water quantity  
6 and quality, air quality, recreation, and scenic beauty.

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

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

16 (b) Afford protection to forest soils and public resources by  
17 utilizing all reasonable methods of technology in conducting forest  
18 practices;

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

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

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

25 (f) Provide for interagency input and intergovernmental and tribal  
26 coordination and cooperation;

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

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

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

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

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

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

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

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

16 (a) Establish minimum standards for forest practices;

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

22 (c) Set forth necessary administrative provisions; and

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

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

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

35 (2) The board shall prepare proposed forest practices  
36 (~~regulations~~) rules. In addition to any forest practices  
37 (~~regulations~~) rules relating to water quality protection proposed by

1 the board, the department of ecology shall prepare proposed forest  
2 practices (~~((regulations))~~) rules relating to water quality protection.

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

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

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

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

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

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

35 (3) The commissioner may:

36 (a) Make reasonable rules and regulations for effectuating any  
37 provision of this code, except those relating to his or her election,

1 qualifications, or compensation: PROVIDED, That the commissioner may  
2 not adopt rules after the effective date of this section that are based  
3 solely on this statute, or on a statute's statement of intent or  
4 purpose, or on the enabling provisions of the statute establishing the  
5 agency, or any combination of such provisions, for statutory authority  
6 to adopt any rule, except rules defining or clarifying terms in, or  
7 procedures necessary to the implementation of a statute. No such rules  
8 and regulations shall be effective prior to their being filed for  
9 public inspection in the commissioner's office.

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

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

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

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

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

31 The commissioner may adopt, in accordance with the provisions of  
32 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)  
33 rules and regulations as necessary or proper to carry out the  
34 provisions of this chapter: PROVIDED, That the commissioner may not  
35 adopt rules after the effective date of this section that are based  
36 solely on this section, a statute's statement of intent or purpose, or  
37 on the enabling provisions of the statute establishing the agency, or

1 any combination of such provisions, for statutory authority to adopt  
2 any rule, except rules defining or clarifying terms in, or procedures  
3 necessary to the implementation of a statute. Nothing in this chapter  
4 shall be construed to prohibit the commissioner from requiring changes  
5 in procedures previously approved by ((him)) the commissioner.

6 **Sec. 107.** RCW 82.32.300 and 1983 c 3 s 222 are each amended to  
7 read as follows:

8 The administration of this and chapters 82.04 through 82.27 RCW of  
9 this title is vested in the department of revenue which shall prescribe  
10 forms and rules of procedure for the determination of the taxable  
11 status of any person, for the making of returns and for the  
12 ascertainment, assessment and collection of taxes and penalties imposed  
13 thereunder.

14 The department of revenue shall make and publish procedural rules  
15 and regulations, not inconsistent therewith, necessary to enforce their  
16 provisions, which shall have the same force and effect as if  
17 specifically included therein, unless declared invalid by the judgment  
18 of a court of record not appealed from.

19 The department may employ such clerks, specialists, and other  
20 assistants as are necessary. Salaries and compensation of such  
21 employees shall be fixed by the department and shall be charged to the  
22 proper appropriation for the department.

23 The department shall exercise general supervision of the collection  
24 of taxes and, in the discharge of such duty, may institute and  
25 prosecute such suits or proceedings in the courts as may be necessary  
26 and proper.

27 **Sec. 108.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to  
28 read as follows:

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

33 (2) In addition to such unfair methods and unfair or deceptive acts  
34 or practices as are expressly defined and prohibited by this code, the  
35 commissioner may from time to time by regulation promulgated pursuant  
36 to chapter 34.05 RCW, define other methods of competition and other  
37 acts and practices in the conduct of such business ((reasonably)) found

1 by the commissioner to be unfair or deceptive by a preponderance of the  
2 facts submitted.

3 (3) In defining other methods of competition and other acts and  
4 practices in the conduct of such business to be unfair and deceptive,  
5 the commissioner shall set forth in detail all facts upon which he or  
6 she relies in making the definition. After the hearing the  
7 commissioner shall review all the material submitted and affirm or deny  
8 the definition based upon a preponderance of facts submitted. Upon  
9 appeal the superior court shall review the findings of fact upon which  
10 the regulation is based de novo on the record.

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

14 ((+4)) (5) If the commissioner has cause to believe that any  
15 person is violating any such regulation, the commissioner may order  
16 such person to cease and desist therefrom. The commissioner shall  
17 deliver such order to such person direct or mail it to the person by  
18 registered mail with return receipt requested. If the person violates  
19 the order after expiration of ten days after the cease and desist order  
20 has been received by him or her, he or she may be fined by the  
21 commissioner a sum not to exceed two hundred and fifty dollars for each  
22 violation committed thereafter.

23 ((+5)) (6) If any such regulation is violated, the commissioner  
24 may take such other or additional action as is permitted under the  
25 insurance code for violation of a regulation.

26 **PART II**

27 **RULE-MAKING REQUIREMENTS**

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

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

31 (a) That immediate adoption, amendment, or repeal of a rule is  
32 necessary for the preservation of ((the)) public health((7)) or safety,  
33 ((or general welfare,)) and that observing the time requirements of  
34 notice and opportunity to comment upon adoption of a permanent rule  
35 would be contrary to the public interest: PROVIDED, That the  
36 department of agriculture may adopt an emergency rule if the failure to

1 adopt the rule on an emergency basis would result in substantial  
2 reduction of commodity value or substantial economic detriment; or

3 (b) That state or federal law or federal rule or a federal deadline  
4 for state receipt of federal funds requires immediate adoption of a  
5 rule,  
6 the agency may dispense with those requirements and adopt, amend, or  
7 repeal the rule on an emergency basis. The agency's finding and a  
8 concise statement of the reasons for its finding shall be incorporated  
9 in the order for adoption of the emergency rule or amendment filed with  
10 the office of the code reviser under RCW 34.05.380 and with the rules  
11 review committee.

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

23 (3) Within seven days after the rule is adopted, any person may  
24 petition the governor requesting the immediate repeal of a rule adopted  
25 on an emergency basis by any department listed in RCW 43.17.010.  
26 Within seven days after submission of the petition, the governor shall  
27 either deny the petition in writing, stating his or her reasons for the  
28 denial, or order the immediate repeal of the rule. In ruling on the  
29 petition, the governor shall consider only whether the conditions in  
30 subsection (1) of this section were met such that adoption of the rule  
31 on an emergency basis was necessary. If the governor orders the repeal  
32 of the emergency rule, any sanction imposed based on that rule is void.  
33 This subsection shall not be construed to prohibit adoption of any rule  
34 as a permanent rule.

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



1       **Sec. 202.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to  
2 read as follows:

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

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

7       (b) Determine that the rule is needed to achieve the general goals  
8 and specific objectives stated under (a) of this subsection, and  
9 analyze alternatives to rule making and the consequences of not  
10 adopting the rule;

11       (c) Determine that the probable benefits of the rule are greater  
12 than its probable costs, taking into account both the qualitative and  
13 quantitative benefits and costs and the specific directives of the  
14 statute being implemented;

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

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

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

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

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

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

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

37       (2) In making its determinations pursuant to subsection (1)(b)  
38 through (g) of this section, the agency shall place in the rule-making

1 file documentation of sufficient quantity and quality so as to persuade  
2 a reasonable person that the determinations are justified.

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

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

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

10 (c) Promote and assist voluntary compliance; and

11 (d) Evaluate whether the rule achieves the purpose for which it was  
12 adopted, including, to the maximum extent practicable, the use of  
13 interim milestones to assess progress and the use of objectively  
14 measurable outcomes.

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

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

22 (b) Coordinate implementation and enforcement of the rule with the  
23 other federal and state entities regulating the same activity or  
24 subject matter by making every effort to do one or more of the  
25 following:

26 (i) Deferring to the other entity;

27 (ii) Designating a lead agency; or

28 (iii) Entering into an agreement with the other entities specifying  
29 how the agency and entities will coordinate implementation and  
30 enforcement.

31 If the agency is unable to comply with this subsection (4)(b), the  
32 agency shall report to the legislature pursuant to (c) of this  
33 subsection;

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

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

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

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

6 (i) Significant legislative rules of the departments of ecology,  
7 labor and industries, health, social and health services, revenue, and  
8 natural resources, the employment security department, the forest  
9 practices board, the office of the insurance commissioner, and to the  
10 legislative rules of the department of fish and wildlife implementing  
11 chapter 75.20 RCW; and

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

17 (b) This section does not apply to:

18 (i) Emergency rules adopted under RCW 34.05.350;

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

21 (iii) Rules adopting or incorporating by reference without material  
22 change federal statutes or regulations, Washington state statutes,  
23 rules of other Washington state agencies, shoreline master programs  
24 other than those programs governing shorelines of state-wide  
25 significance, or, as referenced by Washington state law, national  
26 consensus codes that generally establish industry standards, if the  
27 material adopted or incorporated regulates the same subject matter and  
28 conduct as the adopting or incorporating rule;

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

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

34 (vi) Rules that set or adjust fees or rates pursuant to legislative  
35 standards, except rules relating to reimbursements under Title XVIII or  
36 Title XIX of the Social Security Act.

37 (c) For purposes of this subsection:

38 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
39 (A) any procedure, practice, or requirement relating to any agency

1 hearings; (B) any filing or related process requirement for making  
2 application to an agency for a license or permit; or (C) any policy  
3 statement pertaining to the consistent internal operations of an  
4 agency.

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

8 (iii) A "significant legislative rule" is a rule other than a  
9 procedural or interpretive rule that (A) adopts substantive provisions  
10 of law pursuant to delegated legislative authority, the violation of  
11 which subjects a violator of such rule to a penalty or sanction; (B)  
12 establishes, alters, or revokes any qualification or standard for the  
13 issuance, suspension, or revocation of a license or permit; or (C)  
14 adopts a new, or makes significant amendments to, a policy or  
15 regulatory program.

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

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

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

29 (b) The costs incurred by state agencies in complying with this  
30 section;

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

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

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

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

1       **Sec. 203.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
2 read as follows:

3       (1) To meet the intent of providing greater public access to  
4 administrative rule making and to promote consensus among interested  
5 parties, agencies shall solicit comments from the public on a subject  
6 of possible rule making before filing with the code reviser a notice of  
7 proposed rule making under RCW 34.05.320. The agency shall prepare a  
8 statement of inquiry that:

9       (a) Identifies the specific statute or statutes authorizing the  
10 agency to adopt rules on this subject;

11       (b) Discusses why rules on this subject may be needed and what they  
12 might accomplish;

13       (c) Identifies other federal and state agencies that regulate this  
14 subject, and describes the process whereby the agency would coordinate  
15 the contemplated rule with these agencies;

16       (d) Discusses the process by which the rule might be developed,  
17 including, but not limited to, negotiated rule making, pilot rule  
18 making, or agency study;

19       (e) Specifies the process by which interested parties can  
20 effectively participate in the decision to adopt a new rule and  
21 formulation of a proposed rule before its publication.

22       The statement of inquiry shall be filed with the code reviser for  
23 publication in the state register at least thirty days before the date  
24 the agency files notice of proposed rule making under RCW 34.05.320 and  
25 shall be sent to any party that has requested receipt of the agency's  
26 statements of inquiry.

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

31       (a) Negotiated rule making by which representatives of an agency  
32 and of the interests that are affected by a subject of rule making,  
33 including, where appropriate, county and city representatives, seek to  
34 reach consensus on the terms of the proposed rule and on the process by  
35 which it is negotiated; and

36       (b) Pilot rule making which includes testing the feasibility of  
37 complying with or administering draft new rules or draft amendments to  
38 existing rules through the use of volunteer pilot groups in various

1 areas and circumstances, as provided in RCW 34.05.313 or as otherwise  
2 provided by the agency.

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

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

11 (4) This section does not apply to:

12 (a) Emergency rules adopted under RCW 34.05.350;

13 (b) Rules relating only to internal governmental operations that  
14 are not subject to violation by a nongovernment party;

15 (c) Rules adopting or incorporating by reference without material  
16 change federal statutes or regulations, Washington state statutes,  
17 rules of other Washington state agencies, shoreline master programs  
18 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 (d) Rules that only correct typographical errors, make address or  
24 name changes, or clarify language of a rule without changing its  
25 effect;

26 (e) Rules the content of which is explicitly and specifically  
27 dictated by statute;

28 (f) Rules that set or adjust fees or rates pursuant to legislative  
29 standards, except rules relating to reimbursements under Title XVIII or  
30 Title XIX of the Social Security Act; or

31 (g) Rules that adopt, amend, or repeal:

32 (i) A procedure, practice, or requirement relating to agency  
33 hearings; or

34 (ii) A filing or related process requirement for applying to an  
35 agency for a license or permit.

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

1 (1) No rule, adopted by an agency before the effective date of this  
2 section, is effective for more than seven years after the effective  
3 date of this section, unless it has been readopted under the procedures  
4 established in this chapter.

5 (2) Each agency shall review its rules existing on the effective  
6 date of this section as follows:

7 (a) Fifty percent of the rules shall be reviewed within three years  
8 of the effective date of this section;

9 (b) Eighty percent of the rules shall be reviewed within five years  
10 of the effective date of this section;

11 (c) One hundred percent of the rules shall be reviewed within seven  
12 years of the effective date of this section.

13 (3) In reviewing a rule, the agency shall determine whether the  
14 rule is:

15 (a) Unclear or difficult to understand;

16 (b) Written or being implemented in a way that does not conform  
17 with the intent of the legislature as expressed by the statute which  
18 the rule implements;

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

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

22 (e) Unauthorized because the authorizing statute has since been  
23 repealed or amended; and

24 (f) No longer necessary to meet the purposes of the statute which  
25 it implements.

26 (4) The agency shall place in a rules review file documentation  
27 sufficient to show that the agency considered the criteria in  
28 subsection (2) of this section in reviewing a rule.

29 (5) Following a review, the agency shall take action to repeal the  
30 rule, amend the rule, or readopt the rule.

31 (6) For purposes of this section, "agency" means the department of  
32 ecology, employment security department, department of labor and  
33 industries, department of revenue, department of licensing, department  
34 of health, department of social and health services, department of fish  
35 and wildlife, and the office of the insurance commissioner.

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

1 Each state agency shall prepare a semiannual agenda for rules under  
2 development. The agency shall file the agenda with the code reviser  
3 for publication in the state register not later than January 31st and  
4 July 31st of each year. Not later than three days after its  
5 publication in the state register, the agency shall send a copy of the  
6 agenda to each person who has requested receipt of a copy of the  
7 agenda. The agency shall also submit the agenda to the director of  
8 financial management, the rules review committee, and any other state  
9 agency that may reasonably be expected to have an interest in the  
10 subject of rules that will be developed.

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

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

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

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

23 (a) The proposed rules previously existed in the form of  
24 interpretive statements or policy statements by the agency;

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

27 (c) The proposed rules adopt or incorporate by reference without  
28 material change federal statutes or regulations, Washington state  
29 statutes, rules of other Washington state agencies, shoreline master  
30 programs other than those programs governing shorelines of state-wide  
31 significance, or, as referenced by Washington state law, national  
32 consensus codes that generally establish industry standards, if the  
33 material adopted or incorporated regulates the same subject matter and  
34 conduct as the adopting or incorporating rule;

35 (d) The proposed rules only correct typographical errors, make  
36 address or name changes, or clarify language of a rule without changing  
37 its effect;



1 (e) The content of the proposed rules is explicitly and  
2 specifically dictated by statute;

3 (f) The proposed rules have been the subject of negotiated rule  
4 making, pilot rule making, or some other process that involved  
5 substantial participation by interested parties before the development  
6 of the proposed rule; or

7 (g) The proposed rule is being readopted following a review under  
8 section 204 of this act.

9 (2) The expedited rule-making process must follow the requirements  
10 for rule making set forth in RCW 34.05.320, except that the agency is  
11 not required to prepare a small business economic impact statement, a  
12 statement indicating whether the rule constitutes a significant  
13 legislative rule under RCW 34.05.328(5)(c)(iii), or a significant  
14 legislative rule analysis under RCW 34.05.328. An agency is not  
15 required to prepare statements of inquiry under RCW 34.05.310 or  
16 conduct a hearing for the expedited adoption of rules. The notice for  
17 the expedited adoption of rules must contain a statement which is  
18 substantially in the following form:

19

**NOTICE**

20 THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN  
21 EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR  
22 THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS  
23 ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA  
24 FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE  
25 BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST  
26 EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE RECEIVED BY  
27 (INSERT DATE) AND SENT TO (INSERT NAME AND ADDRESS).

28 (3) The agency shall send a copy of the notice of the proposed  
29 expedited rule making to any person who has requested notification of  
30 proposals for the expedited adoption of rules or of agency rule making,  
31 as well as the joint administrative rules review committee, within  
32 three days after its publication in the Washington State Register. An  
33 agency may charge for the actual cost of providing a requesting party  
34 mailed copies of these notices. The notice of the proposed expedited  
35 rule making shall include a statement that any person who objects to  
36 the adoption of the rule must file a written objection to the adoption  
37 of the rule within forty-five days after the notice has been published.

1 The notice shall also include an explanation of the reasons the agency  
2 believes the expedited adoption of the rule is appropriate.

3 (4) The code reviser shall publish the text of all rules proposed  
4 for expedited adoption along with the notice required in this section  
5 in a separate section of the Washington State Register. Once the text  
6 of the proposed rules has been published in the Washington State  
7 Register, the only changes that an agency may make in the text of these  
8 proposed rules before their final adoption are to correct typographical  
9 errors.

10 (5) Any person may file a written objection to the expedited  
11 adoption of a rule. The objection shall be filed with the agency rules  
12 coordinator within forty-five days after the notice of the proposed  
13 expedited rule making has been published in the Washington State  
14 Register. A person who has filed a written objection to the expedited  
15 adoption of a rule may withdraw the objection.

16 (6) If no written objections to the expedited adoption of a rule  
17 are filed with the agency within forty-five days after the notice of  
18 proposed expedited rule making is published, or if all objections that  
19 have been filed are withdrawn by the persons filing the objections, the  
20 agency may enter an order adopting the rule without further notice or  
21 a public hearing. The order shall be published in the manner required  
22 by this chapter for any other agency order adopting, amending, or  
23 repealing a rule.

24 (7) If a written notice of objection to the expedited adoption of  
25 the rule is timely filed with the agency and is not withdrawn, the  
26 notice of proposed expedited rule making published under this section  
27 shall be considered a statement of inquiry for the purposes of RCW  
28 34.05.310 and the agency may initiate further rule adoption proceedings  
29 in accordance with this chapter except that RCW 34.05.328 does not  
30 apply.

31 **Sec. 208.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to  
32 read as follows:

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

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

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

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

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

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

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

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

37 (6) "Filing" of a document that is required to be filed with an  
38 agency means delivery of the document to a place designated by the

1 agency by rule for receipt of official documents, or in the absence of  
2 such designation, at the office of the agency head.

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

11 (8) "Interpretive statement" means a written expression of the  
12 opinion of an agency(~~(, entitled an interpretive statement))~~ by the  
13 agency head or its designee, as to the meaning of a statute or other  
14 provision of law, of a court decision, or of an agency order, for  
15 general application by the agency and not directed to one specific  
16 event or person for the purpose of providing guidance to persons as to  
17 their obligations under the law. Consumer-related guides and brochures  
18 produced by an agency that generally explain an agency program or a  
19 person's rights under the law do not constitute interpretive statements  
20 for purposes of this chapter. A document entitled "technical  
21 assistance document" does not constitute an interpretive statement for  
22 purposes of this chapter. Tax determinations issued by the department  
23 of revenue that have precedential value do not constitute interpretive  
24 statements for purposes of this chapter.

25 (9)(a) "License" means a franchise, permit, certification,  
26 approval, registration, charter, or similar form of authorization  
27 required by law, but does not include (i) a license required solely for  
28 revenue purposes, or (ii) a certification of an exclusive bargaining  
29 representative, or similar status, under a collective bargaining law or  
30 similar statute, or (iii) a license, franchise, or permission for use  
31 of trademarks, symbols, and similar property owned or controlled by the  
32 agency.

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

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

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

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

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

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

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

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

12 (b) A person named as a party in a judicial review or civil  
13 enforcement proceeding, or allowed to participate as a party in a  
14 judicial review or civil enforcement proceeding.

15 (13) "Person" means any individual, partnership, corporation,  
16 association, governmental subdivision or unit thereof, or public or  
17 private organization or entity of any character, and includes another  
18 agency.

19 (14) "Policy statement" means a written description of the current  
20 approach of an agency(~~(, entitled a policy statement)~~) by the agency  
21 head or its designee, to implementation of a statute or other provision  
22 of law, of a court decision, or of an agency order, including where  
23 appropriate the agency's current practice, procedure, or method of  
24 action based upon that approach. A policy statement may also include  
25 factors the agency will consider in implementing a law, court decision,  
26 or agency order. A policy statement must be used for general  
27 application by the agency and not directed to one specific event or  
28 person for the purpose of providing guidance to persons as to their  
29 obligations under the law. Consumer-related guides and brochures  
30 produced by an agency that generally explain an agency program or a  
31 person's rights under the law do not constitute policy statements for  
32 purposes of this chapter. A document entitled "technical assistance  
33 document" does not constitute a policy statement for purposes of this  
34 chapter. Tax determinations issued by the department of revenue that  
35 have precedential value do not constitute policy statements for the  
36 purpose of this chapter.

37 (15) "Rule" means any agency order, directive, (~~(or)~~) regulation,  
38 or statement of general applicability (a) the violation of which  
39 subjects a person to a penalty or administrative sanction; (b) which

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

20 (16) "Rules review committee" or "committee" means the joint  
21 administrative rules review committee created pursuant to RCW 34.05.610  
22 for the purpose of selectively reviewing existing and proposed rules of  
23 state agencies.

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

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

32 **Sec. 209.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to  
33 read as follows:

34 ~~((If the adoption of rules is not feasible and practicable,))~~  
35 An agency is encouraged to advise the public of its current opinions,  
36 approaches, and likely courses of action by means of interpretive or  
37 policy statements. ~~((Current interpretive and policy statements are~~  
38 advisory only.)) To better inform and involve the public, an agency is

1 encouraged to convert long-standing interpretive and policy statements  
2 into rules through the expedited rule adoption process in section 207  
3 of this act.

4 (2) Interpretive and policy statements are advisory only and do not  
5 foreclose alternative courses of action by persons in agency actions.  
6 Interpretive or policy statements cannot be used to substantially  
7 modify existing rules.

8 (3) A person may petition an agency requesting the conversion of  
9 interpretive and policy statements into rules. A person may also  
10 petition an agency requesting the repeal or withdrawal of interpretive  
11 or policy statements. Upon submission, the agency shall notify the  
12 joint administrative rules review committee of the petition. Within  
13 sixty days after submission of a petition, the agency shall either deny  
14 the petition in writing, stating its reasons for the denial, or  
15 initiate rule-making proceedings in accordance with this chapter, or  
16 repeal or withdraw the interpretive or policy statement.

17 (~~(3)~~) (4) Each agency shall maintain a roster of interested  
18 persons, consisting of persons who have requested in writing to be  
19 notified of all interpretive and policy statements issued by that  
20 agency. Each agency shall update the roster once each year and  
21 eliminate persons from the roster who do not indicate a desire to  
22 continue on the roster. Whenever an agency issues an interpretive or  
23 policy statement, it shall send a copy of the statement to each person  
24 listed on the roster. The agency may charge a nominal fee to the  
25 interested person for this service. Agencies are not required to  
26 notify or send people copies of interpretive or policy statements that  
27 concern only internal agency procedures that do not affect private  
28 rights or procedures available to the public.

29 (~~(4)~~) (5) Whenever an agency issues an interpretive or policy  
30 statement, except for an interpretive or policy statement that concerns  
31 only internal agency procedures that do no affect private rights or  
32 procedures available to the public, it shall submit to the code reviser  
33 for publication in the Washington State Register a statement describing  
34 the subject matter of the interpretive or policy statement, and listing  
35 the person at the agency from whom a copy of the interpretive or policy  
36 statement may be obtained.

37 **Sec. 210.** RCW 82.32.410 and 1991 c 330 s 2 are each amended to  
38 read as follows:

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

3 (a) By rule adopted pursuant to chapter 34.05 RCW, the director  
4 shall adopt criteria which he or she shall use to decide whether a  
5 determination is precedential. These criteria shall include, but not  
6 be limited to, whether the determination clarifies an unsettled  
7 interpretation of Title 82 RCW or where the determination modifies or  
8 clarifies an earlier interpretation.

9 (b) Written determinations designated as precedents by the director  
10 shall be indexed by subject matter. The determinations and indexes  
11 shall be made available for public inspection and shall be published by  
12 the department.

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

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

20 (a) The names, addresses, and other identifying details of the  
21 person to whom the written determination pertains and of another person  
22 identified in the written determination; and

23 (b) Information the disclosure of which is specifically prohibited  
24 by any statute applicable to the department of revenue, and the  
25 department may also delete other information exempted from disclosure  
26 by chapter 42.17 RCW or any other statute applicable to the department  
27 of revenue.

28 NEW SECTION. Sec. 211. A new section is added to chapter 34.05  
29 RCW under the subchapter heading "Part III" to read as follows:

30 (1)(a) Except for the circumstances in (b) of this subsection, no  
31 state agency may enforce or attempt to enforce in an agency action an  
32 interpretive statement, policy statement, guideline, bulletin, staff  
33 instruction, or other such issuance against any person in such a manner  
34 that the procedures or standards contained in the agency issuance are  
35 considered binding. The information contained in such an issuance may  
36 illustrate acceptable and unacceptable procedures or standards, but the  
37 agency must consider individual facts in cases that arise to allow for  
38 individualized determinations in agency actions. If a court or



1 presiding officer finds that an agency is applying the information  
2 contained in an agency issuance in a binding manner, then the  
3 procedures or standards contained in the agency issuance shall be  
4 considered invalid because the agency failed to adopt these procedures  
5 or standards as rules.

6 (b) Nothing in (a) of this subsection prohibits an agency from  
7 enforcing any guidelines, policies, or other such issuances applicable  
8 to the personnel of the agency.

9 (2) Any person may rely upon a technical assistance document,  
10 issued to that person by the agency, in the course of meeting the  
11 requirements of a rule or statute.

12 NEW SECTION. **Sec. 212.** A new section is added to chapter 34.05  
13 RCW under the subchapter heading "Part III" to read as follows:

14 In lieu of regular mail, an agency may send the contents of any  
15 notice pertaining to rule making required under this chapter by  
16 electronic mail or facsimile mail if requested in writing by the person  
17 entitled to receive the notice.

18 **Sec. 213.** RCW 34.05.325 and 1995 c 403 s 304 are each amended to  
19 read as follows:

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

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

29 (3) If the agency possesses equipment capable of receiving  
30 electronic mail, telefacsimile transmissions, or recorded telephonic  
31 communications, the agency ((may)) shall provide in its notice of  
32 hearing filed under RCW 34.05.320 that interested parties may comment  
33 on proposed rules by these means. If the agency ((chooses)) is able to  
34 receive comments by these means, the notice of hearing shall provide  
35 instructions for making such comments, including, but not limited to,  
36 appropriate telephone numbers to be used; the date and time by which  
37 comments must be received; required methods to verify the receipt and

1 authenticity of the comments; and any limitations on the number of  
2 pages for telefacsimile transmission or electronic mail comments and on  
3 the minutes of tape recorded comments. The agency shall accept  
4 comments received by these means for inclusion in the (~~official~~  
5 ~~record~~) rule-making file established under RCW 34.05.370 if the  
6 comments are made in accordance with the agency's instructions.

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

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

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

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

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

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

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

34 **Sec. 214.** RCW 34.05.354 and 1995 c 403 s 701 are each amended to  
35 read as follows:

36 (1) Not later than (~~June 30th~~) April 1st or October 1st of each  
37 year, each agency shall submit to the code reviser, according to  
38 procedures and time lines established by the code reviser, rules that

1 it determines should be repealed by the expedited repeal procedures  
2 provided for in this section. An agency shall file a copy of a  
3 preproposal notice of inquiry, as provided in RCW 34.05.310(1), that  
4 identifies the rule as one that is proposed for expedited repeal.

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

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

10 (b) The statute on which the rule is based has been declared  
11 unconstitutional by a court with jurisdiction, there is a final  
12 judgment, and no statute has been enacted to replace the  
13 unconstitutional statute;

14 (c) The rule is no longer necessary because of changed  
15 circumstances; or

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

18 (3) The agency shall also send a copy of the preproposal notice of  
19 inquiry to any person who has requested notification of copies of  
20 proposals for the expedited repeal of rules or of agency rule making.  
21 The preproposal notice of inquiry shall include a statement that any  
22 person who objects to the repeal of the rule must file a written  
23 objection to the repeal within thirty days after the preproposal notice  
24 of inquiry is published. The notice of inquiry shall also include an  
25 explanation of the reasons the agency believes the expedited repeal of  
26 the rule is appropriate.

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

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

38 (6) If no written objections to the expedited repeal of a rule are  
39 filed with the agency within thirty days after the preproposal notice

1 of inquiry is published, the agency may enter an order repealing the  
2 rule without further notice or an opportunity for a public hearing.  
3 The order shall be published in the manner required by this chapter for  
4 any other order of the agency adopting, amending, or repealing a rule.  
5 If a written objection to the expedited repeal of the rule is filed  
6 with the agency within thirty days after the notice of inquiry has been  
7 published, the preproposal notice of inquiry published pursuant to this  
8 section shall be considered a preproposal notice of inquiry for the  
9 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption  
10 proceedings in accordance with the provisions of this chapter.

11 **Sec. 215.** RCW 19.85.025 and 1995 c 403 s 401 are each amended to  
12 read as follows:

13 (1) Unless an agency receives a written objection to the expedited  
14 repeal of a rule, this chapter does not apply to a rule proposed for  
15 expedited repeal pursuant to RCW 34.05.354. If an agency receives a  
16 written objection to expedited repeal of the rule, this chapter applies  
17 to the rule-making proceeding.

18 (2) This chapter does not apply to a rule proposed for expedited  
19 adoption pursuant to section 207 of this act, unless a written  
20 objection is timely filed with the agency and the objection is not  
21 withdrawn.

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

24 ~~((3))~~ (4) An agency is not required to prepare a separate small  
25 business economic impact statement under RCW 19.85.040 if it prepared  
26 an analysis under RCW 34.05.328 that meets the requirements of a small  
27 business economic impact statement, and if the agency reduced the costs  
28 imposed by the rule on small business to the extent required by RCW  
29 19.85.030(3). The portion of the analysis that meets the requirements  
30 of RCW 19.85.040 shall be filed with the code reviser and provided to  
31 any person requesting it in lieu of a separate small business economic  
32 impact statement.

33 **PART III**  
34 **JUDICIAL REVIEW**

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

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

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

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

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

11 (d) The court shall grant relief only if it determines that a  
12 person seeking judicial relief has been substantially prejudiced by the  
13 action complained of; and

14 (e) In a proceeding otherwise authorized where the court is asked  
15 to defer to an agency's interpretation of a statute as expressed by a  
16 policy or interpretive statement, the court may only defer to the  
17 agency's interpretation if the statute is ambiguous. The court shall  
18 review the interpretive or policy statement under the error of law  
19 standard, but the amount of deference that a court may give to the  
20 agency's interpretation shall depend on the following factors: (i)  
21 Whether the interpretive or policy statement was issued  
22 contemporaneously with the passage of the statute to which it relates;  
23 (ii) the consistency with earlier and later agency pronouncements,  
24 including whether the agency had historically ever interpreted the  
25 statute to require the standards or procedures announced in the  
26 interpretive or policy statement; (iii) the validity of the agency's  
27 reasoning; and (iv) the substantive impact of the interpretive or  
28 policy statement. Interpretive or policy statements that were issued  
29 contemporaneously with the applicable statute and that have been  
30 consistently interpreted by the agency shall be given more deference by  
31 the court. Because interpretive or policy statements have not been  
32 subject to the notice and comment procedures of the rule-making  
33 process, the court shall give less deference to an agency's  
34 interpretation of the law when there is a large substantive impact.  
35 This subsection does not apply to an interpretive or policy statement  
36 that the court finds is invalid because it constitutes a rule that was  
37 not adopted in accordance with all applicable provisions of law.

38 (2) Review of rules. (a) A rule may be reviewed by petition for  
39 declaratory judgment filed pursuant to this subsection or in the

1 context of any other review proceeding under this section. In an  
2 action challenging the validity of a rule, the agency shall be made a  
3 party to the proceeding.

4 (b) The validity of any rule may be determined upon petition for a  
5 declaratory judgment addressed to the superior court of Thurston  
6 county, when it appears that the rule, or its threatened application,  
7 interferes with or impairs or immediately threatens to interfere with  
8 or impair the legal rights or privileges of the petitioner. When the  
9 validity of a rule is challenged, after the petitioner has identified  
10 the defects in the rule, the burden of going forward with the evidence  
11 is on the agency. The declaratory judgment order may be entered  
12 whether or not the petitioner has first requested the agency to pass  
13 upon the validity of the rule in question.

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

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

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

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

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

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

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

33 (f) The agency has not decided all issues requiring resolution by  
34 the agency;

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

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

4 (i) The order is arbitrary or capricious.

5 (4) Review of other agency action.

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

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

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

21 (i) Unconstitutional;

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

24 (iii) Arbitrary or capricious; or

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

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

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

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

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

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

6 (a) The remedies would be patently inadequate;

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

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

11 NEW SECTION. **Sec. 303.** A new section is added to chapter 34.05  
12 RCW under the subchapter heading "Part IV" to read as follows:

13 The presiding officer shall apply the applicable statute as the  
14 first source of law governing an issue in any adjudicative proceeding.  
15 Any agency rule is invalid if it requires a presiding officer to apply  
16 agency rules as the first source of law in an adjudicatory proceeding.

17 **Sec. 304.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each  
18 amended to read as follows:

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

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

23 (b) Upon written demand for a hearing made by any person aggrieved  
24 by any act, threatened act, or failure of the commissioner to act, if  
25 such failure is deemed an act under any provision of this code, or by  
26 any report, promulgation, or order of the commissioner other than an  
27 order on a hearing of which such person was given actual notice or at  
28 which such person appeared as a party, or order pursuant to the order  
29 on such hearing.

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

33 (3) Unless a person aggrieved by a written order of the  
34 commissioner demands a hearing thereon within ninety days after  
35 receiving notice of such order, or in the case of a licensee under  
36 Title 48 RCW within ninety days after the commissioner has mailed the  
37 order to the licensee at the most recent address shown in the



1 commissioner's licensing records for the licensee, the right to such  
2 hearing shall conclusively be deemed to have been waived.

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

9 (5) Any hearing held under this section must be conducted by an  
10 administrative law judge unless the person demanding the hearing agrees  
11 in writing to have an employee of the commissioner conduct the hearing.

12 **Sec. 305.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read  
13 as follows:

14 (1) Except as provided in subsection (2) of this section, whenever  
15 a state agency conducts a hearing which is not presided over by  
16 officials of the agency who are to render the final decision, the  
17 hearing shall be conducted by an administrative law judge assigned  
18 under this chapter. In assigning administrative law judges, the chief  
19 administrative law judge shall wherever practical ~~((+1))~~ (a) use  
20 personnel having expertise in the field or subject matter of the  
21 hearing, and ~~((+2))~~ (b) assign administrative law judges primarily to  
22 the hearings of particular agencies on a long-term basis.

23 (2) An employee of the office of the insurance commissioner may  
24 conduct a hearing as provided in RCW 48.04.010(5).

25 **PART IV**  
26 **LEGISLATIVE REVIEW**

27 **Sec. 401.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to  
28 read as follows:

29 (1) All rules required to be filed pursuant to RCW 34.05.380, and  
30 emergency rules adopted pursuant to RCW 34.05.350, are subject to  
31 selective review by the ~~((legislature))~~ rules review committee.

32 (2) All agency policy and interpretive statements, guidelines, or  
33 other such issuances of general applicability are subject to selective  
34 review by the ~~((legislature))~~ rules review committee for the purpose of  
35 determining whether an issuance constitutes a rule that has not been  
36 adopted in accordance with all applicable provisions of law. If the

1 committee finds that an issuance constitutes a rule, the rules review  
2 committee may also examine whether the rule is within the intent of the  
3 legislature as expressed by the statute that the rule implements.

4 (3) If the rules review committee finds by a majority vote of its  
5 members: (a) That an existing rule is not within the intent of the  
6 legislature as expressed by the statute which the rule implements(~~((7))~~)  
7 or (b) that the rule has not been adopted in accordance with all  
8 applicable provisions of law, (~~((or (c) that an agency is using a policy~~  
9 ~~or interpretive statement in place of a rule,))~~) the agency affected  
10 shall be notified of such finding and the reasons therefor. Within  
11 thirty days of the receipt of the rules review committee's notice, the  
12 agency shall file notice of a hearing on the rules review committee's  
13 finding with the code reviser and mail notice to all persons who have  
14 made timely request of the agency for advance notice of its rule-making  
15 proceedings as provided in RCW 34.05.320. The agency's notice shall  
16 include the rules review committee's findings and reasons therefor, and  
17 shall be published in the Washington state register in accordance with  
18 the provisions of chapter 34.08 RCW.

19 (4) The agency shall consider fully all written and oral  
20 submissions regarding (a) whether the rule in question is within the  
21 intent of the legislature as expressed by the statute which the rule  
22 implements(~~((7))~~) or (b) whether the rule was adopted in accordance with  
23 all applicable provisions of law(~~((, or (c) whether the agency is using~~  
24 ~~a policy or interpretive statement in place of a rule))~~).

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

27 (1) Within seven days of an agency hearing held after notification  
28 of the agency by the rules review committee pursuant to RCW 34.05.620  
29 or 34.05.630, the affected agency shall notify the committee of its  
30 intended action on a proposed or existing rule to which the committee  
31 objected or on a committee finding of the agency's failure to adopt  
32 rules.

33 (2) If the rules review committee finds by a majority vote of its  
34 members: (a) That the proposed or existing rule in question will not  
35 be modified, amended, withdrawn, or repealed by the agency so as to  
36 conform with the intent of the legislature(~~((7))~~) or (b) that (~~((an~~  
37 ~~existing))~~) a rule was not adopted in accordance with all applicable  
38 provisions of law(~~((, or (c) that the agency will not replace the policy~~

1 ~~or interpretive statement with a rule~~)), the rules review committee  
2 may, within thirty days from notification by the agency of its intended  
3 action, file with the code reviser notice of its objections together  
4 with a concise statement of the reasons therefor. Such notice and  
5 statement shall also be provided to the agency by the rules review  
6 committee.

7 (3) If the rules review committee makes an adverse finding  
8 regarding an existing rule under subsection (2) (a) or (b) of this  
9 section, the committee may, by a majority vote of its members,  
10 recommend suspension of the rule. Within seven days of such vote the  
11 committee shall transmit to the appropriate standing committees of the  
12 legislature, the governor, the code reviser, and the agency written  
13 notice of its objection and recommended suspension and the concise  
14 reasons therefor. Within thirty days of receipt of the notice, the  
15 governor shall transmit to the committee, the code reviser, and the  
16 agency written approval or disapproval of the recommended suspension.  
17 If the suspension is approved by the governor, it is effective from the  
18 date of that approval and continues until ninety days after the  
19 expiration of the next regular legislative session.

20 (4) The code reviser shall publish transmittals from the rules  
21 review committee or the governor issued pursuant to subsection (2) or  
22 (3) of this section in the Washington state register and shall publish  
23 in the next supplement and compilation of the Washington Administrative  
24 Code a reference to the committee's objection or recommended suspension  
25 and the governor's action on it and to the issue of the Washington  
26 state register in which the full text thereof appears. If the  
27 transmittal relates to a policy or interpretive statement, guideline,  
28 or other such issuance of general applicability, the code reviser shall  
29 publish the reference in the chapter of the Washington State Register  
30 and Washington Administrative Code that addresses the most relevant  
31 subject matter to the issuance.

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

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

1       (1) Any person may petition the rules review committee for a review  
2 of a proposed or existing rule, or a policy or interpretive statement,  
3 guideline, or other such issuance of general applicability. A petition  
4 to review a policy or interpretive statement, guideline, or other such  
5 issuance of general applicability may only be filed for the purpose of  
6 requesting the rules review committee to determine whether the issuance  
7 constitutes a rule that has not been adopted in accordance with all  
8 provisions of law. If the rules review committee determines that the  
9 issuance constitutes a rule, the committee may also examine whether the  
10 rule is within the intent of the legislature as expressed by the  
11 statute that the rule implements. Within thirty days of the receipt of  
12 the petition, the rules review committee shall acknowledge receipt of  
13 the petition and describe any initial action taken. If the rules  
14 review committee rejects the petition, a written statement of the  
15 reasons for rejection shall be included.

16       (2) A person may petition the rules review committee under  
17 subsection (1) of this section requesting review of an existing rule  
18 only if the person has petitioned the agency to amend or repeal the  
19 rule under RCW 34.05.330(1) and such petition was denied. In the case  
20 of a policy or interpretive statement, guideline, or other such  
21 issuance of general applicability, a person may only petition the rules  
22 review committee under subsection (1) of this section if the person has  
23 petitioned the agency in accordance with RCW 34.05.230(3) to repeal or  
24 withdraw the issuance, or convert the issuance into rules.

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

27       (a) Identify with specificity the proposed or existing rule to be  
28 reviewed;

29       (b) Identify the specific statute identified by the agency as  
30 authorizing the rule, the specific statute which the rule interprets or  
31 implements, and, if applicable, the specific statute the department is  
32 alleged not to have followed in adopting the rule;

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

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

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

5 (4) A petition for review of a policy or interpretive statement,  
6 guideline, or other such issuance of general applicability under  
7 subsection (1) of this section shall:

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

9 (b) Identify the specific statute which the ((rule)) issuance  
10 interprets or implements;

11 (c) State the reasons why the petitioner believes that the  
12 ((statement)) issuance meets the definition of a rule under RCW  
13 34.05.010 and should have been adopted according to the procedures of  
14 this chapter;

15 (d) Identify any known judicial action regarding the ((statement))  
16 issuance or statutes identified in the petition.

17 (5) Within ninety days of receipt of the petition, the rules review  
18 committee shall make a final decision on the rule for which the  
19 petition for review was not previously rejected.

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

22 (1) Except as provided in subsection (2) of this section, it is the  
23 express policy of the legislature that establishment of procedures for  
24 review of administrative rules by the legislature and the notice of  
25 objection required by RCW 34.05.630((+2)) (3) and 34.05.640(2) in no  
26 way serves to establish a presumption as to the legality or  
27 constitutionality of a rule in any subsequent judicial proceedings  
28 interpreting such rules.

29 (2) If the joint administrative rules review committee recommends  
30 to the governor that an existing rule be suspended because it does not  
31 conform with the intent of the legislature or was not adopted in  
32 accordance with all applicable provisions of law, the recommendation  
33 shall establish a rebuttable presumption in any proceeding challenging  
34 the validity of the rule that the rule is invalid. The burden of  
35 demonstrating the validity of the rule is then on the adopting agency.

36  
37

**PART V**  
**FEES AND EXPENSES**

1        NEW SECTION. Sec. 501. A new section is added to chapter 4.84 RCW  
2 to read as follows:

3        If an agency chooses to appeal a decision of the superior court  
4 rendered under chapter 34.05 RCW, the agency shall pay the subsequent  
5 fees and other expenses incurred by the qualified party or parties that  
6 prevailed in superior court. The amount awarded to a qualified party  
7 in an appeal under this section may not exceed the amount that may be  
8 awarded by a superior court to a qualified party under RCW 4.84.350.

9        **Sec. 502.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to  
10 read as follows:

11        Fees and other expenses awarded under RCW 4.84.340 ~~((and)),~~  
12 4.84.350, or section 501 of this act shall be paid by the agency over  
13 which the party prevails from operating funds appropriated to the  
14 agency within sixty days from moneys appropriated to the agency for  
15 administration and support services and not out of moneys for program  
16 activities or service delivery if the operating budget or budget notes  
17 separately designate administration and support services. Agencies  
18 paying fees and other expenses pursuant to RCW 4.84.340 ~~((and)),~~  
19 4.84.350, or section 501 of this act shall report all payments to the  
20 office of financial management within five days of paying the fees and  
21 other expenses. Fees and other expenses awarded by the court shall be  
22 subject to the provisions of chapter 39.76 RCW and shall be deemed  
23 payable on the date the court announces the award.

24        **Sec. 503.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to  
25 read as follows:

26        Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout RCW 4.84.340 through 4.84.360 and section  
28 501 of this act.

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

34        (2) "Agency action" means agency action as defined by chapter 34.05  
35 RCW.

36        (3) "Fees and other expenses" includes the reasonable expenses of  
37 expert witnesses, the reasonable cost of a study, analysis, engineering

1 report, test, or project that is found by the court to be necessary for  
2 the preparation of the party's case, and reasonable attorneys' fees.  
3 Reasonable attorneys' fees shall be based on the prevailing market  
4 rates for the kind and quality of services furnished, except that (a)  
5 no expert witness shall be compensated at a rate in excess of the  
6 highest rates of compensation for expert witnesses paid by the state of  
7 Washington, and (b) attorneys' fees shall not be awarded in excess of  
8 one hundred fifty dollars per hour unless the court determines that an  
9 increase in the cost of living or a special factor, such as the limited  
10 availability of qualified attorneys for the proceedings involved,  
11 justifies a higher fee.

12 (4) "Judicial review" means a judicial review as defined by chapter  
13 34.05 RCW.

14 (5) "Qualified party" means (a) an individual whose net worth did  
15 not exceed one million dollars at the time the initial petition for  
16 judicial review was filed or (b) a sole owner of an unincorporated  
17 business, or a partnership, corporation, association, or organization  
18 whose net worth did not exceed five million dollars at the time the  
19 initial petition for judicial review was filed, except that an  
20 organization described in section 501(c)(3) of the federal internal  
21 revenue code of 1954 as exempt from taxation under section 501(a) of  
22 the code and a cooperative association as defined in section 15(a) of  
23 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party  
24 regardless of the net worth of such organization or cooperative  
25 association.

26 **PART VI**

27 **REGULATORY IMPACT NOTES**

28 **Sec. 601.** RCW 43.41.110 and 1981 2nd ex.s. c 4 s 13 are each  
29 amended to read as follows:

30 The office of financial management shall:

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

34 (2) Perform the comprehensive planning functions and processes  
35 necessary or advisable for state program planning and development,  
36 preparation of the budget, inter-departmental and inter-governmental

1 coordination and cooperation, and determination of state capital  
2 improvement requirements.

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

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

8 (5) Participate with other states or subdivisions thereof in  
9 interstate planning.

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

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

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

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

21 (10) Be the official state agency certifying annexations,  
22 incorporations, or disincorporations to the United States bureau of the  
23 census.

24 (11) Review all United States bureau of the census population  
25 estimates used for federal revenue sharing purposes and provide a  
26 liaison for local governments with the United States bureau of the  
27 census in adjusting or correcting revenue sharing population estimates.

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

30 (13) Provide regulatory impact notes depicting the expected  
31 regulatory impact of proposed legislation on businesses in accordance  
32 with sections 602 through 606 of this act.

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

37 NEW SECTION. **Sec. 602.** The legislature hereby recognizes the  
38 necessity of developing a uniform and coordinated procedure for



1 determining the expected regulatory impact of bills and resolutions on  
2 businesses. The legislature also recognizes that developing the  
3 statements of regulatory impact, which shall be known as regulatory  
4 impact notes, requires the designation of a state agency to be  
5 principally responsible for the notes.

6 NEW SECTION. **Sec. 603.** (1) The office of financial management  
7 shall, in cooperation with appropriate legislative committees and  
8 legislative staff, establish a procedure to provide regulatory impact  
9 notes on the expected impact of bills and resolutions that increase or  
10 decrease regulations on the operation of businesses subject to the  
11 state's business and occupation taxes levied in chapter 82.04 RCW.

12 (2) A regulatory impact note shall be prepared on the basis of a  
13 sample of businesses that are regulated by the bill or resolution. The  
14 regulatory impact note shall contain an estimate of the fiscal impact  
15 to the affected businesses for the biennium in which the bill or  
16 resolution will take effect as well as a cumulative forecast of the  
17 fiscal impact for the succeeding two fiscal years. If it is determined  
18 that no dollar estimate is possible, the regulatory impact note shall  
19 contain a statement to that effect.

20 (3) In establishing the regulatory impact procedure called for  
21 under this chapter, the office of financial management shall coordinate  
22 the development of regulatory impact notes with all state agencies  
23 affected.

24 NEW SECTION. **Sec. 604.** (1) After a regulatory impact note that  
25 depicts the expected regulatory impact of a bill or resolution is  
26 prepared and approved as to form, accuracy, and completeness by the  
27 office of financial management, copies shall be filed immediately with:

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

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

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

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

36 (3) If a regulatory impact note has been prepared for a bill or  
37 resolution, a copy of the regulatory impact note shall be placed in the

1 bill books or otherwise attached to the bill or resolution and shall  
2 remain with the bill or resolution throughout the legislative process  
3 insofar as possible.

4 NEW SECTION. **Sec. 605.** If requested by a legislator, the office  
5 of financial management shall also provide a regulatory impact note on  
6 a legislative proposal. The regulatory impact note shall be returned  
7 to the requesting legislator, and copies shall be filed with the  
8 appropriate legislative committees under section 604 of this act at the  
9 time the proposed legislation is introduced in either house.

10 NEW SECTION. **Sec. 606.** Nothing in this chapter prevents either  
11 house of the legislature from acting on a bill or resolution before it  
12 as otherwise provided by the state Constitution, by law, and by the  
13 rules and joint rules of the senate and house of representatives, nor  
14 shall the lack of a regulatory impact note as provided in this chapter  
15 or an error in the accuracy of the note affect the validity of a  
16 measure otherwise duly passed by the legislature.

17 **PART VII**  
18 **MISCELLANEOUS**

19 NEW SECTION. **Sec. 701.** A new section is added to chapter 43.17  
20 RCW to read as follows:

21 (1) An agency, prior to releasing a final report or study regarding  
22 management by a county, city, town, special purpose district, or other  
23 unit of local government of a program delegated to the local government  
24 by the agency or for which the agency has regulatory responsibility,  
25 shall provide copies of a draft of the report or study at least two  
26 weeks in advance of the release of the final report or study to the  
27 legislative body of the local government. The agency shall, at the  
28 request of a local government legislative body, meet with the  
29 legislative body prior to the release of a final report or study  
30 regarding the management of such a program.

31 (2) For purposes of this section, "agency" means an office,  
32 department, board, commission, or other unit of state government, other  
33 than a unit of state government headed by a separately elected  
34 official.

1        NEW SECTION.    **Sec. 702.**    A new section is added to chapter 43.05  
2 RCW to read as follows:

3        When issuing a citation or other written finding that a person has  
4 violated a statute, rule, or order, the agency shall include with the  
5 citation or other written finding the text of the specific statute or  
6 statutes granting the agency the authority to regulate the subject  
7 matter of the citation or other written finding.

8        NEW SECTION.    **Sec. 703.**    A new section is added to chapter 34.05  
9 RCW under the subchapter heading "Part III" to read as follows:

10        (1) The statute law committee shall convene a working group that  
11 includes representatives of the office of financial management, state  
12 agencies, and the general public for the purpose of (a) developing  
13 proposed rules relating to the acceptance of electronic filings of  
14 proposed rules and interpretive or policy statements from state  
15 agencies; (b) developing proposed rules pertaining to the filing and  
16 publication of executive orders, information submitted by agencies in  
17 the preparation of statements of inquiry, and other information deemed  
18 important for publication in the Washington State Register; and (c)  
19 developing a method for noting in the published volumes of the Revised  
20 Code of Washington or the Washington Administrative Code, or both, if  
21 interpretive or policy statements have been issued that pertain to the  
22 statutes or rules. The working group shall be convened no later than  
23 July 1, 1997, and develop the proposed rules no later than July 1,  
24 1998. The code reviser shall adopt the proposed rules developed by the  
25 statute law committee working group created in this section.

26        (2) This section expires January 1, 1999.

27        NEW SECTION.    **Sec. 704.**    Part headings used in this act do not  
28 constitute any part of the law.

29        NEW SECTION.    **Sec. 705.**    Sections 602 through 606 of this act  
30 constitute a new chapter in Title 43 RCW.

31        NEW SECTION.    **Sec. 706.**    If any provision of this act or its  
32 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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