
HOUSE BILL 2345

State of Washington

55th Legislature

1998 Regular Session

By Representative Reams

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1 AN ACT Relating to administrative law; amending RCW 34.05.230,
2 34.05.328, 34.05.354, 34.05.370, 34.05.610, 34.05.630, 34.05.640,
3 34.05.655, 34.05.660, 34.12.040, and 48.04.010; adding new sections to
4 chapter 34.05 RCW; and providing an expiration date.

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

6 **Sec. 1.** RCW 34.05.230 and 1997 c 409 s 202 are each amended to
7 read as follows:

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

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

13 ~~(b) The proposed rules adopt or incorporate by reference without~~
14 ~~material change federal statutes or regulations, Washington state~~
15 ~~statutes, rules of other Washington state agencies, shoreline master~~
16 ~~programs other than those programs governing shorelines of state-wide~~
17 ~~significance, or, as referenced by Washington state law, national~~
18 ~~consensus codes that generally establish industry standards, if the~~

1 ~~material adopted or incorporated regulates the same subject matter and~~
2 ~~conduct as the adopting or incorporating rule;~~

3 ~~(c) The proposed rules only correct typographical errors, make~~
4 ~~address or name changes, or clarify language of a rule without changing~~
5 ~~its effect;~~

6 ~~(d) The content of the proposed rules is explicitly and~~
7 ~~specifically dictated by statute;~~

8 ~~(e) The proposed rules have been the subject of negotiated rule~~
9 ~~making, pilot rule making, or some other process that involved~~
10 ~~substantial participation by interested parties before the development~~
11 ~~of the proposed rule; or~~

12 ~~(f) The proposed rule is being amended after a review under RCW~~
13 ~~34.05.328 or section 210 of this act.~~

14 ~~(2) The expedited rule making process must follow the requirements~~
15 ~~for rule making set forth in RCW 34.05.320, except that the agency is~~
16 ~~not required to prepare a small business economic impact statement~~
17 ~~under RCW 19.85.025, a statement indicating whether the rule~~
18 ~~constitutes a significant legislative rule under RCW~~
19 ~~34.05.328(5)(c)(iii), or a significant legislative rule analysis under~~
20 ~~RCW 34.05.328. An agency is not required to prepare statements of~~
21 ~~inquiry under RCW 34.05.310 or conduct a hearing for the expedited~~
22 ~~adoption of rules. The notice for the expedited adoption of rules must~~
23 ~~contain a statement in at least ten point type, that is substantially~~
24 ~~in the following form:~~

25 **NOTICE**

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

34 ~~(3) The agency shall send a copy of the notice of the proposed~~
35 ~~expedited rule making to any person who has requested notification of~~
36 ~~proposals for the expedited adoption of rules or of agency rule making,~~
37 ~~as well as the joint administrative rules review committee, within~~
38 ~~three days after its publication in the Washington State Register. An~~

1 agency may charge for the actual cost of providing a requesting party
2 mailed copies of these notices. The notice of the proposed expedited
3 rule making must be preceded by a statement substantially in the form
4 provided in subsection (2) of this section. The notice must also
5 include an explanation of the reasons the agency believes the expedited
6 adoption of the rule is appropriate.

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

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

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

28 (7) If a written notice of objection to the expedited adoption of
29 the rule is timely filed with the agency and is not withdrawn, the
30 notice of proposed expedited rule making published under this section
31 is considered a statement of inquiry for the purposes of RCW 34.05.310,
32 and the agency may initiate further rule adoption proceedings in
33 accordance with this chapter.

34 (8) Subsections (1) through (8) of this section expire on December
35 31, 2000.

36 an-{An})) Each agency is encouraged to advise the public of its
37 current opinions, approaches, and likely courses of action by means of
38 interpretive or policy statements. Current interpretive and policy
39 statements are advisory only. To better inform and involve the public,

1 ((an)) each agency is encouraged to convert long-standing interpretive
2 and policy statements into rules.

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

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

19 ((+12)) (4) Whenever an agency issues an interpretive or policy
20 statement, it shall submit to the code reviser for publication in the
21 Washington State Register a statement describing the subject matter of
22 the interpretive or policy statement, and listing the person at the
23 agency from whom a copy of the interpretive or policy statement may be
24 obtained.

25 (5) When a person contacts an agency regarding a rule, the agency
26 shall identify any associated interpretive and policy statements and
27 provide copies of the statements upon request.

28 (6) An agency shall not issue a citation or civil penalty related
29 to a matter on which the department has issued a policy or interpretive
30 statement or other written document of general applicability unless the
31 agency has provided copies of the documents to the responsible party.

32 NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW
33 to read as follows:

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

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

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

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

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

14 (e) The proposed rules have been the subject of negotiated rule
15 making, pilot rule making, or some other process that involved
16 substantial participation by interested parties before the development
17 of the proposed rule; or

18 (f) The proposed rule is being amended after a review under RCW
19 34.05.328.

20 (2) The expedited rule-making process must follow the requirements
21 for rule making set forth in RCW 34.05.320, except that the agency is
22 not required to prepare a small business economic impact statement
23 under RCW 19.85.025, a statement indicating whether the rule
24 constitutes a significant legislative rule under RCW
25 34.05.328(3)(c)(iii), or a significant legislative rule analysis under
26 RCW 34.05.328. An agency is not required to prepare statements of
27 inquiry under RCW 34.05.310 or conduct a hearing for the expedited
28 adoption of rules. The notice for the expedited adoption of rules must
29 contain a statement in at least ten-point type, that is substantially
30 in the following form:

31 **NOTICE**

32 THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN
33 EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR
34 THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS
35 ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA
36 FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE
37 BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST

1 EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO
2 (ININSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

3 (3) The agency shall send a copy of the notice of the proposed
4 expedited rule making to any person who has requested notification of
5 proposals for the expedited adoption of rules or of agency rule making,
6 as well as the joint administrative rules review committee, within
7 three days after its publication in the Washington State Register. An
8 agency may charge for the actual cost of providing a requesting party
9 mailed copies of these notices. The notice of the proposed expedited
10 rule making must be preceded by a statement substantially in the form
11 provided in subsection (2) of this section. The notice must also
12 include an explanation of the reasons the agency believes the expedited
13 adoption of the rule is appropriate.

14 (4) The code reviser shall publish the text of all rules proposed
15 for expedited adoption along with the notice required in this section
16 in a separate section of the Washington State Register. Once the text
17 of the proposed rules has been published in the Washington State
18 Register, the only changes that an agency may make in the text of these
19 proposed rules before their final adoption are to correct typographical
20 errors.

21 (5) Any person may file a written objection to the expedited
22 adoption of a rule. The objection must be filed with the agency rules
23 coordinator within forty-five days after the notice of the proposed
24 expedited rule making has been published in the Washington State
25 Register. A person who has filed a written objection to the expedited
26 adoption of a rule may withdraw the objection.

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

35 (7) If a written notice of objection to the expedited adoption of
36 the rule is timely filed with the agency and is not withdrawn, the
37 notice of proposed expedited rule making published under this section
38 is considered a statement of inquiry for the purposes of RCW 34.05.310,

1 and the agency may initiate further rule adoption proceedings in
2 accordance with this chapter.

3 (8) This section expires December 31, 2000.

4 **Sec. 3.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
5 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ~~(a) Implement and enforce the rule, including a description of the~~
13 ~~resources the agency intends to use;~~

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

15 ~~(c) Promote and assist voluntary compliance; and~~

16 ~~(d) Evaluate whether the rule achieves the purpose for which it was~~
17 ~~adopted, including, to the maximum extent practicable, the use of~~
18 ~~interim milestones to assess progress and the use of objectively~~
19 ~~measurable outcomes.~~

20 ~~(4) After adopting a rule described in subsection (5) of this~~
21 ~~section regulating the same activity or subject matter as another~~
22 ~~provision of federal or state law, an agency shall do all of the~~
23 ~~following:~~

24 ~~(a) Provide to the business assistance center a list citing by~~
25 ~~reference the other federal and state laws that regulate the same~~
26 ~~activity or subject matter;~~

27 ~~(b) Coordinate implementation and enforcement of the rule with the~~
28 ~~other federal and state entities regulating the same activity or~~
29 ~~subject matter by making every effort to do one or more of the~~
30 ~~following:~~

31 ~~(i) Deferring to the other entity;~~

32 ~~(ii) Designating a lead agency; or~~

33 ~~(iii) Entering into an agreement with the other entities specifying~~
34 ~~how the agency and entities will coordinate implementation and~~
35 ~~enforcement.~~

36 ~~If the agency is unable to comply with this subsection (4)(b), the~~
37 ~~agency shall report to the legislature pursuant to (c) of this~~
38 ~~subsection;~~

39 ~~(c) Report to the joint administrative rules review committee;~~

1 ~~(i) The existence of any overlap or duplication of other federal or~~
2 ~~state laws, any differences from federal law, and any known overlap,~~
3 ~~duplication, or conflict with local laws; and~~

4 ~~(ii) Make recommendations for any legislation that may be necessary~~
5 ~~to eliminate or mitigate any adverse effects of such overlap,~~
6 ~~duplication, or difference.~~

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

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

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

20 (b) This section does not apply to:

21 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

35 (v) Rules the content of which is explicitly and specifically
36 dictated by statute;

37 (vi) Rules that set or adjust fees or rates pursuant to legislative
38 standards; or

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

4 (c) For purposes of this subsection:

5 (i) A "procedural rule" is a rule that adopts, amends, or repeals
6 (A) any procedure, practice, or requirement relating to any agency
7 hearings; (B) any filing or related process requirement for making
8 application to an agency for a license or permit; or (C) any policy
9 statement pertaining to the consistent internal operations of an
10 agency.

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

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

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

26 ((+6+)) (4) By January 31, 1996, and by January 31st of each even-
27 numbered year thereafter, the office of financial management, after
28 consulting with state agencies, counties, and cities, and business,
29 labor, and environmental organizations, shall report to the governor
30 and the legislature regarding the effects of this section on the
31 regulatory system in this state. The report shall document:

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

35 (b) The costs incurred by state agencies in complying with this
36 section;

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

- 1 (d) The extent to which this section has adversely affected the
2 capacity of agencies to fulfill their legislatively prescribed mission;
3 (e) The extent to which this section has improved the acceptability
4 of state rules to those regulated; and
5 (f) Any other information considered by the office of financial
6 management to be useful in evaluating the effect of this section.

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

9 (1) Before adopting a rule described in RCW 34.05.328(3), an agency
10 shall place in the rule-making file a rule implementation plan. The
11 plan must describe how the agency intends to:

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

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

15 (c) Promote and assist voluntary compliance; and

16 (d) Evaluate whether the rule achieves the purpose for which it was
17 adopted, including, to the maximum extent practicable, the use of
18 interim milestones to assess progress and the use of objectively
19 measurable outcomes.

20 (2) At least twenty days before the effective date of a rule
21 described in RCW 34.05.328(3), an agency shall convene a meeting of
22 persons affected by the rule to:

23 (a) Identify ambiguities and problem areas in the rule;

24 (b) Coordinate education and public relations efforts by all
25 persons;

26 (c) Obtain comments regarding agency training and enforcement
27 plans;

28 (d) Obtain comments regarding appropriate evaluation mechanisms to
29 determine the effectiveness of the new rule.

30 The agency shall place a summary of the meeting in the rule-making
31 file.

32 (3) Within ninety days of the effective date of a rule described in
33 RCW 34.05.328(3), an agency shall make a good faith effort to notify
34 persons affected by the rule.

35 (4) After adopting a rule described in RCW 34.05.328(3) regulating
36 the same activity or subject matter as another provision of federal or
37 state law, an agency shall do all of the following:

1 (a) Provide to the department of community, trade, and economic
2 development a list citing by reference the other federal and state laws
3 that regulate the same activity or subject matter;

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

8 (i) Deferring to the other entity;

9 (ii) Designating a lead agency; or

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

13 If the agency is unable to comply with this subsection (3)(b), the
14 agency shall report to the legislature under (c) of this subsection;

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

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

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

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

24 (1) In the adoption of a rule, an agency shall prepare a local
25 government economic impact statement if (a) the proposed rule will
26 impose more than minor costs on local government or (b) if requested to
27 do so by a majority vote of the rules review committee within forty-
28 five days of receiving the notice of proposed rule making under RCW
29 34.05.320.

30 (2) For purposes of this section, "local government" means
31 counties, cities, towns, port districts, school districts, and other
32 municipal corporations.

33 (3) This section does not apply to:

34 (a) A rule proposed for expedited repeal or expedited adoption,
35 unless the agency receives written objection to expedited repeal or
36 adoption;

37 (b) Rules described in RCW 34.05.310(4); or

1 (c) Rules adopted solely for the purpose of conformity or
2 compliance, or both, with federal statutes or regulations.

3 (4) The local government economic impact statement must:

4 (a) Describe the reporting, recordkeeping, and other compliance
5 requirements of the proposed rule; and

6 (b) Analyze the costs of compliance for local governments.

7 (5) The department of community, trade, and economic development
8 shall assist an agency in preparation of a local government economic
9 impact statement.

10 (6) For a rule qualifying under subsection (1)(a) of this section,
11 the agency shall file the statement with the code reviser along with
12 the notice required under RCW 34.05.320. For a rule qualifying under
13 subsection (1)(b) of this section, the agency shall file the statement
14 with the code reviser within fifteen days of being requested to do so.
15 In either case, the agency shall provide a copy of the statement to any
16 person requesting it.

17 **Sec. 6.** RCW 34.05.354 and 1997 c 409 s 208 are each amended to
18 read as follows:

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

26 ~~(2))~~ An agency may ~~((propose))~~ file notice for the expedited
27 repeal of rules under the procedures set forth in this section for
28 rules meeting any one ((or more)) of the following criteria:

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

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

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

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

3 ~~((+3))~~ (2) An agency shall file a copy of a preproposal notice of
4 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as
5 one that is proposed for expedited repeal. The agency shall also send
6 a copy of the preproposal notice of inquiry to any person who has
7 requested notification of copies of proposals for the expedited repeal
8 of rules or of agency rule making. The preproposal notice of inquiry
9 shall include a statement that any person who objects to the repeal of
10 the rule must file a written objection to the repeal within thirty days
11 after the preproposal notice of inquiry is published. The notice of
12 inquiry shall also include an explanation of the reasons the agency
13 believes the expedited repeal of the rule is appropriate.

14 ~~((+4))~~ (3) The code reviser shall publish all rules proposed for
15 expedited repeal in a separate section of ((a regular edition of)) the
16 Washington state register ((or in a special edition of the Washington
17 state register. The publication shall be not later than May 31st or
18 November 30th of each year, or in the first register published after
19 that date)).

20 ~~((+5))~~ (4) Any person may file a written objection to the
21 expedited repeal of a rule. The notice shall be filed with the agency
22 rules coordinator within thirty days after the notice of inquiry has
23 been published in the Washington state register. The written objection
24 need not state any reason for objecting to the expedited repeal of the
25 rule.

26 ~~((+6))~~ (5) If no written objections to the expedited repeal of a
27 rule are filed with the agency within thirty days after the preproposal
28 notice of inquiry is published, the agency may enter an order repealing
29 the rule without further notice or an opportunity for a public hearing.
30 The order shall be published in the manner required by this chapter for
31 any other order of the agency adopting, amending, or repealing a rule.
32 If a written objection to the expedited repeal of the rule is filed
33 with the agency within thirty days after the notice of inquiry has been
34 published, the preproposal notice of inquiry published pursuant to this
35 section shall be considered a preproposal notice of inquiry for the
36 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
37 proceedings in accordance with the provisions of this chapter.

1 **Sec. 7.** RCW 34.05.370 and 1996 c 102 s 2 are each amended to read
2 as follows:

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

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

8 (a) (~~Copies of all publications~~) A list of citations to all
9 notices in the state register with respect to the rule or the
10 proceeding upon which the rule is based;

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

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

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

23 (e) All petitions for exceptions to, amendment of, or repeal or
24 suspension of, the rule;

25 (f) Citations to data, factual information, studies, or reports on
26 which the agency relies in the adoption of the rule, indicating where
27 such data, factual information, studies, or reports are available for
28 review by the public, but this subsection (2)(f) does not require the
29 agency to include in the rule-making file any data, factual
30 information, studies, or reports gathered pursuant to chapter 19.85 RCW
31 or RCW 34.05.328 that can be identified to a particular business;

32 (g) The concise explanatory statement required by RCW 34.05.325(6);
33 and

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

35 (3) Internal agency documents are exempt from inclusion in the
36 rule-making file under subsection (2) of this section to the extent
37 they constitute preliminary drafts, notes, recommendations, and intra-
38 agency memoranda in which opinions are expressed or policies formulated
39 or recommended, except that a specific document is not exempt from

1 inclusion when it is publicly cited by an agency in connection with its
2 decision.

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

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 34.05 RCW
9 to read as follows:

10 (1) The legislature finds that under the governor's Executive Order
11 97-02, agencies have begun systematic reviews of existing rules and
12 have eliminated some unnecessary rules and improved clarity for other
13 rules.

14 (2) An agency shall review a rule at least every four years to
15 evaluate whether the rule is:

16 (a) Necessary to comply with the authorizing statute;

17 (b) Providing the results that it was originally designed to
18 achieve in a reasonable manner;

19 (c) Written and organized in a clear and concise manner;

20 (d) Consistent with the legislative intent of the authorizing
21 statute;

22 (e) Coordinated with other agencies and governmental jurisdictions
23 to eliminate or reduce duplication and inconsistency;

24 (f) Resulting in equitable treatment of those required to comply
25 with it; and

26 (g) Achieving its goals in a cost-effective manner.

27 (3) An agency shall place in a rules review file, documentation
28 sufficient to show that the agency conducted the review under this
29 section.

30 (4) Beginning with the effective date of this act, no rule is valid
31 for more than four years unless the agency has substantially complied
32 with this section.

33 **Sec. 9.** RCW 34.05.610 and 1996 c 318 s 2 are each amended to read
34 as follows:

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

1 legislature. The senate members of the committee shall be appointed by
2 the president of the senate, and the house members of the committee
3 shall be appointed by the speaker of the house. (~~Not more than two~~
4 ~~members from each house may be from the same political party.~~) Three
5 of the members from each house must be from the majority caucus, and
6 two of the members from each house must be from the minority caucus.
7 The appointing authorities shall also appoint one alternate member from
8 each caucus of each house. All appointments to the committee are
9 subject to approval by the caucuses to which the appointed members
10 belong.

11 (2) Members and alternates shall be appointed as soon as possible
12 after the legislature convenes in regular session in an odd-numbered
13 year, and their terms shall extend until their successors are appointed
14 and qualified at the next regular session of the legislature in an odd-
15 numbered year or until such persons no longer serve in the legislature,
16 whichever occurs first. Members and alternates may be reappointed to
17 the committee.

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

25 (4) The chairperson of the committee shall cause all meeting
26 notices and committee documents to be sent to the members and
27 alternates. A vacancy shall be filled by appointment of a legislator
28 from the same political party as the original appointment. The
29 appropriate appointing authority shall make the appointment within
30 thirty days of the vacancy occurring.

31 **Sec. 10.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to read
32 as follows:

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

36 (2) All agency policy and interpretive statements, guidelines, and
37 issuances that are of general applicability, or their equivalents, are
38 subject to selective review by the legislature to determine whether or

1 not an agency has failed to adopt a rule or whether they are within the
2 intent of the legislature as expressed by the governing statute.

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

21 (4) The agency shall consider fully all written and oral
22 submissions regarding (a) whether the rule in question is within the
23 intent of the legislature as expressed by the statute which the rule
24 implements, (b) whether the rule was adopted in accordance with all
25 applicable provisions of law, (~~(c)~~) (c) whether the agency is using
26 (~~(a)~~) policy or interpretive statements, guidelines, or issuances, or
27 their equivalents, in place of a rule, or (d) whether the policy or
28 interpretive statement, guideline, or issuance, or its equivalent, is
29 within the legislative intent.

30 **Sec. 11.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to read
31 as follows:

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

1 (2) If the rules review committee finds by a majority vote of its
2 members: (a) That the proposed or existing rule in question will not
3 be modified, amended, withdrawn, or repealed by the agency so as to
4 conform with the intent of the legislature, (b) that an existing rule
5 was not adopted in accordance with all applicable provisions of law,
6 ~~((or))~~ (c) that the agency is using a policy or interpretive statement,
7 guideline, or issuance, or its equivalent, in place of a rule, or that
8 the policy or interpretive statement, guideline, or issuance, or its
9 equivalent, is outside the legislative intent, and that the agency will
10 not replace the policy or interpretive statement, guideline, or
11 issuance, or its equivalent, with a rule, or (d) will not modify or
12 withdraw the statement, guideline, issuance, or its equivalent, to
13 conform to the intent of the legislature, the rules review committee
14 may, within thirty days from notification by the agency of its intended
15 action, file with the code reviser notice of its objections together
16 with a concise statement of the reasons therefor. Such notice and
17 statement shall also be provided to the agency by the rules review
18 committee.

19 (3) If the rules review committee makes an adverse finding
20 regarding an existing rule under subsection (2)(a) or (b) of this
21 section, the committee may, by a majority vote of its members,
22 recommend suspension of the rule. Within seven days of such vote the
23 committee shall transmit to the appropriate standing committees of the
24 legislature, the governor, the code reviser, and the agency written
25 notice of its objection and recommended suspension and the concise
26 reasons therefor. Within thirty days of receipt of the notice, the
27 governor shall transmit to the committee, the code reviser, and the
28 agency written approval or disapproval of the recommended suspension.
29 If the suspension is approved by the governor, it is effective from the
30 date of that approval and continues until ninety days after the
31 expiration of the next regular legislative session.

32 (4) The code reviser shall publish transmittals from the rules
33 review committee or the governor issued pursuant to subsection (2) or
34 (3) of this section in the Washington state register and shall publish
35 in the next supplement and compilation of the Washington Administrative
36 Code a reference to the committee's objection or recommended suspension
37 and the governor's action on it and to the issue of the Washington
38 state register in which the full text thereof appears.

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

6 **Sec. 12.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to read
7 as follows:

8 (1) Any person may petition the rules review committee for a review
9 of a proposed or existing rule or a proposed or existing policy or
10 interpretive statement, guideline, or issuance, or its equivalent.
11 Within thirty days of the receipt of the petition, the rules review
12 committee shall acknowledge receipt of the petition and describe any
13 initial action taken. If the rules review committee rejects the
14 petition, a written statement of the reasons for rejection shall be
15 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.

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

22 (a) Identify with specificity the proposed or existing rule to be
23 reviewed;

24 (b) Identify the specific statute identified by the agency as
25 authorizing the rule, the specific statute which the rule interprets or
26 implements, and, if applicable, the specific statute the department is
27 alleged not to have followed in adopting the rule;

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

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

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

1 (4) A petition for review of a policy or interpretive statement,
2 guideline, or issuance, or its equivalent, under subsection (1) of this
3 section shall:

4 (a) Identify the specific policy or interpretative statement,
5 guideline, or issuance, or its equivalent, to be reviewed;

6 (b) Identify the specific statute which the rule interprets or
7 implements;

8 (c) State the reasons why the petitioner believes that the policy
9 or interpretive statement, guideline, or issuance, or its equivalent,
10 meets the definition of a rule under RCW 34.05.010 and should have been
11 adopted according to the procedures of this chapter;

12 (d) State the reasons why the petitioner believes that the policy
13 or interpretive statement, guideline, or issuance, or its equivalent,
14 is not within the intent of the legislature;

15 (e) Identify any known judicial action regarding the policy or
16 interpretive statement, guideline, or issuance, or its equivalent, or
17 statutes identified in the petition.

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

21 **Sec. 13.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
22 read as follows:

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

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

1 **Sec. 14.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
2 as follows:

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

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

14 **Sec. 15.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended
15 to read as follows:

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

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

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

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

30 (3) Unless a person aggrieved by a written order of the
31 commissioner demands a hearing thereon within ninety days after
32 receiving notice of such order, or in the case of a licensee under
33 Title 48 RCW within ninety days after the commissioner has mailed the
34 order to the licensee at the most recent address shown in the
35 commissioner's licensing records for the licensee, the right to such
36 hearing shall conclusively be deemed to have been waived.

37 (4) If a hearing is demanded by a licensee whose license has been
38 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall

1 hold such hearing demanded within thirty days after receipt of the
2 demand or within thirty days of the effective date of a temporary
3 license suspension issued after such demand, unless postponed by mutual
4 consent.

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

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