

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032

Chapter 409, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

REGULATORY REFORM

EFFECTIVE DATE: 7/27/97 - Except section 605 which becomes effective 5/19/97

Passed by the House April 21, 1997
Yeas 68 Nays 29

CLYDE BALLARD
Speaker of the
House of Representatives

Passed by the Senate April 17, 1997
Yeas 30 Nays 19

BRAD OWEN
President of the Senate

Approved May 19, 1997, with the exception of sections 101, 102, 104, 105, 106, 201, 202(9) and (10), 203, 204, 205, 207, 210, 301, 303, 304, 401, 402, 403, 404, 501, 502, 503, 602 and 604, which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 19, 1997 - 7:18 p.m.

Secretary of State
State of Washington

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 act, the board may not adopt forest practices
37 rules based solely on any other section of law stating a statute's
38 intent or purpose, on the enabling provisions of the statute
39 establishing the agency, or on any combination of those 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. 101 was vetoed. See message at end of chapter.

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

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

17 (a) Establish minimum standards for forest practices;

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

23 (c) Set forth necessary administrative provisions; and

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

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

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

36 (2) The board shall prepare proposed forest practices
37 ((regulations)) rules. In addition to any forest practices
38 ((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 *Sec. 102 was vetoed. See message at end of chapter.

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

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

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

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

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

36 (3) The commissioner may:

1 (a) Make reasonable rules and regulations for effectuating any
2 provision of this code, except those relating to his or her election,
3 qualifications, or compensation. However, the commissioner may not
4 adopt rules after the effective date of this act that are based solely
5 on this statute, or on a statute's statement of intent or purpose, or
6 on the enabling provisions of the statute establishing the agency, or
7 any combination of those provisions, for statutory authority to adopt
8 any rule, except rules defining or clarifying terms in, or procedures
9 necessary to the implementation of a statute. No such rules and
10 regulations shall be effective prior to their being filed for public
11 inspection in the commissioner's office.

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

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

17 *Sec. 104 was vetoed. See message at end of chapter.

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

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

32 *Sec. 105 was vetoed. See message at end of chapter.

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

35 The commissioner may adopt, in accordance with the provisions of
36 the Administrative Procedure Act, chapter 34.05 RCW, ((promulgate))
37 rules and regulations as necessary or proper to carry out the
38 provisions of this chapter. However, the commissioner may not adopt

1 rules after the effective date of this act that are based solely on
2 this section, a statute's statement of intent or purpose, or on the
3 enabling provisions of the statute establishing the agency, or any
4 combination of those provisions, for statutory authority to adopt any
5 rule, except rules defining or clarifying terms in, or procedures
6 necessary to the implementation of a statute. Nothing in this chapter
7 shall be construed to prohibit the commissioner from requiring changes
8 in procedures previously approved by ((him)) the commissioner.

9 *Sec. 106 was vetoed. See message at end of chapter.

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

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

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

23 (3)(a) In defining other methods of competition and other acts and
24 practices in the conduct of such business to be unfair or deceptive,
25 and after reviewing all comments and documents received during the
26 notice and comment rule-making period, the commissioner shall identify
27 his or her reasons for defining the method of competition or other act
28 or practice in the conduct of insurance to be unfair or deceptive and
29 shall include a statement outlining these reasons as part of the
30 adopted rule.

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

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

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

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

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

22 (5) "De facto rule" means an issuance not adopted under Part III of
23 this chapter that the agency uses to (a) subject a person to a penalty
24 or administrative sanction; (b) establish, alter, or revoke a
25 procedure, practice, or requirement relating to agency hearings; (c)
26 establish, alter, or revoke a qualification or requirement relating to
27 the enjoyment of a benefit or privilege conferred by law; (d)
28 establish, alter, or revoke a qualification or standard for the
29 issuance, suspension, or revocation of a license to pursue a commercial
30 activity, trade, or profession; or (e) establish, alter, or revoke
31 mandatory standards for a product or material that must be met before
32 distribution or sale. The term does not include (i) statements
33 concerning only the internal management of an agency and not affecting
34 private rights or procedures available to the public, (ii) declaratory
35 rulings issued under RCW 34.05.240, (iii) traffic restrictions for
36 motor vehicles, bicyclists, and pedestrians established by the
37 secretary of transportation or his or her designee where notice of the
38 restrictions is given by official traffic control devices, or (iv)
39 rules of institutions of higher education involving standards of

1 admission, academic advancement, academic credit, graduation and the
2 granting of degrees, employment relationships, or fiscal processes.

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

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

10 ((+7)) (8) "Institutions of higher education" are the University
11 of Washington, Washington State University, Central Washington
12 University, Eastern Washington University, Western Washington
13 University, The Evergreen State College, the various community
14 colleges, and the governing boards of each of the above, and the
15 various colleges, divisions, departments, or offices authorized by the
16 governing board of the institution involved to act for the institution,
17 all of which are sometimes referred to in this chapter as
18 "institutions."

19 ((+8)) (9) "Interpretive statement" means a written expression of
20 the opinion of an agency, entitled an interpretive statement by the
21 agency head or its designee, as to the meaning of a statute or other
22 provision of law, of a court decision, or of an agency order.

23 ((+9)) (10) "Issuance" means a written document of general
24 applicability issued by an agency that is available to the public. It
25 includes, but is not limited to, an agency order of adoption, bulletin,
26 directive, policy statement, interpretive statement, guideline, letter,
27 memorandum, rule, or de facto rule. "Issuance" does not include final
28 agency orders issued after an adjudicative proceeding under Part IV of
29 this chapter, tax determinations of precedential value issued by the
30 department of revenue, documents entitled "technical assistance
31 document," medical coverage decisions, tariffs, or permits.

32 (11)(a) "License" means a franchise, permit, certification,
33 approval, registration, charter, or similar form of authorization
34 required by law, but does not include (i) a license required solely for
35 revenue purposes, or (ii) a certification of an exclusive bargaining
36 representative, or similar status, under a collective bargaining law or
37 similar statute, or (iii) a license, franchise, or permission for use
38 of trademarks, symbols, and similar property owned or controlled by the
39 agency.

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

3 ~~((+10))~~ (12)(a) "Order," without further qualification, means a
4 written statement of particular applicability that finally determines
5 the legal rights, duties, privileges, immunities, or other legal
6 interests of a specific person or persons.

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

9 ~~((+11))~~ (13) "Party to agency proceedings," or "party" in a
10 context so indicating, means:

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

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

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

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

18 (b) A person named as a party in a judicial review or civil
19 enforcement proceeding, or allowed to participate as a party in a
20 judicial review or civil enforcement proceeding.

21 ~~((+13))~~ (15) "Person" means any individual, partnership,
22 corporation, association, governmental subdivision or unit thereof, or
23 public or private organization or entity of any character, and includes
24 another agency.

25 ~~((+14))~~ (16) "Policy statement" means a written description of the
26 current approach of an agency, entitled a policy statement by the
27 agency head or its designee, to implementation of a statute or other
28 provision of law, of a court decision, or of an agency order, including
29 where appropriate the agency's current practice, procedure, or method
30 of action based upon that approach.

31 ~~((+15))~~ (17) "Rule" means any ~~((agency order, directive, or~~
32 ~~regulation of general applicability (a) the violation of which subjects~~
33 ~~a person to a penalty or administrative sanction; (b) which~~
34 ~~establishes, alters, or revokes any procedure, practice, or requirement~~
35 ~~relating to agency hearings; (c) which establishes, alters, or revokes~~
36 ~~any qualification or requirement relating to the enjoyment of benefits~~
37 ~~or privileges conferred by law; (d) which establishes, alters, or~~
38 ~~revokes any qualifications or standards for the issuance, suspension,~~
39 ~~or revocation of licenses to pursue any commercial activity, trade, or~~

1 ~~profession; or (e) which establishes, alters, or revokes any mandatory~~
2 ~~standards for any product or material which must be met before~~
3 ~~distribution or sale)) issuance adopted under Part III of this chapter.~~
4 ~~The term includes the amendment or repeal of a prior rule(, but does~~
5 ~~not include (i) statements concerning only the internal management of~~
6 ~~an agency and not affecting private rights or procedures available to~~
7 ~~the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,~~
8 ~~(iii) traffic restrictions for motor vehicles, bicyclists, and~~
9 ~~pedestrians established by the secretary of transportation or his~~
10 ~~designee where notice of such restrictions is given by official traffic~~
11 ~~control devices, or (iv) rules of institutions of higher education~~
12 ~~involving standards of admission, academic advancement, academic~~
13 ~~credit, graduation and the granting of degrees, employment~~
14 ~~relationships, or fiscal processes)).~~

15 ~~((16))~~ (18) "Rules review committee" or "committee" means the
16 joint administrative rules review committee created pursuant to RCW
17 34.05.610 ~~((for the purpose of selectively reviewing existing and~~
18 ~~proposed rules of state agencies)).~~

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

21 ~~((18))~~ (20) "Service," except as otherwise provided in this
22 chapter, means posting in the United States mail, properly addressed,
23 postage prepaid, or personal service. Service by mail is complete upon
24 deposit in the United States mail. Agencies may, by rule, authorize
25 service by electronic telefacsimile transmission, where copies are
26 mailed simultaneously, or by commercial parcel delivery company.

27 *Sec. 201 was vetoed. See message at end of chapter.

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

30 (1) ~~((If the adoption of rules is not feasible and practicable,))~~
31 An agency may file notice for the expedited adoption of rules in
32 accordance with the procedures set forth in this section for rules
33 meeting any one of the following criteria:

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

36 (b) The proposed rules adopt or incorporate by reference without
37 material change federal statutes or regulations, Washington state
38 statutes, rules of other Washington state agencies, shoreline master

1 programs other than those programs governing shorelines of state-wide
2 significance, or, as referenced by Washington state law, national
3 consensus codes that generally establish industry standards, if the
4 material adopted or incorporated regulates the same subject matter and
5 conduct as the adopting or incorporating rule;

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

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

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

15 (f) The proposed rule is being amended after a review under RCW
16 34.05.328 or section 210 of this act.

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

28 **NOTICE**

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

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

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

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

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

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

1 (8) Subsections (1) through (8) of this section expire on December
2 31, 2000.

3 (9) An agency is encouraged to advise the public of its current
4 opinions, approaches, and likely courses of action by means of
5 ((~~interpretive or policy statements. Current interpretive and policy~~
6 statements)) issuances. Unless adopted under Part III of this chapter
7 or exempted under the definition of de facto rule as defined in RCW
8 34.05.010, these issuances are advisory only. ((~~To better inform and~~
9 involve the public, an agency is encouraged to convert long-standing
10 interpretive and policy statements into rules.

11 (2)) (10) A person may petition an agency ((~~requesting the~~
12 conversion of interpretive and policy statements into rules)) to adopt
13 an issuance as a rule. Upon submission, the agency shall notify the
14 joint administrative rules review committee of the petition. A person
15 may petition an agency requesting the repeal or withdrawal of an
16 interpretive or policy statement. Within sixty days after submission
17 of ((a)) either type of petition, the agency shall either deny the
18 petition in writing, stating its reasons for the denial, or initiate
19 rule-making proceedings in accordance with this chapter.

20 ((+3)) (11) Each agency shall maintain a roster of interested
21 persons, consisting of persons who have requested in writing to be
22 notified of all interpretive and policy statements issued by that
23 agency. Each agency shall update the roster once each year and
24 eliminate persons who do not indicate a desire to continue on the
25 roster. Whenever an agency issues an interpretive or policy statement,
26 it shall send a copy of the statement to each person listed on the
27 roster. The agency may charge a nominal fee to the interested person
28 for this service.

29 ((+4)) (12) Whenever an agency issues an interpretive or policy
30 statement, it shall submit to the code reviser for publication in the
31 Washington State Register a statement describing the subject matter of
32 the interpretive or policy statement, and listing the person at the
33 agency from whom a copy of the interpretive or policy statement may be
34 obtained.

35 *Sec. 202 was partially vetoed. See message at end of chapter.

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

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

5 *Sec. 203 was vetoed. See message at end of chapter.

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

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

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

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

32 (4) The agency head, a member of the agency head, or a presiding
33 officer designated by the agency head shall preside at the rule-making
34 hearing. Rule-making hearings shall be open to the public. The agency
35 shall cause a record to be made of the hearing by stenographic,
36 mechanical, or electronic means. Unless the agency head presides or is
37 present at substantially all the hearings, the presiding official shall
38 prepare a memorandum for consideration by the agency head, summarizing

1 the contents of the presentations made at the rule-making hearing. The
2 summarizing memorandum is a public document and shall be made available
3 to any person in accordance with chapter 42.17 RCW.

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

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

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

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

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

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

21 *Sec. 204 was vetoed. See message at end of chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) Promote and assist voluntary compliance; and

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

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

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

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

9 (i) Deferring to the other entity;

10 (ii) Designating a lead agency; or

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

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

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

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

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

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

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

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

37 (b) This section does not apply to:

38 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

14 (v) Rules the content of which is explicitly and specifically
15 dictated by statute; ((~~or~~))

16 (vi) Rules that set or adjust fees or rates pursuant to legislative
17 standards; or

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

21 (c) For purposes of this subsection:

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

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

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

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

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

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

14 (b) The costs incurred by state agencies in complying with this
15 section;

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

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

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

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

25 *Sec. 205 was vetoed. See message at end of chapter.

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

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

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

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

4 (a) That immediate adoption, amendment, or repeal of a rule is
5 necessary for the preservation of the public health, safety, or general
6 welfare, and that observing the time requirements of notice and
7 opportunity to comment upon adoption of a permanent rule would be
8 contrary to the public interest; or

9 (b) That state or federal law or federal rule or a federal deadline
10 for state receipt of federal funds requires immediate adoption of a
11 rule,

12 the agency may dispense with those requirements and adopt, amend, or
13 repeal the rule on an emergency basis. ~~((The agency's finding and a
14 concise statement of the reasons for its finding shall be incorporated
15 in))~~ The order for adoption of the emergency rule or amendment filed
16 with the office of the code reviser under RCW 34.05.380 and with the
17 rules review committee must contain the governor's signature approving
18 the adoption of the emergency rule or amendment if immediate adoption
19 is found necessary for the preservation of the general welfare. In
20 that case, the governor shall also include a statement explaining why
21 the rule is necessary for that reason. For all other emergency rules,
22 the order of adoption must contain the agency's finding and a concise
23 statement of the reasons for its finding.

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

35 (3) Within seven days after the rule is adopted, any person may
36 petition the governor requesting the immediate repeal of a rule adopted
37 on an emergency basis by any department listed in RCW 43.17.010.
38 Within seven days after submission of the petition, the governor shall
39 either deny the petition in writing, stating his or her reasons for the

1 denial, or order the immediate repeal of the rule. In ruling on the
2 petition, the governor shall consider only whether the conditions in
3 subsection (1) of this section were met such that adoption of the rule
4 on an emergency basis was necessary. If the governor orders the repeal
5 of the emergency rule, any sanction imposed based on that rule is void.
6 This subsection shall not be construed to prohibit adoption of any rule
7 as a permanent rule.

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

11 *Sec. 207 was vetoed. See message at end of chapter.

12 **Sec. 208.** RCW 34.05.354 and 1995 c 403 s 701 are each amended to
13 read as follows:

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

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

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

26 (b) The statute on which the rule is based has been declared
27 unconstitutional by a court with jurisdiction, there is a final
28 judgment, and no statute has been enacted to replace the
29 unconstitutional statute;

30 (c) The rule is no longer necessary because of changed
31 circumstances; or

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

34 (3) The agency shall also send a copy of the preproposal notice of
35 inquiry to any person who has requested notification of copies of
36 proposals for the expedited repeal of rules or of agency rule making.
37 The preproposal notice of inquiry shall include a statement that any
38 person who objects to the repeal of the rule must file a written

1 objection to the repeal within thirty days after the preproposal notice
2 of inquiry is published. The notice of inquiry shall also include an
3 explanation of the reasons the agency believes the expedited repeal of
4 the rule is appropriate.

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

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

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

28 NEW SECTION. **Sec. 209.** The legislature finds that rules existing
29 as of the effective date of this act may be unclear or difficult to
30 understand; written or being implemented in a way that does not conform
31 with the intent of the legislature as expressed by the statute that the
32 rule implements; duplicative of, inconsistent with, or in conflict with
33 other state, federal, or local rules or statutes; excessively costly or
34 outdated in the methods prescribed; unauthorized because the
35 authorizing statute has since been repealed or amended; or no longer
36 necessary to meet the purposes of the statute that it implements. The
37 legislature further finds that the review of existing rules is a

1 critical undertaking that is necessary to address these and other
2 deficiencies.

3 The legislature acknowledges the special nature of the relationship
4 between the legislative and executive branches of government, the
5 cooperation between both of which is essential to the just and
6 efficient administration of the laws of this state.

7 The legislature further acknowledges the governor's Executive Order
8 97-02, which provides for executive review of existing rules of
9 agencies the heads of which are appointed by and serve at the pleasure
10 of the governor. The legislature encourages not only these but all
11 agencies to establish a formal and expeditious process for the review
12 of existing rules in consideration of the aforementioned deficiencies
13 in the rules of all state agencies and their interactions with each
14 other.

15 ****NEW SECTION.** Sec. 210. A new section is added to chapter 34.05
16 RCW under the subchapter heading "Part III" to read as follows:*

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

21 *(a) Achievement of the goals and objectives of the rule;*

22 *(b) Technological changes that impact the implementation of or
23 compliance with the rule;*

24 *(c) Controversy surrounding the implementation or enforcement of
25 the rule, stating the nature of the controversy;*

26 *(d) The outcome of any court challenges to the validity of the rule
27 or its authority to draft the rule;*

28 *(e) Actual costs or changes undergone by the regulated community;
29 and*

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

32 *The agency shall place in a rules review file documentation
33 sufficient to show that the agency conducted the review under this
34 section.*

35 *(2) Those rules certified to the legislature by the governor to
36 have undergone executive rules review by July 31, 2001, are subject to
37 review under subsection (1) of this section beginning July 31, 2001,*

1 *and may be effective for no more than seven years after that date*
2 *unless so reviewed.*

3 *Sec. 210 was vetoed. See message at end of chapter.

4 **Sec. 211.** RCW 82.32.410 and 1991 c 330 s 2 are each amended to
5 read as follows:

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

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

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

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

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

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

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

33 **Sec. 212.** RCW 19.85.025 and 1995 c 403 s 401 are each amended to
34 read as follows:

35 (1) Unless an agency receives a written objection to the expedited
36 repeal of a rule, this chapter does not apply to a rule proposed for
37 expedited repeal pursuant to RCW 34.05.354. If an agency receives a

1 written objection to expedited repeal of the rule, this chapter applies
2 to the rule-making proceeding.

3 (2) This chapter does not apply to a rule proposed for expedited
4 adoption under RCW 34.05.230 (1) through (8), unless a written
5 objection is timely filed with the agency and the objection is not
6 withdrawn.

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

9 ((+3+)) (4) An agency is not required to prepare a separate small
10 business economic impact statement under RCW 19.85.040 if it prepared
11 an analysis under RCW 34.05.328 that meets the requirements of a small
12 business economic impact statement, and if the agency reduced the costs
13 imposed by the rule on small business to the extent required by RCW
14 19.85.030(3). The portion of the analysis that meets the requirements
15 of RCW 19.85.040 shall be filed with the code reviser and provided to
16 any person requesting it in lieu of a separate small business economic
17 impact statement.

18 NEW SECTION. Sec. 213. (1) The legislature finds that there are
19 state rules on the same subject adopted by more than one state agency.
20 The legislature further finds that this situation places an undue
21 hardship on those regulated by rules issued by more than one state
22 agency on the same subject since the regulated individuals must
23 determine what the combined requirements of the rules from the multiple
24 agencies are and how to comply with the requirements of one agency
25 without violating the requirements of another agency.

26 (2) The governor or his or her designee shall present to the
27 legislature a plan for the design and implementation of a pilot project
28 on a single subject for the consolidation of all rules adopted by any
29 state agency that regulate that same activity or subject matter. The
30 goal of the pilot project is to consolidate these rules into one rule
31 or set of rules that will be the sole and conclusive source of all
32 regulation affecting that activity or subject matter.

33 The governor or his or her designee shall present the plan for the
34 pilot project to the legislature no later than November 30, 1997.

35 **PART III**
36 **JUDICIAL REVIEW**

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

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

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

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

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

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

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

21 (b) The validity of any rule may be determined upon petition for a
22 declaratory judgment addressed to the superior court of Thurston
23 county, when it appears that the rule, or its threatened application,
24 interferes with or impairs or immediately threatens to interfere with
25 or impair the legal rights or privileges of the petitioner. When the
26 validity of a rule is challenged, after the petitioner has identified
27 the defects in the rule, the burden of going forward with the evidence
28 is on the agency. The declaratory judgment order may be entered
29 whether or not the petitioner has first requested the agency to pass
30 upon the validity of the rule in question.

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

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

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

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

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

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

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

12 (f) The agency has not decided all issues requiring resolution by
13 the agency;

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

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

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

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

24 (4) Review of other agency action.

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

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

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

- 1 *(i) Unconstitutional;*
2 *(ii) Outside the statutory authority of the agency or the authority*
3 *conferred by a provision of law;*
4 *(iii) Arbitrary or capricious; ((or))*
5 *(iv) Taken by persons who were not properly constituted as agency*
6 *officials lawfully entitled to take such action; or*
7 *(v) Based on a de facto rule.*

8 *Sec. 301 was vetoed. See message at end of chapter.

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

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

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

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

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

25 (a) The remedies would be patently inadequate;

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

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

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

32 (1) *The commissioner may hold a hearing for any purpose within the*
33 *scope of this code as he or she may deem necessary. The commissioner*
34 *shall hold a hearing:*

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

36 (b) *Upon written demand for a hearing made by any person aggrieved*
37 *by any act, threatened act, or failure of the commissioner to act, if*

1 such failure is deemed an act under any provision of this code, or by
2 any report, promulgation, or order of the commissioner other than an
3 order on a hearing of which such person was given actual notice or at
4 which such person appeared as a party, or order pursuant to the order
5 on such hearing.

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

9 (3) Unless a person aggrieved by a written order of the
10 commissioner demands a hearing thereon within ninety days after
11 receiving notice of such order, or in the case of a licensee under
12 Title 48 RCW within ninety days after the commissioner has mailed the
13 order to the licensee at the most recent address shown in the
14 commissioner's licensing records for the licensee, the right to such
15 hearing shall conclusively be deemed to have been waived.

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

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

25 *Sec. 303 was vetoed. See message at end of chapter.

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

28 (1) Except as provided in subsection (2) of this section, whenever
29 a state agency conducts a hearing which is not presided over by
30 officials of the agency who are to render the final decision, the
31 hearing shall be conducted by an administrative law judge assigned
32 under this chapter. In assigning administrative law judges, the chief
33 administrative law judge shall wherever practical ((+1)) (a) use
34 personnel having expertise in the field or subject matter of the
35 hearing, and ((+2)) (b) assign administrative law judges primarily to
36 the hearings of particular agencies on a long-term basis.

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

1 *Sec. 304 was vetoed. See message at end of chapter.

2 PART IV
3 LEGISLATIVE REVIEW

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

6 (1) ~~All ((rules required to be filed pursuant to RCW 34.05.380, and~~
7 ~~emergency rules adopted pursuant to RCW 34.05.350,)) issuances are~~
8 ~~subject to selective review by the legislature.~~

9 (2) ~~((All agency policy and interpretive statements are subject to~~
10 ~~selective review by the legislature.~~

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

27 ~~((+4))~~ (3) The agency shall consider fully all written and oral
28 submissions regarding (a) whether the rule in question is within the
29 intent of the legislature as expressed by the statute ~~((which))~~ that
30 the rule implements, (b) whether the rule was adopted in accordance
31 with all applicable provisions of law, or (c) whether ~~((the agency is~~
32 ~~using a policy or interpretive statement in place of a))~~ an agency
33 issuance is a de facto rule.

34 *Sec. 401 was vetoed. See message at end of chapter.

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

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

7 (2) If the rules review committee finds by a majority vote of its
8 members: (a) That the proposed or existing rule in question will not
9 be modified, amended, withdrawn, or repealed by the agency so as to
10 conform with the intent of the legislature, (b) that an existing rule
11 was not adopted in accordance with all applicable provisions of law, or
12 (c) that the agency will not modify or withdraw a de facto rule, or
13 replace (~~((the policy or interpretive statement))~~) it with a rule, the
14 rules review committee may, within thirty days from notification by the
15 agency of its intended action, file with the code reviser notice of its
16 objections together with a concise statement of the reasons therefor.
17 Such notice and statement shall also be provided to the agency by the
18 rules review 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 or a de facto rule under subsection (2)(c) of this section, the
22 committee may, by a majority vote of its members, recommend suspension
23 of the rule. Within seven days of such vote the committee shall
24 transmit to the appropriate standing committees of the legislature, the
25 governor, the code reviser, and the agency written notice of its
26 objection and recommended suspension and the concise reasons therefor.
27 Within thirty days of receipt of the notice, the governor shall
28 transmit to the committee, the code reviser, and the agency written
29 approval or disapproval of the recommended suspension. If the
30 suspension is approved by the governor, it is effective from the date
31 of that approval and continues until ninety days after the expiration
32 of the next regular legislative session.

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

1 transmittal relates to a de facto rule, the code reviser shall publish
2 the reference within the Washington State Register and the Washington
3 Administrative Code in a location that addresses the most relevant
4 subject matter.

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

10 *Sec. 402 was vetoed. See message at end of chapter.

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

13 (1) Any person may petition the rules review committee for a review
14 of a proposed or existing rule or (~~a policy or interpretive~~
15 ~~statement~~) other issuance. Within thirty days of the receipt of the
16 petition, the rules review committee shall acknowledge receipt of the
17 petition and describe any initial action taken. If the rules review
18 committee rejects the petition, a written statement of the reasons for
19 rejection shall be included.

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

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

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

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

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

36 (d) Identify any known judicial action regarding the rule or
37 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 an issuance other than a proposed or existing rule under subsection (1)
7 of this section shall:

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

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

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

15 ~~((d))~~ (c) Identify any known judicial action regarding the
16 ~~((statement))~~ 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 or other issuance for
19 which the petition for review was not previously rejected.

20 *Sec. 403 was vetoed. See message at end of chapter.

21 *Sec. 404. 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) and 34.05.640(2) in no way
27 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.

37 *Sec. 404 was vetoed. See message at end of chapter.

1 PART V
2 FEES AND EXPENSES

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

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

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

12 (2) "Agency action" means agency action as defined by chapter 34.05
13 RCW.

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

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

30 (5) "Qualified party" means (a) an individual whose net worth did
31 not exceed (~~(one))~~ two million dollars at the time the initial petition
32 for judicial review was filed or (b) a sole owner of an unincorporated
33 business, or a partnership, corporation, association, or organization
34 whose net worth did not exceed (~~(five))~~ seven million dollars at the
35 time the initial petition for judicial review was filed, except that an
36 organization described in section 501(c)(3) of the federal Internal
37 Revenue Code of 1954 as exempt from taxation under section 501(a) of
38 the code and a cooperative association as defined in section 15(a) of

1 the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a party
2 regardless of the net worth of such organization or cooperative
3 association.

4 *Sec. 501 was vetoed. See message at end of chapter.

5 *Sec. 502. RCW 4.84.350 and 1995 c 403 s 903 are each amended to
6 read as follows:

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

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

30 *Sec. 502 was vetoed. See message at end of chapter.

31 *Sec. 503. RCW 4.84.360 and 1995 c 403 s 904 are each amended to
32 read as follows:

33 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
34 shall be paid by the agency over which the party prevails from
35 operating funds appropriated to the agency within ((~~sixty days~~)) thirty
36 days of the decision of a superior court or court of appeal. The fees
37 and other expenses must be paid from moneys appropriated to the agency
38 for administration and support services and not out of moneys for

1 program activities or service delivery if the operating budget or
2 budget notes separately designate administration and support services.
3 *Agencies paying fees and other expenses pursuant to RCW 4.84.340 and*
4 *4.84.350 shall report all payments to the office of financial*
5 *management within five days of paying the fees and other expenses.*
6 *Fees and other expenses awarded by the court shall be subject to the*
7 *provisions of chapter 39.76 RCW and shall be deemed payable on the date*
8 *the court announces the award.*
9 *Sec. 503 was vetoed. See message at end of chapter.

10 **PART VI**
11 **MISCELLANEOUS**

12 **Sec. 601.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
13 each reenacted and amended to read as follows:

14 (1) Each agency, in accordance with published rules, shall make
15 available for public inspection and copying all public records, unless
16 the record falls within the specific exemptions of subsection (6) of
17 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
18 or prohibits disclosure of specific information or records. To the
19 extent required to prevent an unreasonable invasion of personal privacy
20 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
21 delete identifying details in a manner consistent with RCW 42.17.310
22 and 42.17.315 when it makes available or publishes any public record;
23 however, in each case, the justification for the deletion shall be
24 explained fully in writing.

25 (2) For informational purposes, each agency shall publish and
26 maintain a current list containing every law, other than those listed
27 in this chapter, that the agency believes exempts or prohibits
28 disclosure of specific information or records of the agency. An
29 agency's failure to list an exemption shall not affect the efficacy of
30 any exemption.

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

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

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

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

5 (d) Planning policies and goals, and interim and final planning
6 decisions;

7 (e) Factual staff reports and studies, factual consultant's reports
8 and studies, scientific reports and studies, and any other factual
9 information derived from tests, studies, reports, or surveys, whether
10 conducted by public employees or others; and

11 (f) Correspondence, and materials referred to therein, by and with
12 the agency relating to any regulatory, supervisory, or enforcement
13 responsibilities of the agency, whereby the agency determines, or
14 opines upon, or is asked to determine or opine upon, the rights of the
15 state, the public, a subdivision of state government, or of any private
16 party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) In determining the actual per page cost for providing
26 photocopies of public records, an agency may include all costs directly
27 incident to copying such public records including the actual cost of
28 the paper and the per page cost for use of agency copying equipment.
29 In determining other actual costs for providing photocopies of public
30 records, an agency may include all costs directly incident to shipping
31 such public records, including the cost of postage or delivery charges
32 and the cost of any container or envelope used.

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

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

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

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

24 *The director shall supervise the providing of prompt and efficient*
25 *care and treatment, including care provided by physician assistants*
26 *governed by the provisions of chapters 18.57A and 18.71A RCW, acting*
27 *under a supervising physician, and including chiropractic care, to*
28 *workers injured during the course of their employment at the least cost*
29 *consistent with promptness and efficiency, without discrimination or*
30 *favoritism, and with as great uniformity as the various and diverse*
31 *surrounding circumstances and locations of industries will permit and*
32 *to that end shall, from time to time, establish and adopt and supervise*
33 *the administration of printed forms, rules, regulations, and practices*
34 *for the furnishing of such care and treatment: PROVIDED, That, the*
35 *department may recommend to an injured worker particular health care*
36 *services and providers where specialized treatment is indicated or*
37 *where cost effective payment levels or rates are obtained by the*
38 *department: AND PROVIDED FURTHER, That the department may enter into*

1 contracts for goods and services including, but not limited to, durable
2 medical equipment so long as state-wide access to quality service is
3 maintained for injured workers.

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

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

30 *Sec. 602 was vetoed. See message at end of chapter.

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

33 (1) An agency, prior to releasing a final report or study regarding
34 management by a county, city, town, special purpose district, or other
35 unit of local government of a program delegated to the local government
36 by the agency or for which the agency has regulatory responsibility,
37 shall provide copies of a draft of the report or study at least two
38 weeks in advance of the release of the final report or study to the

1 legislative body of the local government. The agency shall, at the
2 request of a local government legislative body, meet with the
3 legislative body before the release of a final report or study
4 regarding the management of such a program.

5 (2) For purposes of this section, "agency" means an office,
6 department, board, commission, or other unit of state government, other
7 than a unit of state government headed by a separately elected
8 official.

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

11 ***When issuing a citation or other written finding that a person has***
12 ***violated a statute, rule, or order, the agency shall include with the***
13 ***citation or other written finding the text of the specific statute or***
14 ***statutes granting the agency the authority to regulate the subject***
15 ***matter of the citation or other written finding.***

16 ****Sec. 604 was vetoed. See message at end of chapter.***

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

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

24 (a) The agency submits an application in writing to the employment
25 security department for the records or information containing a
26 statement of the official purposes for which the information or records
27 are needed and specific identification of the records or information
28 sought from the department; and

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

32 (c) The agency requesting access has served a copy of the
33 application for records or information on the individual or employing
34 unit whose records or information are sought and has provided the
35 department with proof of service. Service shall be made in a manner
36 which conforms to the civil rules for superior court. The requesting
37 agency shall include with the copy of the application a statement to

1 the effect that the individual or employing unit may contact the public
2 records officer of the employment security department to state any
3 objections to the release of the records or information. The
4 employment security department shall not act upon the application of
5 the requesting agency until at least five days after service on the
6 concerned individual or employing unit. The employment security
7 department shall consider any objections raised by the concerned
8 individual or employing unit in deciding whether the requesting agency
9 needs the information or records for official purposes.

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

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

26 (4) The requirements of subsection (1)(c) of this section shall not
27 apply to governmental agencies where the procedures would frustrate the
28 investigation of possible violations of criminal laws or to the release
29 of employing unit names, addresses, number of employees, and aggregate
30 employer wage data for the purpose of state governmental agencies
31 preparing small business economic impact statements under chapter 19.85
32 RCW or preparing cost-benefit analyses under RCW 34.05.328(1)(c).
33 Information provided by the department and held to be private and
34 confidential under state or federal laws must not be misused or
35 released to unauthorized parties. A person who misuses such
36 information or releases such information to unauthorized parties is
37 subject to the sanctions in RCW 50.13.080.

38 (5) Governmental agencies shall have access to certain records or
39 information, limited to such items as names, addresses, social security

1 numbers, and general information about benefit entitlement or employer
2 information possessed by the department, for comparison purposes with
3 records or information possessed by the requesting agency to detect
4 improper or fraudulent claims, or to determine potential tax liability
5 or employer compliance with registration and licensing requirements.
6 In those cases the governmental agency shall not be required to comply
7 with subsection (1)(c) of this section, but the requirements of the
8 remainder of subsection (1) must be satisfied.

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

21 (7) Disclosure to governmental agencies of information or records
22 obtained by the employment security department from the federal
23 government shall be governed by any applicable federal law or any
24 agreement between the federal government and the employment security
25 department where so required by federal law. When federal law does not
26 apply to the records or information state law shall control.

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

31 (9) In conducting periodic salary or fringe benefit studies
32 pursuant to law, the department of personnel shall have access to
33 records of the employment security department as may be required for
34 such studies. For such purposes, the requirements of subsection (1)(c)
35 of this section need not apply.

36 NEW SECTION. **Sec. 606.** The code reviser shall study the
37 feasibility of accepting agency rule filings in an electronic format.
38 The study must include consideration of the benefits to be achieved by

1 electronic filing compared to the costs that electronic filing would
2 entail. The code reviser may consult with the office of financial
3 management, state agencies, and the general public in conducting the
4 study. The code reviser shall report to the legislature and the
5 governor by July 1, 1998, on the results of this study.

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

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

12 NEW SECTION. **Sec. 609.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

Passed the House April 21, 1997.

Passed the Senate April 17, 1997.

Approved by the Governor May 19, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 19, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 101,
3 102, 104, 105, 106, 201, 202(9) and (10), 203, 204, 205, 207, 210, 301,
4 303, 304, 401, 402, 403, 404, 501, 502, 503, 602, and 604, Engrossed
5 Second Substitute House Bill No. 1032 entitled:

6 "AN ACT Relating to regulatory reform;"

7 On March 25, 1997, I issued Executive Order 97-02, which set the
8 stage for a thorough review of agency regulations based on need,
9 effectiveness, clarity, statutory intent, coordination and consistency,
10 cost, and fairness. The order also directs agencies to review their
11 reporting requirements for businesses and their policy and interpretive
12 statements and other similar documents. It was not by accident that I
13 chose regulatory reform as the subject of the first executive order of
14 my administration. It is a top priority of my office and all state
15 agencies, and I am firmly committed to ensuring that it results in
16 effective and meaningful regulatory improvements throughout state
17 government.

18 Despite this demonstrated commitment, the legislature chose to
19 proceed with legislation that in many cases does not measure up to what
20 I consider effective and meaningful regulatory reform. Regulatory
21 reform should reduce inefficiencies, conflicts, and delays in the
22 regulatory process. It should not increase costs, cause

1 inefficiencies, or sacrifice continued protection of our environment
2 and the health and safety of our citizens. While some of the proposals
3 in Engrossed Second Substitute House Bill 1032 meet these goals, many
4 do not.

5 I have approved a number of provisions in the bill that I hope will
6 improve the regulatory process. Those sections will clarify rule
7 making authority for the Department of Labor and Industries, improve
8 the Insurance Commissioner's procedures for adopting rules governing
9 unfair practices, and initiate an expedited rule adoption process.
10 Other sections that I have approved will provide better advance notice
11 of rule making, improve opportunities for expedited repeal of rules,
12 encourage all state agencies to engage in a formal rule review process,
13 and provide greater public access to Department of Revenue tax
14 determinations. I have also signed sections that set the stage for
15 possible consolidation of agency rules on the same subject matter,
16 remove legal ambiguities regarding judicial review of rules, provide
17 more local government input on state agency reports, and facilitate the
18 preparation of small business economic impact statements. I applaud
19 the legislature for initiating these improvements to the regulatory
20 process.

21 However, other sections of the bill are not consistent with
22 meaningful and effective regulatory reform. Sections 101 and 102 would
23 limit the authority of the Forest Practices Board to adopt rules
24 regarding scenic beauty. Proponents argue that these sections merely
25 clarify the current rule making authority of the Board and ensure that
26 its authority is consistent with standards applied to other agencies.
27 In fact, these sections could well be interpreted as a substantive
28 reduction of Board authority and possibly jeopardize ongoing negotiated
29 rule making over sensitive visual impacts in the Columbia River Gorge
30 Scenic Area. For these reasons, I have vetoed sections 101 and 102.

31 Sections 104 through 106 pose similar risks to the rule making
32 authority of the Office of the Insurance Commissioner, by limiting the
33 general rule making authority of that office. In the insurance code,
34 effective regulatory action and consumer protection depend on a
35 combination of specific statutory directives and general rule making
36 authority. To eliminate general authority, as is proposed in sections
37 104, 105, and 106, could compromise the capacity of that agency to
38 effectively regulate insurance companies, health care service
39 contractors, and health maintenance organizations. In addition,
40 sections 303 and 304 require the use of administrative law judges for
41 adjudicative proceedings within the Office of the Insurance
42 Commissioner. I have not been presented with sufficient evidence that
43 the current system has created results that were unfair to aggrieved
44 parties. It appears that existing procedures are both cost-effective
45 and efficient. For these reasons, sections 104, 105, 106, 303, and 304
46 are vetoed.

47 Section 201 and other related sections in the bill are designed to
48 clarify the difference between rules and other documents that agencies
49 issue. These sections restructure the definition of "rule" within the
50 Administrative Procedure Act (APA). Proponents believe that this
51 language would resolve problems that businesses have when agencies
52 issue policy statements or other documents that should be adopted as
53 rules. I am sympathetic with these concerns and recognize that
54 problems do exist in this area. For that reason, in Executive Order
55 97-02, I directed agencies to review these kinds of documents with the

1 Attorney General's office and affected members of the regulated
2 community, and take appropriate corrective action. I will be
3 monitoring that effort and will determine if legislation is necessary
4 in 1998.

5 I believe this problem can be more effectively addressed on an
6 issue-by-issue basis, not by a restructuring of the definition of
7 "rule," as is proposed in this bill. Section 201 could substantially
8 increase rule making in areas where rules may not be the best answer
9 for reasons of cost, timeliness and urgency of the decision, and the
10 sheer number of decisions that must be made in many state programs.
11 Also, sections 202(9) and (10), 301, 401, 402, 403, and 602 contain
12 changes that cross-reference the terms "issuance" or "de facto rule"
13 that are defined only in section 201. Since section 201 is vetoed,
14 these changes would be confusing and obsolete. For these reasons, I
15 have vetoed sections 201, 202(9) and (10), 301, 401, 402, 403, and 602.

16 Section 203 would authorize agencies to send out the contents of
17 regulatory notices by electronic mail or fax. This was authorized in
18 Substitute House Bill 1323, which I have already signed.

19 Section 204 mandates that agencies receive and accept comments on
20 proposed rules via voice mail if they have the equipment to receive
21 comments by this method. Current law authorizes agencies to receive
22 comments by voice mail. This is preferable to the mandate contained in
23 section 204.

24 Section 205 requires the Department of Social and Health Services
25 to adopt a large portion of its rules using significant legislative
26 rule making requirements. This provision is identical to one contained
27 in Substitute House Bill 1076, which I will sign. Section 205 also
28 provides the Joint Administrative Rules Review Committee (JARRC) with
29 90 days to direct an agency to adopt rules using significant
30 legislative rule making requirements. If an agency completes rule
31 making before the 90 days have elapsed, it is uncertain what the legal
32 effect of the rule would be if JARRC subsequently mandates that the
33 rule should have been adopted under these more stringent requirements.
34 For these reasons, I have vetoed section 205.

35 Section 207 requires the governor's signature on every emergency
36 rule adopted by all agencies under the general welfare criterion. This
37 section introduces excessive bureaucratic process and paperwork into
38 crucial agency operations. It is also impractical to require the
39 governor to review and approve hundreds of emergency rules, many of
40 which require a same day turn around time. For these reasons, I have
41 vetoed section 207.

42 Section 210 requires a review of all newly adopted rules within
43 seven years, and a review of existing rules after the governor's rule
44 review is completed. Without this review, the rules would no longer be
45 effective. This section creates a major workload that, in most cases,
46 will duplicate rule review efforts of agencies under Executive Order
47 97-02. And because the requirement would be part of statutory rule
48 adoption provisions of the APA, it could add substantial legal
49 uncertainty and risk regarding the validity of many rules that may be
50 subject to court challenge. For these reasons, I have vetoed section
51 210.

1 Section 301 shifts to agencies the burden of going forward with
2 evidence in rule validity challenges. The purpose of this change is to
3 make it easier for people with limited resources to challenge rules.
4 While I am sympathetic to this concern, there is already provision in
5 the APA to address the problem.

6 Section 404 gives five members of JARRC the power to establish a
7 rebuttable presumption in judicial proceedings that a rule does not
8 comply with legislative intent or was not adopted in accordance with
9 all applicable provisions of law. The burden of proof to establish the
10 validity of the rule would then fall to the agency, rather than to the
11 person challenging the rule. I have vetoed this section because it
12 violates the state Constitution, which requires that legislative acts
13 be performed by the entire legislature with presentment to the governor
14 for approval. It also raises constitutional separation of powers
15 questions.

16 Sections 501 through 503 make major changes in the Equal Access to
17 Justice Act, which was recently enacted in 1995 under ESHB 1010. The
18 proposed changes expand the program to judicial review of all agency
19 actions, not just APA issues; modify the standard for allowing
20 attorney's fees; substantially increase awards and the net worth of
21 persons who can qualify for awards; and make other changes regarding
22 the payment of fees. I am not convinced that such changes are
23 justified in a program that is less than two years old and has been
24 applied to only a handful of cases. The current law, with its existing
25 limits and standards, was intended to cure the evils the legislature
26 sought to eliminate. For these reasons, I have vetoed sections 501,
27 502, and 503.

28 Finally, section 604 requires that agencies print on their
29 citations the entire text of laws authorizing those citations. This
30 may turn the "ticket books" used by some agencies into rather lengthy
31 treatises.

32 For these reasons, I have vetoed sections 101,102, 104, 105, 106,
33 201, 202(9) and (10), 203, 204, 205, 207, 210, 301, 303, 304, 401, 402,
34 403, 404, 501, 502, 503, 602, and 604 of Engrossed Second Substitute
35 House Bill 1032.

36 With the exceptions of sections 101,102, 104, 105, 106, 201, 202(9)
37 and (10), 203, 204, 205, 207, 210, 301, 303, 304, 401, 402, 403, 404,
38 501, 502, 503, 602, and 604, Engrossed Second Substitute House Bill
39 1032 is approved."