

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2345

Chapter 280, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

ADMINISTRATIVE LAW--RULE-MAKING NOTICES--JOINT ADMINISTRATIVE
RULES COMMITTEE LEADERSHIP APPOINTMENT

EFFECTIVE DATE: 6/11/98

Passed by the House March 10, 1998
Yeas 83 Nays 15

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 6, 1998
Yeas 31 Nays 17

BRAD OWEN
President of the Senate

Approved April 2, 1998, with the
exception of sections 1, 3, 4, 8, 10,
11, 12 and 13, 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 2345** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 2, 1998 - 2:17 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2345

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representative Reams)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to administrative law; amending RCW 34.05.230,
2 34.05.328, 34.05.330, 34.05.354, 34.05.370, 34.05.610, 34.12.040, and
3 48.04.010; adding new sections to chapter 34.05 RCW; adding a new
4 section to chapter 43.132 RCW; creating a new section; and providing an
5 expiration date.

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

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

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

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

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

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

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

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

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

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

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

25 NOTICE

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

34 (3) The agency shall send a copy of the notice of the proposed
35 expedited rule making to any person who has requested notification of
36 proposals for the expedited adoption of rules or of agency rule making,

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

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

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

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

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

36 ~~(8) Subsections (1) through (8) of this section expire on December~~
37 ~~31, 2000.~~

38 ~~an [An] agency is encouraged to advise the public of its current~~
39 ~~opinions, approaches, and likely courses of action by means of~~

1 ~~interpretive or policy statements.~~ Current)) Interpretive and policy
2 statements or their equivalents, regardless of title, are advisory
3 only. To better inform and involve the public, ((an)) each agency is
4 encouraged to convert long-standing interpretive and policy statements
5 into rules.

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

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

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

28 (5) When a person requests a copy of a rule from an agency, the
29 agency shall identify any associated interpretive or policy statements,
30 guidelines, documents of general applicability, or their equivalents,
31 and provide copies of the statements upon request.

32 (6) Within two hundred days after an agency issues a policy or
33 interpretative statement, guideline, document of general applicability,
34 or its equivalent involving an issue, the violation of which can result
35 in a citation, civil penalty, assessment, or other sanction to a
36 business, the agency shall make a good faith effort to notify
37 businesses affected by the statement, guideline, or document and how to
38 obtain technical assistance to comply. For purposes of this section,
39 "good faith" means: (a) The agency at least notifies businesses in the

1 standard industrial classifications or their successor affected by the
2 statement, guideline, or document that are registered with the
3 department of revenue; or (b) for a statement, guideline, or document
4 that applies only to persons or firms that are licensed, registered, or
5 operate under a permit, the agency notifies those persons or firms
6 holding the license, registration, or permit. Inadvertent failure to
7 notify a specific business under this section does not invalidate a
8 rule.

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

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW
11 to read as follows:

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

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

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

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

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

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

34 (f) The proposed rule is being amended after a review under RCW
35 34.05.328.

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

1 under RCW 19.85.025, a statement indicating whether the rule
2 constitutes a significant legislative rule under RCW
3 34.05.328(6)(c)(iii), or a significant legislative rule analysis under
4 RCW 34.05.328. An agency is not required to prepare statements of
5 inquiry under RCW 34.05.310 or conduct a hearing for the expedited
6 adoption of rules. The notice for the expedited adoption of rules must
7 contain a statement in at least ten-point type, that is substantially
8 in the following form:

9

NOTICE

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

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

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

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

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

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

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

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

24 *(1) Before adopting a rule described in subsection ((-5)) (6) of*
25 *this 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))~~ (6) of
25 this 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))~~ will:

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; and

36 (e) Provide appropriate training to agency personnel.

37 (4) At least twenty days before the effective date of a rule
38 described in subsection (6) of this section, the agency is encouraged
39 to convene a meeting of interested persons affected by the rule to

1 identify ambiguities and problem areas in the rule and determine how to
2 resolve the ambiguities and problem areas. If the agency convenes such
3 a meeting, the agency shall include the meeting in the plan described
4 under subsection (3) of this section.

5 (5) After adopting a rule described in subsection ~~((+5))~~ (6) of
6 this section regulating the same activity or subject matter as another
7 provision of federal or state law, an agency shall do all of the
8 following:

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

13 (b) Coordinate implementation and enforcement of the rule with the
14 other federal and state entities regulating the same activity or
15 subject matter by making every effort to do one or more of the
16 following:

17 (i) Deferring to the other entity;

18 (ii) Designating a lead agency; or

19 (iii) Entering into an agreement with the other entities specifying
20 how the agency and entities will coordinate implementation and
21 enforcement.

22 If the agency is unable to comply with this subsection ~~((+4))~~
23 (5)(b), the agency shall report to the legislature pursuant to (c) of
24 this subsection;

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

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

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

32 ~~((+5))~~ (6)(a) Except as provided in (b) of this subsection, this
33 section applies to:

34 (i) Significant legislative rules of the departments of ecology,
35 labor and industries, health, revenue, social and health services, and
36 natural resources, the employment security department, the forest
37 practices board, the office of the insurance commissioner, and to the
38 legislative rules of the department of fish and wildlife implementing
39 chapter 75.20 RCW; and

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

6 (b) This section does not apply to:

7 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

23 (vi) Rules that set or adjust fees or rates pursuant to legislative
24 standards; or

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

28 (c) For purposes of this subsection:

29 (i) A "procedural rule" is a rule that adopts, amends, or repeals
30 (A) any procedure, practice, or requirement relating to any agency
31 hearings; (B) any filing or related process requirement for making
32 application to an agency for a license or permit; or (C) any policy
33 statement pertaining to the consistent internal operations of an
34 agency.

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

38 (iii) A "significant legislative rule" is a rule other than a
39 procedural or interpretive rule that (A) adopts substantive provisions

1 of law pursuant to delegated legislative authority, the violation of
2 which subjects a violator of such rule to a penalty or sanction; (B)
3 establishes, alters, or revokes any qualification or standard for the
4 issuance, suspension, or revocation of a license or permit; or (C)
5 adopts a new, or makes significant amendments to, a policy or
6 regulatory program.

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

11 ((+6+)) (7) By January 31, 1996, and by January 31st of each even-
12 numbered year thereafter, the office of financial management, after
13 consulting with state agencies, counties, and cities, and business,
14 labor, and environmental organizations, shall report to the governor
15 and the legislature regarding the effects of this section on the
16 regulatory system in this state. The report shall document:

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

20 (b) The costs incurred by state agencies in complying with this
21 section;

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

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

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

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

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

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

34 Within two hundred days after the effective date of a rule that
35 imposes additional requirements on businesses the violation of which
36 subjects a person to a penalty, assessment, or administrative sanction,
37 an agency shall make a good faith effort to notify businesses affected
38 by the rule of the requirements of the rule and how to obtain technical

1 *assistance to comply. For purposes of this section, "good faith"*
2 *means: (1) The agency at least notifies businesses in the standard*
3 *industrial classifications or their successor identified in the rule-*
4 *making file as businesses affected by the rule that are registered with*
5 *the department of revenue; or (2) for rules imposing additional*
6 *requirements only on persons or firms licensed, registered, or*
7 *operating under a permit, the agency notifies those persons or firms*
8 *holding the license, registration, or permit. Inadvertent failure to*
9 *notify a specific business under this section does not invalidate a*
10 *rule.*

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

12 **Sec. 5.** RCW 34.05.330 and 1996 c 318 s 1 are each amended to read
13 as follows:

14 (1) Any person may petition an agency requesting the adoption,
15 amendment, or repeal of any rule. The office of financial management
16 shall prescribe by rule the format for such petitions and the procedure
17 for their submission, consideration, and disposition and provide a
18 standard form that may be used to petition any agency. Within sixty
19 days after submission of a petition, the agency shall either (a) deny
20 the petition in writing, stating (i) its reasons for the denial,
21 specifically addressing the concerns raised by the petitioner, and,
22 where appropriate, (ii) the alternative means by which it will address
23 the concerns raised by the petitioner, or (b) initiate rule-making
24 proceedings in accordance with (~~this chapter~~) RCW 34.05.320.

25 (2) If an agency denies a petition to repeal or amend a rule
26 submitted under subsection (1) of this section, and the petition
27 alleges that the rule is not within the intent of the legislature or
28 was not adopted in accordance with all applicable provisions of law,
29 the person may petition for review of the rule by the joint
30 administrative rules review committee under RCW 34.05.655.

31 (3) If an agency denies a petition to repeal or amend a rule
32 submitted under subsection (1) of this section, the petitioner, within
33 thirty days of the denial, may appeal the denial to the governor. The
34 governor shall immediately file notice of the appeal with the code
35 reviser for publication in the Washington state register. Within
36 forty-five days after receiving the appeal, the governor shall either
37 (a) deny the petition in writing, stating (i) his or her reasons for
38 the denial, specifically addressing the concerns raised by the

1 petitioner, and, (ii) where appropriate, the alternative means by which
2 he or she will address the concerns raised by the petitioner; (b) for
3 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
4 making proceedings in accordance with this chapter; or (c) for agencies
5 not listed in RCW 43.17.010, recommend that the agency initiate rule-
6 making proceedings in accordance with this chapter. The governor's
7 response to the appeal shall be published in the Washington state
8 register and copies shall be submitted to the chief clerk of the house
9 of representatives and the secretary of the senate.

10 (4) In petitioning for repeal or amendment of a rule under this
11 section, a person is encouraged to address, among other concerns:

12 (a) Whether the rule is authorized;

13 (b) Whether the rule is needed;

14 (c) Whether the rule conflicts with or duplicates other federal,
15 state, or local laws;

16 (d) Whether alternatives to the rule exist that will serve the same
17 purpose at less cost;

18 (e) Whether the rule applies differently to public and private
19 entities;

20 (f) Whether the rule serves the purposes for which it was adopted;

21 (g) Whether the costs imposed by the rule are unreasonable;

22 (h) Whether the rule is clearly and simply stated;

23 (i) Whether the rule is different than a federal law applicable to
24 the same activity or subject matter without adequate justification; and

25 (j) Whether the rule was adopted according to all applicable
26 provisions of law.

27 (5) The (~~business assistance center~~) department of community,
28 trade, and economic development and the office of financial management
29 shall coordinate efforts among agencies to inform the public about the
30 existence of this rules review process.

31 (6) The office of financial management shall initiate the rule
32 making required by subsection (1) of this section by September 1, 1995.

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

35 (1) (~~Not later than April 1st or October 1st of each year, each~~
36 ~~agency shall submit to the code reviser, according to procedures and~~
37 ~~time lines established by the code reviser, rules that it determines~~
38 ~~should be repealed by the expedited repeal procedures provided for in~~

1 ~~this section. An agency shall file a copy of a preproposal notice of~~
2 ~~inquiry, as provided in RCW 34.05.310(1), that identifies the rule as~~
3 ~~one that is proposed for expedited repeal.~~

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

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

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

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

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

18 ~~((3))~~ (2) An agency shall file a copy of a preproposal notice of
19 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as
20 one that is proposed for expedited repeal. The agency shall also send
21 a copy of the preproposal notice of inquiry to any person who has
22 requested notification of copies of proposals for the expedited repeal
23 of rules or of agency rule making. The preproposal notice of inquiry
24 shall include a statement that any person who objects to the repeal of
25 the rule must file a written objection to the repeal within thirty days
26 after the preproposal notice of inquiry is published. The notice of
27 inquiry shall also include an explanation of the reasons the agency
28 believes the expedited repeal of the rule is appropriate.

29 ~~((4))~~ (3) The code reviser shall publish all rules proposed for
30 expedited repeal in a separate section of ~~((a regular edition of))~~ the
31 Washington state register ~~((or in a special edition of the Washington~~
32 ~~state register. The publication shall be not later than May 31st or~~
33 ~~November 30th of each year, or in the first register published after~~
34 ~~that date))~~.

35 ~~((5))~~ (4) Any person may file a written objection to the
36 expedited repeal of a rule. The notice shall be filed with the agency
37 rules coordinator within thirty days after the notice of inquiry has
38 been published in the Washington state register. The written objection

1 need not state any reason for objecting to the expedited repeal of the
2 rule.

3 ~~((6))~~ (5) If no written objections to the expedited repeal of a
4 rule are filed with the agency within thirty days after the preproposal
5 notice of inquiry is published, the agency may enter an order repealing
6 the rule without further notice or an opportunity for a public hearing.
7 The order shall be published in the manner required by this chapter for
8 any other order of the agency adopting, amending, or repealing a rule.
9 If a written objection to the expedited repeal of the rule is filed
10 with the agency within thirty days after the notice of inquiry has been
11 published, the preproposal notice of inquiry published pursuant to this
12 section shall be considered a preproposal notice of inquiry for the
13 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
14 proceedings in accordance with the provisions of this chapter.

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

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

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

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

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

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

32 (d) Any official transcript of oral presentations made in the
33 proceeding on which the rule is based or, if not transcribed, any tape
34 recording or stenographic record of them, and any memorandum prepared
35 by a presiding official summarizing the contents of those
36 presentations;

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

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

8 (g) The concise explanatory statement required by RCW 34.05.325(6);
9 and

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

11 (3) Internal agency documents are exempt from inclusion in the
12 rule-making file under subsection (2) of this section to the extent
13 they constitute preliminary drafts, notes, recommendations, and intra-
14 agency memoranda in which opinions are expressed or policies formulated
15 or recommended, except that a specific document is not exempt from
16 inclusion when it is publicly cited by an agency in connection with its
17 decision.

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

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

25 (1) *The legislature finds that under the governor's Executive Order*
26 *97-02, agencies have begun systematic reviews of existing rules and*
27 *have eliminated some unnecessary rules and improved clarity for other*
28 *rules.*

29 (2) *Effective July 1, 2001, each state agency shall review its*
30 *rules that have significant effects on businesses, labor, consumers,*
31 *and the environment. Agencies shall establish a rules review schedule*
32 *that allows each rule filing under the criteria of this section to be*
33 *reviewed every seven years. Agencies shall determine if their rules*
34 *should be (a) retained in their current form, or (b) amended or*
35 *repealed, if they do not meet the review criteria specified in this*
36 *section. Agencies shall concentrate their regulatory review on rules*
37 *or portions of a rule that have been the subject of petitions filed*
38 *under RCW 34.05.330 or have been the source of complaints, concerns, or*

1 other difficulties that relate to matters other than the specific
2 mandates of the statute on which the rule is based. Agencies that have
3 already established regulatory review processes shall make them
4 consistent with the requirements of this section. Each agency head
5 shall designate a person responsible for regulatory review who shall
6 serve as the agency's contact for regulatory review.

7 (3) The following criteria will be used for the review of each rule
8 identified for review:

9 (a) Need. Is the rule necessary to comply with the statutes that
10 authorize it? Is the rule obsolete, duplicative, or ambiguous to a
11 degree that warrants repeal or revision? Have laws or other
12 circumstances changed so that the rule should be amended or repealed?
13 Is the rule necessary to protect or safeguard the health, welfare, or
14 safety of Washington's citizens?

15 (b) Effectiveness and efficiency. Is the rule providing the
16 results that it was originally designed to achieve in a reasonable
17 manner? Are there regulatory alternatives or new technologies that
18 could more effectively or efficiently achieve the same objectives?

19 (c) Clarity. Is the rule written and organized in a clear and
20 concise manner so that it can be readily understood by those to whom it
21 applies?

22 (d) Intent and statutory authority. Is the rule consistent with
23 legislative intent of the statutes that authorize it? Is the rule
24 based upon sufficient statutory authority? Is there a need to develop
25 a more specific legislative authorization in order to protect the
26 health, safety, and welfare of Washington's citizens?

27 (e) Coordination. Could additional consultation and coordination
28 with other governmental jurisdictions and state agencies with similar
29 regulatory authority eliminate or reduce duplication and inconsistency?
30 Agencies should consult with and coordinate with other jurisdictions
31 that have similar regulatory requirements when it is likely that
32 coordination can reduce duplication and inconsistency.

33 (f) Cost. Have qualitative and quantitative benefits of the rule
34 been considered in relation to its cost?

35 (g) Fairness. Does the rule result in equitable treatment of those
36 required to comply with it? Should it be modified to eliminate or
37 minimize any disproportionate impacts on the regulated community?
38 Should it be strengthened to provide additional protection?

1 (4)(a) By July 1, 2002, and July 1st of each year thereafter, each
2 agency shall report to the rules review committee on the rules reviewed
3 during the previous fiscal year and other measures taken to improve its
4 regulatory program. The reports must include, but not be limited to:
5 (i) The number of rule sections amended or repealed and the number of
6 pages eliminated in the Washington Administrative Code; (ii) a summary
7 of rules amended or repealed based on the review criteria in this
8 section; (iii) a summary of agency actions in response to petitions
9 under RCW 34.05.330; (iv) a summary of the results of the agency's
10 review of policy and interpretive statements and similar documents; (v)
11 a summary of the agency's review of reporting requirements imposed on
12 businesses; and (vi) recommendations for statutory or administrative
13 changes resulting from the regulatory reviews. More frequent reports
14 may be requested, as necessary. Agencies shall make the reports
15 available to persons who have requested notification of agency rule
16 making and shall submit a summary of the report for publication in the
17 Washington State Register.

18 (b) As part of its regulatory review, each agency shall review its
19 existing policy and interpretive statements or similar documents to
20 determine whether or not they must, by law, be adopted as rules. The
21 review must include consultation with the attorney general. Agencies
22 shall concentrate their review on those statements and documents that
23 have been the source of complaints, concerns, or other difficulties.

24 (c) Each agency shall also review its reporting requirements that
25 are applied generally to all businesses or classes of businesses to
26 ensure that they are necessary and consistent with the principles and
27 objectives of this section. The goals of the review must be to achieve
28 reporting requirements that, to the extent possible, are coordinated
29 with other state agencies with similar requirements, are economical and
30 easy to understand, and rely on electronic transfer of information.

31 (5)(a) An agency is deemed to have met the requirements of this
32 section ninety days after publication in the Washington State Register
33 unless the rules review committee receives a written objection of the
34 agency's compliance with the requirements of this section.

35 (b) If a written objection is received within the ninety-day
36 period, the rules review committee will make a determination as to
37 whether the agency did indeed comply with this section.

38 (c) If the committee finds the agency has failed to meet the
39 requirements of this section, the agency will have one hundred twenty

1 days to meet the requirements and receive approval by a majority vote
2 of the committee. If the agency fails to comply with the requirements
3 of this section after the one hundred twenty days, the committee may,
4 by a majority vote of its members, recommend suspension of a rule or
5 rules included in the report. Within seven days of that vote the
6 committee shall transmit to the appropriate standing committees of the
7 legislature, the governor, the code reviser, and the agency written
8 notice of its objection and any recommended suspension based on failure
9 to meet the rules review requirements. Within thirty days of receipt
10 of the notice, the governor shall transmit to the committee, the code
11 reviser, and the agency written approval or disapproval of the
12 recommended suspension. If the suspension is approved by the governor,
13 it is effective from the date of that approval and continues until
14 ninety days after the expiration of the next regular legislative
15 session.

16 (d) If the governor disapproves the recommendation of the rules
17 review committee to suspend a rule or rules in the report, the agency
18 shall treat the transmittal of that decision, along with the findings
19 of the rules review committee, as a petition by the committee to repeal
20 the rule or rules under RCW 34.05.330.

21 (e) The code reviser shall publish these transmittals according to
22 RCW 34.05.640(5).

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

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

26 (1) There is hereby created a joint administrative rules review
27 committee which shall be a bipartisan committee consisting of four
28 senators and four representatives from the state legislature. The
29 senate members of the committee shall be appointed by the president of
30 the senate, and the house members of the committee shall be appointed
31 by the speaker of the house. Not more than two members from each house
32 may be from the same political party. The appointing authorities shall
33 also appoint one alternate member from each caucus of each house. All
34 appointments to the committee are subject to approval by the caucuses
35 to which the appointed members belong.

36 (2) Members and alternates shall be appointed as soon as possible
37 after the legislature convenes in regular session in an odd-numbered
38 year, and their terms shall extend until their successors are appointed

1 and qualified at the next regular session of the legislature in an odd-
2 numbered year or until such persons no longer serve in the legislature,
3 whichever occurs first. Members and alternates may be reappointed to
4 the committee.

5 (3) On or about January 1, 1999, the president of the senate shall
6 appoint the chairperson ((in even-numbered years)) and the vice
7 chairperson ((in odd-numbered years)) from among the committee
8 membership. The speaker of the house shall appoint the chairperson
9 ((in odd-numbered years)) and the vice chairperson in alternating even-
10 numbered years beginning in the year 2000 from among the committee
11 membership. The secretary of the senate shall appoint the chairperson
12 and the vice chairperson in the alternating even-numbered years
13 beginning in the year 2002 from among the committee membership. Such
14 appointments shall be made in January of each even-numbered year as
15 soon as possible after a legislative session convenes.

16 (4) The chairperson of the committee shall cause all meeting
17 notices and committee documents to be sent to the members and
18 alternates. A vacancy shall be filled by appointment of a legislator
19 from the same political party as the original appointment. The
20 appropriate appointing authority shall make the appointment within
21 thirty days of the vacancy occurring.

22 **Sec. 10. RCW 34.12.040 and 1981 c 67 s 4 are each amended to read*
23 *as follows:*

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

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

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

36 **NEW SECTION. Sec. 11. A new section is added to chapter 43.132*
37 *RCW to read as follows:*

1 (1) To determine the fiscal impact of proposed rules on units of
2 local government, an agency shall prepare a local government economic
3 impact statement if the proposed rule will impose costs on units of
4 local government.

5 (2) The economic impact statement shall describe the reporting,
6 recordkeeping, and other compliance requirements of the proposed rule
7 and analyze the costs of compliance for local governments. An agency
8 shall file the statement with the code reviser along with the notice
9 required under RCW 34.05.320.

10 (3) The department of community, trade, and economic development
11 shall develop a guide to assist agencies in preparing the economic
12 impact statement. The guide shall be developed through a collaborative
13 process with agencies and local governments and other interested
14 persons.

15 (4) An agency shall maintain a list of proposed rules for which it
16 prepares an economic impact statement and a summary of the costs. By
17 December 1st of each year, an agency shall submit the list and summary
18 to the joint administrative rules review committee.

19 (5) This section does not apply to:

20 (a) A rule proposed for expedited repeal or expedited adoption,
21 unless the agency receives written objection;

22 (b) Rules described in RCW 34.05.310(4); and

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

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

26 *Sec. 12. RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each
27 amended to read as follows:

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

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

32 (b) Upon written demand for a hearing made by any person aggrieved
33 by any act, threatened act, or failure of the commissioner to act, if
34 such failure is deemed an act under any provision of this code, or by
35 any report, promulgation, or order of the commissioner other than an
36 order on a hearing of which such person was given actual notice or at
37 which such person appeared as a party, or order pursuant to the order
38 on such hearing.

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

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

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

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

20 *Sec. 12 was vetoed. See message at end of chapter.

21 *NEW SECTION. Sec. 13. If specific funding for the purposes of
22 this act, referencing this act by bill or chapter number, is not
23 provided by June 30, 1998, in the omnibus appropriations act, this act
24 is null and void.

25 *Sec. 13 was vetoed. See message at end of chapter.

26 NEW SECTION. Sec. 14. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

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

2 "I am returning herewith, without my approval as to sections 1, 3,
3 4, 8, 10, 11, 12, and 13, Engrossed Second Substitute House Bill No.
4 2345 entitled:

5 "AN ACT Relating to administrative law;"

1 Engrossed Second Substitute House Bill No. 2345 makes numerous
2 changes throughout the Administrative Procedures Act (APA) that
3 proponents claim will improve the rule making process and provide
4 better notification of regulatory actions.

5 I am deeply committed to meaningful regulatory improvement in state
6 government and have demonstrated that commitment by undertaking a major
7 reform effort under Executive Order 97-02. That program has already
8 resulted in the elimination of nearly 2,000 rules and the rewriting of
9 hundreds of regulations in plain English. Agencies are also
10 eliminating regulatory inefficiencies, improving customer service,
11 reducing conflicting regulations, using negotiated rule making, and
12 expanding effective outreach and voluntary compliance among the
13 regulated community. Those are examples of meaningful regulatory
14 reform, and I welcome proposals that will further those goals.

15 Unfortunately, most of the provisions in E2SHB 2345 do not further
16 those goals. Sections 1, 3, and 4 would mandate additional
17 notification, meetings, and other requirements for agencies, and would
18 add costs and complexity to the regulatory process. They would also
19 result in additional bureaucratic red tape, and duplicate information
20 and services that are already being provided under current law and
21 practices. In some cases, the language in those sections is ambiguous
22 regarding who should be notified about what actions. Those sections
23 would only create more opportunities for litigation regarding the
24 meaning of the requirements and the extent to which agencies may or may
25 not have complied. Proponents of this bill did not provide hard
26 evidence of system-wide problems that would justify these changes.
27 Anecdotes and disagreements with individual agencies about a rule
28 should not be used as a rationale to make costly changes in the APA
29 that affect all agencies.

30 Section 8 of the bill would require a rule review process that is
31 similar to that already established in E.O. 97-02. Under that
32 executive order, all agencies are conducting rule review in an
33 efficient and orderly manner, and that review is yielding results.
34 Statutory rule review is, therefore, unnecessary and could open up new
35 opportunities for litigation on technical grounds relating to the
36 adequacy of the reviews.

37 Sections 10 and 12 of the bill would require the Office of the
38 Insurance Commissioner to use adjudicators from the Office of
39 Administrative Hearings. I vetoed the same sections after the 1997
40 legislative session, and I am not aware of any evidence that would
41 justify changing the current adjudication process and singling out the
42 Insurance Commissioner for different treatment.

43 Section 11 of the bill would require agencies to prepare local
44 government economic impact statements on rules that impose any costs on
45 local governments. While funding was made available for this program,
46 the Legislature chose to condition the availability of those funds on
47 enactment of sections 1 and 4 of the bill, which I have vetoed.

48 Finally, section 13 of the bill is a "null and void" clause that
49 would nullify the entire act if funding is not made available. The
50 supplemental budget act conditions funding for portions of this bill on
51 the approval of certain sections. Since I am vetoing those necessary
52 sections, funding will disappear. Section 13 must, therefore, be
53 vetoed in order to preserve sections in this bill that I have approved.

1 For these reasons, I have vetoed sections 1, 3, 4, 8, 10, 11, 12,
2 and 13 of Engrossed Second Substitute House Bill No. 2345.

3 With the exception of sections 1, 3, 4, 8, 10, 11, 12, and 13,
4 Engrossed Second Substitute House Bill No. 2345 is approved."