
HOUSE BILL 1010

State of Washington

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1 AN ACT Relating to regulatory reform; amending RCW 43.70.040,
2 82.01.060, 46.01.110, 50.12.010, 76.09.040, 77.04.090, 48.02.060,
3 34.05.570, 34.05.310, 34.05.370, 34.05.380, 34.05.330, 19.85.030,
4 34.05.010, 34.05.320, 34.05.350, 34.05.610, 34.05.620, 34.05.630,
5 34.05.640, 34.05.650, 34.05.660, 42.40.010, 42.40.020, 42.40.030,
6 43.31.086, and 43.180.110; adding new sections to chapter 43.21A RCW;
7 adding new sections to chapter 43.22 RCW; adding new sections to
8 chapter 43.24 RCW; adding a new section to chapter 50.12 RCW; adding
9 new sections to chapter 34.05 RCW; adding a new section to chapter
10 19.85 RCW; adding a new section to chapter 43.70 RCW; adding a new
11 section to chapter 43.300 RCW; adding a new section to chapter 48.02
12 RCW; adding a new section to chapter 50.08 RCW; adding a new section to
13 chapter 82.01 RCW; adding new sections to chapter 4.84 RCW; adding a
14 new section to chapter 43.88 RCW; adding a new chapter to Title 44 RCW;
15 creating a new section; recodifying RCW 34.05.610, 34.05.620,
16 34.05.630, 34.05.640, 34.05.650, and 34.05.660; repealing RCW
17 43.21A.080, 50.12.040, and 19.85.060; prescribing penalties; and
18 providing for submission of this act to a vote of the people.

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

1 PART 1

2 GRANTS OF RULE-MAKING AUTHORITY

3 NEW SECTION. **Sec. 101.** (1) The legislature recognizes that clear
4 and specific grants of rule-making authority are necessary for
5 accountability in decision making by governmental agencies, and that an
6 agency should exercise jurisdiction and adopt rules over a subject
7 matter only if it has obvious and explicit rule-making authority to do
8 so. It is therefore the legislature's purpose to ensure that existing
9 and future rules exist only pursuant to clear and appropriate rule-
10 making authority.

11 (2) The legislature further finds that state agencies have adopted
12 administrative rules without clear authority to do so from the
13 legislature, relying on general grants of authority rather than
14 specific legislative policy direction. This has resulted in agency-
15 initiated policy that has been adopted without the benefit of the
16 public dialogue and accountability inherent to the legislative process.
17 It is therefore the intent of the legislature to eliminate reliance on
18 general grants of authority, limit certain agency rule making to those
19 matters specifically authorized by the legislature, and that grants of
20 rule-making authority be narrowly construed.

21 **Sec. 102.** RCW 43.70.040 and 1989 1st ex.s. c 9 s 106 are each
22 amended to read as follows:

23 In addition to any other powers granted the secretary, the
24 secretary may:

25 (1) Adopt, in accordance with chapter 34.05 RCW, rules (~~(necessary~~
26 ~~to carry out the provisions of this act))~~ or policy statements, other
27 than emergency rules, only:

28 (a) As specifically required, and only to the extent specifically
29 required, by federal law; or

30 (b) As specifically authorized, and only to the extent specifically
31 authorized, by the legislature;

32 (2) Appoint such advisory committees as may be necessary to carry
33 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
34 sess. Members of such advisory committees are authorized to receive
35 travel expenses in accordance with RCW 43.03.050 and 43.03.060. The
36 secretary and the board of health shall review each advisory committee
37 within their jurisdiction and each statutory advisory committee on a

1 biennial basis to determine if such advisory committee is needed. The
2 criteria specified in RCW 43.131.070 shall be used to determine whether
3 or not each advisory committee shall be continued;

4 (3) Undertake studies, research, and analysis necessary to carry
5 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
6 sess. in accordance with RCW 43.70.050;

7 (4) Delegate powers, duties, and functions of the department to
8 employees of the department as the secretary deems necessary to carry
9 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
10 sess.;

11 (5) Enter into contracts on behalf of the department to carry out
12 the purposes of (~~this act~~) chapter 9, Laws of 1989 1st ex. sess.;

13 (6) Act for the state in the initiation of, or the participation
14 in, any intergovernmental program to the purposes of (~~this act~~)
15 chapter 9, Laws of 1989 1st ex. sess.; or

16 (7) Accept gifts, grants, or other funds.

17 **Sec. 103.** RCW 82.01.060 and 1977 c 75 s 92 are each amended to
18 read as follows:

19 The director of revenue, hereinafter in (~~this 1967 amendatory~~
20 ~~act~~) chapter 26, Laws of 1967 ex. sess. referred to as the director,
21 through the department of revenue, hereinafter in (~~this 1967~~
22 ~~amendatory act~~) chapter 26, Laws of 1967 ex. sess. referred to as the
23 department, shall:

24 (1) Assess and collect all taxes and administer all programs
25 relating to taxes which are the responsibility of the tax commission at
26 the time (~~this 1967 amendatory act~~) chapter 26, Laws of 1967 ex.
27 sess. takes effect or which the legislature may hereafter make the
28 responsibility of the director or of the department;

29 (2) (~~Make, adopt and publish such rules and regulations as he may~~
30 ~~deem necessary or desirable to carry out the powers and duties imposed~~
31 ~~upon him or the department by the legislature:— PROVIDED, That~~) The
32 director of revenue may adopt, in accordance with chapter 34.05 RCW,
33 rules or policy statements, other than emergency rules, only:

34 (a) As specifically required by federal law, and only to the extent
35 specifically required; or

36 (b) As specifically authorized, and only to the extent specifically
37 authorized, by the legislature;

1 (3) Rules (~~(and regulations)~~) adopted by the tax commission prior
2 to the effective date of this (~~(1967-amendatory)~~) 1995 act shall remain
3 in force until such time as they may be revised or rescinded by the
4 director;

5 (~~(+3)~~) (4) Provide by general (~~(regulations)~~) rules for an
6 adequate system of departmental review of the actions of the department
7 or of its officers and employees in the assessment or collection of
8 taxes;

9 (~~(+4)~~) (5) Maintain a tax research section with sufficient
10 technical, clerical and other employees to conduct constant observation
11 and investigation of the effectiveness and adequacy of the revenue laws
12 of this state and of the sister states in order to assist the governor,
13 the legislature and the director in estimation of revenue, analysis of
14 tax measures, and determination of the administrative feasibility of
15 proposed tax legislation and allied problems;

16 (~~(+5)~~) (6) Recommend to the governor such amendments, changes in,
17 and modifications of the revenue laws as seem proper and requisite to
18 remedy injustice and irregularities in taxation, and to facilitate the
19 assessment and collection of taxes in the most economical manner.

20 NEW SECTION. Sec. 104. A new section is added to chapter 43.21A
21 RCW to read as follows:

22 The director of the department of ecology may adopt, in accordance
23 with chapter 34.05 RCW, rules or policy statements, other than
24 emergency rules, only:

25 (1) As specifically required by federal law, and only to the extent
26 specifically required; or

27 (2) As specifically authorized, and only to the extent specifically
28 authorized, by the legislature.

29 NEW SECTION. Sec. 105. A new section is added to chapter 43.22
30 RCW to read as follows:

31 The director of the department of labor and industries may adopt,
32 in accordance with chapter 34.05 RCW, rules or policy statements, other
33 than emergency rules, only:

34 (1) As specifically required by federal law, and only to the extent
35 specifically required; or

36 (2) As specifically authorized, and only to the extent specifically
37 authorized, by the legislature.

1 NEW SECTION. **Sec. 106.** A new section is added to chapter 43.24
2 RCW to read as follows:

3 The director of the department of licensing may adopt, in
4 accordance with chapter 34.05 RCW, rules or policy statements, other
5 than emergency rules, only:

6 (1) As specifically required by federal law, and only to the extent
7 specifically required; or

8 (2) As specifically authorized, and only to the extent specifically
9 authorized, by the legislature.

10 **Sec. 107.** RCW 46.01.110 and 1979 c 158 s 120 are each amended to
11 read as follows:

12 The director of licensing is hereby authorized to adopt ~~((and~~
13 ~~enforce such reasonable rules and regulations as may be consistent with~~
14 ~~and))~~, in accordance with chapter 34.05 RCW, rules or policy
15 statements, other than emergency rules, only:

16 (1) As specifically required by federal law, and only to the extent
17 specifically required; or

18 (2) As specifically authorized, and only to the extent specifically
19 authorized, by the legislature.

20 The rules shall be necessary to carry out the provisions relating
21 to vehicle licenses, certificates of ownership and license registration
22 and drivers' licenses not in conflict with the provisions of Title 46
23 RCW.

24 **Sec. 108.** RCW 50.12.010 and 1977 c 75 s 75 are each amended to
25 read as follows:

26 The commissioner shall administer this title. He or she shall have
27 the power and authority to ~~((adopt, amend, or rescind such rules and~~
28 ~~regulations, to))~~ employ ~~((such))~~ persons, make ~~((such))~~ expenditures,
29 require ~~((such))~~ reports, make ~~((such))~~ investigations, and take
30 ~~((such))~~ other actions, not including the adoption, amendment, or
31 rescission of rules or policy statements other than emergency rules, as
32 he or she deems necessary or suitable to that end. ~~((Such rules and~~
33 ~~regulations shall be effective upon publication and in the manner, not~~
34 ~~inconsistent with the provisions of this title, which the commissioner~~
35 ~~shall prescribe.))~~ The commissioner, in accordance with the provisions
36 of this title, shall determine the organization and methods of
37 procedure of the divisions referred to in this title, and shall have an

1 official seal which shall be judicially noticed. The commissioner
2 shall submit to the governor a report covering the administration and
3 operation of this title during the preceding fiscal year, July 1
4 through June 30, and shall make (~~(such)~~) recommendations for amendments
5 to this title as he or she deems proper. (~~(Such)~~) The report shall
6 include a balance sheet of the moneys in the fund in which there shall
7 be provided, if possible, a reserve against the liability in future
8 years to pay benefits in excess of the then current contributions,
9 which reserve shall be set up by the commissioner in accordance with
10 accepted actuarial principles on the basis of statistics of employment,
11 business activity, and other relevant factors for the longest possible
12 period. Whenever the commissioner believes that a change in
13 contribution or benefit rates will become necessary to protect the
14 solvency of the fund, he or she shall promptly (~~(se)~~) inform the
15 governor and legislature and make recommendations with respect thereto.

16 NEW SECTION. Sec. 109. A new section is added to chapter 50.12
17 RCW to read as follows:

18 The commissioner of the employment security department may adopt,
19 in accordance with chapter 34.05 RCW, rules or policy statements, other
20 than emergency rules, only:

21 (1) As specifically required by federal law, and only to the extent
22 specifically required; or

23 (2) As specifically authorized, and only to the extent specifically
24 authorized, by the legislature.

25 Sec. 110. RCW 76.09.040 and 1994 c 264 s 48 are each amended to
26 read as follows:

27 (~~((1) Where necessary to accomplish the purposes and policies~~
28 ~~stated in RCW 76.09.010, and to implement the provisions of this~~
29 ~~chapter,)) The board shall ((promulgate)) adopt forest practices
30 ((regulations)) rules or policy statements, other than emergency rules,
31 pursuant to chapter 34.05 RCW and in accordance with the procedures
32 enumerated in this section:~~

33 (a) As specifically required by federal law, and only to the extent
34 specifically required; or

35 (b) As specifically authorized, and only to the extent specifically
36 authorized, by the legislature.

37 (2) The board shall adopt rules that:

- 1 (a) Establish minimum standards for forest practices;
- 2 (b) Provide procedures for the voluntary development of resource
3 management plans which may be adopted as an alternative to the minimum
4 standards in (a) of this subsection if the plan is consistent with the
5 purposes and policies stated in RCW 76.09.010 and the plan meets or
6 exceeds the objectives of the minimum standards;
- 7 (c) Set forth necessary administrative provisions; and
- 8 (d) Establish procedures for the collection and administration of
9 forest practice fees as set forth by this chapter.

10 Forest practices (~~((regulations))~~) rules pertaining to water quality
11 protection shall be (~~((promulgated))~~) adopted individually by the board
12 and by the department of ecology after they have reached agreement with
13 respect thereto. All other forest practices (~~((regulations))~~) rules
14 shall be (~~((promulgated))~~) adopted by the board.

15 Forest practices regulations shall be administered and enforced by
16 the department except as otherwise provided in this chapter. Such
17 regulations shall be promulgated and administered so as to give
18 consideration to all purposes and policies set forth in RCW 76.09.010.

19 (~~((+2+))~~) (3) The board shall prepare proposed forest practices
20 (~~((regulations))~~) rules. In addition to any forest practices
21 (~~((regulations))~~) rules relating to water quality protection proposed by
22 the board, the department of ecology shall prepare proposed forest
23 practices (~~((regulations))~~) rules relating to water quality protection.

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

1 **Sec. 111.** RCW 77.04.090 and 1984 c 240 s 1 are each amended to
2 read as follows:

3 The commission shall adopt (~~permanent rules and amendments to or~~
4 ~~repeals of existing rules~~), in accordance with chapter 34.05 RCW,
5 rules or policy statements, other than emergency rules, only:

6 (1) As specifically required by federal law, and only to the extent
7 specifically required; or

8 (2) As specifically authorized, and only to the extent specifically
9 authorized, by the legislature, by approval of four members by
10 resolution, entered and recorded in the minutes of the commission. The
11 commission shall adopt emergency rules by approval of four members.
12 The commission or the director, when adopting emergency rules under RCW
13 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.
14 Judicial notice shall be taken of the rules filed and published as
15 provided in RCW 34.05.380 and 34.05.210.

16 A copy of an emergency rule, certified as a true copy by a member
17 of the commission, the director, or by a person authorized in writing
18 by the director to make the certification, is admissible in court as
19 prima facie evidence of the adoption and validity of the rule.

20 NEW SECTION. Sec. 112. The following acts or parts of acts are
21 each repealed:

22 (1) RCW 43.21A.080 and 1970 ex.s. c 62 s 8; and

23 (2) RCW 50.12.040 and 1973 1st ex.s. c 158 s 3 & 1945 c 35 s 43.

24 **Sec. 113.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
25 read as follows:

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

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

31 (3) The commissioner may:

32 (a) (~~Make reasonable rules and regulations for effectuating any~~
33 ~~provision of this code, except those relating to his election,~~
34 ~~qualifications, or compensation. No such rules and regulations shall~~
35 ~~be effective prior to their being filed for public inspection in the~~
36 ~~commissioner's office~~)) Adopt, in accordance with chapter 34.05 RCW,
37 rules or policy statements, other than emergency rules, only:

1 (i) As specifically required by federal law, and only to the extent
2 specifically required; or

3 (ii) As specifically authorized, and only to the extent
4 specifically authorized, by the legislature.

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

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

10 **Sec. 114.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to
11 read as follows:

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

14 (a) The burden of demonstrating the invalidity of agency action is
15 on the party asserting invalidity;

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

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

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

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

29 (b) The validity of any rule may be determined upon petition for a
30 declaratory judgment addressed to the superior court of Thurston
31 county, when it appears that the rule, or its threatened application,
32 interferes with or impairs or immediately threatens to interfere with
33 or impair the legal rights or privileges of the petitioner. The
34 declaratory judgment order may be entered whether or not the petitioner
35 has first requested the agency to pass upon the validity of the rule in
36 question.

37 (c) In a proceeding involving review of a rule, the court shall
38 declare the rule invalid only if it finds that: ~~((it))~~ The rule

1 violates constitutional provisions(~~(7)~~); the rule exceeds the statutory
2 authority of the agency(~~(7)~~); the rule was adopted without compliance
3 with statutory rule-making procedures(~~(7 or could not conceivably have~~
4 been the product of a rational decision-maker)); the factual basis for
5 the rule under RCW 34.05.370(2)(i) is not supported by substantial
6 evidence; or the rule is arbitrary or capricious. Grants of rule-
7 making authority to an agency by the legislature shall be narrowly
8 construed.

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

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

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

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

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

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

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

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

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

33 (i) The order is arbitrary or capricious.

34 (4) Review of other agency action.

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

37 (b) A person whose rights are violated by an agency's failure to
38 perform a duty that is required by law to be performed may file a
39 petition for review pursuant to RCW 34.05.514, seeking an order

1 pursuant to this subsection requiring performance. Within twenty days
2 after service of the petition for review, the agency shall file and
3 serve an answer to the petition, made in the same manner as an answer
4 to a complaint in a civil action. The court may hear evidence,
5 pursuant to RCW 34.05.562, on material issues of fact raised by the
6 petition and answer.

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

11 (i) Unconstitutional;

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

14 (iii) Arbitrary or capricious; or

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

17 PART 2

18 RULE-MAKING REQUIREMENTS

19 **Sec. 201.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to
20 read as follows:

21 (1) To meet the intent of providing greater public access to
22 administrative rule making and to promote consensus among interested
23 parties, agencies shall solicit comments from the public on a subject
24 of possible rule making before publication of a notice of proposed rule
25 adoption under RCW 34.05.320. The agency shall prepare a statement of
26 intent that:

27 (a) States the specific statutory authority for the new rule;

28 (b) Identifies the reasons the new rule is needed;

29 (c) Identifies the goals of the new rule;

30 (d) Identifies other agencies that have rule-making authority over
31 the activity or subject matter of the new rule, and describes the
32 process for coordination with those agencies;

33 (e) Describes the process by which the rule will be developed,
34 including, but not limited to, negotiated rule making, pilot rule
35 making, or agency study; and

36 ~~((e))~~ (f) Specifies the process by which interested parties can
37 effectively participate in the formulation of the new rule.

1 The statement of intent shall be filed with the code reviser for
2 publication in the state register and shall be sent to any party that
3 has requested receipt of the agency's statements of intent.

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

8 (a) Negotiated rule making which includes:

9 (i) Identifying individuals and organizations that have a
10 recognized interest in or will be significantly affected by the
11 adoption of the proposed rule;

12 (ii) Soliciting participation by persons who are capable, willing,
13 and appropriately authorized to enter into such negotiations;

14 (iii) Assuring that participants fully recognize the consequences
15 of not participating in the process, are committed to negotiate in good
16 faith, and recognize the alternatives available to other parties;

17 (iv) Establishing guidelines to encourage consideration of all
18 pertinent issues, to set reasonable completion deadlines, and to
19 provide fair and objective settlement of disputes that may arise;

20 (v) Agreeing on a reasonable time period during which the agency
21 will be bound to the rule resulting from the negotiations without
22 substantive amendment; and

23 (vi) Providing a mechanism by which one or more parties may
24 withdraw from the process or the negotiations may be terminated if it
25 appears that consensus cannot be reached on a draft rule that
26 accommodates the needs of the agency, interested parties, and the
27 general public and conforms to the legislative intent of the statute
28 that the rule is intended to implement; and

29 (b) Pilot rule making which includes testing the draft of a
30 proposed rule through the use of volunteer pilot study groups in
31 various areas and circumstances.

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

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

1 **Sec. 202.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to
2 read as follows:

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

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

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

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

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

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

22 (e) The concise explanatory statement required by RCW 34.05.355;

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

25 (g) Citations to data, factual information, studies, or reports on
26 which the agency relies in the adoption of the rule, indicating where
27 such data, factual information, studies, or reports are available for
28 review by the public;

29 (h) The written summary and response required by RCW 34.05.325(6);
30 ((and))

31 (i) Evidence that the rule is: Authorized or required, citing
32 statutory authority; necessary; cost-effective; consistent with, and
33 not duplicated by, other federal, state, or local laws; enforceable;
34 targeted; measurable, quantifying intended results; the least
35 burdensome alternative; not in excess of federal law unless authorized
36 by state statute; and amenable to voluntary compliance; and

37 (j) Any other material placed in the file by the agency.

38 (3) Internal agency documents are exempt from inclusion in the
39 rule-making file under subsection (2) of this section to the extent

1 they constitute preliminary drafts, notes, recommendations, and intra-
2 agency memoranda in which opinions are expressed or policies formulated
3 or recommended, except that a specific document is not exempt from
4 inclusion when it is publicly cited by an agency in connection with its
5 decision.

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

11 NEW SECTION. **Sec. 203.** A new section is added to chapter 34.05
12 RCW to read as follows:

13 (1) Upon adoption of a rule, an agency shall: (a) Inform and
14 educate affected persons about the rule; and (b) promote voluntary
15 compliance.

16 (2) Upon the adoption of a rule regulating the same activity or
17 subject matter as another provision of federal, state, or local law, an
18 agency shall do all of the following:

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

22 (b) Coordinate implementation and enforcement of the rule with the
23 other federal, state, and local entities regulating the same activity
24 or subject matter by doing one or more of the following: (i) Deferring
25 to the other entity; (ii) designating a lead agency; or (iii) entering
26 into an agreement with the other entities specifying how the agency and
27 entities will coordinate implementation and enforcement. If the agency
28 is unable to meet this requirement, the agency shall report to the
29 legislature pursuant to (c) of this subsection;

30 (c) Report to the chief clerk of the house of representatives and
31 the secretary of the senate regarding legislation that may be necessary
32 to eliminate or mitigate the adverse effects of any overlap or
33 duplication or difference from federal law, and to facilitate
34 coordination with appropriate governmental entities.

35 **Sec. 204.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to
36 read as follows:

1 (1) Each agency shall file in the office of the code reviser a
2 certified copy of all rules it adopts, except for rules contained in
3 tariffs filed with or published by the Washington utilities and
4 transportation commission. The code reviser shall place upon each rule
5 a notation of the time and date of filing and shall keep a permanent
6 register of filed rules open to public inspection. In filing a rule,
7 each agency shall use the standard form prescribed for this purpose by
8 the code reviser.

9 (2) Emergency rules adopted under RCW 34.05.350 become effective
10 upon filing unless a later date is specified in the order of adoption.
11 All other rules become effective upon the expiration of thirty days
12 after the date of filing, unless a later date is required by statute or
13 specified in the order of adoption.

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

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

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

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

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

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

29 (5) No rule, adopted by any of the following agencies, is effective
30 for more than seven years after its adoption or seven years after the
31 effective date of this section, whichever is later: Department of
32 ecology, employment security department, department of labor and
33 industries, department of revenue, department of licensing, department
34 of health, department of fish and wildlife, or the office of the
35 insurance commissioner. A rule made ineffective under this subsection
36 may be readopted according to the procedures established in this
37 chapter.

1 NEW SECTION. **Sec. 205.** A new section is added to chapter 34.05
2 RCW to read as follows:

3 The department of ecology, employment security department,
4 department of labor and industries, department of revenue, department
5 of licensing, department of health, department of fish and wildlife,
6 and the office of the insurance commissioner shall review their
7 respective rules as follows:

8 (1) Fifty percent of their rules existing on the effective date of
9 this section shall be reviewed within three years of the effective date
10 of this section;

11 (2) Eighty percent of their rules existing on the effective date of
12 this section shall be reviewed within five years of the effective date
13 of this section; and

14 (3) One hundred percent of their rules existing on the effective
15 date of this section shall be reviewed within seven years of the
16 effective date of this section.

17 **Sec. 206.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
18 read as follows:

19 (1) Any person may petition an agency requesting the adoption,
20 amendment, or repeal of any rule. Each agency may prescribe by rule
21 the form for such petitions and the procedure for their submission,
22 consideration, and disposition. Within sixty days after submission of
23 a petition, the agency shall ~~((+1))~~ (a) either deny the petition in
24 writing, stating its reasons for the denial, or ~~((+2))~~ (b) initiate
25 rule-making proceedings in accordance with this chapter.

26 (2) If any agency named in RCW 43.17.010 denies a petition to
27 repeal or amend a rule submitted under subsection (1) of this section,
28 the petitioner may appeal the denial to the governor. The petitioner
29 may file notice of the appeal with the code reviser for publication in
30 the Washington State Register. Within sixty days after receiving the
31 appeal, the governor shall either reject the appeal in writing, stating
32 his or her reasons for the rejection, or order the agency to initiate
33 rule-making proceedings in accordance with this chapter. In ruling on
34 the appeal, the governor shall consider:

35 (a) Whether the rule was adopted in compliance with RCW
36 34.05.370(2)(i);

1 (b) Whether the agency has established an adequate internal rules
2 review process, allowing public participation, and has subjected the
3 rule to that review;

4 (c) The nature of complaints and other comments received from the
5 public concerning the rule;

6 (d) Whether the rule exceeds specific federal requirements or
7 specific legislative authority, or conflicts with, overlaps, or
8 duplicates any other provision of federal, state, or local law and, if
9 so, whether the agency has taken steps to mitigate any adverse effects
10 of the excess, conflict, overlap, or duplication;

11 (e) The extent to which technology, social or economic conditions,
12 or other relevant factors have changed since the rule was adopted, and
13 whether, given those changes, the rule continues to be necessary and
14 appropriate;

15 (f) Whether the statute that the rule implements has been amended
16 or repealed by the legislature, or ruled invalid by a court.

17 (3) The governor shall file a copy of the rejection or order in
18 subsection (2) of this section with the regulatory oversight committee
19 and with the code reviser for publication in the Washington State
20 Register.

21 **PART 3**

22 **REGULATORY FAIRNESS**

23 **Sec. 301.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to
24 read as follows:

25 ~~(1) ((In the adoption of any rule pursuant to RCW 34.05.320 that~~
26 ~~will impose more than minor costs on more than twenty percent of all~~
27 ~~industries, or more than ten percent of any one industry, the adopting~~
28 ~~agency:~~

29 ~~(a) Shall reduce the economic impact of the rule on small business~~
30 ~~by doing one or more of the following when it is legal and feasible in~~
31 ~~meeting the stated objective of the statutes which are the basis of the~~
32 ~~proposed rule:~~

33 ~~(i) Establish differing compliance or reporting requirements or~~
34 ~~timetables for small businesses;~~

35 ~~(ii) Clarify, consolidate, or simplify the compliance and reporting~~
36 ~~requirements under the rule for small businesses;~~

37 ~~(iii) Establish performance rather than design standards;~~

1 ~~(iv) Exempt small businesses from any or all requirements of the~~
2 ~~rule;~~

3 ~~(v) Reduce or modify fine schedules for noncompliance; and~~

4 ~~(vi) Other mitigation techniques;~~

5 ~~(b) Before filing notice of a proposed rule, shall prepare a small~~
6 ~~business economic impact statement in accordance with RCW 19.85.040 and~~
7 ~~file notice of how the person can obtain the statement with the code~~
8 ~~reviser as part of the notice required under RCW 34.05.320.~~

9 ~~(2) If requested to do so by a majority vote of the joint~~
10 ~~administrative rules review committee within thirty days after notice~~
11 ~~of the proposed rule is published in the state register, an agency~~
12 ~~shall prepare a small business economic impact statement on the~~
13 ~~proposed rule before adoption of the rule. Upon completion, an agency~~
14 ~~shall provide a copy of the small business economic impact statement to~~
15 ~~any person requesting it.~~

16 ~~(3))~~ In the adoption of a rule under RCW 34.05.320, an agency
17 shall prepare a small business economic impact statement: (a) If the
18 proposed rule will impose more than minor costs on businesses in an
19 industry; or (b) if requested to do so by a majority vote of the
20 legislative regulatory oversight committee within thirty days after
21 notice of the proposed rule is published in the state register.

22 An agency shall prepare the small business economic impact
23 statement in accordance with RCW 19.85.040, and file it with the code
24 reviser along with the notice required under RCW 34.05.320. An agency
25 shall file a statement prepared at the request of the legislative
26 regulatory oversight committee with the code reviser upon its
27 completion before the adoption of the rule. An agency shall provide a
28 copy of the small business economic impact statement to any person
29 requesting it.

30 An agency may request assistance from the business assistance
31 center in the preparation of the small business economic impact
32 statement.

33 ~~((4) The business assistance center shall develop guidelines to~~
34 ~~assist agencies in determining whether a proposed rule will impose more~~
35 ~~than minor costs on businesses in an industry and therefore require~~
36 ~~preparation of a small business economic impact statement. The~~
37 ~~business assistance center may review an agency determination that a~~
38 ~~proposed rule will not impose such costs, and shall advise the joint~~

1 ~~administrative rules review committee on disputes involving agency~~
2 ~~determinations under this section.))~~

3 (2) A proposed rule will impose more than minor costs on businesses
4 in an industry when the costs imposed will equal or exceed 0.1 percent
5 of the average yearly profit for businesses in that industry. The
6 business assistance center shall develop guidelines to assist agencies
7 in determining whether a proposed rule will impose such costs. The
8 business assistance center may review an agency determination that a
9 proposed rule will not impose such costs, and shall advise the
10 legislative regulatory oversight committee on disputes involving agency
11 determinations under this section.

12 (3) Based upon the extent of disproportionate impact on small
13 business identified in the statement prepared under RCW 19.85.040, the
14 agency shall, unless the agency prepares a statement listing reasonable
15 justifications to do otherwise, reduce the costs imposed by the rule on
16 small businesses. Methods to reduce the costs on small businesses may
17 include, but are not limited to:

18 (a) Reducing, modifying, or eliminating substantive regulatory
19 requirements;

20 (b) Establishing performance rather than design standards;

21 (c) Simplifying, reducing, or eliminating recordkeeping and
22 reporting requirements;

23 (d) Reducing the frequency of inspections;

24 (e) Delaying compliance timetables; or

25 (f) Reducing or modifying fine schedules for noncompliance.

26 NEW SECTION. Sec. 302. A new section is added to chapter 19.85
27 RCW to read as follows:

28 Unless so requested by a majority vote of the legislative
29 regulatory oversight committee under RCW 19.85.030, an agency is not
30 required to comply with this chapter when adopting any rule solely for
31 the purpose of conformity or compliance, or both, with federal law or
32 regulations. In lieu of the statement required under RCW 19.85.030,
33 the agency shall file a statement citing, with specificity, the federal
34 law or regulation with which the rule is being adopted to conform or
35 comply, and describing the consequences to the state if the rule is not
36 adopted.

1 management of public lands or real property interests, or (d) the
2 granting of a license, franchise, or permission for the use of
3 trademarks, symbols, and similar property owned or controlled by the
4 agency.

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

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

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

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

24 (8) "Interpretive statement" means a written expression of the
25 opinion of an agency, entitled an interpretive statement by the agency
26 head or its designee, as to the meaning of a statute or other provision
27 of law, of a court decision, or of an agency order.

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

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

38 (10)(a) "Order," without further qualification, means a written
39 statement of particular applicability that finally determines the legal

1 rights, duties, privileges, immunities, or other legal interests of a
2 specific person or persons.

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

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

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

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

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

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

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

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

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

27 (15) "Regulatory oversight committee" or "committee" means the
28 legislative regulatory oversight committee created in RCW 34.05.610 (as
29 recodified by this act) for the purposes of selectively reviewing
30 existing and proposed rules of state agencies.

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

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

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

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

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

26 **Sec. 402.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to
27 read as follows:

28 (1) At least twenty days before the rule-making hearing at which
29 the agency receives public comment regarding adoption of a rule, the
30 agency shall cause notice of the hearing to be published in the state
31 register. The publication constitutes the proposal of a rule. The
32 notice shall include all of the following:

33 (a) A title, a description of the rule's purpose, and any other
34 information which may be of assistance in identifying the rule or its
35 purpose;

36 (b) Citations of the statutory authority for adopting the rule and
37 the specific statute the rule is intended to implement;

1 (c) A summary of the rule and a statement of the reasons supporting
2 the proposed action;

3 (d) The agency personnel, with their office location and telephone
4 number, who are responsible for the drafting, implementation, and
5 enforcement of the rule;

6 (e) The name of the person or organization, whether private,
7 public, or governmental, proposing the rule;

8 (f) Agency comments or recommendations, if any, regarding statutory
9 language, implementation, enforcement, and fiscal matters pertaining to
10 the rule;

11 (g) Whether the rule is necessary as the result of federal law or
12 federal or state court action, and if so, a copy of such law or court
13 decision shall be attached to the purpose statement;

14 (h) When, where, and how persons may present their views on the
15 proposed rule;

16 (i) The date on which the agency intends to adopt the rule;

17 (j) A short explanation of the rule, its purpose, and anticipated
18 effects, including in the case of a proposal that would modify existing
19 rules, a short description of the changes the proposal would make; and

20 (k) A statement indicating how a person can obtain a copy of the
21 small business economic impact statement prepared under chapter 19.85
22 RCW, or an explanation for why the agency did not prepare the
23 statement.

24 (2) Upon filing notice of the proposed rule with the code reviser,
25 the adopting agency shall have copies of the notice on file and
26 available for public inspection and shall forward three copies of the
27 notice to the ~~((rules review))~~ regulatory oversight committee. The
28 adopting agency shall also forward to the regulatory oversight
29 committee three copies of the proposed rule and the evidence required
30 under RCW 34.05.370(2)(i).

31 (3) No later than three days after its publication in the state
32 register, the agency shall cause a copy of the notice of proposed rule
33 adoption to be mailed to each person who has made a request to the
34 agency for a mailed copy of such notices. An agency may charge for the
35 actual cost of providing individual mailed copies of these notices.

36 (4) In addition to the notice required by subsections (1) and (2)
37 of this section, an institution of higher education shall cause the
38 notice to be published in the campus or standard newspaper of the
39 institution at least seven days before the rule-making hearing.

1 NEW SECTION. **Sec. 403.** The regulatory oversight committee shall
2 not render a decision on a rule unless a quorum is present. A quorum
3 shall consist of at least five members of the committee. Once a quorum
4 is established, a majority of those present may render a decision.

5 NEW SECTION. **Sec. 404.** Upon receipt of a proposed rule under RCW
6 34.05.320(2) and upon the review of an existing rule under RCW
7 34.05.630 (as recodified by this act), the regulatory oversight
8 committee shall forward the rule to the appropriate standing committee
9 of the legislature for initial review. The standing committee shall
10 make a recommendation on the rule within sixty days of the referral by
11 the regulatory oversight committee and forward that recommendation to
12 the regulatory oversight committee.

13 NEW SECTION. **Sec. 405.** (1) Any person potentially impacted by a
14 proposed rule or currently impacted by an existing rule may petition
15 the regulatory oversight committee for a review of that rule. Within
16 thirty days of the receipt of the petition, the regulatory oversight
17 committee shall acknowledge receipt of the petition and describe the
18 initial action taken. If the regulatory oversight committee rejects
19 the petition, a written statement of the reasons for rejection shall be
20 included.

21 (2) Within ninety days of receipt of the petition, the regulatory
22 oversight committee shall make a final decision on the rule.

23 NEW SECTION. **Sec. 406.** Any individual employed or holding office
24 in any department or agency of state government may submit rules
25 warranting review to the regulatory oversight committee. Any such
26 state employee is protected under chapter 42.40 RCW.

27 **Sec. 407.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
28 read as follows:

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

30 (a) That immediate adoption, amendment, or repeal of a rule is
31 necessary for the preservation of the public health, safety, or general
32 welfare, and that observing the time requirements of notice and
33 opportunity to comment upon adoption of a permanent rule would be
34 contrary to the public interest; or

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

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

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

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

36 NEW SECTION. **Sec. 408.** Unless the context clearly requires
37 otherwise, the definitions in RCW 34.05.010 apply throughout this
38 chapter.

1 **Sec. 409.** RCW 34.05.610 and 1988 c 288 s 601 are each amended to
2 read as follows:

3 (1) There is hereby created a (~~joint administrative rules review~~)
4 regulatory oversight committee which shall be a bipartisan committee
5 consisting of four senators and four representatives from the state
6 legislature. The senate members of the committee shall be appointed by
7 the president of the senate, and the house members of the committee
8 shall be appointed by the speaker of the house. Not more than two
9 members from each house may be from the same political party. All
10 appointments to the committee are subject to approval by the caucuses
11 to which the appointed members belong.

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

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

25 (4) A vacancy on the committee shall be filled by appointment of a
26 legislator from the same political party as the original appointment.
27 The appropriate appointing authority shall make the appointment within
28 thirty days of the vacancy occurring.

29 **Sec. 410.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to
30 read as follows:

31 Whenever a majority of the members of the (~~rules review~~)
32 regulatory oversight committee determines that a proposed rule is not
33 within the intent of the legislature as expressed in the statute which
34 the rule implements, or that an agency may not be adopting a proposed
35 rule in accordance with all applicable provisions of law, including
36 (~~section 4 of this act and~~) chapter 19.85 RCW, the committee shall
37 give the affected agency written notice of its decision. The notice
38 shall be given at least seven days prior to any hearing scheduled for

1 consideration of or adoption of the proposed rule pursuant to RCW
2 34.05.320. The notice shall include a statement of the ((review))
3 committee's findings and the reasons therefor. When the agency holds
4 a hearing on the proposed rule, the agency shall consider the
5 ((review)) committee's decision.

6 **Sec. 411.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to
7 read as follows:

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

11 (2) The ((rules review)) regulatory oversight committee may review
12 an agency's use of policy statements, guidelines, and issuances that
13 are of general applicability, or their equivalents to determine whether
14 or not an agency has failed to adopt a rule or whether they are within
15 the intent of the legislature as expressed by the governing statute.

16 (3) If the ((rules review)) regulatory oversight committee finds by
17 a majority vote of its members: (a) That an existing rule is not
18 within the intent of the legislature as expressed by the statute which
19 the rule implements, (b) that the rule has not been adopted in
20 accordance with all applicable provisions of law, including ((section
21 4 of this act if the rule was adopted after the effective date of
22 section 4 of this act and)) chapter 19.85 RCW, (c) that an agency is
23 using a policy statement, guideline, or issuance in place of a rule, or
24 (d) that the policy statement, guideline, or issuance is outside of
25 legislative intent, the agency affected shall be notified of such
26 finding and the reasons therefor. Within thirty days of the receipt of
27 the ((rules review)) regulatory oversight committee's notice, the
28 agency shall file notice of a hearing on the ((rules review))
29 regulatory oversight committee's finding with the code reviser and mail
30 notice to all persons who have made timely request of the agency for
31 advance notice of its rule-making proceedings as provided in RCW
32 34.05.320. The agency's notice shall include the ((rules review))
33 regulatory oversight committee's findings and reasons therefor, and
34 shall be published in the Washington state register in accordance with
35 the provisions of chapter 34.08 RCW.

36 (4) The agency shall consider fully all written and oral
37 submissions regarding (a) whether the rule in question is within the
38 intent of the legislature as expressed by the statute which the rule

1 implements, (b) whether the rule was adopted in accordance with all
2 applicable provisions of law, including (~~section 4 of this act if the~~
3 ~~rule was adopted after the effective date of section 4 of this act~~
4 ~~and~~)) chapter 19.85 RCW, (c) whether the agency is using a policy
5 statement, guideline, or issuance in place of a rule, or (d) whether
6 the policy statement, guideline, or issuance is within the legislative
7 intent.

8 **Sec. 412.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to
9 read as follows:

10 (1) Within seven days of an agency hearing held after notification
11 of the agency by the (~~rules review~~) regulatory oversight committee
12 pursuant to RCW 34.05.620 or 34.05.630 (each as recodified by this
13 act), the affected agency shall notify the committee of its action on
14 a proposed or existing rule to which the committee objected or on a
15 committee finding of the agency's failure to adopt rules. If the
16 (~~rules review~~) regulatory oversight committee determines, by a
17 majority vote of its members, that the agency has failed to provide for
18 the required hearings or notice of its action to the committee, the
19 committee may file notice of its objections, together with a concise
20 statement of the reasons therefor, with the code reviser within thirty
21 days of such determination.

22 (2) If the (~~rules review~~) regulatory oversight committee finds,
23 by a majority vote of its members: (a) That the proposed or existing
24 rule in question has not been modified, amended, withdrawn, or repealed
25 by the agency so as to conform with the intent of the legislature, or
26 (b) that an existing rule was not adopted in accordance with all
27 applicable provisions of law, including (~~section 4 of this act if the~~
28 ~~rule was adopted after the effective date of section 4 of this act~~
29 ~~and~~)) chapter 19.85 RCW, or (c) that the agency is using a policy
30 statement, guideline, or issuance in place of a rule, or that the
31 policy statement, guideline, or issuance is outside of the legislative
32 intent, the (~~rules review~~) regulatory oversight committee may, within
33 thirty days from notification by the agency of its action, file with
34 the code reviser notice of its objections together with a concise
35 statement of the reasons therefor. Such notice and statement shall
36 also be provided to the agency by the (~~rules review~~) regulatory
37 oversight committee.

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

14 (4) If the governor disapproves the recommendation of the ((~~rules
15 review~~)) regulatory oversight committee to suspend the rule, the
16 transmittal of such decision, along with the findings of the ((~~rules
17 review~~)) regulatory oversight committee, shall be treated by the agency
18 as a petition by the ((~~rules review~~)) regulatory oversight committee to
19 repeal the rule under RCW 34.05.330.

20 (5) The code reviser shall publish transmittals from the ((~~rules
21 review~~)) regulatory oversight committee or the governor issued pursuant
22 to subsection (1), (2), or (3) of this section in the Washington state
23 register and shall publish in the next supplement and compilation of
24 the Washington Administrative Code a reference to the committee's
25 objection or recommended suspension and the governor's action on it and
26 to the issue of the Washington state register in which the full text
27 thereof appears.

28 (6) The reference shall be removed from a rule published in the
29 Washington Administrative Code if a subsequent adjudicatory proceeding
30 determines that the rule is within the intent of the legislature or was
31 adopted in accordance with all applicable laws, whichever was the
32 objection of the ((~~rules review~~)) regulatory oversight committee.

33 **Sec. 413.** RCW 34.05.650 and 1988 c 288 s 605 are each amended to
34 read as follows:

35 The ((~~rules review~~)) regulatory oversight committee may, by
36 majority vote, recommend to the legislature that the original enabling
37 legislation serving as authority for the adoption of any rule reviewed
38 by the committee be amended or repealed in such manner as the committee

1 deems advisable. The committee may submit its recommendation in the
2 form of request legislation.

3 **Sec. 414.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, it is the
6 express policy of the legislature that establishment of procedures for
7 review of administrative rules by the legislature and the notice of
8 objection required by RCW 34.05.630(2) and 34.05.640(2) (each as
9 recodified by this act) in no way serves to establish a presumption as
10 to the legality or constitutionality of a rule in any subsequent
11 judicial proceedings interpreting such rules.

12 (2) An election by the regulatory oversight committee to recommend
13 suspension of a rule, whether or not the suspension is approved by the
14 governor, establishes a presumption in any subsequent judicial review
15 of the rule that the rule is invalid. The burden of demonstrating the
16 rule's validity is then on the adopting agency.

17 NEW SECTION. Sec. 415. (1) The regulatory oversight committee may
18 make reports from time to time to the members of the legislature and to
19 the public with respect to any of its findings or recommendations. The
20 committee shall keep complete minutes of its meetings.

21 (2) The committee may establish ad hoc advisory boards, including
22 but not limited to, ad hoc economics or science advisory boards to
23 assist the committee in its rules review functions.

24 (3) The committee may hire staff as needed to perform functions
25 under this chapter.

26 NEW SECTION. Sec. 416. In the discharge of any duty imposed under
27 this chapter, the regulatory oversight committee or any personnel under
28 its authority may examine and inspect all properties, equipment,
29 facilities, files, records, and accounts of any state office,
30 department, institution, board, committee, commission, or agency, and
31 administer oaths, issue subpoenas, compel the attendance of witnesses
32 and the production of any papers, books, accounts, documents, and
33 testimony, and cause the deposition of witnesses, either residing
34 within or without the state, to be taken in the manner prescribed by
35 law for taking depositions in civil actions in the superior courts.

1 NEW SECTION. **Sec. 417.** In case of the failure on the part of any
2 person to comply with any subpoena issued in behalf of the regulatory
3 oversight committee, or on the refusal of any witness to testify to any
4 matters regarding which he or she may be lawfully interrogated, it is
5 the duty of the superior court of any county, or of the judge thereof,
6 on application of the committee, to compel obedience by proceedings for
7 contempt, as in the case of disobedience of the requirements of a
8 subpoena issued from the court or a refusal to testify in the court.

9 **Sec. 418.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to
10 read as follows:

11 It is the policy of the legislature that employees should be
12 encouraged to disclose, to the extent not expressly prohibited by law,
13 improper governmental actions, and it is the intent of the legislature
14 to protect the rights of state employees making these disclosures. It
15 is also the policy of the legislature that employees should be
16 encouraged to identify rules warranting review or provide information
17 to the legislative regulatory oversight committee, and it is the intent
18 of the legislature to protect the rights of these employees.

19 **Sec. 419.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to
20 read as follows:

21 As used in this chapter, the terms defined in this section shall
22 have the meanings indicated unless the context clearly requires
23 otherwise.

24 (1) "Auditor" means the office of the state auditor.

25 (2) "Employee" means any individual employed or holding office in
26 any department or agency of state government.

27 (3)(a) "Improper governmental action" means any action by an
28 employee:

29 (i) Which is undertaken in the performance of the employee's
30 official duties, whether or not the action is within the scope of the
31 employee's employment; and

32 (ii) Which is in violation of any state law or rule, is an abuse of
33 authority, is of substantial and specific danger to the public health
34 or safety, or is a gross waste of public funds.

35 (b) "Improper governmental action" does not include personnel
36 actions including but not limited to employee grievances, complaints,
37 appointments, promotions, transfers, assignments, reassignments,

1 reinstatements, restorations, reemployments, performance evaluations,
2 reductions in pay, dismissals, suspensions, demotions, violations of
3 the state civil service law, alleged labor agreement violations,
4 reprimands, or any action which may be taken under chapter 41.06 ((~~or~~
5 ~~28B.16~~)) RCW, or other disciplinary action except as provided in RCW
6 42.40.030.

7 (4) "Use of official authority or influence" includes taking,
8 directing others to take, recommending, processing, or approving any
9 personnel action such as an appointment, promotion, transfer,
10 assignment, reassignment, reinstatement, restoration, reemployment,
11 performance evaluation, or any adverse action under chapter 41.06 ((~~or~~
12 ~~28B.16~~)) RCW, or other disciplinary action.

13 (5) "Whistleblower" means an employee who in good faith reports
14 alleged improper governmental action to the auditor, initiating an
15 investigation under RCW 42.40.040. For purposes of the provisions of
16 this chapter and chapter 49.60 RCW relating to reprisals and
17 retaliatory action, the term "whistleblower" also means: (a) An
18 employee who in good faith provides information to the auditor in
19 connection with an investigation under RCW 42.40.040 and an employee
20 who is believed to have reported alleged improper governmental action
21 to the auditor or to have provided information to the auditor in
22 connection with an investigation under RCW 42.40.040 but who, in fact,
23 has not reported such action or provided such information; or (b) an
24 employee who in good faith identifies rules warranting review or
25 provides information to the legislative regulatory oversight committee,
26 and an employee who is believed to have identified rules warranting
27 review or provided information to the legislative regulatory oversight
28 committee but who, in fact, has not done so.

29 **Sec. 420.** RCW 42.40.030 and 1989 c 284 s 2 are each amended to
30 read as follows:

31 (1) An employee shall not directly or indirectly use or attempt to
32 use the employee's official authority or influence for the purpose of
33 intimidating, threatening, coercing, commanding, influencing, or
34 attempting to intimidate, threaten, coerce, command, or influence any
35 individual for the purpose of interfering with the right of the
36 individual to: (a) Disclose to the auditor (or representative thereof)
37 information concerning improper governmental action; or (b) identify

1 rules warranting review or provide information to the legislative
2 regulatory oversight committee.

3 (2) Nothing in this section authorizes an individual to disclose
4 information otherwise prohibited by law.

5 **Sec. 421.** RCW 43.31.086 and 1994 c 249 s 15 are each amended to
6 read as follows:

7 To assist state agencies in reducing regulatory costs to small
8 business and to promote greater public participation in the rule-making
9 process, the business assistance center shall:

10 (1) Develop agency guidelines for the preparation of a small
11 business economic impact statement and compliance with chapter 19.85
12 RCW;

13 (2) Review and provide comments to agencies on draft or final small
14 business economic impact statements;

15 (3) Advise the (~~joint administrative rules review~~) legislative
16 regulatory oversight committee on whether an agency reasonably assessed
17 the costs of a proposed rule and reduced the costs for small business
18 as required by chapter 19.85 RCW; and

19 (4) Organize and chair a state rules coordinating committee,
20 consisting of agency rules coordinators and interested members of the
21 public, to develop an education and training program that includes,
22 among other components, a component that addresses voluntary
23 compliance, for agency personnel responsible for rule development and
24 implementation. The business assistance center shall submit
25 recommendations to the department of personnel for an administrative
26 procedures training program that is based on the sharing of interagency
27 resources.

28 **Sec. 422.** RCW 43.180.110 and 1983 c 161 s 11 are each amended to
29 read as follows:

30 The commission shall submit the initial policies adopted under RCW
31 43.180.090 and 43.180.100 to the chief clerk of the house and the
32 secretary of the senate for transmittal to and review by the
33 appropriate standing committees and the (~~joint administrative rules~~
34 ~~review~~) legislative regulatory oversight committee. By January 1,
35 1984, the commission shall have adopted policies in the form of rules
36 (~~and regulations~~) under chapter 34.05 RCW. Such rules (~~and~~

1 regulations)) may only be changed or revised in accordance with chapter
2 34.05 RCW.

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PART 5
TECHNICAL ASSISTANCE

5 NEW SECTION. **Sec. 501.** A new section is added to chapter 34.05
6 RCW to read as follows:

7 (1) An agency listed in subsection (6) of this section may
8 immediately impose a penalty otherwise provided for by law for a
9 violation of an administrative rule only if the entity on which the
10 penalty will be imposed has willfully violated the rule. Where a
11 penalty is otherwise provided, but may not be imposed under this
12 subsection, the agency shall issue a statement of deficiency.

13 (2) A statement of deficiency shall specify: (a) The particular
14 rule violated; (b) suggestions on actions the entity may take to comply
15 with the rule; (c) agency personnel designated by the agency to provide
16 technical assistance regarding compliance with the rule; and (d) a
17 negotiated date when the entity will be revisited by technical
18 assistance personnel. At the revisit, technical assistance personnel
19 shall assess compliance, make further recommendations for action, and
20 set a date for compliance. The date specified shall provide a
21 reasonable period of time for the entity to comply with the rule,
22 considering the size of the entity, its available resources, and the
23 threat posed by the violation. If the entity fails to comply with the
24 rule by the date specified, it shall be subject to the penalty
25 otherwise provided in law.

26 (3) Subsection (1) of this section shall not apply to any violation
27 that places a person in danger of death or substantial bodily harm, is
28 causing or is likely to cause significant environmental harm, or has
29 caused or is likely to cause physical damage to the property of others
30 in an amount exceeding one thousand dollars.

31 (4) The state, the agency, and officers or employees of the state
32 shall not be liable for damages to any person to the extent that
33 liability is asserted to arise from the technical assistance provided
34 under this section, or if liability is asserted to arise from the
35 failure of the agency to supply technical assistance.

36 (5) Where a state agency has been delegated authority to enforce
37 federal laws and regulations, the agency shall submit a written

1 petition to the appropriate federal agency for authorization to comply
2 with this section for all inspections while retaining the state's
3 federal delegation. If the federal agency fails to provide the
4 authorization, the agency shall comply with this section in all
5 inspections except the minimum number of inspections required by the
6 federal government for the program delegated to the state of Washington
7 for enforcement.

8 (6) This section shall apply to the departments of health, labor
9 and industries, ecology, revenue, licensing, and fish and wildlife, the
10 employment security department, and the office of insurance
11 commissioner.

12 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.21A
13 RCW to read as follows:

14 (1) All enforcement personnel positions in the department shall be
15 abolished. These positions shall be converted to technical assistance
16 personnel positions.

17 (2) This section shall not apply where enforcement personnel are
18 required to maintain state authority to administer a federally
19 delegated program.

20 NEW SECTION. **Sec. 503.** A new section is added to chapter 43.22
21 RCW to read as follows:

22 (1) All enforcement personnel positions in the department of labor
23 and industries shall be abolished. These positions shall be converted
24 to technical assistance personnel positions.

25 (2) This section shall not apply where enforcement personnel are
26 required to maintain state authority to administer a federally
27 delegated program.

28 NEW SECTION. **Sec. 504.** A new section is added to chapter 43.24
29 RCW to read as follows:

30 (1) All enforcement personnel positions in the department of
31 licensing shall be abolished. These positions shall be converted to
32 technical assistance personnel positions.

33 (2) This section shall not apply where enforcement personnel are
34 required to maintain state authority to administer a federally
35 delegated program.

1 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.70
2 RCW to read as follows:

3 (1) All enforcement personnel positions in the department shall be
4 abolished. These positions shall be converted to technical assistance
5 personnel positions.

6 (2) This section shall not apply where enforcement personnel are
7 required to maintain state authority to administer a federally
8 delegated program.

9 NEW SECTION. **Sec. 506.** A new section is added to chapter 43.300
10 RCW to read as follows:

11 (1) All enforcement personnel positions in the department shall be
12 abolished. These positions shall be converted to technical assistance
13 personnel positions.

14 (2) This section shall not apply where enforcement personnel are
15 required to maintain state authority to administer a federally
16 delegated program.

17 NEW SECTION. **Sec. 507.** A new section is added to chapter 48.02
18 RCW to read as follows:

19 (1) All enforcement personnel positions in the office of the
20 insurance commissioner shall be abolished. These positions shall be
21 converted to technical assistance personnel positions.

22 (2) This section shall not apply where enforcement personnel are
23 required to maintain state authority to administer a federally
24 delegated program.

25 NEW SECTION. **Sec. 508.** A new section is added to chapter 50.08
26 RCW to read as follows:

27 (1) All enforcement personnel positions in the employment security
28 department shall be abolished. These positions shall be converted to
29 technical assistance personnel positions.

30 (2) This section shall not apply where enforcement personnel are
31 required to maintain state authority to administer a federally
32 delegated program.

33 NEW SECTION. **Sec. 509.** A new section is added to chapter 82.01
34 RCW to read as follows:

1 (1) All enforcement personnel positions in the department shall be
2 abolished. These positions shall be converted to technical assistance
3 personnel positions.

4 (2) This section shall not apply where enforcement personnel are
5 required to maintain state authority to administer a federally
6 delegated program.

7 **PART 6**
8 **FEES AND EXPENSES**

9 NEW SECTION. Sec. 601. A new section is added to chapter 4.84 RCW
10 to read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this section and sections 602 through 604
13 of this act.

14 (1) "Agency" means agency as defined by chapter 34.05 RCW.

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

28 (3) "Judicial review" means a judicial review as defined by chapter
29 34.05 RCW.

30 (4) "Qualified party" means (a) an individual whose net worth did
31 not exceed one million dollars at the time the initial petition for
32 judicial review was filed; (b) a sole owner of an unincorporated
33 business, or a partnership, corporation, association, or organization
34 whose net worth did not exceed five million dollars at the time the
35 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

1 the code and a cooperative association as defined in section 15(a) of
2 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
3 party regardless of the net worth of such organization or cooperative
4 association; or (c) a sole owner of an unincorporated business, or a
5 partnership, corporation, association, or organization, having not more
6 than one hundred employees at the time the initial petition for
7 judicial review was filed.

8 (5) "Rule" means a rule as defined by chapter 34.05 RCW.

9 NEW SECTION. **Sec. 602.** A new section is added to chapter 4.84 RCW
10 to read as follows:

11 If upon judicial review a rule is declared invalid and the party
12 that challenged the rule is a qualified party, the party shall be
13 awarded fees and other expenses not to exceed ten thousand dollars.

14 NEW SECTION. **Sec. 603.** A new section is added to chapter 4.84 RCW
15 to read as follows:

16 Fees and other expenses awarded under section 602 of this act shall
17 be paid by the agency that adopted the invalid rule from operating
18 funds appropriated to the agency within sixty days. Agencies paying
19 fees and other expenses pursuant to section 602 of this act shall
20 report all payments to the office of financial management within five
21 days of paying the fees and other expenses. Fees and other expenses
22 awarded by the court shall be subject to chapter 39.76 RCW and shall be
23 deemed payable on the date the court announces the award.

24 NEW SECTION. **Sec. 604.** A new section is added to chapter 43.88
25 RCW to read as follows:

26 The office of financial management shall report annually to the
27 legislature on the amount of fees and other expenses awarded during the
28 preceding fiscal year under section 602 of this act. The report shall
29 describe the number, nature, and amount of the awards, the claims
30 involved in the controversy, and other relevant information that may
31 aid the legislature in evaluating the scope and impact of the awards.

32 **PART 7**
33 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 701.** (1) The following sections are each
2 recodified as a new chapter in Title 44 RCW:

3 RCW 34.05.610

4 RCW 34.05.620

5 RCW 34.05.630

6 RCW 34.05.640

7 RCW 34.05.650

8 RCW 34.05.660

9 (2) Sections 403 through 406, 408, and 415 through 417 of this act
10 are each added to the chapter created in this section.

11 NEW SECTION. **Sec. 702.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 703.** This act shall be submitted to the people
16 for their adoption and ratification, or rejection, at the next
17 succeeding general election to be held in this state, in accordance
18 with Article II, section 1 of the state Constitution, as amended, and
19 the laws adopted to facilitate the operation thereof.

--- END ---