
SUBSTITUTE HOUSE BILL 2747

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Government Operations (originally sponsored by Representatives Mastin, Reams, Silver and Johnson)

Read first time 01/26/96.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 34.05.328, 34.05.570,
3 34.05.375, 4.84.350, and 48.30.010; adding a new section to chapter
4 43.22 RCW; and adding new sections to chapter 34.05 RCW.

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

6 **Sec. 1.** RCW 76.09.010 and 1993 c 3 s 1 are each amended to read as
7 follows:

8 (1) The legislature hereby finds and declares that the forest land
9 resources are among the most valuable of all resources in the state;
10 that a viable forest products industry is of prime importance to the
11 state's economy; that it is in the public interest for public and
12 private commercial forest lands to be managed consistent with sound
13 policies of natural resource protection; that coincident with
14 maintenance of a viable forest products industry, it is important to
15 afford protection to forest soils, fisheries, wildlife, water quantity
16 and quality, air quality, recreation, and scenic beauty.

17 (2) The legislature further finds and declares it to be in the
18 public interest of this state to create and maintain through the
19 adoption of this chapter a comprehensive state-wide system of laws and

1 forest practices regulations which will achieve the following purposes
2 and policies:

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

7 (b) Afford protection to forest soils and public resources by
8 utilizing all reasonable methods of technology in conducting forest
9 practices;

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

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

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

16 (f) Provide for interagency input and intergovernmental and tribal
17 coordination and cooperation;

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

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

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

25 The authority of the board to adopt forest practices rules is
26 prescribed by this subsection (2) and RCW 76.09.040. The board may not
27 adopt forest practices rules based solely on any other section of law
28 stating a statute's intent or purpose, on the enabling provisions of
29 the statute establishing the agency, or on any combination of such
30 provisions.

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

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

1 **Sec. 2.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to read
2 as follows:

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

8 (a) Establish minimum standards for forest practices;

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

14 (c) Set forth necessary administrative provisions; and

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

17 Forest practices (~~regulations~~) rules pertaining to water quality
18 protection shall be (~~promulgated~~) adopted individually by the board
19 and by the department of ecology after they have reached agreement with
20 respect thereto. All other forest practices (~~regulations~~) rules
21 shall be (~~promulgated~~) adopted by the board.

22 Forest practices (~~regulations~~) rules shall be administered and
23 enforced by the department except as otherwise provided in this
24 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted
25 and administered so as to give consideration to all purposes and
26 policies specifically set forth in RCW 76.09.010(2).

27 (~~(2)~~) (3) The board shall prepare proposed forest practices
28 (~~regulations~~) rules. In addition to any forest practices
29 (~~regulations~~) rules relating to water quality protection proposed by
30 the board, the department of ecology shall prepare proposed forest
31 practices (~~regulations~~) rules relating to water quality protection.

32 Prior to initiating the rule making process, the proposed
33 (~~regulations~~) rules shall be submitted for review and comments to the
34 department of fish and wildlife and to the counties of the state.
35 After receipt of the proposed forest practices (~~regulations~~) rules,
36 the department of fish and wildlife and the counties of the state shall
37 have thirty days in which to review and submit comments to the board,
38 and to the department of ecology with respect to its proposed
39 (~~regulations~~) rules relating to water quality protection. After the

1 expiration of such thirty day period the board and the department of
2 ecology shall jointly hold one or more hearings on the proposed
3 (~~regulations~~) rules pursuant to chapter 34.05 RCW. At such
4 hearing(s) any county may propose specific forest practices
5 (~~regulations~~) rules relating to problems existing within such county.
6 The board and the department of ecology may adopt such proposals if
7 they find the proposals are consistent with the purposes and policies
8 of this chapter.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.22 RCW
10 to read as follows:

11 For rules adopted after the effective date of this section, the
12 director of the department of labor and industries may not rely solely
13 on a statute's statement of intent or purpose, on the enabling
14 provisions of the statute establishing the agency, or on any
15 combination of such provisions, for statutory authority to adopt any
16 rule: PROVIDED, That this section shall not apply to rules adopted
17 pursuant to chapter 39.12 RCW.

18 **Sec. 4.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
19 read as follows:

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

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

25 (3) The commissioner may:

26 (a) Make reasonable rules and regulations for effectuating any
27 provision of this code, except those relating to his or her election,
28 qualifications, or compensation: PROVIDED, That the commissioner may
29 not adopt rules after the effective date of this section that are based
30 solely on this statute, or on a statute's statement of intent or
31 purpose, or on the enabling provisions of the statute establishing the
32 agency, or any combination of such provisions, for statutory authority
33 to adopt any rule, except rules defining or clarifying terms in, or
34 procedures necessary to the implementation of a statute. No such rules
35 and regulations shall be effective prior to their being filed for
36 public inspection in the commissioner's office.

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

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

6 **Sec. 5.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to read
7 as follows:

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

20 **Sec. 6.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
21 amended to read as follows:

22 The commissioner may adopt, in accordance with the provisions of
23 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
24 rules and regulations as necessary or proper to carry out the
25 provisions of this chapter: PROVIDED, That the commissioner may not
26 adopt rules after the effective date of this section that are based
27 solely on this section, a statute's statement of intent or purpose, or
28 on the enabling provisions of the statute establishing the agency, or
29 any combination of such provisions, for statutory authority to adopt
30 any rule, except rules defining or clarifying terms in, or procedures
31 necessary to the implementation of a statute. Nothing in this chapter
32 shall be construed to prohibit the commissioner from requiring changes
33 in procedures previously approved by (~~him~~) the commissioner.

34 **Sec. 7.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
35 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) Promote and assist voluntary compliance; and

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

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

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

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

24 (i) Deferring to the other entity;

25 (ii) Designating a lead agency; or

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

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

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

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

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

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

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

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

13 (b) This section does not apply to:

14 (i) Emergency rules adopted under RCW 34.05.350;

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

17 (iii) Rules adopting or incorporating by reference without material
18 change federal statutes or regulations, Washington state statutes,
19 rules of other Washington state agencies, shoreline master programs
20 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, however, the exemption
25 in this subsection (5)(b)(iii) does not apply if the rule adopted is
26 the rule of another Washington state agency, which rule was not adopted
27 in accordance with this section. Any doubts as to whether this
28 requirement has been met shall be resolved in favor of causing the
29 rules to be subjected to the requirements of this section;

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

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

35 (vi) Rules that set or adjust fees or rates pursuant to legislative
36 standards.

37 (c) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

3 If an amendment is made to a subsection of an existing significant
4 legislative rule, then the entire section must be processed in
5 accordance with RCW 34.05.328.

6 **Sec. 9.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
7 read as follows:

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

10 (a) Except as provided in subsections (2) and (3) of this section,
11 the burden of demonstrating the invalidity of agency action is on the
12 party asserting invalidity;

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

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

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

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

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

35 (c) In a proceeding involving review of a rule, the court shall
36 declare the rule invalid only if it finds that: The rule violates
37 constitutional provisions; the rule exceeds the statutory authority of

1 the agency; the rule was adopted without compliance with statutory
2 rule-making procedures; or the rule is arbitrary and capricious.

3 (3) Review of agency orders in adjudicative proceedings. The
4 burden of proof is on the agency to demonstrate that any challenged
5 provision of (a) through (i) of this subsection was not violated. The
6 court shall grant relief from an agency order in an adjudicative
7 proceeding only if it determines that:

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

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

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

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

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

19 (f) The agency has not decided all issues requiring resolution by
20 the agency;

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

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

29 (i) The order is arbitrary or capricious.

30 (4) Review of other agency action.

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

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

1 pursuant to RCW 34.05.562, on material issues of fact raised by the
2 petition and answer.

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

7 (i) Unconstitutional;

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

10 (iii) Arbitrary or capricious; or

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

13 **Sec. 10.** RCW 34.05.375 and 1988 c 288 s 314 are each amended to
14 read as follows:

15 No rule proposed after July 1, 1989, is valid unless it is adopted
16 in substantial compliance with RCW 34.05.310 through 34.05.395.
17 Inadvertent failure to mail notice of a proposed rule adoption to any
18 person as required by RCW 34.05.320(3) does not invalidate a rule. No
19 action based upon this section may be maintained to contest the
20 validity of any rule unless it is commenced within (~~two~~) seven years
21 after the effective date of the rule.

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

24 (1) A person may petition an agency requesting that an existing
25 rule be subject to readoption. The office of financial management
26 shall prescribe by rule the format for such petitions and the procedure
27 for their submission, consideration, and disposition and provide a
28 standard form that may be used to petition any agency. Within sixty
29 days after submission of a petition, the agency shall either (a) deny
30 the petition in writing, stating (i) its reasons for the denial,
31 specifically addressing each item listed in subsection (3) of this
32 section and, where appropriate, (ii) the alternative means by which it
33 will address the concerns raised by the petitioner, or (b) initiate the
34 readoption procedure in accordance with this section.

35 (2) If an agency denies a petition submitted under subsection (1)
36 of this section, the petitioner, within thirty days of the denial, may
37 appeal the denial to the joint administrative rules review committee.

1 Within sixty days after receiving the appeal, the committee shall, by
2 a majority vote of its members, either (a) deny the appeal in writing,
3 stating its reasons for the denial, or (b) direct the agency to
4 initiate the readoption procedure in accordance with this section. The
5 agency shall initiate the readoption procedure by the date specified by
6 the committee.

7 (3) An agency's written denial under subsection (1) of this section
8 must address each of the following:

9 (a) Whether the rule is authorized;

10 (b) Whether the rule is needed;

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

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

15 (e) Whether the rule applies differently to public and private
16 entities;

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

18 (g) Whether the benefits of the rule are greater than its costs;

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

20 (i) Whether there is adequate justification if the rule is
21 different than a federal law applicable to the same activity or subject
22 matter.

23 Persons are encouraged to address each of these issues in their
24 petition to the agency.

25 (4) For purposes of this section, "readoption" means that the text
26 of the existing rule is submitted under RCW 34.05.320 as a proposed
27 rule and is then subject to the rule-making process set forth in this
28 chapter. However, an agency need not submit a statement of inquiry
29 under RCW 34.05.310 for an existing rule subject to readoption. Unless
30 readopted, an existing rule subject to readoption is automatically
31 repealed one hundred eighty days after publication of the text as a
32 proposed rule in the Washington State Register.

33 (5) A decision by an agency under subsection (1) of this section to
34 deny a petition for readoption is not subject to judicial review.

35 (6) The office of financial management shall initiate the rule
36 making required by subsection (1) of this section by July 1, 1996.

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

1 (1) Except as provided in subsection (2) of this section, after
2 December 31, 2000, the following agencies may not rely solely on a
3 statute's statement of intent or purpose or the enabling provisions of
4 the statute establishing the agency, or any combination of such
5 provisions, for the agency's statutory authority to have adopted a rule
6 challenged after December 31, 2000: The commissioner of public lands,
7 the department of social and health services, the department of
8 ecology, the department of agriculture, the department of health, the
9 department of revenue, the department of licensing, the department of
10 labor and industries, the employment security department, the forest
11 practices board, the fish and wildlife commission, and the office of
12 the insurance commissioner.

13 (2) This section does not apply to rules adopted under chapter
14 39.12 RCW or RCW 48.30.010.

15 **Sec. 13.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to
16 read as follows:

17 (1) Except as otherwise specifically provided by statute, a court
18 shall award a qualified party that prevails in a judicial review of an
19 agency action fees and other expenses, including reasonable attorneys'
20 fees, unless the court finds that the agency action was substantially
21 justified or that circumstances make an award unjust. A qualified
22 party shall be considered to have prevailed if the qualified party
23 obtained relief on a significant issue that achieves some benefit that
24 the qualified party sought.

25 (2) The amount awarded a qualified party under subsection (1) of
26 this section shall not exceed:

27 (a) For cases involving rule validity:

28 (i) Twenty-five thousand dollars for superior court cases; and

29 (ii) Fifteen thousand dollars for appeals to the court of appeals
30 and the supreme court; and

31 (b) For cases involving other agency action:

32 (i) Fifty thousand dollars for superior court cases; and

33 (ii) Fifteen thousand dollars for appeals to the court of appeals
34 and the supreme court.

35 (3) Subsection (1) of this section shall not apply unless all
36 parties challenging the agency action are qualified parties. If two or
37 more qualified parties join in an action, the award in total shall not
38 exceed twenty-five thousand dollars. The court, in its discretion, may

1 reduce the amount to be awarded pursuant to subsection (1) of this
2 section, or deny any award, to the extent that a qualified party during
3 the course of the proceedings engaged in conduct that unduly or
4 unreasonably protracted the final resolution of the matter in
5 controversy.

6 (4) Qualified parties shall receive awards under this section for
7 cases pending July 23, 1995.

8 **Sec. 14.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
9 read as follows:

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

14 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~
15 ~~or practices as))~~ are expressly defined and prohibited by this code ~~((~~
16 ~~the commissioner may from time to time by regulation promulgated~~
17 ~~pursuant to chapter 34.05 RCW, define other methods of competition and~~
18 ~~other acts and practices in the conduct of such business reasonably~~
19 ~~found by the commissioner to be unfair or deceptive.~~

20 ~~(3) No such regulation shall be made effective prior to the~~
21 ~~expiration of thirty days after the date of the order by which it is~~
22 ~~promulgated)).~~

23 ~~((4))~~ (2) If the commissioner has cause to believe that any
24 person is violating any such ~~((regulation))~~ rule or prohibition of this
25 code, the commissioner may order such person to cease and desist
26 therefrom. The commissioner shall deliver such order to such person
27 direct or mail it to the person by registered mail with return receipt
28 requested. If the person violates the order after expiration of ten
29 days after the cease and desist order has been received by him or her,
30 he or she may be fined by the commissioner a sum not to exceed two
31 hundred and fifty dollars for each violation committed thereafter.

32 ~~((5))~~ (3) If any such ~~((regulation))~~ rule or prohibition of this
33 code is violated, the commissioner may take such other or additional
34 action as is permitted under the insurance code for violation of a
35 ~~((regulation))~~ rule or that prohibition.

36 (4) Any permanent rule that was adopted by the commissioner under
37 the authority of this section as it existed before the effective date
38 of this section, and that was in effect as of the effective date of

1 this section, shall, if otherwise valid, remain in effect until and
2 unless it is repealed by the commissioner, who shall retain the
3 authority to repeal any such rule, or is effectively repealed by an act
4 of the legislature.

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