

2 **E2SHB 1032** - S AMD TO WM COMM AMD (S-2866.4/97) - 450  
3 By Senator Hale

4 ADOPTED 4/17/97

5 Strike everything after the enacting clause and insert the  
6 following:

7 "PART I

8 GRANTS OF RULE-MAKING AUTHORITY

9 **Sec. 101.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to  
10 read as follows:

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

20 (2) The legislature further finds and declares it to be in the  
21 public interest of this state to create and maintain through the  
22 adoption of this chapter a comprehensive state-wide system of laws and  
23 forest practices regulations which will achieve the following purposes  
24 and policies:

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

29 (b) Afford protection to forest soils and public resources by  
30 utilizing all reasonable methods of technology in conducting forest  
31 practices;

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

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

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

3 (f) Provide for interagency input and intergovernmental and tribal  
4 coordination and cooperation;

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

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

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

12 The authority of the board to adopt forest practices rules is  
13 prescribed by this subsection (2) and RCW 76.09.040. After the  
14 effective date of this act, the board may not adopt forest practices  
15 rules based solely on any other section of law stating a statute's  
16 intent or purpose, on the enabling provisions of the statute  
17 establishing the agency, or on any combination of those provisions.

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

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

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

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

33 (a) Establish minimum standards for forest practices;

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

1 (c) Set forth necessary administrative provisions; and  
2 (d) Establish procedures for the collection and administration of  
3 forest practice fees as set forth by this chapter.

4 Forest practices (~~((regulations))~~) rules pertaining to water quality  
5 protection shall be (~~((promulgated))~~) adopted individually by the board  
6 and by the department of ecology after they have reached agreement with  
7 respect thereto. All other forest practices (~~((regulations))~~) rules  
8 shall be (~~((promulgated))~~) adopted by the board.

9 Forest practices (~~((regulations))~~) rules shall be administered and  
10 enforced by the department except as otherwise provided in this  
11 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted  
12 and administered so as to give consideration to all purposes and  
13 policies specifically set forth in RCW 76.09.010(2).

14 (2) The board shall prepare proposed forest practices  
15 (~~((regulations))~~) rules. In addition to any forest practices  
16 (~~((regulations))~~) rules relating to water quality protection proposed by  
17 the board, the department of ecology shall prepare proposed forest  
18 practices (~~((regulations))~~) rules relating to water quality protection.

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

35 NEW SECTION. Sec. 103. A new section is added to chapter 43.22  
36 RCW to read as follows:

37 For rules adopted after the effective date of this act, the  
38 director of the department of labor and industries may not rely solely

1 on a statute's statement of intent or purpose, on the enabling  
2 provisions of the statute establishing the agency, or on any  
3 combination of those provisions, for statutory authority to adopt any  
4 rule. This section does not apply to rules adopted under chapter 39.12  
5 RCW.

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

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

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

13 (3) The commissioner may:

14 (a) Make reasonable rules and regulations for effectuating any  
15 provision of this code, except those relating to his or her election,  
16 qualifications, or compensation. However, the commissioner may not  
17 adopt rules after the effective date of this act that are based solely  
18 on this statute, or on a statute's statement of intent or purpose, or  
19 on the enabling provisions of the statute establishing the agency, or  
20 any combination of those provisions, for statutory authority to adopt  
21 any rule, except rules defining or clarifying terms in, or procedures  
22 necessary to the implementation of a statute. No such rules and  
23 regulations shall be effective prior to their being filed for public  
24 inspection in the commissioner's office.

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

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

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

32 The insurance commissioner shall make reasonable regulations in aid  
33 of the administration of this chapter which may include, but shall not  
34 be limited to regulations concerning the maintenance of adequate  
35 insurance, bonds, or cash deposits, information required of  
36 registrants, and methods of expediting speedy and fair payments to  
37 claimants. However, the commissioner may not adopt rules after the

1 effective date of this act that are based solely on this section, a  
2 statute's statement of intent or purpose, or on the enabling provisions  
3 of the statute establishing the agency, or any combination of those  
4 provisions, for statutory authority to adopt any rule, except rules  
5 defining or clarifying terms in, or procedures necessary to the  
6 implementation of a statute.

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

9 The commissioner may adopt, in accordance with the provisions of  
10 the Administrative Procedure Act, chapter 34.05 RCW, (~~promulgate~~)  
11 rules and regulations as necessary or proper to carry out the  
12 provisions of this chapter. However, the commissioner may not adopt  
13 rules after the effective date of this act that are based solely on  
14 this section, a statute's statement of intent or purpose, or on the  
15 enabling provisions of the statute establishing the agency, or any  
16 combination of those provisions, for statutory authority to adopt any  
17 rule, except rules defining or clarifying terms in, or procedures  
18 necessary to the implementation of a statute. Nothing in this chapter  
19 shall be construed to prohibit the commissioner from requiring changes  
20 in procedures previously approved by (~~him~~) the commissioner.

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

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

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

34 (3)(a) In defining other methods of competition and other acts and  
35 practices in the conduct of such business to be unfair or deceptive,  
36 and after reviewing all comments and documents received during the  
37 notice and comment rule-making period, the commissioner shall identify

1 his or her reasons for defining the method of competition or other act  
2 or practice in the conduct of insurance to be unfair or deceptive and  
3 shall include a statement outlining these reasons as part of the  
4 adopted rule.

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

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

12 (4) No such regulation shall be made effective prior to the  
13 expiration of thirty days after the date of the order by which it is  
14 promulgated.

15 ~~((+4))~~ (5) If the commissioner has cause to believe that any  
16 person is violating any such regulation, the commissioner may order  
17 such person to cease and desist therefrom. The commissioner shall  
18 deliver such order to such person direct or mail it to the person by  
19 registered mail with return receipt requested. If the person violates  
20 the order after expiration of ten days after the cease and desist order  
21 has been received by him or her, he or she may be fined by the  
22 commissioner a sum not to exceed two hundred and fifty dollars for each  
23 violation committed thereafter.

24 ~~((+5))~~ (6) If any such regulation is violated, the commissioner  
25 may take such other or additional action as is permitted under the  
26 insurance code for violation of a regulation.

27 **PART II**

28 **RULE-MAKING REQUIREMENTS**

29 **Sec. 201.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to  
30 read as follows:

31 The definitions set forth in this section shall apply throughout  
32 this chapter, unless the context clearly requires otherwise.

33 (1) "Adjudicative proceeding" means a proceeding before an agency  
34 in which an opportunity for hearing before that agency is required by  
35 statute or constitutional right before or after the entry of an order  
36 by the agency. Adjudicative proceedings also include all cases of  
37 licensing and rate making in which an application for a license or rate

1 change is denied except as limited by RCW 66.08.150, or a license is  
2 revoked, suspended, or modified, or in which the granting of an  
3 application is contested by a person having standing to contest under  
4 the law.

5 (2) "Agency" means any state board, commission, department,  
6 institution of higher education, or officer, authorized by law to make  
7 rules or to conduct adjudicative proceedings, except those in the  
8 legislative or judicial branches, the governor, or the attorney general  
9 except to the extent otherwise required by law and any local  
10 governmental entity that may request the appointment of an  
11 administrative law judge under chapter 42.41 RCW.

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

16 Agency action does not include an agency decision regarding (a)  
17 contracting or procurement of goods, services, public works, and the  
18 purchase, lease, or acquisition by any other means, including eminent  
19 domain, of real estate, as well as all activities necessarily related  
20 to those functions, or (b) determinations as to the sufficiency of a  
21 showing of interest filed in support of a representation petition, or  
22 mediation or conciliation of labor disputes or arbitration of labor  
23 disputes under a collective bargaining law or similar statute, or (c)  
24 any sale, lease, contract, or other proprietary decision in the  
25 management of public lands or real property interests, or (d) the  
26 granting of a license, franchise, or permission for the use of  
27 trademarks, symbols, and similar property owned or controlled by the  
28 agency.

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

33 (5) "De facto rule" means an issuance not adopted under Part III of  
34 this chapter that the agency uses to (a) subject a person to a penalty  
35 or administrative sanction; (b) establish, alter, or revoke a  
36 procedure, practice, or requirement relating to agency hearings; (c)  
37 establish, alter, or revoke a qualification or requirement relating to  
38 the enjoyment of a benefit or privilege conferred by law; (d)  
39 establish, alter, or revoke a qualification or standard for the

1 issuance, suspension, or revocation of a license to pursue a commercial  
2 activity, trade, or profession; or (e) establish, alter, or revoke  
3 mandatory standards for a product or material that must be met before  
4 distribution or sale. The term does not include (i) statements  
5 concerning only the internal management of an agency and not affecting  
6 private rights or procedures available to the public, (ii) declaratory  
7 rulings issued under RCW 34.05.240, (iii) traffic restrictions for  
8 motor vehicles, bicyclists, and pedestrians established by the  
9 secretary of transportation or his or her designee where notice of the  
10 restrictions is given by official traffic control devices, or (iv)  
11 rules of institutions of higher education involving standards of  
12 admission, academic advancement, academic credit, graduation and the  
13 granting of degrees, employment relationships, or fiscal processes.

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

17 (~~(6)~~) (7) "Filing" of a document that is required to be filed  
18 with an agency means delivery of the document to a place designated by  
19 the agency by rule for receipt of official documents, or in the absence  
20 of such designation, at the office of the agency head.

21 (~~(7)~~) (8) "Institutions of higher education" are the University  
22 of Washington, Washington State University, Central Washington  
23 University, Eastern Washington University, Western Washington  
24 University, The Evergreen State College, the various community  
25 colleges, and the governing boards of each of the above, and the  
26 various colleges, divisions, departments, or offices authorized by the  
27 governing board of the institution involved to act for the institution,  
28 all of which are sometimes referred to in this chapter as  
29 "institutions."

30 (~~(8)~~) (9) "Interpretive statement" means a written expression of  
31 the opinion of an agency, entitled an interpretive statement by the  
32 agency head or its designee, as to the meaning of a statute or other  
33 provision of law, of a court decision, or of an agency order.

34 (~~(9)~~) (10) "Issuance" means a written document of general  
35 applicability issued by an agency that is available to the public. It  
36 includes, but is not limited to, an agency order of adoption, bulletin,  
37 directive, policy statement, interpretive statement, guideline, letter,  
38 memorandum, rule, or de facto rule. "Issuance" does not include final  
39 agency orders issued after an adjudicative proceeding under Part IV of



1 this chapter, tax determinations of precedential value issued by the  
2 department of revenue, documents entitled "technical assistance  
3 document," medical coverage decisions, tariffs, or permits.

4 (11)(a) "License" means a franchise, permit, certification,  
5 approval, registration, charter, or similar form of authorization  
6 required by law, but does not include (i) a license required solely for  
7 revenue purposes, or (ii) a certification of an exclusive bargaining  
8 representative, or similar status, under a collective bargaining law or  
9 similar statute, or (iii) a license, franchise, or permission for use  
10 of trademarks, symbols, and similar property owned or controlled by the  
11 agency.

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

14 ~~((10))~~ (12)(a) "Order," without further qualification, means a  
15 written statement of particular applicability that finally determines  
16 the legal rights, duties, privileges, immunities, or other legal  
17 interests of a specific person or persons.

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

20 ~~((11))~~ (13) "Party to agency proceedings," or "party" in a  
21 context so indicating, means:

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

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

25 ~~((12))~~ (14) "Party to judicial review or civil enforcement  
26 proceedings," or "party" in a context so indicating, means:

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

29 (b) A person named as a party in a judicial review or civil  
30 enforcement proceeding, or allowed to participate as a party in a  
31 judicial review or civil enforcement proceeding.

32 ~~((13))~~ (15) "Person" means any individual, partnership,  
33 corporation, association, governmental subdivision or unit thereof, or  
34 public or private organization or entity of any character, and includes  
35 another agency.

36 ~~((14))~~ (16) "Policy statement" means a written description of the  
37 current approach of an agency, entitled a policy statement by the  
38 agency head or its designee, to implementation of a statute or other  
39 provision of law, of a court decision, or of an agency order, including

1 where appropriate the agency's current practice, procedure, or method  
2 of action based upon that approach.

3 ~~((15))~~ (17) "Rule" means any ~~((agency order, directive, or~~  
4 ~~regulation of general applicability (a) the violation of which subjects~~  
5 ~~a person to a penalty or administrative sanction; (b) which~~  
6 ~~establishes, alters, or revokes any procedure, practice, or requirement~~  
7 ~~relating to agency hearings; (c) which establishes, alters, or revokes~~  
8 ~~any qualification or requirement relating to the enjoyment of benefits~~  
9 ~~or privileges conferred by law; (d) which establishes, alters, or~~  
10 ~~revokes any qualifications or standards for the issuance, suspension,~~  
11 ~~or revocation of licenses to pursue any commercial activity, trade, or~~  
12 ~~profession; or (e) which establishes, alters, or revokes any mandatory~~  
13 ~~standards for any product or material which must be met before~~  
14 ~~distribution or sale))~~ issuance adopted under Part III of this chapter.  
15 The term includes the amendment or repeal of a prior rule(~~(, but does~~  
16 ~~not include (i) statements concerning only the internal management of~~  
17 ~~an agency and not affecting private rights or procedures available to~~  
18 ~~the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,~~  
19 ~~(iii) traffic restrictions for motor vehicles, bicyclists, and~~  
20 ~~pedestrians established by the secretary of transportation or his~~  
21 ~~designee where notice of such restrictions is given by official traffic~~  
22 ~~control devices, or (iv) rules of institutions of higher education~~  
23 ~~involving standards of admission, academic advancement, academic~~  
24 ~~credit, graduation and the granting of degrees, employment~~  
25 ~~relationships, or fiscal processes)).~~

26 ~~((16))~~ (18) "Rules review committee" or "committee" means the  
27 joint administrative rules review committee created pursuant to RCW  
28 34.05.610 ~~((for the purpose of selectively reviewing existing and~~  
29 ~~proposed rules of state agencies)).~~

30 ~~((17))~~ (19) "Rule making" means the process for formulation and  
31 adoption of a rule.

32 ~~((18))~~ (20) "Service," except as otherwise provided in this  
33 chapter, means posting in the United States mail, properly addressed,  
34 postage prepaid, or personal service. Service by mail is complete upon  
35 deposit in the United States mail. Agencies may, by rule, authorize  
36 service by electronic telefacsimile transmission, where copies are  
37 mailed simultaneously, or by commercial parcel delivery company.



1           THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN  
2           EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR  
3           THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS  
4           ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA  
5           FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE  
6           BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST  
7           EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO  
8           (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

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

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

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

33          (6) If no written objections to the expedited adoption of a rule  
34          are filed with the agency within forty-five days after the notice of  
35          proposed expedited rule making is published, or if all objections that  
36          have been filed are withdrawn by the persons filing the objections, the  
37          agency may enter an order adopting the rule without further notice or  
38          a public hearing. The order must be published in the manner required

1 by this chapter for any other agency order adopting, amending, or  
2 repealing a rule.

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

9 (8) Subsections (1) through (8) of this section expire on December  
10 31, 2000.

11 (9) An agency is encouraged to advise the public of its current  
12 opinions, approaches, and likely courses of action by means of  
13 ((interpretive or policy statements. Current interpretive and policy  
14 statements)) issuances. Unless adopted under Part III of this chapter  
15 or exempted under the definition of de facto rule as defined in RCW  
16 34.05.010, these issuances are advisory only. ((To better inform and  
17 involve the public, an agency is encouraged to convert long-standing  
18 interpretive and policy statements into rules.

19 (2)) (10) A person may petition an agency ((requesting the  
20 conversion of interpretive and policy statements into rules)) to adopt  
21 an issuance as a rule. Upon submission, the agency shall notify the  
22 joint administrative rules review committee of the petition. A person  
23 may petition an agency requesting the repeal or withdrawal of an  
24 interpretive or policy statement. Within sixty days after submission  
25 of ((a)) either type of petition, the agency shall either deny the  
26 petition in writing, stating its reasons for the denial, or initiate  
27 rule-making proceedings in accordance with this chapter.

28 ((3)) (11) Each agency shall maintain a roster of interested  
29 persons, consisting of persons who have requested in writing to be  
30 notified of all interpretive and policy statements issued by that  
31 agency. Each agency shall update the roster once each year and  
32 eliminate persons who do not indicate a desire to continue on the  
33 roster. Whenever an agency issues an interpretive or policy statement,  
34 it shall send a copy of the statement to each person listed on the  
35 roster. The agency may charge a nominal fee to the interested person  
36 for this service.

37 ((4)) (12) Whenever an agency issues an interpretive or policy  
38 statement, it shall submit to the code reviser for publication in the  
39 Washington State Register a statement describing the subject matter of

1 the interpretive or policy statement, and listing the person at the  
2 agency from whom a copy of the interpretive or policy statement may be  
3 obtained.

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

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

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

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

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

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

36 (4) The agency head, a member of the agency head, or a presiding  
37 officer designated by the agency head shall preside at the rule-making

1 hearing. Rule-making hearings shall be open to the public. The agency  
2 shall cause a record to be made of the hearing by stenographic,  
3 mechanical, or electronic means. Unless the agency head presides or is  
4 present at substantially all the hearings, the presiding official shall  
5 prepare a memorandum for consideration by the agency head, summarizing  
6 the contents of the presentations made at the rule-making hearing. The  
7 summarizing memorandum is a public document and shall be made available  
8 to any person in accordance with chapter 42.17 RCW.

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

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

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

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

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

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

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

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

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

32 (b) Determine that the rule is needed to achieve the general goals  
33 and specific objectives stated under (a) of this subsection, and  
34 analyze alternatives to rule making and the consequences of not  
35 adopting the rule;

36 (c) Determine that the probable benefits of the rule are greater  
37 than its probable costs, taking into account both the qualitative and

1 quantitative benefits and costs and the specific directives of the  
2 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

36 (c) Promote and assist voluntary compliance; and

37 (d) Evaluate whether the rule achieves the purpose for which it was  
38 adopted, including, to the maximum extent practicable, the use of



1 interim milestones to assess progress and the use of objectively  
2 measurable outcomes.

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

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

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

15 (i) Deferring to the other entity;

16 (ii) Designating a lead agency; or

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

20 If the agency is unable to comply with this subsection (4)(b), the  
21 agency shall report to the legislature pursuant to (c) of this  
22 subsection;

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

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

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

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

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

38 (ii) Any rule of any agency, if this section is voluntarily made  
39 applicable to the rule by the agency, or is made applicable to the rule

1 by a majority vote of the joint administrative rules review committee  
2 within (~~forty-five~~) ninety days of receiving the notice of proposed  
3 rule making under RCW 34.05.320.

4 (b) This section does not apply to:

5 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

21 (vi) Rules that set or adjust fees or rates pursuant to legislative  
22 standards; or

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

26 (c) For purposes of this subsection:

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

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

36 (iii) A "significant legislative rule" is a rule other than a  
37 procedural or interpretive rule that (A) adopts substantive provisions  
38 of law pursuant to delegated legislative authority, the violation of  
39 which subjects a violator of such rule to a penalty or sanction; (B)

1 establishes, alters, or revokes any qualification or standard for the  
2 issuance, suspension, or revocation of a license or permit; or (C)  
3 adopts a new, or makes significant amendments to, a policy or  
4 regulatory program.

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

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

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

18 (b) The costs incurred by state agencies in complying with this  
19 section;

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

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

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

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

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

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

1 agency that may reasonably be expected to have an interest in the  
2 subject of rules that will be developed.

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

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

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

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

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

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

37 (3) Within seven days after the rule is adopted, any person may  
38 petition the governor requesting the immediate repeal of a rule adopted

1 on an emergency basis by any department listed in RCW 43.17.010.  
2 Within seven days after submission of the petition, the governor shall  
3 either deny the petition in writing, stating his or her reasons for the  
4 denial, or order the immediate repeal of the rule. In ruling on the  
5 petition, the governor shall consider only whether the conditions in  
6 subsection (1) of this section were met such that adoption of the rule  
7 on an emergency basis was necessary. If the governor orders the repeal  
8 of the emergency rule, any sanction imposed based on that rule is void.  
9 This subsection shall not be construed to prohibit adoption of any rule  
10 as a permanent rule.

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

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

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

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

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

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

32 (c) The rule is no longer necessary because of changed  
33 circumstances; or

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

36 (3) The agency shall also send a copy of the preproposal notice of  
37 inquiry to any person who has requested notification of copies of  
38 proposals for the expedited repeal of rules or of agency rule making.

1 The preproposal notice of inquiry shall include a statement that any  
2 person who objects to the repeal of the rule must file a written  
3 objection to the repeal within thirty days after the preproposal notice  
4 of inquiry is published. The notice of inquiry shall also include an  
5 explanation of the reasons the agency believes the expedited repeal of  
6 the rule is appropriate.

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

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

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

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

1 legislature further finds that the review of existing rules is a  
2 critical undertaking that is necessary to address these and other  
3 deficiencies.

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

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

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

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

- 22 (a) Achievement of the goals and objectives of the rule;
- 23 (b) Technological changes that impact the implementation of or  
24 compliance with the rule;
- 25 (c) Controversy surrounding the implementation or enforcement of  
26 the rule, stating the nature of the controversy;
- 27 (d) The outcome of any court challenges to the validity of the rule  
28 or its authority to draft the rule;
- 29 (e) Actual costs or changes undergone by the regulated community;
- 30 and
- 31 (f) Laws or other rules passed since the rule was adopted that are  
32 in conflict, impact its implementation, or render the rule obsolete.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The order, or the statute or rule on which the order is based,  
2 is in violation of constitutional provisions on its face or as applied;  
3 (b) The order is outside the statutory authority or jurisdiction of  
4 the agency conferred by any provision of law;  
5 (c) The agency has engaged in unlawful procedure or decision-making  
6 process, or has failed to follow a prescribed procedure;  
7 (d) The agency has erroneously interpreted or applied the law;  
8 (e) The order is not supported by evidence that is substantial when  
9 viewed in light of the whole record before the court, which includes  
10 the agency record for judicial review, supplemented by any additional  
11 evidence received by the court under this chapter;  
12 (f) The agency has not decided all issues requiring resolution by  
13 the agency;  
14 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050  
15 was made and was improperly denied or, if no motion was made, facts are  
16 shown to support the grant of such a motion that were not known and  
17 were not reasonably discoverable by the challenging party at the  
18 appropriate time for making such a motion;  
19 (h) The order is inconsistent with a rule of the agency unless the  
20 agency explains the inconsistency by stating facts and reasons to  
21 demonstrate a rational basis for inconsistency; ((or))  
22 (i) The order is arbitrary or capricious; or  
23 (j) The order is based on a de facto rule.  
24 (4) Review of other agency action.  
25 (a) All agency action not reviewable under subsection (2) or (3) of  
26 this section shall be reviewed under this subsection.  
27 (b) A person whose rights are violated by an agency's failure to  
28 perform a duty that is required by law to be performed may file a  
29 petition for review pursuant to RCW 34.05.514, seeking an order  
30 pursuant to this subsection requiring performance. Within twenty days  
31 after service of the petition for review, the agency shall file and  
32 serve an answer to the petition, made in the same manner as an answer  
33 to a complaint in a civil action. The court may hear evidence,  
34 pursuant to RCW 34.05.562, on material issues of fact raised by the  
35 petition and answer.  
36 (c) Relief for persons aggrieved by the performance of an agency  
37 action, including the exercise of discretion, or an action under (b) of  
38 this subsection can be granted only if the court determines that the  
39 action is:

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

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

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

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

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

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

24 (a) The remedies would be patently inadequate;

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

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

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

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

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

35 (b) Upon written demand for a hearing made by any person aggrieved  
36 by any act, threatened act, or failure of the commissioner to act, if  
37 such failure is deemed an act under any provision of this code, or by

1 any report, promulgation, or order of the commissioner other than an  
2 order on a hearing of which such person was given actual notice or at  
3 which such person appeared as a party, or order pursuant to the order  
4 on such hearing.

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

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

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

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

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

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

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

PART IV  
LEGISLATIVE REVIEW

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

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

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

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

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

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

(1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its

1 intended action on a proposed or existing rule or issuance to which the  
2 committee objected (~~((or on a committee finding of the agency's failure~~  
3 ~~to adopt rules))~~).

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

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

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

1 Administrative Code in a location that addresses the most relevant  
2 subject matter.

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

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

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

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

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

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

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

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

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

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



1 (4) A petition for review of ~~((a policy or interpretive statement))~~  
2 an issuance other than a proposed or existing rule under subsection (1)  
3 of this section shall:

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

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

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

11 ~~((d))~~ (c) Identify any known judicial action regarding the  
12 ~~((statement))~~ issuance or statutes identified in the petition.

13 (5) Within ninety days of receipt of the petition, the rules review  
14 committee shall make a final decision on the rule or other issuance for  
15 which the petition for review was not previously rejected.

16 **Sec. 404.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
17 read as follows:

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

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

32 **PART V**  
33 **FEES AND EXPENSES**

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

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

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

8 (2) "Agency action" means agency action as defined by chapter 34.05  
9 RCW.

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

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

26 (5) "Qualified party" means (a) an individual whose net worth did  
27 not exceed ~~((one))~~ two million dollars at the time the initial petition  
28 for judicial review was filed or (b) a sole owner of an unincorporated  
29 business, or a partnership, corporation, association, or organization  
30 whose net worth did not exceed ~~((five))~~ seven million dollars at the  
31 time the initial petition for judicial review was filed, except that an  
32 organization described in section 501(c)(3) of the federal Internal  
33 Revenue Code of 1954 as exempt from taxation under section 501(a) of  
34 the code and a cooperative association as defined in section 15(a) of  
35 the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a party  
36 regardless of the net worth of such organization or cooperative  
37 association.

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

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

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

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

28       Fees and other expenses awarded under RCW 4.84.340 and 4.84.350  
29 shall be paid by the agency over which the party prevails from  
30 operating funds appropriated to the agency within ((~~sixty days~~)) thirty  
31 days of the decision of a superior court or court of appeal. The fees  
32 and other expenses must be paid from moneys appropriated to the agency  
33 for administration and support services and not out of moneys for  
34 program activities or service delivery if the operating budget or  
35 budget notes separately designate administration and support services.  
36 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and  
37 4.84.350 shall report all payments to the office of financial  
38 management within five days of paying the fees and other expenses.

1 Fees and other expenses awarded by the court shall be subject to the  
2 provisions of chapter 39.76 RCW and shall be deemed payable on the date  
3 the court announces the award.

4 **PART VI**  
5 **MISCELLANEOUS**

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

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

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

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

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

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

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

35 (d) Planning policies and goals, and interim and final planning  
36 decisions;

1 (e) Factual staff reports and studies, factual consultant's reports  
2 and studies, scientific reports and studies, and any other factual  
3 information derived from tests, studies, reports, or surveys, whether  
4 conducted by public employees or others; and

5 (f) Correspondence, and materials referred to therein, by and with  
6 the agency relating to any regulatory, supervisory, or enforcement  
7 responsibilities of the agency, whereby the agency determines, or  
8 opines upon, or is asked to determine or opine upon, the rights of the  
9 state, the public, a subdivision of state government, or of any private  
10 party.

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

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

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

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

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

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

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

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

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

34 Rules establishing systems of indexing shall include, but not be  
35 limited to, requirements for the form and content of the index, its  
36 location and availability to the public, and the schedule for revising  
37 or updating the index. State agencies that have maintained indexes for  
38 records issued before July 1, 1990, shall continue to make such indexes  
39 available for public inspection and copying. Information in such

1 indexes may be incorporated into indexes prepared pursuant to this  
2 subsection. State agencies may satisfy the requirements of this  
3 subsection by making available to the public indexes prepared by other  
4 parties but actually used by the agency in its operations. State  
5 agencies shall make indexes available for public inspection and  
6 copying. State agencies may charge a fee to cover the actual costs of  
7 providing individual mailed copies of indexes.

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

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

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

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

19 (a) In determining the actual per page cost for providing  
20 photocopies of public records, an agency may include all costs directly  
21 incident to copying such public records including the actual cost of  
22 the paper and the per page cost for use of agency copying equipment.  
23 In determining other actual costs for providing photocopies of public  
24 records, an agency may include all costs directly incident to shipping  
25 such public records, including the cost of postage or delivery charges  
26 and the cost of any container or envelope used.

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

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

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

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

17 The director shall supervise the providing of prompt and efficient  
18 care and treatment, including care provided by physician assistants  
19 governed by the provisions of chapters 18.57A and 18.71A RCW, acting  
20 under a supervising physician, and including chiropractic care, to  
21 workers injured during the course of their employment at the least cost  
22 consistent with promptness and efficiency, without discrimination or  
23 favoritism, and with as great uniformity as the various and diverse  
24 surrounding circumstances and locations of industries will permit and  
25 to that end shall, from time to time, establish and adopt and supervise  
26 the administration of printed forms, rules, regulations, and practices  
27 for the furnishing of such care and treatment: PROVIDED, That, the  
28 department may recommend to an injured worker particular health care  
29 services and providers where specialized treatment is indicated or  
30 where cost effective payment levels or rates are obtained by the  
31 department: AND PROVIDED FURTHER, That the department may enter into  
32 contracts for goods and services including, but not limited to, durable  
33 medical equipment so long as state-wide access to quality service is  
34 maintained for injured workers.

35 The director shall, in consultation with interested persons,  
36 establish and, in his or her discretion, periodically change as may be  
37 necessary, and make available a fee schedule of the maximum charges to  
38 be made by any physician, surgeon, chiropractor, hospital, druggist,

1 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,  
2 acting under a supervising physician or other agency or person  
3 rendering services to injured workers. The department shall coordinate  
4 with other state purchasers of health care services to establish as  
5 much consistency and uniformity in billing and coding practices as  
6 possible, taking into account the unique requirements and differences  
7 between programs. No service covered under this title shall be charged  
8 or paid at a rate or rates exceeding those specified in such fee  
9 schedule, and no contract providing for greater fees shall be valid as  
10 to the excess. The establishment of such a schedule, exclusive of  
11 conversion factors, does not constitute "agency action" as used in RCW  
12 34.05.010(~~(+3)~~), nor does such a fee schedule constitute a "de facto  
13 rule" as used in RCW 34.05.010(~~(+15)~~).

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

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

25 (1) An agency, prior to releasing a final report or study regarding  
26 management by a county, city, town, special purpose district, or other  
27 unit of local government of a program delegated to the local government  
28 by the agency or for which the agency has regulatory responsibility,  
29 shall provide copies of a draft of the report or study at least two  
30 weeks in advance of the release of the final report or study to the  
31 legislative body of the local government. The agency shall, at the  
32 request of a local government legislative body, meet with the  
33 legislative body before the release of a final report or study  
34 regarding the management of such a program.

35 (2) For purposes of this section, "agency" means an office,  
36 department, board, commission, or other unit of state government, other  
37 than a unit of state government headed by a separately elected  
38 official.



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

3        When issuing a citation or other written finding that a person has  
4    violated a statute, rule, or order, the agency shall include with the  
5    citation or other written finding the text of the specific statute or  
6    statutes granting the agency the authority to regulate the subject  
7    matter of the citation or other written finding.

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

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

15       (a) The agency submits an application in writing to the employment  
16    security department for the records or information containing a  
17    statement of the official purposes for which the information or records  
18    are needed and specific identification of the records or information  
19    sought from the department; and

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

23       (c) The agency requesting access has served a copy of the  
24    application for records or information on the individual or employing  
25    unit whose records or information are sought and has provided the  
26    department with proof of service. Service shall be made in a manner  
27    which conforms to the civil rules for superior court. The requesting  
28    agency shall include with the copy of the application a statement to  
29    the effect that the individual or employing unit may contact the public  
30    records officer of the employment security department to state any  
31    objections to the release of the records or information. The  
32    employment security department shall not act upon the application of  
33    the requesting agency until at least five days after service on the  
34    concerned individual or employing unit. The employment security  
35    department shall consider any objections raised by the concerned  
36    individual or employing unit in deciding whether the requesting agency  
37    needs the information or records for official purposes.

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

9 (3) In cases of emergency the governmental agency requesting access  
10 shall not be required to formally comply with the provisions of  
11 subsection (1) of this section at the time of the request if the  
12 procedures required by subsection (1) of this section are complied with  
13 by the requesting agency following the receipt of any records or  
14 information deemed private and confidential under this chapter. An  
15 emergency is defined as a situation in which irreparable harm or damage  
16 could occur if records or information are not released immediately.

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

29 (5) Governmental agencies shall have access to certain records or  
30 information, limited to such items as names, addresses, social security  
31 numbers, and general information about benefit entitlement or employer  
32 information possessed by the department, for comparison purposes with  
33 records or information possessed by the requesting agency to detect  
34 improper or fraudulent claims, or to determine potential tax liability  
35 or employer compliance with registration and licensing requirements.  
36 In those cases the governmental agency shall not be required to comply  
37 with subsection (1)(c) of this section, but the requirements of the  
38 remainder of subsection (1) must be satisfied.

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

13 (7) Disclosure to governmental agencies of information or records  
14 obtained by the employment security department from the federal  
15 government shall be governed by any applicable federal law or any  
16 agreement between the federal government and the employment security  
17 department where so required by federal law. When federal law does not  
18 apply to the records or information state law shall control.

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

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

28 NEW SECTION. **Sec. 606.** The code reviser shall study the  
29 feasibility of accepting agency rule filings in an electronic format.  
30 The study must include consideration of the benefits to be achieved by  
31 electronic filing compared to the costs that electronic filing would  
32 entail. The code reviser may consult with the office of financial  
33 management, state agencies, and the general public in conducting the  
34 study. The code reviser shall report to the legislature and the  
35 governor by July 1, 1998, on the results of this study.

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

