

2 E2SHB 2345 - S COMM AMD
3 By Committee on Government Operations

4

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

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

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

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

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

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

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

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

31 ~~(f) The proposed rule is being amended after a review under RCW
32 34.05.328 or section 210 of this act.~~

33 (2) ~~The expedited rule making process must follow the requirements
34 for rule making set forth in RCW 34.05.320, except that the agency is
35 not required to prepare a small business economic impact statement
36 under RCW 19.85.025, a statement indicating whether the rule~~

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

8 **NOTICE**

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

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

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

35 (5) Any person may file a written objection to the expedited
36 adoption of a rule. The objection must be filed with the agency rules
37 coordinator within forty-five days after the notice of the proposed
38 expedited rule making has been published in the Washington State

1 Register. A person who has filed a written objection to the expedited
2 adoption of a rule may withdraw the objection.

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

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

17 (8) Subsections (1) through (8) of this section expire on December
18 31, 2000.

19 an [An] agency is encouraged to advise the public of its current
20 opinions, approaches, and likely courses of action by means of
21 interpretive or policy statements. Current)) Interpretive and policy
22 statements or their equivalents, regardless of title, are advisory
23 only. To better inform and involve the public, ((an)) each agency is
24 encouraged to convert long-standing interpretive and policy statements
25 into rules.

26 (2) A person may petition an agency requesting the conversion of
27 interpretive and policy statements into rules. Upon submission, the
28 agency shall notify the joint administrative rules review committee of
29 the petition. Within sixty days after submission of a petition, the
30 agency shall either deny the petition in writing, stating its reasons
31 for the denial, or initiate rule-making proceedings in accordance with
32 this chapter.

33 ((11)) (3) Each agency shall maintain a roster of interested
34 persons, consisting of persons who have requested in writing to be
35 notified of all interpretive and policy statements issued by that
36 agency. Each agency shall update the roster once each year and
37 eliminate persons who do not indicate a desire to continue on the
38 roster. Whenever an agency issues an interpretive or policy statement,
39 it shall send a copy of the statement to each person listed on the

1 roster. The agency may charge a nominal fee to the interested person
2 for this service.

3 ~~((12))~~ (4) Whenever an agency issues an interpretive or policy
4 statement, it shall submit to the code reviser for publication in the
5 Washington State Register a statement describing the subject matter of
6 the interpretive or policy statement, and listing the person at the
7 agency from whom a copy of the interpretive or policy statement may be
8 obtained.

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

13 (6) Within two hundred days after an agency issues a policy or
14 interpretative statement, guideline, document of general applicability,
15 or its equivalent involving an issue, the violation of which can result
16 in a citation, civil penalty, assessment, or other sanction to a
17 business, the agency shall make a good faith effort to notify
18 businesses affected by the statement, guideline, or document and how to
19 obtain technical assistance to comply. For purposes of this section,
20 "good faith" means: (a) The agency at least notifies businesses in the
21 standard industrial classifications or their successor affected by the
22 statement, guideline, or document that are registered with the
23 department of revenue; or (b) for a statement, guideline, or document
24 that applies only to persons or firms that are licensed, registered, or
25 operate under a permit, the agency notifies those persons or firms
26 holding the license, registration, or permit. Inadvertent failure to
27 notify a specific business under this section does not invalidate a
28 rule.

29 NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW
30 to read as follows:

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

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

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

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

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

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

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

15 (f) The proposed rule is being amended after a review under RCW
16 34.05.328.

17 (2) The expedited rule-making process must follow the requirements
18 for rule making set forth in RCW 34.05.320, except that the agency is
19 not required to prepare a small business economic impact statement
20 under RCW 19.85.025, a statement indicating whether the rule
21 constitutes a significant legislative rule under RCW
22 34.05.328(6)(c)(iii), or a significant legislative rule analysis under
23 RCW 34.05.328. An agency is not required to prepare statements of
24 inquiry under RCW 34.05.310 or conduct a hearing for the expedited
25 adoption of rules. The notice for the expedited adoption of rules must
26 contain a statement in at least ten-point type, that is substantially
27 in the following form:

28

NOTICE

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

37 (3) The agency shall send a copy of the notice of the proposed
38 expedited rule making to any person who has requested notification of

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

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

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

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

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

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

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

3 (1) Before adopting a rule described in subsection (~~(+5+)~~) (6) of
4 this section, an agency shall:

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

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

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

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

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

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

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

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

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

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

37 (2) In making its determinations pursuant to subsection (1)(b)
38 through (g) of this section, the agency shall place in the rule-making

1 file documentation of sufficient quantity and quality so as to persuade
2 a reasonable person that the determinations are justified.

3 (3) Before adopting rules described in subsection ~~((5))~~ (6) of
4 this section, an agency shall place in the rule-making file a rule
5 implementation plan for rules filed under each adopting order. The
6 plan shall describe how the agency ~~((intends to))~~ will:

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

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

10 (c) Promote and assist voluntary compliance; ~~((and))~~

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

15 (e) Provide appropriate training to agency personnel.

16 (4) At least twenty days before the effective date of a rule
17 described in subsection (6) of this section, the agency is encouraged
18 to convene a meeting of interested persons affected by the rule to
19 identify ambiguities and problem areas in the rule and determine how to
20 resolve the ambiguities and problem areas. If the agency convenes such
21 a meeting, the agency shall include the meeting in the plan described
22 under subsection (3) of this section.

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

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

31 (b) Coordinate implementation and enforcement of the rule with the
32 other federal and state entities regulating the same activity or
33 subject matter by making every effort to do one or more of the
34 following:

35 (i) Deferring to the other entity;

36 (ii) Designating a lead agency; or

37 (iii) Entering into an agreement with the other entities specifying
38 how the agency and entities will coordinate implementation and
39 enforcement.

1 If the agency is unable to comply with this subsection (~~((4))~~)
2 (5)(b), the agency shall report to the legislature pursuant to (c) of
3 this subsection;

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

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

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

11 (~~((5))~~) (6)(a) Except as provided in (b) of this subsection, this
12 section applies to:

13 (i) Significant legislative rules of the departments of ecology,
14 labor and industries, health, revenue, social and health services, and
15 natural resources, the employment security department, the forest
16 practices board, the office of the insurance commissioner, and to the
17 legislative rules of the department of fish and wildlife implementing
18 chapter 75.20 RCW; and

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

24 (b) This section does not apply to:

25 (i) Emergency rules adopted under RCW 34.05.350;

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

28 (iii) Rules adopting or incorporating by reference without material
29 change federal statutes or regulations, Washington state statutes,
30 rules of other Washington state agencies, shoreline master programs
31 other than those programs governing shorelines of state-wide
32 significance, or, as referenced by Washington state law, national
33 consensus codes that generally establish industry standards, if the
34 material adopted or incorporated regulates the same subject matter and
35 conduct as the adopting or incorporating rule;

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

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

3 (vi) Rules that set or adjust fees or rates pursuant to legislative
4 standards; or

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

8 (c) For purposes of this subsection:

9 (i) A "procedural rule" is a rule that adopts, amends, or repeals
10 (A) any procedure, practice, or requirement relating to any agency
11 hearings; (B) any filing or related process requirement for making
12 application to an agency for a license or permit; or (C) any policy
13 statement pertaining to the consistent internal operations of an
14 agency.

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

18 (iii) A "significant legislative rule" is a rule other than a
19 procedural or interpretive rule that (A) adopts substantive provisions
20 of law pursuant to delegated legislative authority, the violation of
21 which subjects a violator of such rule to a penalty or sanction; (B)
22 establishes, alters, or revokes any qualification or standard for the
23 issuance, suspension, or revocation of a license or permit; or (C)
24 adopts a new, or makes significant amendments to, a policy or
25 regulatory program.

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

30 (~~(6)~~) (7) By January 31, 1996, and by January 31st of each even-
31 numbered year thereafter, the office of financial management, after
32 consulting with state agencies, counties, and cities, and business,
33 labor, and environmental organizations, shall report to the governor
34 and the legislature regarding the effects of this section on the
35 regulatory system in this state. The report shall document:

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

1 (b) The costs incurred by state agencies in complying with this
2 section;

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

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

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

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

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

14 Within two hundred days after the effective date of a rule that
15 imposes additional requirements on businesses the violation of which
16 subjects a person to a penalty, assessment, or administrative sanction,
17 an agency shall make a good faith effort to notify businesses affected
18 by the rule of the requirements of the rule and how to obtain technical
19 assistance to comply. For purposes of this section, "good faith"
20 means: (1) The agency at least notifies businesses in the standard
21 industrial classifications or their successor identified in the rule-
22 making file as businesses affected by the rule that are registered with
23 the department of revenue; or (2) for rules imposing additional
24 requirements only on persons or firms licensed, registered, or
25 operating under a permit, the agency notifies those persons or firms
26 holding the license, registration, or permit. Inadvertent failure to
27 notify a specific business under this section does not invalidate a
28 rule.

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

31 (1) Any person may petition an agency requesting the adoption,
32 amendment, or repeal of any rule. The office of financial management
33 shall prescribe by rule the format for such petitions and the procedure
34 for their submission, consideration, and disposition and provide a
35 standard form that may be used to petition any agency. Within sixty
36 days after submission of a petition, the agency shall either (a) deny
37 the petition in writing, stating (i) its reasons for the denial,

1 specifically addressing the concerns raised by the petitioner, and,
2 where appropriate, (ii) the alternative means by which it will address
3 the concerns raised by the petitioner, or (b) initiate rule-making
4 proceedings in accordance with (~~this chapter~~) RCW 34.05.320.

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

11 (3) If an agency denies a petition to repeal or amend a rule
12 submitted under subsection (1) of this section, the petitioner, within
13 thirty days of the denial, may appeal the denial to the governor. The
14 governor shall immediately file notice of the appeal with the code
15 reviser for publication in the Washington state register. Within
16 forty-five days after receiving the appeal, the governor shall either
17 (a) deny the petition in writing, stating (i) his or her reasons for
18 the denial, specifically addressing the concerns raised by the
19 petitioner, and, (ii) where appropriate, the alternative means by which
20 he or she will address the concerns raised by the petitioner; (b) for
21 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
22 making proceedings in accordance with this chapter; or (c) for agencies
23 not listed in RCW 43.17.010, recommend that the agency initiate rule-
24 making proceedings in accordance with this chapter. The governor's
25 response to the appeal shall be published in the Washington state
26 register and copies shall be submitted to the chief clerk of the house
27 of representatives and the secretary of the senate.

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

30 (a) Whether the rule is authorized;

31 (b) Whether the rule is needed;

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

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

36 (e) Whether the rule applies differently to public and private
37 entities;

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

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

- 1 (h) Whether the rule is clearly and simply stated;
2 (i) Whether the rule is different than a federal law applicable to
3 the same activity or subject matter without adequate justification; and
4 (j) Whether the rule was adopted according to all applicable
5 provisions of law.

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

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

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

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

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

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

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

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

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

35 ~~((3))~~ (2) An agency shall file a copy of a preproposal notice of
36 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as
37 one that is proposed for expedited repeal. The agency shall also send
38 a copy of the preproposal notice of inquiry to any person who has

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

8 ~~((+4))~~ (3) The code reviser shall publish all rules proposed for
9 expedited repeal in a separate section of ~~((a regular edition of))~~ the
10 Washington state register ~~((or in a special edition of the Washington
11 state register. The publication shall be not later than May 31st or
12 November 30th of each year, or in the first register published after
13 that date))~~.

14 ~~((+5))~~ (4) Any person may file a written objection to the
15 expedited repeal of a rule. The notice shall be filed with the agency
16 rules coordinator within thirty days after the notice of inquiry has
17 been published in the Washington state register. The written objection
18 need not state any reason for objecting to the expedited repeal of the
19 rule.

20 ~~((+6))~~ (5) If no written objections to the expedited repeal of a
21 rule are filed with the agency within thirty days after the preproposal
22 notice of inquiry is published, the agency may enter an order repealing
23 the rule without further notice or an opportunity for a public hearing.
24 The order shall be published in the manner required by this chapter for
25 any other order of the agency adopting, amending, or repealing a rule.
26 If a written objection to the expedited repeal of the rule is filed
27 with the agency within thirty days after the notice of inquiry has been
28 published, the preproposal notice of inquiry published pursuant to this
29 section shall be considered a preproposal notice of inquiry for the
30 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
31 proceedings in accordance with the provisions of this chapter.

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

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

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

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

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

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

11 (d) Any official transcript of oral presentations made in the
12 proceeding on which the rule is based or, if not transcribed, any tape
13 recording or stenographic record of them, and any memorandum prepared
14 by a presiding official summarizing the contents of those
15 presentations;

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

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

25 (g) The concise explanatory statement required by RCW 34.05.325(6);
26 and

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

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

35 (4) Upon judicial review, the file required by this section
36 constitutes the official agency rule-making file with respect to that
37 rule. Unless otherwise required by another provision of law, the
38 official agency rule-making file need not be the exclusive basis for
39 agency action on that rule.

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

3 (1) The legislature finds that under the governor's Executive Order
4 97-02, agencies have begun systematic reviews of existing rules and
5 have eliminated some unnecessary rules and improved clarity for other
6 rules.

7 (2) Effective July 1, 2001, each state agency shall review its
8 rules that have significant effects on businesses, labor, consumers,
9 and the environment. Agencies shall establish a rules review schedule
10 that allows each rule filing under the criteria of this section to be
11 reviewed every seven years. Agencies shall determine if their rules
12 should be (a) retained in their current form, or (b) amended or
13 repealed, if they do not meet the review criteria specified in this
14 section. Agencies shall concentrate their regulatory review on rules
15 or portions of a rule that have been the subject of petitions filed
16 under RCW 34.05.330 or have been the source of complaints, concerns, or
17 other difficulties that relate to matters other than the specific
18 mandates of the statute on which the rule is based. Agencies that have
19 already established regulatory review processes shall make them
20 consistent with the requirements of this section. Each agency head
21 shall designate a person responsible for regulatory review who shall
22 serve as the agency's contact for regulatory review.

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

25 (a) Need. Is the rule necessary to comply with the statutes that
26 authorize it? Is the rule obsolete, duplicative, or ambiguous to a
27 degree that warrants repeal or revision? Have laws or other
28 circumstances changed so that the rule should be amended or repealed?
29 Is the rule necessary to protect or safeguard the health, welfare, or
30 safety of Washington's citizens?

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

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

38 (d) Intent and statutory authority. Is the rule consistent with
39 legislative intent of the statutes that authorize it? Is the rule

1 based upon sufficient statutory authority? Is there a need to develop
2 a more specific legislative authorization in order to protect the
3 health, safety, and welfare of Washington's citizens?

4 (e) Coordination. Could additional consultation and coordination
5 with other governmental jurisdictions and state agencies with similar
6 regulatory authority eliminate or reduce duplication and inconsistency?
7 Agencies should consult with and coordinate with other jurisdictions
8 that have similar regulatory requirements when it is likely that
9 coordination can reduce duplication and inconsistency.

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

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

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

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

1 (c) Each agency shall also review its reporting requirements that
2 are applied generally to all businesses or classes of businesses to
3 ensure that they are necessary and consistent with the principles and
4 objectives of this section. The goals of the review must be to achieve
5 reporting requirements that, to the extent possible, are coordinated
6 with other state agencies with similar requirements, are economical and
7 easy to understand, and rely on electronic transfer of information.

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

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

15 (c) If the committee finds the agency has failed to meet the
16 requirements of this section, the agency will have one hundred twenty
17 days to meet the requirements and receive approval by a majority vote
18 of the committee. If the agency fails to comply with the requirements
19 of this section after the one hundred twenty days, the committee may,
20 by a majority vote of its members, recommend suspension of a rule or
21 rules included in the report. Within seven days of that vote the
22 committee shall transmit to the appropriate standing committees of the
23 legislature, the governor, the code reviser, and the agency written
24 notice of its objection and any recommended suspension based on failure
25 to meet the rules review requirements. Within thirty days of receipt
26 of the notice, the governor shall transmit to the committee, the code
27 reviser, and the agency written approval or disapproval of the
28 recommended suspension. If the suspension is approved by the governor,
29 it is effective from the date of that approval and continues until
30 ninety days after the expiration of the next regular legislative
31 session.

32 (d) If the governor disapproves the recommendation of the rules
33 review committee to suspend a rule or rules in the report, the agency
34 shall treat the transmittal of that decision, along with the findings
35 of the rules review committee, as a petition by the committee to repeal
36 the rule or rules under RCW 34.05.330.

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

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

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

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

20 (3) On or about January 1, 1999, the president of the senate shall
21 appoint the chairperson ((in even-numbered years)) and the vice
22 chairperson ((in odd-numbered years)) from among the committee
23 membership. The speaker of the house shall appoint the chairperson
24 ((in odd-numbered years)) and the vice chairperson in alternating even-
25 numbered years beginning in the year 2000 from among the committee
26 membership. The secretary of the senate shall appoint the chairperson
27 and the vice chairperson in the alternating even-numbered years
28 beginning in the year 2002 from among the committee membership. Such
29 appointments shall be made in January of each even-numbered year as
30 soon as possible after a legislative session convenes.

31 (4) The chairperson of the committee shall cause all meeting
32 notices and committee documents to be sent to the members and
33 alternates. A vacancy shall be filled by appointment of a legislator
34 from the same political party as the original appointment. The
35 appropriate appointing authority shall make the appointment within
36 thirty days of the vacancy occurring.

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

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

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

12 NEW SECTION. Sec. 11. A new section is added to chapter 43.132
13 RCW to read as follows:

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

18 (2) The economic impact statement shall describe the reporting,
19 recordkeeping, and other compliance requirements of the proposed rule
20 and analyze the costs of compliance for local governments. An agency
21 shall file the statement with the code reviser along with the notice
22 required under RCW 34.05.320.

23 (3) The department of community, trade, and economic development
24 shall develop a guide to assist agencies in preparing the economic
25 impact statement. The guide shall be developed through a collaborative
26 process with agencies and local governments and other interested
27 persons.

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

32 (5) This section does not apply to:

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

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

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

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

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

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

7 (b) Upon written demand for a hearing made by any person aggrieved
8 by any act, threatened act, or failure of the commissioner to act, if
9 such failure is deemed an act under any provision of this code, or by
10 any report, promulgation, or order of the commissioner other than an
11 order on a hearing of which such person was given actual notice or at
12 which such person appeared as a party, or order pursuant to the order
13 on such hearing.

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

17 (3) Unless a person aggrieved by a written order of the
18 commissioner demands a hearing thereon within ninety days after
19 receiving notice of such order, or in the case of a licensee under
20 Title 48 RCW within ninety days after the commissioner has mailed the
21 order to the licensee at the most recent address shown in the
22 commissioner's licensing records for the licensee, the right to such
23 hearing shall conclusively be deemed to have been waived.

24 (4) If a hearing is demanded by a licensee whose license has been
25 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall
26 hold such hearing demanded within thirty days after receipt of the
27 demand or within thirty days of the effective date of a temporary
28 license suspension issued after such demand, unless postponed by mutual
29 consent.

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

33 NEW SECTION. **Sec. 13.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected."

1 **E2SHB 2345** - S COMM AMD
2 By Committee on Government Operations

3
4 In line 1 of the title, after "law;" strike the remainder of the
5 title, and insert "amending RCW 34.05.230, 34.05.328, 34.05.330,
6 34.05.354, 34.05.370, 34.05.610, 34.12.040, and 48.04.010; adding new
7 sections to chapter 34.05 RCW; adding a new section to chapter 43.132
8 RCW; and providing an expiration date."

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