





1       ~~BEING ADOPTED USING THE EXPEDITED RULE MAKING PROCESS, YOU MUST~~  
2       ~~EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO~~  
3       ~~(INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).~~

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

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

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

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31 ~~have been filed are withdrawn by the persons filing the objections, the~~  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

36       ~~(7) If a written notice of objection to the expedited adoption of~~  
37 ~~the rule is timely filed with the agency and is not withdrawn, the~~  
38 ~~notice of proposed expedited rule making published under this section~~  
39 ~~is considered a statement of inquiry for the purposes of RCW 34.05.310,~~

1 and the agency may initiate further rule adoption proceedings in  
2 accordance with this chapter.

3 ~~(8) Subsections (1) through (8) of this section expire on December~~  
4 ~~31, 2000.~~

5 ~~an [An])~~ An agency is encouraged to advise the public of its  
6 current opinions, approaches, and likely courses of action by means of  
7 interpretive or policy statements. Current interpretive and policy  
8 statements are advisory only. To better inform and involve the public,  
9 an agency is encouraged to convert long-standing interpretive and  
10 policy statements into rules.

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

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

27 ~~((12))~~ (4) Whenever an agency issues an interpretive or policy  
28 statement, it shall submit to the code reviser for publication in the  
29 Washington State Register a statement describing the subject matter of  
30 the interpretive or policy statement, and listing the person at the  
31 agency from whom a copy of the interpretive or policy statement may be  
32 obtained.

33 **Sec. 2.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
34 read as follows:

35 (1) To meet the intent of providing greater public access to  
36 administrative rule making and to promote consensus among interested  
37 parties, agencies shall solicit comments from the public on a subject  
38 of possible rule making before filing with the code reviser a notice of

1 proposed rule making under RCW 34.05.320. The agency shall prepare a  
2 statement of inquiry that:

3 (a) Identifies the specific statute or statutes authorizing the  
4 agency to adopt rules on this subject;

5 (b) Discusses why rules on this subject may be needed and what they  
6 might accomplish;

7 (c) Identifies other federal and state agencies that regulate this  
8 subject, and describes the process whereby the agency would coordinate  
9 the contemplated rule with these agencies;

10 (d) Discusses the process by which the rule might be developed,  
11 including, but not limited to, negotiated rule making, pilot rule  
12 making, or agency study;

13 (e) Specifies the process by which interested parties can  
14 effectively participate in the decision to adopt a new rule and  
15 formulation of a proposed rule before its publication.

16 The statement of inquiry shall be filed with the code reviser (~~for~~  
17 ~~publication~~) and published in the state register at least thirty days  
18 before the date the agency files notice of proposed rule making under  
19 RCW 34.05.320 and shall be sent to any party that has requested receipt  
20 of the agency's statements of inquiry.

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

25 (a) Negotiated rule making by which representatives of an agency  
26 and of the interests that are affected by a subject of rule making,  
27 including, where appropriate, county and city representatives, seek to  
28 reach consensus on the terms of the proposed rule and on the process by  
29 which it is negotiated; and

30 (b) Pilot rule making which includes testing the feasibility of  
31 complying with or administering draft new rules or draft amendments to  
32 existing rules through the use of volunteer pilot groups in various  
33 areas and circumstances, as provided in RCW 34.05.313 or as otherwise  
34 provided by the agency.

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

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

5 (4) Statements issued by an agency under this section and filed  
6 with the code reviser are regarded as withdrawn if the agency has not  
7 proposed a rule as provided by RCW 34.05.320 within one hundred eighty  
8 days after publication of the statement in the register.

9 (5) This section does not apply to:

10 (a) Emergency rules adopted under RCW 34.05.350;

11 ~~(b) ((Rules relating only to internal governmental operations that~~  
12 ~~are not subject to violation by a nongovernment party;~~

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

21 ~~(d) Rules that only correct typographical errors, make address or~~  
22 ~~name changes, or clarify language of a rule without changing its~~  
23 ~~effect;~~

24 ~~(e) Rules the content of which is explicitly and specifically~~  
25 ~~dictated by statute;~~

26 ~~(f))~~ Rules that can be adopted or repealed using expedited rule  
27 making under section 3 of this act;

28 (c) Rules that set or adjust fees or rates pursuant to legislative  
29 standards; or

30 ~~((g))~~ (d) Rules that adopt, amend, or repeal:

31 (i) A procedure, practice, or requirement relating to agency  
32 hearings; or

33 (ii) A filing or related process requirement for applying to an  
34 agency for a license or permit.

35 NEW SECTION. Sec. 3. A new section is added to chapter 34.05 RCW  
36 to read as follows:

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

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

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

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

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

19 (e) The proposed rules have been the subject of negotiated rule  
20 making, pilot rule making, or some other process that involved  
21 substantial participation by interested parties before the development  
22 of the proposed rule; or

23 (f) The proposed rule is being amended after a review under RCW  
24 34.05.328.

25 (2) An agency may file notice for the expedited repeal of rules  
26 under the procedures set forth in this section for rules meeting any  
27 one of the following criteria:

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

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

35 (c) The rule is no longer necessary because of changed  
36 circumstances; or

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

1 (3) The expedited rule-making process must follow the requirements  
2 for rule making set forth in RCW 34.05.320, except that the agency is  
3 not required to prepare a small business economic impact statement  
4 under RCW 19.85.025, a statement indicating whether the rule  
5 constitutes a significant legislative rule under RCW  
6 34.05.328(5)(c)(iii), or a significant legislative rule analysis under  
7 RCW 34.05.328. An agency is not required to prepare statements of  
8 inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule  
9 making. The notice for the expedited rule making must contain a  
10 statement in at least ten-point type, that is substantially in the  
11 following form:

12 **NOTICE**

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

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

32 (5) The code reviser shall publish the text of all rules proposed  
33 for expedited adoption, and the citation and caption of all rules  
34 proposed for expedited repeal, along with the notice required in this  
35 section in a separate section of the Washington State Register. Once  
36 the notice of expedited rule making has been published in the  
37 Washington State Register, the only changes that an agency may make in

1 the noticed materials before their final adoption or repeal are to  
2 correct typographical errors.

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

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

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

23 (9) This section expires July 1, 2005.

24 NEW SECTION. **Sec. 4.** RCW 34.05.354 (Expedited repeal) and 1998 c  
25 280 s 6, 1997 c 409 s 208, & 1995 c 403 s 701 are each repealed.

26 **PART II**

27 **NORMAL RULE-MAKING PROCEDURES**

28 **Sec. 5.** RCW 34.05.320 and 1995 c 403 s 302 are each amended to  
29 read as follows:

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

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

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

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

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

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

13 (f) Agency comments or recommendations, if any, regarding statutory  
14 language, implementation, enforcement, and fiscal matters pertaining to  
15 the rule;

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

19 (h) An explanation of the differences between the rule and any  
20 federal or state law dealing with the same activity or subject matter;

21 (i) When, where, and how persons may present their views on the  
22 proposed rule;

23 ~~((i))~~ (j) The date on which the agency intends to adopt the rule;

24 ~~((j))~~ (k) A short explanation of the rule, its purpose, and  
25 anticipated effects, including in the case of a proposal that would  
26 modify existing rules, a short description of the changes the proposal  
27 would make;

28 ~~((k))~~ (l) A copy of the local government economic impact  
29 statement prepared under section 31 of this act;

30 (m) A copy of the small business economic impact statement prepared  
31 under chapter 19.85 RCW, or an explanation for why the agency did not  
32 prepare the statement; and

33 ~~((l))~~ (n) A statement indicating whether RCW 34.05.328 applies to  
34 the rule adoption.

35 (2) Upon filing notice of the proposed rule with the code reviser,  
36 the adopting agency shall have copies of the notice on file and  
37 available for public inspection and shall forward three copies of the  
38 notice to the rules review committee.

1 (3) No later than three days after its publication in the state  
2 register, the agency shall cause a copy of the notice of proposed rule  
3 adoption to be mailed to each person, city, and county that has made a  
4 request to the agency for a mailed copy of such notices. An agency may  
5 charge for the actual cost of providing a requesting party mailed  
6 copies of these notices.

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

11 **Sec. 6.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read  
12 as follows:

13 (1) Before (~~adopting~~) proposing a rule described in subsection  
14 (5) of this section, an agency shall:

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

17 (b) Determine that the rule is needed to achieve the general goals  
18 and specific objectives stated under (a) of this subsection, and  
19 analyze alternatives to rule making and the consequences of not  
20 adopting the rule;

21 (c) Determine that the probable benefits of the rule are greater  
22 than its probable costs, taking into account both the qualitative and  
23 quantitative benefits and costs and the specific directives of the  
24 statute being implemented;

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

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

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

36 (g) Determine if the rule differs from any federal or state  
37 regulation or statute applicable to the same activity or subject matter

1 and, if so, determine that the difference is justified by the  
2 following:

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

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

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

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

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

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

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

22 (c) Promote and assist voluntary compliance; and

23 (d) Evaluate whether the rule achieves the purpose for which it was  
24 adopted, including, to the maximum extent practicable, the use of  
25 interim milestones to assess progress and the use of objectively  
26 measurable outcomes.

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

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

35 (b) Coordinate implementation and enforcement of the rule with the  
36 other federal and state entities regulating the same activity or  
37 subject matter by making every effort to do one or more of the  
38 following:

39 (i) Deferring to the other entity;

1 (ii) Designating a lead agency; or  
2 (iii) Entering into an agreement with the other entities specifying  
3 how the agency and entities will coordinate implementation and  
4 enforcement.

5 If the agency is unable to comply with this subsection (4)(b), the  
6 agency shall report to the legislature pursuant to (c) of this  
7 subsection;

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

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

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

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

17 (i) Significant legislative rules of the departments of ecology,  
18 labor and industries, health, revenue, social and health services, and  
19 natural resources, the employment security department, the forest  
20 practices board, the office of the insurance commissioner, and to the  
21 legislative rules of the department of fish and wildlife implementing  
22 chapter ((75.20)) 77.55 RCW; and

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

28 (b) This section does not apply to:

29 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

6 (vi) Rules that set or adjust fees or rates pursuant to legislative  
7 standards; or

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

11 (c) For purposes of this subsection:

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

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

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

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

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

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

4 (b) The costs incurred by state agencies in complying with this  
5 section;

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

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

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

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

15 **Sec. 7.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read  
16 as follows:

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

18 (a) That immediate adoption, amendment, or repeal of a rule is  
19 necessary for the preservation of the public health, safety, or general  
20 welfare, and that observing the time requirements of notice and  
21 opportunity to comment upon adoption of a permanent rule would be  
22 contrary to the public interest; or

23 (b) That state or federal law or federal rule or a federal deadline  
24 for state receipt of federal funds requires immediate adoption of a  
25 rule,

26 the agency may dispense with those requirements and adopt, amend, or  
27 repeal the rule on an emergency basis. ~~((The agency's finding and a  
28 concise statement of the reasons for its finding shall be incorporated  
29 in))~~ The order for adoption of the emergency rule or amendment filed  
30 with the office of the code reviser under RCW 34.05.380 and with the  
31 rules review committee must contain the governor's signature approving  
32 the adoption of the emergency rule or amendment if immediate adoption  
33 is found necessary for the preservation of the general welfare. In  
34 that case, the governor shall also include a statement explaining why  
35 the rule is necessary for that reason. For all other emergency rules,  
36 the order of adoption must contain the agency's finding and a concise  
37 statement of the reasons for its finding.

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

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

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

27 **Sec. 8.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to read  
28 as follows:

29 (1) Each agency shall file in the office of the code reviser a  
30 certified copy of all rules it adopts, except for rules contained in  
31 tariffs filed with or published by the Washington utilities and  
32 transportation commission. The code reviser shall place upon each rule  
33 a notation of the time and date of filing and shall keep a permanent  
34 register of filed rules open to public inspection. In filing a rule,  
35 each agency shall use the standard form prescribed for this purpose by  
36 the code reviser.

37 (2)(a) Emergency rules adopted under RCW 34.05.350 become effective  
38 upon filing unless a later date is specified in the order of adoption.

1 (b) All other rules become effective upon the expiration of thirty  
2 days after the ~~((date of filing))~~ adjournment of the regular session of  
3 the legislature in the calendar year after the year in which the rule  
4 was adopted, unless a later date is required by statute or specified in  
5 the order of adoption.

6 (c) This subsection (2) does not apply to a rule authorized to take  
7 effect under subsection (3) of this section.

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

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

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

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

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

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

23 NEW SECTION. Sec. 9. RCW 34.05.380(2)(b) applies only to rules  
24 adopted after the effective date of this section.

25 NEW SECTION. Sec. 10. A new section is added to chapter 34.05 RCW  
26 to read as follows:

27 (1) Every rule adopted under this chapter before the effective date  
28 of this section that is still in effect one day less than five years  
29 after the effective date of this section, terminates five years after  
30 the effective date of this section.

31 (2) A rule adopted under this chapter on or after the effective  
32 date of this section that is still in effect one day less than five  
33 years after the date the rule was adopted, terminates five years after  
34 the date the rule was adopted. The amendment of a rule that was  
35 adopted on or after the effective date of this section establishes a  
36 new date for calculating this five-year termination date.



- 1 (1) As specifically required by federal law, and only to the extent  
2 specifically required; or  
3 (2) As specifically authorized, and only to the extent specifically  
4 authorized, by the legislature.

5 **PART IV**  
6 **JUDICIAL REVIEW**

7 **Sec. 14.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
8 read as follows:

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

11 (a) Except as provided in subsection (2) of this section and except  
12 that an agency bears the burden of demonstrating that the agency action  
13 was authorized by law, the burden of demonstrating the invalidity of  
14 agency action is on the party asserting invalidity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (i) The order is arbitrary or capricious; or

31 (j) The order is based on a de facto rule.

32 (4) Review of other agency action.

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

35 (b) A person whose rights are violated by an agency's failure to  
36 perform a duty that is required by law to be performed may file a  
37 petition for review pursuant to RCW 34.05.514, seeking an order  
38 pursuant to this subsection requiring performance. Within twenty days  
39 after service of the petition for review, the agency shall file and

1 serve an answer to the petition, made in the same manner as an answer  
2 to a complaint in a civil action. The court may hear evidence,  
3 pursuant to RCW 34.05.562, on material issues of fact raised by the  
4 petition and answer.

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

9 (i) Unconstitutional;

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

12 (iii) Arbitrary or capricious; ~~((or))~~

13 (iv) Taken by persons who were not properly constituted as agency  
14 officials lawfully entitled to take such action; or

15 (v) Based on a de facto rule.

## 16 PART V

### 17 EQUAL ACCESS TO JUSTICE

18 **Sec. 15.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to  
19 read as follows:

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

22 (1) "Adjudicative proceeding" means an adjudicative proceeding as  
23 defined in RCW 34.05.010 and an administrative review under RCW  
24 34.05.464. RCW 4.84.340 through 4.84.360 and sections 18 and 19 of  
25 this act apply only to the following adjudicative proceedings:

26 (a) Cases conducted for the department of social and health  
27 services, but excluding the division of child support and the division  
28 of juvenile rehabilitation;

29 (b) Licensing cases conducted for the liquor control board;

30 (c) Business and professional licensing cases for the department of  
31 licensing, but excluding motor vehicle franchise cases under chapter  
32 46.96 RCW;

33 (d) Business and professional licensing cases for the department of  
34 labor and industries;

35 (e) Employer assessment and penalty cases conducted under chapters  
36 49.17, 51.48, and 51.52 RCW for the department of labor and industries;  
37 and

1 (f) Employer assessment and penalty cases conducted under chapter  
2 50.24 RCW for the employment security department.

3 (2) "Administrative review" means an adjudicative proceeding under  
4 RCW 34.05.464.

5 (3) "Administrative tribunal" means an independent agency that  
6 conducts adjudicative proceedings, as defined in RCW 34.05.010, as its  
7 sole or principal duty, to: (a) Review decisions of another agency or  
8 governmental unit; or (b) resolve disputes in which the tribunal is not  
9 a party.

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

15 ~~((+2))~~ (5) "Agency action" means agency action as defined by  
16 chapter 34.05 RCW.

17 ~~((+3))~~ (6) "Fees and other expenses" includes the reasonable  
18 expenses of expert witnesses, the reasonable cost of a study, analysis,  
19 engineering report, test, or project that is found by the court,  
20 presiding officer, or reviewing officer to be necessary for the  
21 preparation of the party's case, and reasonable attorneys' fees.  
22 Reasonable attorneys' fees shall be based on the prevailing market  
23 rates for the kind and quality of services furnished, except that (a)  
24 no expert witness shall be compensated at a rate in excess of the  
25 highest rates of compensation for expert witnesses paid by the state of  
26 Washington, and (b) attorneys' fees shall not be awarded in excess of  
27 one hundred fifty dollars per hour unless the court, presiding officer,  
28 or reviewing officer determines that an increase in the cost of living  
29 or a special factor, such as the limited availability of qualified  
30 attorneys for the proceedings involved, justifies a higher fee.

31 ~~((+4))~~ (7) "Judicial review" means ((a judicial review as defined  
32 by chapter 34.05 RCW)) review of an agency action in the superior court  
33 and courts of appeal.

34 (8) "Presiding officer" means a presiding officer under RCW  
35 34.05.425.

36 (9) "Qualified administrative party" means (a) an individual whose  
37 net worth did not exceed two hundred fifty thousand dollars at the time  
38 the initial petition for an adjudicatory proceeding was filed, or (b)  
39 a sole owner of an unincorporated business, or a partnership,

1 corporation, association, or organization whose net worth did not  
2 exceed one million two hundred fifty thousand dollars at the time the  
3 initial petition for an adjudicatory proceeding was filed, except that  
4 an organization described in section 501(c)(3) of the federal Internal  
5 Revenue Code of 1954 as exempt from taxation under section 501(a) of  
6 the code and a cooperative association as defined in section 15(a) of  
7 the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a party  
8 regardless of the net worth of the organization or cooperative  
9 association.

10 ~~((+5))~~ (10) "Qualified judicial party" means (a) an individual  
11 whose net worth did not exceed one million dollars at the time the  
12 initial petition for judicial review was filed, or (b) a sole owner of  
13 an unincorporated business, or a partnership, corporation, association,  
14 or organization whose net worth did not exceed five million dollars at  
15 the time the initial petition for judicial review was filed, except  
16 that an organization described in section 501(c)(3) of the federal  
17 Internal Revenue Code of 1954 as exempt from taxation under section  
18 501(a) of the code and a cooperative association as defined in section  
19 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a  
20 party regardless of the net worth of such organization or cooperative  
21 association.

22 (11) "Qualified party" means a qualified judicial party or a  
23 qualified administrative party.

24 (12) "Reviewing officer" means a reviewing officer under RCW  
25 34.05.464.

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

28 (1) Except as otherwise specifically provided by statute, a court  
29 shall award a qualified judicial party that prevails in a judicial  
30 review of an agency action and a presiding officer or reviewing officer  
31 shall award a qualified administrative party that prevails in an  
32 adjudicative proceeding challenging an agency action, fees and other  
33 expenses, including reasonable attorneys' fees, unless the court,  
34 presiding officer, or reviewing officer finds that the agency action  
35 was substantially justified or that circumstances make an award unjust.  
36 A qualified party ~~((shall be))~~ is considered to have prevailed if the  
37 qualified party obtained relief on a significant issue that achieves  
38 some benefit that the qualified party sought.

1 (2) The amount awarded a qualified party under subsection (1) of  
2 this section (~~shall~~) may not exceed twenty-five thousand dollars for  
3 the total request for the combined proceedings, administrative hearing,  
4 or administrative review, and may not exceed fifty thousand dollars for  
5 the fees and other expenses incurred in superior court, and fifty  
6 thousand dollars for the fees and other expenses incurred in each court  
7 of appeal, but not to exceed a total award for judicial expenses of  
8 seventy-five thousand dollars. Subsection (1) of this section shall  
9 not apply unless all parties challenging the agency action are  
10 qualified parties. If two or more qualified parties join in an action,  
11 the award in total (~~shall~~) may not exceed twenty-five thousand  
12 dollars in the superior court. The court, presiding officer, or  
13 reviewing officer, in its discretion, may reduce the amount to be  
14 awarded pursuant to subsection (1) of this section, or deny any award,  
15 to the extent that a qualified party during the course of the  
16 proceedings engaged in conduct that unduly or unreasonably protracted  
17 the final resolution of the matter in controversy.

18 (3) The agencies that conduct their own administrative hearings or  
19 administrative reviews under chapter 34.05 RCW, the chief  
20 administrative law judge of the office of administrative hearings, and  
21 the board of industrial insurance appeals are authorized to adopt rules  
22 to implement RCW 4.84.340 through 4.84.360 and sections 18 and 19 of  
23 this act. These rules may include reasonable requirements for notices  
24 of appearances by authorized representatives, requirements for notices  
25 of intent to seek fees under this section, limitations on the  
26 eligibility for fees for nonattorney representatives, and a schedule  
27 for hours, rates, or limitations on amounts of fees and other expenses  
28 presumed reasonable for the type of adjudicative proceeding. In  
29 addition, rules may set a maximum total amount including all fees and  
30 expenses for specific types of adjudicative proceedings.

31 **Sec. 17.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to  
32 read as follows:

33 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350  
34 (~~shall~~) must be paid by the agency over which the party prevails from  
35 operating funds appropriated to the agency within (~~sixty~~) thirty  
36 days. The fees and other expenses must be paid from moneys  
37 appropriated to the agency for administration and support services, and  
38 not from moneys appropriated for program activities or service

1 delivery, if the operating budget or budget notes specifically  
2 designate administrative and support services. Agencies paying fees  
3 and other expenses pursuant to RCW 4.84.340 and 4.84.350 shall report  
4 all payments to the office of financial management within five days of  
5 paying the fees and other expenses. Fees and other expenses awarded by  
6 the court (~~(shall be)~~), presiding officer, or reviewing officer are  
7 subject to (~~(the provisions of)~~) chapter 39.76 RCW and (~~(shall)~~) must  
8 be deemed payable on the date the court, presiding officer, or  
9 reviewing officer announces the award.

10 NEW SECTION. Sec. 18. A new section is added to chapter 4.84 RCW  
11 to read as follows:

12 When an agency has made an offer to participate in an alternative  
13 dispute resolution process, the appellant must participate in good  
14 faith or be precluded from applying for an award of attorneys' fees or  
15 expenses under RCW 4.84.340 through 4.84.360, this section, and section  
16 19 of this act.

17 NEW SECTION. Sec. 19. A new section is added to chapter 4.84 RCW  
18 to read as follows:

19 No fees or other expenses may be awarded against an administrative  
20 tribunal.

## 21 **PART VI**

### 22 **TECHNICAL ASSISTANCE PROGRAMS**

23 NEW SECTION. Sec. 20. A new section is added to chapter 34.05 RCW  
24 to read as follows:

25 (1) Within two hundred days after the effective date of a rule that  
26 imposes additional requirements on businesses, the violation of which  
27 subjects a person to a penalty, assessment, or administrative sanction,  
28 an agency shall make a good faith effort to notify businesses affected  
29 by the rule of the requirements of the rule and how to obtain technical  
30 assistance to comply.

31 (2) For purposes of this section, the agency has made a good faith  
32 effort to notify businesses affected by the rule if:

33 (a) The agency at least notifies businesses in the standard  
34 industrial classifications registered with the department of revenue

1 that are identified in the rule-making file as businesses affected by  
2 the rule; or

3 (b) For rules imposing additional requirements only on persons or  
4 firms licensed, registered, or operating under a permit, the agency  
5 notifies the persons or firms holding the license, registration, or  
6 permit.

7 (3) Inadvertent failure to notify a specific person or business  
8 under this section does not invalidate a rule.

9 **Sec. 21.** RCW 43.05.040 and 1995 c 403 s 605 are each amended to  
10 read as follows:

11 (1) The owner and operator shall be given a reasonable period of  
12 time to correct violations identified during a technical assistance  
13 visit before any civil penalty provided for by law is imposed for those  
14 violations. A regulatory agency may revisit a facility, business, or  
15 other location after a technical assistance visit and a reasonable  
16 period of time has passed to correct violations identified by the  
17 agency in writing and issue civil penalties as provided for by law for  
18 any uncorrected violations.

19 (2) During a visit under subsection (1) of this section, the  
20 regulatory agency may not issue civil penalties:

21 (a) For violations not previously identified in a technical  
22 assistance visit, unless the violations are of the type for which the  
23 agency may issue a citation during a technical assistance visit under  
24 RCW 43.05.050; or

25 (b) If the owner or operator has made a good faith effort to comply  
26 with the agency's statement of what is required for compliance under  
27 RCW 43.05.030(3)(b).

28 (3) During a visit under subsection (1) of this section, if the  
29 regulatory agency identifies violations for which it may not issue  
30 civil penalties under subsection (2) of this section, the agency shall  
31 treat the visit as a technical assistance visit and notify the owner or  
32 operator of the violations under RCW 43.05.030(3)(a).

33 (4) This section does not apply to citations issued by the  
34 department of labor and industries under RCW 43.05.090.

35 **Sec. 22.** RCW 43.05.030 and 1996 c 206 s 2 are each amended to read  
36 as follows:

1 (1) For the purposes of this chapter, a technical assistance visit  
2 is a visit by a regulatory agency to a facility, business, or other  
3 location that:

4 (a) Has been requested or is voluntarily accepted; and

5 (b) Is declared by the regulatory agency at the beginning of the  
6 visit to be a technical assistance visit.

7 (2) A technical assistance visit also includes:

8 (a) A consultative visit pursuant to RCW 49.17.250; and

9 (b) A visit during which the agency identifies violations for which  
10 it may not issue civil penalties under RCW 43.05.040(2).

11 (3) During a technical assistance visit, or within a reasonable  
12 time thereafter, a regulatory agency shall inform the owner or operator  
13 of the facility of any violations of law or agency rules identified by  
14 the agency as follows:

15 (a) A description of the condition that is not in compliance and  
16 the text of the specific section or subsection of the applicable state  
17 or federal law or rule;

18 (b) A statement of what is required to achieve compliance;

19 (c) The date by which the agency requires compliance to be  
20 achieved;

21 (d) Notice of the means to contact any technical assistance  
22 services provided by the agency or others; and

23 (e) Notice of when, where, and to whom a request to extend the time  
24 to achieve compliance for good cause may be filed with the agency.

## 25 PART VII

### 26 LEGISLATIVE REVIEW

27 **Sec. 23.** RCW 34.05.610 and 1998 c 280 s 9 are each amended to read  
28 as follows:

29 (1) There is hereby created a joint administrative rules review  
30 committee which shall be a bipartisan committee consisting of the  
31 lieutenant governor, four senators, and four representatives from the  
32 state legislature. The lieutenant governor shall serve as a nonvoting  
33 committee member unless there is a tie vote among the members voting on  
34 an issue, in which case the lieutenant governor may vote to break the  
35 tie. The senate members of the committee shall be appointed by the  
36 president of the senate, and the house members of the committee shall  
37 be appointed by the speaker of the house. Not more than two members

1 from each house may be from the same political party. The appointing  
2 authorities shall also appoint one alternate member from each caucus of  
3 each house. All appointments to the committee are subject to approval  
4 by the caucuses to which the appointed members belong.

5 (2) Members and alternates shall be appointed as soon as possible  
6 after the legislature convenes in regular session in an odd-numbered  
7 year, and their terms shall extend until their successors are appointed  
8 and qualified at the next regular session of the legislature in an odd-  
9 numbered year or until such persons no longer serve in the legislature,  
10 whichever occurs first. Members and alternates may be reappointed to  
11 the committee.

12 (3) On or about January 1, 1999, the president of the senate shall  
13 appoint the chairperson and the vice chairperson from among the  
14 committee membership. The speaker of the house shall appoint the  
15 chairperson and the vice chairperson in alternating even-numbered years  
16 beginning in the year 2000 from among the committee membership. The  
17 secretary of the senate shall appoint the chairperson and the vice  
18 chairperson in the alternating even-numbered years beginning in the  
19 year 2002 from among the committee membership. Such appointments shall  
20 be made in January of each even-numbered year as soon as possible after  
21 a legislative session convenes.

22 (4) The chairperson of the committee shall cause all meeting  
23 notices and committee documents to be sent to the members and  
24 alternates. A vacancy shall be filled by appointment of a legislator  
25 from the same political party as the original appointment. The  
26 appropriate appointing authority shall make the appointment within  
27 thirty days of the vacancy occurring.

28 **Sec. 24.** RCW 34.05.630 and 1998 c 21 s 1 are each amended to read  
29 as follows:

30 (1) All rules required to be filed pursuant to RCW 34.05.380, and  
31 emergency rules adopted pursuant to RCW 34.05.350, are subject to  
32 selective review by the committee.

33 (2) All agency policy and interpretive statements, guidelines, and  
34 documents that are of general applicability, or their equivalents, are  
35 subject to selective review by the committee to determine whether or  
36 not a statement, guideline, or document that is of general  
37 applicability, or its equivalent, is being used as a rule that has not  
38 been adopted in accordance with all applicable provisions of law.

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

16 (4) The agency shall conduct the hearing within ninety days of  
17 receiving the rules review committee's finding. The agency shall  
18 consider fully all written and oral submissions regarding (a) whether  
19 the rule in question is within the intent of the legislature as  
20 expressed by the statute which the rule implements, (b) whether the  
21 rule was adopted in accordance with all applicable provisions of law,  
22 and (c) whether the agency is using a policy or interpretive statement,  
23 guideline, or document that is of general applicability, or its  
24 equivalent, in place of a rule.

25 **Sec. 25.** RCW 34.05.640 and 1998 c 21 s 2 are each amended to read  
26 as follows:

27 (1) Within seven days of an agency hearing held after notification  
28 of the agency by the rules review committee pursuant to RCW 34.05.620  
29 or 34.05.630, the affected agency shall notify the committee of its  
30 intended action on a proposed or existing rule to which the committee  
31 objected or on a committee finding of the agency's failure to adopt  
32 rules.

33 (2) If the rules review committee finds by a majority vote of its  
34 members: (a) That the proposed or existing rule in question will not  
35 be modified, amended, withdrawn, or repealed by the agency so as to  
36 conform with the intent of the legislature, (b) that an existing rule  
37 was not adopted in accordance with all applicable provisions of law, or  
38 (c) that the agency will not replace the policy or interpretive

1 statement, guideline, or document that is of general applicability, or  
2 its equivalent, with a rule, the rules review committee may(~~(, within~~  
3 ~~thirty days from notification by the agency of its intended action,~~)  
4 file with the code reviser notice of its objections together with a  
5 concise statement of the reasons therefor. Such notice and statement  
6 shall also be provided to the agency by the rules review committee.

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

20 (b) If the rules review committee makes an adverse finding  
21 regarding a policy or interpretive statement, guideline, or document  
22 that is of general applicability, or its equivalent, under subsection  
23 (2)(c) of this section, the committee may, by a majority vote of its  
24 members, advise the governor of its finding.

25 (4) The code reviser shall publish transmittals from the rules  
26 review committee or the governor issued pursuant to subsection (2) or  
27 (3) of this section in the Washington state register and shall publish  
28 in the next supplement and compilation of the Washington Administrative  
29 Code a reference to the committee's objection or recommended suspension  
30 and the governor's action on it and to the issue of the Washington  
31 state register in which the full text thereof appears.

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

37 **Sec. 26.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
38 read as follows:



1 of service under existing programs imposed on any political subdivision  
2 or transferred to or from the state.

3 (4) Subsection (1) of this section does not apply to the costs  
4 incurred for voting devices or machines under RCW 29.04.200.

5 (5) For the purposes of this section:

6 (a) "Agency" means a state board, commission, department,  
7 institution of higher education, or officer, authorized by law to make  
8 rules or conduct adjudicative proceedings, except those in the  
9 legislative or judicial branch; and

10 (b) "Local government" means a political subdivision or unit of  
11 local government of this state including, but not limited to municipal  
12 corporations, quasi-municipal corporations, special purpose districts,  
13 and local service districts.

14 NEW SECTION. Sec. 28. The legislature finds that administrative  
15 rules adopted by state agencies can have a disproportionate impact on  
16 local governments due to the financial burdens of providing services to  
17 its citizens. This disproportionate impact reduces service levels,  
18 forces employee reductions, and threatens the very existence of some  
19 small jurisdictions. The legislature therefore enacts the Local  
20 Government Regulatory Fairness Act with the intent of reducing the  
21 disproportionate impact of state administrative rules on local  
22 governments.

23 NEW SECTION. Sec. 29. For the purposes of this chapter, the  
24 following definitions apply:

25 (1) "Agency" means a state board, commission, department,  
26 institution of higher education, or officer, authorized by law to make  
27 rules or conduct adjudicative proceedings, except those in the  
28 legislative or judicial branch; and

29 (2) "Local government" means a political subdivision or unit of  
30 local government of this state including, but not limited to municipal  
31 corporations, quasi-municipal corporations, special purpose districts,  
32 and local service districts.

33 NEW SECTION. Sec. 30. Proposed rules adopted by state agencies  
34 that have a fiscal impact greater than fifty thousand dollars, as  
35 determined by the local government impact statement, may not be imposed  
36 without full reimbursement according to RCW 43.135.060.

1        NEW SECTION.    **Sec. 31.**    (1) In the adoption of a rule under chapter  
2 34.05 RCW, an agency shall prepare a local government impact statement:  
3 (a) If the proposed rule will impose more than minor costs on local  
4 governments; or (b) if requested to do so by a majority vote of the  
5 joint administrative rules review committee within forty-five days of  
6 receiving the notice of proposed rule making under RCW 34.05.320.

7        An agency shall prepare the local government impact statement, and  
8 file it with the code reviser along with the notice required under RCW  
9 34.05.320. An agency shall file a statement prepared at the request of  
10 the joint administrative rules review committee with the code reviser  
11 upon its completion before the adoption of the rule. An agency shall  
12 provide a copy of the local government impact statement to any person  
13 requesting it.

14        (2) Based upon the extent of disproportionate impact on local  
15 governments identified in the statement prepared under this chapter,  
16 the agency shall, where legal and feasible in meeting the stated  
17 objectives of the statutes upon which the rule is based, reduce the  
18 costs imposed by the rule on local governments. Methods to reduce the  
19 costs on local governments may include:

- 20        (a) Reducing, modifying, or eliminating substantive regulatory  
21 requirements;  
22        (b) Delaying compliance timetables;  
23        (c) Eliminating agency review requirements; or  
24        (d) Any other mitigation techniques.

25        NEW SECTION.    **Sec. 32.**    (1) A local government impact statement  
26 must include a brief description of the reporting, recordkeeping, and  
27 other compliance requirements of the proposed rule, and the kinds of  
28 regulatory changes a local government would need to implement to comply  
29 with such requirements. It must analyze the costs of compliance for  
30 local governments required to comply with the proposed rule, including  
31 costs of labor, planning, implementation, court defense, and  
32 administrative costs. It must consider, based on input received from  
33 local governments affected, whether compliance with the rule will  
34 result in a total cost of fifty thousand dollars or more to any one  
35 jurisdiction.

36        (2) A local government impact statement must also include:

- 37        (a) A statement of the steps taken by the agency to reduce the  
38 costs of the rule on local jurisdictions as required by section 31 of

1 this act, or reasonable justification for not doing so, addressing the  
2 options listed in section 31 of this act;

3 (b) A description of how the agency will involve local governments  
4 in the development of the rule; and

5 (c) A list of local government that will be required to comply with  
6 the rule.

7 (3) To obtain information for purposes of this section, an agency  
8 may survey a representative sample of affected local governments or  
9 their associations, and should, whenever possible, appoint a committee  
10 under RCW 34.05.310(2) to assist in the accurate assessment of the  
11 costs of a proposed rule, and the means to reduce the costs imposed on  
12 local governments.

13 NEW SECTION. **Sec. 33.** Sections 28 through 32 of this act  
14 constitute a new chapter in Title 34 RCW.

15 **PART IX**  
16 **MISCELLANEOUS**

17 NEW SECTION. **Sec. 34.** A new section is added to chapter 43.05 RCW  
18 to read as follows:

19 When issuing a citation or other written finding that a person has  
20 violated a statute, rule, or order, the agency shall include with the  
21 citation or other written finding the text of the specific statute or  
22 statutes granting the agency the authority to regulate the subject  
23 matter of the citation or other written finding.

24 NEW SECTION. **Sec. 35.** Sections 1 through 4 of this act take  
25 effect January 1, 2002.

26 NEW SECTION. **Sec. 36.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

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