

2 **E2SHB 2510** - CONF REPT  
3 By Conference Committee

4 ADOPTED 3/10/94

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

7 "Sec. 1. RCW 34.05.310 and 1993 c 202 s 2 are each amended to read  
8 as follows:

9 (1) To meet the intent of providing greater public access to  
10 administrative rule making and to promote consensus among interested  
11 parties, agencies (~~are encouraged to:~~

12 ~~(1)) shall solicit~~ comments from the public on a subject of  
13 possible rule making before publication of a notice of proposed rule  
14 adoption under RCW 34.05.320. (~~This process can be accomplished by~~  
15 ~~having a notice published in the state register of the subject under~~  
16 ~~active consideration and indicating where, when, and how persons may~~  
17 ~~comment; and)) The agency shall prepare a statement of intent that:~~

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

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

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

21 (d) Describes the process by which the rule will be developed,  
22 including, but not limited to, negotiated rule making, pilot rule  
23 making, or agency study; and

24 (e) Specifies the process by which interested parties can  
25 effectively participate in the formulation of the new rule.

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

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

33 (a) Negotiated rule making which includes:

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

1       ~~((b))~~ (ii) Soliciting participation by persons who are capable,  
2 willing, and appropriately authorized to enter into such negotiations;  
3       ~~((c))~~ (iii) Assuring that participants fully recognize the  
4 consequences of not participating in the process, are committed to  
5 negotiate in good faith, and recognize the alternatives available to  
6 other parties;

7       ~~((d))~~ (iv) Establishing guidelines to encourage consideration of  
8 all pertinent issues, to set reasonable completion deadlines, and to  
9 provide fair and objective settlement of disputes that may arise;

10       ~~((e))~~ (v) Agreeing on a reasonable time period during which the  
11 agency will be bound to the rule resulting from the negotiations  
12 without substantive amendment; and

13       ~~((f))~~ (vi) Providing a mechanism by which one or more parties may  
14 withdraw from the process or the negotiations may be terminated if it  
15 appears that consensus cannot be reached on a draft rule that  
16 accommodates the needs of the agency, interested parties, and the  
17 general public and conforms to the legislative intent of the statute  
18 that the rule is intended to implement; and

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

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

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

30       **Sec. 2.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to  
31 read as follows:

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

36       (2) The agency rule-making file shall contain all of the following:  
37       (a) Copies of all publications in the state register with respect  
38 to the rule or the proceeding upon which the rule is based;

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

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

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

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

14 (f) All petitions for exceptions to, amendment of, or repeal or  
15 suspension of, the rule; (~~and~~)

16 (g) Citations to data, factual information, studies, or reports on  
17 which the agency relies in the adoption of the rule, indicating where  
18 such data, factual information, studies, or reports are available for  
19 review by the public;

20 (h) The written summary and response required by RCW 34.05.325(6);  
21 and

22 (i) Any other material placed in the file by the agency.

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

30 (4) Upon judicial review, the file required by this section  
31 constitutes the official agency rule-making file with respect to that  
32 rule. Unless otherwise required by another provision of law, the  
33 official agency rule-making file need not be the exclusive basis for  
34 agency action on that rule.

35 **Sec. 3.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read  
36 as follows:

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

1 (a) That immediate adoption, amendment, or repeal of a rule is  
2 necessary for the preservation of the public health, safety, or general  
3 welfare, and that observing the time requirements of notice and  
4 opportunity to comment upon adoption of a permanent rule would be  
5 contrary to the public interest; or

6 (b) That state or federal law or federal rule or a federal deadline  
7 for state receipt of federal funds requires immediate adoption of a  
8 rule,

9 the agency may dispense with those requirements and adopt, amend, or  
10 repeal the rule on an emergency basis. The agency's finding and a  
11 concise statement of the reasons for its finding shall be incorporated  
12 in the order for adoption of the emergency rule or amendment filed with  
13 the office of the code reviser under RCW 34.05.380 and with the rules  
14 review committee.

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

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

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

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

6       (1) In addition to other requirements imposed by law, an agency may  
7 adopt a rule only if it determines that:

8       (a) The rule is needed;

9       (b) The likely benefits of the rule justify its likely costs;

10       (c) There are no reasonable alternatives to the rule that were  
11 presented during the public comment period that would be as effective  
12 but less burdensome on those required to comply;

13       (d) Any fee imposed will generate no more revenue than is necessary  
14 to achieve the objectives of the statute authorizing the fee;

15       (e) The rule does not conflict with any other provision of federal  
16 or state law;

17       (f) Any overlap or duplication of the rule with any other provision  
18 of federal or state law is necessary to achieve the objectives of the  
19 statute upon which the rule is based or expressly authorized by  
20 statute;

21       (g) Any difference between the rule and any provision of federal  
22 law regulating the same activity or subject matter is necessary to  
23 achieve the objectives of the statute upon which the rule is based or  
24 expressly authorized by statute; and

25       (h) Any difference between the rule's application to public and  
26 private entities is necessary to achieve the objectives of the statute  
27 upon which the rule is based or expressly authorized by statute.

28       (2) The agency shall prepare a written description of its  
29 determinations under subsection (1) of this section. This description  
30 shall be part of the official rule-making file for the rule.

31       (3) This section applies only to a rule the violation of which  
32 subjects a person to a penalty or administrative sanction; that  
33 establishes, alters, or revokes a qualification or standard for the  
34 issuance, suspension, or revocation of a license to pursue a commercial  
35 activity, trade, or profession; or that establishes, alters, or revokes  
36 a mandatory standard for a product or material that must be met before  
37 distribution or sale.

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

3        (1) Within a reasonable period of time after adopting rules covered  
4 by section 4 of this act, an agency shall have a rule implementation  
5 plan for rules filed under each adopting order.    The plan shall  
6 describe how the agency intends to:    (a) Inform and educate affected  
7 persons about the rule; (b) promote voluntary compliance; and (c)  
8 evaluate whether the rule achieves the purpose for which it was  
9 adopted.

10        (2) After the adoption of a rule covered by section 4 of this act  
11 regulating the same activity or subject matter as another provision of  
12 federal or state law, an agency shall do all of the following:

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

16        (b) Coordinate implementation and enforcement of the rule with the  
17 other federal and state entities regulating the same activity or  
18 subject matter by making every effort to do one or more of the  
19 following: (i) Defer to the other entity; (ii) designate a lead agency;  
20 or (iii) enter into an agreement with the other entities specifying how  
21 the agency and entities will coordinate implementation and enforcement.  
22 If the agency is unable to do this, the agency shall report to the  
23 legislature pursuant to (c) of this subsection;

24        (c) Report to the joint administrative rules review committee: (i)  
25 The existence of any overlap or duplication of other federal or state  
26 laws, any differences from federal law, and any known overlap,  
27 duplication, or conflict with local laws; and (ii) legislation that may  
28 be necessary to eliminate or mitigate any adverse effects of such  
29 overlap, duplication, or difference.

30        **Sec. 6.**    RCW 34.05.330 and 1988 c 288 s 305 are each amended to  
31 read as follows:

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

1       (2) If any department listed in RCW 43.17.010 denies a petition to  
2 repeal or amend a rule submitted under subsection (1) of this section,  
3 the petitioner, within thirty days of the denial, may appeal the denial  
4 to the governor. The petitioner may file notice of the appeal with the  
5 code reviser for publication in the Washington State Register. Within  
6 sixty days after receiving the appeal, the governor shall either reject  
7 the appeal in writing, stating his or her reasons for the rejection, or  
8 order the agency to initiate rule-making proceedings in accordance with  
9 this chapter.

10       (3) In petitioning or appealing under this section, the person  
11 should address, among other factors:

12       (a) Whether the agency complied with sections 4 and 5 of this act;

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

16       (c) Whether the rule conflicts with, overlaps, or duplicates any  
17 other provision of federal, state, or local law and, if so, whether the  
18 agency has taken steps to mitigate any adverse effects of the conflict,  
19 overlap, or duplication;

20       (d) The extent to which technology, social or economic conditions,  
21 or other relevant factors have changed since the rule was adopted, and  
22 whether, given those changes, the rule continues to be necessary and  
23 appropriate;

24       (e) Whether the statute that the rule implements has been amended  
25 or repealed by the legislature, or ruled invalid by a court.

26       (4) The governor's office shall provide a copy of the governor's  
27 ruling under subsection (2) of this section to anyone upon request.

28       **Sec. 7.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read  
29 as follows:

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

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

1 (3) If the agency possesses equipment capable of receiving  
2 telefacsimile transmissions or recorded telephonic communications, the  
3 agency may provide in its notice of hearing filed under RCW 34.05.320  
4 that interested parties may comment on proposed rules by these means.  
5 If the agency chooses to receive comments by these means, the notice of  
6 hearing shall provide instructions for making such comments, including,  
7 but not limited to, appropriate telephone numbers to be used; the date  
8 and time by which comments must be received; required methods to verify  
9 the receipt and authenticity of the comments; and any limitations on  
10 the number of pages for telefacsimile transmission comments and on the  
11 minutes of tape recorded comments. The agency shall accept comments  
12 received by these means for inclusion in the official record if the  
13 comments are made in accordance with the agency's instructions.

14 (4) The agency head, a member of the agency head, or a presiding  
15 officer designated by the agency head shall preside at the rule-making  
16 hearing. Rule-making hearings shall be open to the public. The agency  
17 shall cause a record to be made of the hearing by stenographic,  
18 mechanical, or electronic means. Unless the agency head presides or is  
19 present at substantially all the hearings, the presiding official shall  
20 prepare a memorandum for consideration by the agency head, summarizing  
21 the contents of the presentations made at the rule-making hearing. The  
22 summarizing memorandum is a public document and shall be made available  
23 to any person in accordance with chapter 42.17 RCW.

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

29 (6) Before the adoption of a final rule, an agency shall prepare a  
30 written summary of all comments received regarding the proposed rule,  
31 and a substantive response to the comments by category or subject  
32 matter, indicating how the final rule reflects agency consideration of  
33 the comments, or why it fails to do so. The agency shall provide the  
34 written summary and response to any person upon request or from whom  
35 the agency received comment.

36 **Sec. 8.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to  
37 read as follows:



1       (~~(1)~~) At the time it files an adopted rule with the code reviser  
2 or within thirty days thereafter, an agency shall place into the rule-  
3 making file maintained under RCW 34.05.370 a concise explanatory  
4 statement about the rule, identifying (~~(a)~~) (1) the agency's reasons  
5 for adopting the rule, and (~~(b)~~) (2) a description of any difference  
6 between the text of the proposed rule as published in the register and  
7 the text of the rule as adopted, other than editing changes, stating  
8 the reasons for change.

9       (~~(2) Upon the request of any interested person within thirty days  
10 after adoption of a rule, the agency shall issue a concise statement of  
11 the principal reasons for overruling the considerations urged against  
12 its adoption.~~)

13       NEW SECTION.   **Sec. 9.** A new section is added to chapter 19.85 RCW  
14 to read as follows:

15       The legislature finds that administrative rules adopted by state  
16 agencies can have a disproportionate impact on the state's small  
17 businesses because of the size of those businesses. This  
18 disproportionate impact reduces competition, innovation, employment,  
19 and new employment opportunities, and threatens the very existence of  
20 some small businesses. The legislature therefore enacts the regulatory  
21 fairness act with the intent of reducing the disproportionate impact of  
22 state administrative rules on small business.

23       **Sec. 10.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to  
24 read as follows:

25       Unless the context clearly indicates otherwise, the definitions in  
26 this section apply through this chapter.

27       (1) "Small business" means any business entity, including a sole  
28 proprietorship, corporation, partnership, or other legal entity, that  
29 is owned and operated independently from all other businesses, that has  
30 the purpose of making a profit, and that has fifty or fewer employees.

31       (2) "Small business economic impact statement" means a statement  
32 meeting the requirements of RCW 19.85.040 prepared by a state agency  
33 pursuant to RCW 19.85.030.

34       (3) "Industry" means all of the businesses in this state in any one  
35 (~~(three-digit)~~) four-digit standard industrial classification as  
36 published by the United States department of commerce. However, if the  
37 use of a four-digit standard industrial classification would result in

1 the release of data that would violate state confidentiality laws,  
2 "industry" means all businesses in a three-digit standard industrial  
3 classification.

4 **Sec. 11.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are  
5 each reenacted and amended to read as follows:

6 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will  
7 ((have an economic impact)) impose more than minor costs on more than  
8 twenty percent of all industries, or more than ten percent of any one  
9 industry, the adopting agency:

10 ((1)) (a) Shall reduce the economic impact of the rule on small  
11 business by doing one or more of the following when it is legal and  
12 feasible in meeting the stated objective of the statutes which are the  
13 basis of the proposed rule:

14 ((a)) (i) Establish differing compliance or reporting  
15 requirements or timetables for small businesses;

16 ((b)) (ii) Clarify, consolidate, or simplify the compliance and  
17 reporting requirements under the rule for small businesses;

18 ((c)) (iii) Establish performance rather than design standards;

19 ((d)) (iv) Exempt small businesses from any or all requirements  
20 of the rule;

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

22 (vi) Other mitigation techniques;

23 ((2)) (b) Before filing notice of a proposed rule, shall prepare  
24 a small business economic impact statement in accordance with RCW  
25 19.85.040 and file ((such)) notice of how the person can obtain the  
26 statement with the code reviser ((along with)) as part of the notice  
27 required under RCW 34.05.320;

28 (2) If requested to do so by a majority vote of the joint  
29 administrative rules review committee within thirty days after notice  
30 of the proposed rule is published in the state register, an agency  
31 shall prepare a small business economic impact statement on the  
32 proposed rule before adoption of the rule. Upon completion, an agency  
33 shall provide a copy of the small business economic impact statement to  
34 any person requesting it.

35 (3) An agency may request assistance from the business assistance  
36 center in the preparation of the small business economic impact  
37 statement.

1       (4) The business assistance center shall develop guidelines to  
2 assist agencies in determining whether a proposed rule will impose more  
3 than minor costs on businesses in an industry and therefore require  
4 preparation of a small business economic impact statement. The  
5 business assistance center may review an agency determination that a  
6 proposed rule will not impose such costs, and shall advise the joint  
7 administrative rules review committee on disputes involving agency  
8 determinations under this section.

9       **Sec. 12.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are  
10 each reenacted and amended to read as follows:

11       (1) A small business economic impact statement must include a brief  
12 description of the reporting, recordkeeping, and other compliance  
13 requirements of the proposed rule, and the kinds of professional  
14 services that a small business is likely to need in order to comply  
15 with such requirements. ((A small business economic impact statement))  
16 It shall analyze((, based on existing data,)) the costs of compliance  
17 for businesses required to comply with the ((provisions of a)) proposed  
18 rule adopted pursuant to RCW 34.05.320, including costs of equipment,  
19 supplies, labor, and increased administrative costs((, and)). It shall  
20 consider, based on input received, whether compliance with the rule  
21 will cause businesses to lose sales or revenue. To determine whether  
22 the proposed rule will have a disproportionate impact on small  
23 businesses, the impact statement must compare ((to the greatest extent  
24 possible)) the cost of compliance for small business with the cost of  
25 compliance for the ten percent of ((firms which)) businesses that are  
26 the largest businesses required to comply with the proposed ((new or  
27 amendatory)) rules((. The small business economic impact statement  
28 shall use)) using one or more of the following as a basis for comparing  
29 costs:

- 30       ((+1)) (a) Cost per employee;  
31       ((+2)) (b) Cost per hour of labor; or  
32       ((+3)) (c) Cost per one hundred dollars of sales((+)  
33       (4) Any combination of (1), (2), or (3)).

34       (2) A small business economic impact statement must also include:  
35       (a) A statement of the steps taken by the agency to reduce the  
36 costs of the rule on small businesses as required by RCW 19.85.030(1),  
37 or reasonable justification for not doing so, addressing the options  
38 listed in RCW 19.85.030(1);

1       (b) A description of how the agency will involve small businesses  
2 in the development of the rule; and

3       (c) A list of industries that will be required to comply with the  
4 rule. However, this subsection (2)(c) shall not be construed to  
5 preclude application of the rule to any business or industry to which  
6 it would otherwise apply.

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

13       NEW SECTION. Sec. 13. A new section is added to chapter 19.85 RCW  
14 to read as follows:

15       Unless so requested by a majority vote of the joint administrative  
16 rules review committee under RCW 19.85.030, an agency is not required  
17 to comply with this chapter when adopting any rule solely for the  
18 purpose of conformity or compliance, or both, with federal law. In  
19 lieu of the statement required under RCW 19.85.030, the agency shall  
20 file a statement citing, with specificity, the federal law with which  
21 the rule is being adopted to conform or comply, and describing the  
22 consequences to the state if the rule is not adopted.

23       **Sec. 14.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read  
24 as follows:

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

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

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

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

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

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

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

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

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

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

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

18 (k) A statement indicating how a person can obtain a copy of the  
19 small business economic impact statement~~((, if applicable, and a~~  
20 ~~statement of steps taken to minimize the economic impact in accordance~~  
21 ~~with RCW 19.85.030))~~ prepared under chapter 19.85 RCW, or an  
22 explanation for why the agency did not prepare the statement.

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

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

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

36 NEW SECTION. Sec. 15. A new section is added to chapter 43.31 RCW  
37 to read as follows:

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

4 (1) Develop agency guidelines for the preparation of a small  
5 business economic impact statement and compliance with chapter 19.85  
6 RCW;

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

9 (3) Advise the joint administrative rules review committee on  
10 whether an agency reasonably assessed the costs of a proposed rule and  
11 reduced the costs for small business as required by chapter 19.85 RCW;  
12 and

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

22 NEW SECTION. **Sec. 16.** The following acts or parts of acts are  
23 each repealed:

24 (1) RCW 19.85.010 and 1982 c 6 s 1;

25 (2) RCW 19.85.060 and 1989 c 374 s 5; and

26 (3) RCW 19.85.080 and 1992 c 197 s 2.

27 **Sec. 17.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to  
28 read as follows:

29 Whenever a majority of the members of the rules review committee  
30 determines that a proposed rule is not within the intent of the  
31 legislature as expressed in the statute which the rule implements, or  
32 that an agency may not be adopting a proposed rule in accordance with  
33 all applicable provisions of law, including section 4 of this act and  
34 chapter 19.85 RCW, the committee shall give the affected agency written  
35 notice of its decision. The notice shall be given at least seven days  
36 prior to any hearing scheduled for consideration of or adoption of the  
37 proposed rule pursuant to RCW 34.05.320. The notice shall include a

1 statement of the review committee's findings and the reasons therefor.  
2 When the agency holds a hearing on the proposed rule, the agency shall  
3 consider the review committee's decision.

4 **Sec. 18.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read  
5 as follows:

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

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

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

32 (4) The agency shall consider fully all written and oral  
33 submissions regarding (a) whether the rule in question is within the  
34 intent of the legislature as expressed by the statute which the rule  
35 implements, (b) whether the rule was adopted in accordance with all  
36 applicable provisions of law, including section 4 of this act if the  
37 rule was adopted after the effective date of section 4 of this act and  
38 chapter 19.85 RCW, (c) whether the agency is using a policy statement,

1 guideline, or issuance in place of a rule, or (d) whether the policy  
2 statement, guideline, or issuance is within the legislative intent.

3 **Sec. 19.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read  
4 as follows:

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

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

30 (3) If the rules review committee makes an adverse finding under  
31 subsection (2) of this section, the committee may, by a (~~two-thirds~~)  
32 majority vote of its members, recommend suspension of an existing rule.  
33 Within seven days of such vote the committee shall transmit to the  
34 appropriate standing committees of the legislature, the governor, the  
35 code reviser, and the agency written notice of its objection and  
36 recommended suspension and the concise reasons therefor. Within thirty  
37 days of receipt of the notice, the governor shall transmit to the  
38 committee, the code reviser, and the agency written approval or



1 disapproval of the recommended suspension. If the suspension is  
2 approved by the governor, it is effective from the date of that  
3 approval and continues until ninety days after the expiration of the  
4 next regular legislative session.

5 (4) If the governor disapproves the recommendation of the rules  
6 review committee to suspend the rule, the transmittal of such decision,  
7 along with the findings of the rules review committee, shall be treated  
8 by the agency as a petition by the rules review committee to repeal the  
9 rule under RCW 34.05.330.

10 (5) The code reviser shall publish transmittals from the rules  
11 review committee or the governor issued pursuant to subsection (1),  
12 (2), or (3) of this section in the Washington state register and shall  
13 publish in the next supplement and compilation of the Washington  
14 Administrative Code a reference to the committee's objection or  
15 recommended suspension and the governor's action on it and to the issue  
16 of the Washington state register in which the full text thereof  
17 appears.

18 ~~((+5))~~ (6) The reference shall be removed from a rule published in  
19 the Washington Administrative Code if a subsequent adjudicatory  
20 proceeding determines that the rule is within the intent of the  
21 legislature or was adopted in accordance with all applicable laws,  
22 whichever was the objection of the rules review committee.

23 **Sec. 20.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
24 read as follows:

25 (1) It is the express policy of the legislature that establishment  
26 of procedures for review of administrative rules by the legislature and  
27 the notice of objection required by RCW 34.05.630(2) and 34.05.640(2)  
28 in no way serves to establish a presumption as to the legality or  
29 constitutionality of a rule in any subsequent judicial proceedings  
30 interpreting such rules.

31 (2) Notwithstanding subsection (1) of this section, if the joint  
32 administrative rules review committee, by a two-thirds vote of its  
33 members, recommends to the governor that an existing rule be suspended  
34 because it does not conform with the intent of the legislature, the  
35 recommendation shall establish a rebuttable presumption in any  
36 proceeding challenging the validity of the rule that the rule is  
37 invalid. The burden of demonstrating the rule's validity is then on  
38 the adopting agency.

1        NEW SECTION.    **Sec. 21.**    The following acts or parts of acts are  
2 each repealed:

- 3            (1) RCW 34.05.670 and 1992 c 197 s 3; and  
4            (2) RCW 34.05.680 and 1992 c 197 s 4.

5        NEW SECTION.    **Sec. 22.**    The department of community, trade, and  
6 economic development shall develop a standardized format for reporting  
7 information that is commonly required from the public by state, local,  
8 and where appropriate, federal government agencies for permits,  
9 licenses, approvals, and services. In the development of the format,  
10 the department shall work in conjunction with representatives from  
11 state, local, and where appropriate, federal government agencies. In  
12 developing the standardized format, the department shall also consult  
13 with representatives of both small and large businesses in the state.

14            The department shall submit the standardized format together with  
15 recommendations for implementation to the legislature by December 31,  
16 1994.

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

19            (1) This section applies only to the department of revenue, the  
20 employment security department, the department of ecology, the  
21 department of labor and industries, the department of health, the  
22 department of licensing, and the department of fish and wildlife for  
23 rules other than those that deal only with seasons, catch or bag  
24 limits, gear types, or geographical areas for fishing or shellfish  
25 removal.

26            (2) If a business entity has written to an agency listed in  
27 subsection (1) of this section requesting technical assistance to  
28 comply with specific types of the agency's statutes or rules, the  
29 agency may immediately impose a penalty otherwise provided for by law  
30 for a violation of a statute or administrative rule only if the  
31 business entity on which the penalty will be imposed has: (a)  
32 Previously violated the same statute or rule; or (b) knowingly violated  
33 the statute or rule. Where a penalty is otherwise provided, but may  
34 not be imposed under this subsection, the agency shall issue a  
35 statement of deficiency.

36            (3) A statement of deficiency shall specify: (a) The particular  
37 rule violated; (b) the steps the entity must take to comply with the

1 rule; (c) any agency personnel designated by the agency to provide  
2 technical assistance regarding compliance with the rule; and (d) a date  
3 by which the entity is required to comply with the rule. The date  
4 specified shall provide a reasonable period of time for the entity to  
5 comply with the rule, considering the size of the entity, its available  
6 resources, and the threat posed by the violation. If the entity fails  
7 to comply with the rule by the date specified, it shall be subject to  
8 the penalty otherwise provided in law.

9 (4) Subsection (2) of this section shall not apply to any violation  
10 that places a person in danger of death or bodily harm, is causing or  
11 is likely to cause more than minor environmental harm, or has caused or  
12 is likely to cause physical damage to the property of others in an  
13 amount exceeding one thousand dollars. With regard to a statute or  
14 rule requiring the payment of a tax, subsection (2) of this section  
15 shall not apply if the amount of taxes actually owed by the business  
16 entity exceeds the amount paid by more than one thousand dollars and  
17 shall not be construed to relieve anyone from the obligation to pay  
18 interest on taxes owed.

19 (5) The state, the agency, and officers or employees of the state  
20 shall not be liable for damages to any person to the extent that  
21 liability is asserted to arise from the technical assistance provided  
22 under this section, or if liability is asserted to arise from the  
23 failure of the agency to supply technical assistance.

24 (6) An agency need not comply with this section if compliance may  
25 be in conflict with a requirement of federal law for obtaining or  
26 maintaining state authority to administer a federally delegated  
27 program; however, the agency shall submit a written petition to the  
28 appropriate federal agency for authorization to comply with this  
29 section for all inspections while obtaining or maintaining the state's  
30 federal delegation and shall comply with this section to the extent  
31 authorized by the appropriate federal agency.

32 **Sec. 24.** RCW 34.05.220 and 1989 c 175 s 4 are each amended to read  
33 as follows:

34 (1) In addition to other rule-making requirements imposed by law:

35 (a) Each agency may adopt rules governing the formal and informal  
36 procedures prescribed or authorized by this chapter and rules of  
37 practice before the agency, together with forms and instructions. If  
38 an agency has not adopted procedural rules under this section, the

1 model rules adopted by the chief administrative law judge under RCW  
2 34.05.250 govern procedures before the agency.

3 (b) To assist interested persons dealing with it, each agency shall  
4 adopt as a rule a description of its organization, stating the general  
5 course and method of its operations and the methods whereby the public  
6 may obtain information and make submissions or requests. No person may  
7 be required to comply with agency procedure not adopted as a rule as  
8 herein required.

9 (2) To the extent not prohibited by federal law or regulation, nor  
10 prohibited for reasons of confidentiality by state law, each agency  
11 shall keep on file for public inspection all final orders, decisions,  
12 and opinions in adjudicative proceedings, interpretive statements,  
13 policy statements, and any digest or index to those orders, decisions,  
14 opinions, or statements prepared by or for the agency.

15 (3) No agency order, decision, or opinion is valid or effective  
16 against any person, nor may it be invoked by the agency for any  
17 purpose, unless it is available for public inspection. This subsection  
18 is not applicable in favor of any person who has actual knowledge of  
19 the order, decision, or opinion. The agency has the burden of proving  
20 that knowledge, but may meet that burden by proving that the person has  
21 been properly served with a copy of the order.

22 (4) Each agency that is authorized by law to exercise discretion in  
23 deciding individual cases is encouraged to formalize the general  
24 principles that may evolve from these decisions by adopting the  
25 principles as rules that the agency will follow until they are amended  
26 or repealed.

27 (5) To the extent practicable, any rule proposed or adopted by an  
28 agency should be clearly and simply stated, so that it can be  
29 understood by those required to comply.

30 **Sec. 25.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to  
31 read as follows:

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

36 (1) A petitioner for judicial review of a rule need not have  
37 participated in the rule-making proceeding upon which that rule is

1 based, (~~or~~) have petitioned for its amendment or repeal, or have  
2 appealed a petition for amendment or repeal to the governor;

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

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

8 (a) The remedies would be patently inadequate;

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

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

13 **Sec. 26.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended  
14 to read as follows:

15 (1) All requests for review to a growth (~~planning~~) management  
16 hearings board shall be initiated by filing a petition that includes a  
17 detailed statement of issues presented for resolution by the board.

18 (2) All petitions relating to whether or not an adopted  
19 comprehensive plan, development regulation, or permanent amendment  
20 thereto, is in compliance with the goals and requirements of this  
21 chapter or chapter 43.21C RCW must be filed within sixty days after  
22 publication by the legislative bodies of the county or city. The date  
23 of publication for a city shall be the date the city publishes the  
24 ordinance, or summary of the ordinance, adopting the comprehensive plan  
25 or development regulations, or amendment thereto, as is required to be  
26 published. Promptly after adoption, a county shall publish a notice  
27 that it has adopted the comprehensive plan or development regulations,  
28 or amendment thereto. The date of publication for a county shall be  
29 the date the county publishes the notice that it has adopted the  
30 comprehensive plan or development regulations, or amendment thereto.

31 (3) Unless the board dismisses the petition as frivolous or finds  
32 that the person filing the petition lacks standing, the board shall,  
33 within ten days of receipt of the petition, set a time for hearing the  
34 matter.

35 (4) The board shall base its decision on the record developed by  
36 the city, county, or the state and supplemented with additional  
37 evidence if the board determines that such additional evidence would be

1 necessary or of substantial assistance to the board in reaching its  
2 decision.

3 (5) The board, shall consolidate, when appropriate, all petitions  
4 involving the review of the same comprehensive plan or the same  
5 development regulation or regulations.

6 **Sec. 27.** RCW 36.70A.110 and 1993 sp.s. c 6 s 2 are each amended to  
7 read as follows:

8 (1) Each county that is required or chooses to plan under RCW  
9 36.70A.040 shall designate an urban growth area or areas within which  
10 urban growth shall be encouraged and outside of which growth can occur  
11 only if it is not urban in nature. Each city that is located in such  
12 a county shall be included within an urban growth area. An urban  
13 growth area may include more than a single city. An urban growth area  
14 may include territory that is located outside of a city only if such  
15 territory already is characterized by urban growth or is adjacent to  
16 territory already characterized by urban growth.

17 (2) Based upon the population growth management planning population  
18 projection made for the county by the office of financial management,  
19 the urban growth areas in the county shall include areas and densities  
20 sufficient to permit the urban growth that is projected to occur in the  
21 county for the succeeding twenty-year period. Each urban growth area  
22 shall permit urban densities and shall include greenbelt and open space  
23 areas. Within one year of July 1, 1990, each county that as of June 1,  
24 1991, was required or chose to plan under RCW 36.70A.040, shall begin  
25 consulting with each city located within its boundaries and each city  
26 shall propose the location of an urban growth area. Within sixty days  
27 of the date the county legislative authority of a county adopts its  
28 resolution of intention or of certification by the office of financial  
29 management, all other counties that are required or choose to plan  
30 under RCW 36.70A.040 shall begin this consultation with each city  
31 located within its boundaries. The county shall attempt to reach  
32 agreement with each city on the location of an urban growth area within  
33 which the city is located. If such an agreement is not reached with  
34 each city located within the urban growth area, the county shall  
35 justify in writing why it so designated the area an urban growth area.  
36 A city may object formally with the department over the designation of  
37 the urban growth area within which it is located. Where appropriate,

1 the department shall attempt to resolve the conflicts, including the  
2 use of mediation services.

3 (3) Urban growth should be located first in areas already  
4 characterized by urban growth that have existing public facility and  
5 service capacities to serve such development, and second in areas  
6 already characterized by urban growth that will be served by a  
7 combination of both existing public facilities and services and any  
8 additional needed public facilities and services that are provided by  
9 either public or private sources. Further, it is appropriate that  
10 urban government services be provided by cities, and urban government  
11 services should not be provided in rural areas.

12 (4) On or before October 1, 1993, each county that was initially  
13 required to plan under RCW 36.70A.040(1) shall adopt development  
14 regulations designating interim urban growth areas under this chapter.  
15 Within three years and three months of the date the county legislative  
16 authority of a county adopts its resolution of intention or of  
17 certification by the office of financial management, all other counties  
18 that are required or choose to plan under RCW 36.70A.040 shall adopt  
19 development regulations designating interim urban growth areas under  
20 this chapter. Adoption of the interim urban growth areas may only  
21 occur after public notice; public hearing; and compliance with the  
22 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.  
23 Such action may be appealed to the appropriate growth ((planning))  
24 management hearings board under RCW 36.70A.280. Final urban growth  
25 areas shall be adopted at the time of comprehensive plan adoption under  
26 this chapter.

27 (5) Each county shall include designations of urban growth areas in  
28 its comprehensive plan.

29 **Sec. 28.** RCW 36.70A.210 and 1993 sp.s. c 6 s 4 are each amended to  
30 read as follows:

31 (1) The legislature recognizes that counties are regional  
32 governments within their boundaries, and cities are primary providers  
33 of urban governmental services within urban growth areas. For the  
34 purposes of this section, a "county-wide planning policy" is a written  
35 policy statement or statements used solely for establishing a county-  
36 wide framework from which county and city comprehensive plans are  
37 developed and adopted pursuant to this chapter. This framework shall  
38 ensure that city and county comprehensive plans are consistent as

1 required in RCW 36.70A.100. Nothing in this section shall be construed  
2 to alter the land-use powers of cities.

3 (2) The legislative authority of a county that plans under RCW  
4 36.70A.040 shall adopt a county-wide planning policy in cooperation  
5 with the cities located in whole or in part within the county as  
6 follows:

7 (a) No later than sixty calendar days from July 16, 1991, the  
8 legislative authority of each county that as of June 1, 1991, was  
9 required or chose to plan under RCW 36.70A.040 shall convene a meeting  
10 with representatives of each city located within the county for the  
11 purpose of establishing a collaborative process that will provide a  
12 framework for the adoption of a county-wide planning policy. In other  
13 counties that are required or choose to plan under RCW 36.70A.040, this  
14 meeting shall be convened no later than sixty days after the date the  
15 county adopts its resolution of intention or was certified by the  
16 office of financial management.

17 (b) The process and framework for adoption of a county-wide  
18 planning policy specified in (a) of this subsection shall determine the  
19 manner in which the county and the cities agree to all procedures and  
20 provisions including but not limited to desired planning policies,  
21 deadlines, ratification of final agreements and demonstration thereof,  
22 and financing, if any, of all activities associated therewith.

23 (c) If a county fails for any reason to convene a meeting with  
24 representatives of cities as required in (a) of this subsection, the  
25 governor may immediately impose any appropriate sanction or sanctions  
26 on the county from those specified under RCW 36.70A.340.

27 (d) If there is no agreement by October 1, 1991, in a county that  
28 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,  
29 or if there is no agreement within one hundred twenty days of the date  
30 the county adopted its resolution of intention or was certified by the  
31 office of financial management in any other county that is required or  
32 chooses to plan under RCW 36.70A.040, the governor shall first inquire  
33 of the jurisdictions as to the reason or reasons for failure to reach  
34 an agreement. If the governor deems it appropriate, the governor may  
35 immediately request the assistance of the department of community,  
36 trade, and economic development to mediate any disputes that preclude  
37 agreement. If mediation is unsuccessful in resolving all disputes that  
38 will lead to agreement, the governor may impose appropriate sanctions  
39 from those specified under RCW 36.70A.340 on the county, city, or



1 cities for failure to reach an agreement as provided in this section.  
2 The governor shall specify the reason or reasons for the imposition of  
3 any sanction.

4 (e) No later than July 1, 1992, the legislative authority of each  
5 county that was required or chose to plan under RCW 36.70A.040 as of  
6 June 1, 1991, or no later than fourteen months after the date the  
7 county adopted its resolution of intention or was certified by the  
8 office of financial management the county legislative authority of any  
9 other county that is required or chooses to plan under RCW 36.70A.040,  
10 shall adopt a county-wide planning policy according to the process  
11 provided under this section and that is consistent with the agreement  
12 pursuant to (b) of this subsection, and after holding a public hearing  
13 or hearings on the proposed county-wide planning policy.

14 (3) A county-wide planning policy shall at a minimum, address the  
15 following:

16 (a) Policies to implement RCW 36.70A.110;

17 (b) Policies for promotion of contiguous and orderly development  
18 and provision of urban services to such development;

19 (c) Policies for siting public capital facilities of a county-wide  
20 or state-wide nature;

21 (d) Policies for county-wide transportation facilities and  
22 strategies;

23 (e) Policies that consider the need for affordable housing, such as  
24 housing for all economic segments of the population and parameters for  
25 its distribution;

26 (f) Policies for joint county and city planning within urban growth  
27 areas;

28 (g) Policies for county-wide economic development and employment;  
29 and

30 (h) An analysis of the fiscal impact.

31 (4) Federal agencies and Indian tribes may participate in and  
32 cooperate with the county-wide planning policy adoption process.  
33 Adopted county-wide planning policies shall be adhered to by state  
34 agencies.

35 (5) Failure to adopt a county-wide planning policy that meets the  
36 requirements of this section may result in the imposition of a sanction  
37 or sanctions on a county or city within the county, as specified in RCW  
38 36.70A.340. In imposing a sanction or sanctions, the governor shall  
39 specify the reasons for failure to adopt a county-wide planning policy

1 in order that any imposed sanction or sanctions are fairly and  
2 equitably related to the failure to adopt a county-wide planning  
3 policy.

4 (6) Cities and the governor may appeal an adopted county-wide  
5 planning policy to the growth ((~~planning~~)) management hearings board  
6 within sixty days of the adoption of the county-wide planning policy.

7 (7) Multicounty planning policies shall be adopted by two or more  
8 counties, each with a population of four hundred fifty thousand or  
9 more, with contiguous urban areas and may be adopted by other counties,  
10 according to the process established under this section or other  
11 processes agreed to among the counties and cities within the affected  
12 counties throughout the multicounty region.

13 **Sec. 29.** RCW 36.70A.250 and 1991 sp.s. c 32 s 5 are each amended  
14 to read as follows:

15 (1) There are hereby created three growth ((~~planning~~)) management  
16 hearings boards for the state of Washington. The boards shall be  
17 established as follows:

18 (a) An Eastern Washington board with jurisdictional boundaries  
19 including all counties that are required to or choose to plan under RCW  
20 36.70A.040 and are located east of the crest of the Cascade mountains;

21 (b) A Central Puget Sound board with jurisdictional boundaries  
22 including King, Pierce, Snohomish, and Kitsap counties; and

23 (c) A Western Washington board with jurisdictional boundaries  
24 including all counties that are required or choose to plan under RCW  
25 36.70A.040 and are located west of the crest of the Cascade mountains  
26 and are not included in the Central Puget Sound board jurisdictional  
27 boundaries. Skamania county, should it be required or choose to plan  
28 under RCW 36.70A.040, may elect to be included within the  
29 jurisdictional boundaries of either the Western or Eastern board.

30 (2) Each board shall only hear matters pertaining to the cities and  
31 counties located within its jurisdictional boundaries.

32 **Sec. 30.** RCW 36.70A.260 and 1991 sp.s. c 32 s 6 are each amended  
33 to read as follows:

34 (1) Each growth ((~~planning~~)) management hearings board shall  
35 consist of three members qualified by experience or training in matters  
36 pertaining to land use planning and residing within the jurisdictional  
37 boundaries of the applicable board. At least one member of each board

1 must be admitted to practice law in this state and at least one member  
2 must have been a city or county elected official. Each board shall be  
3 appointed by the governor and not more than two members at the time of  
4 appointment or during their term shall be members of the same political  
5 party. No more than two members at the time of appointment or during  
6 their term shall reside in the same county.

7 (2) Each member of a board shall be appointed for a term of six  
8 years. A vacancy shall be filled by appointment by the governor for  
9 the unexpired portion of the term in which the vacancy occurs. The  
10 terms of the first three members of a board shall be staggered so that  
11 one member is appointed to serve until July 1, 1994, one member until  
12 July 1, 1996, and one member until July 1, 1998.

13 **Sec. 31.** RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended  
14 to read as follows:

15 (1) A growth (~~(planning)~~) management hearings board shall hear and  
16 determine only those petitions alleging either:

17 (a) That a state agency, county, or city is not in compliance with  
18 the requirements of this chapter, or chapter 43.21C RCW as it relates  
19 to plans, regulations, (~~(and)~~) or amendments (~~(thereto)~~), adopted under  
20 RCW 36.70A.040; or

21 (b) That the twenty-year growth management planning population  
22 projections adopted by the office of financial management pursuant to  
23 RCW 43.62.035 should be adjusted.

24 (2) A petition may be filed only by the state, a county or city  
25 that plans under this chapter, a person who has either appeared before  
26 the county or city regarding the matter on which a review is being  
27 requested or is certified by the governor within sixty days of filing  
28 the request with the board, or a person qualified pursuant to RCW  
29 34.05.530.

30 (3) For purposes of this section "person" means any individual,  
31 partnership, corporation, association, governmental subdivision or unit  
32 thereof, or public or private organization or entity of any character.

33 (4) When considering a possible adjustment to a growth management  
34 planning population projection prepared by the office of financial  
35 management, a board shall consider the implications of any such  
36 adjustment to the population forecast for the entire state.

1 The rationale for any adjustment that is adopted by a board must be  
2 documented and filed with the office of financial management within ten  
3 working days after adoption.

4 If adjusted by a board, a county growth management planning  
5 population projection shall only be used for the planning purposes set  
6 forth in this chapter and shall be known as a "board adjusted  
7 population projection". None of these changes shall affect the  
8 official state and county population forecasts prepared by the office  
9 of financial management, which shall continue to be used for state  
10 budget and planning purposes.

11 **Sec. 32.** RCW 36.70A.310 and 1991 sp.s. c 32 s 12 are each amended  
12 to read as follows:

13 A request for review by the state to a growth ((~~planning~~))  
14 management hearings board may be made only by the governor, or with the  
15 governor's consent the head of an agency, or by the commissioner of  
16 public lands as relating to state trust lands, for the review of  
17 whether: (1) A county or city that is required or chooses to plan  
18 under RCW 36.70A.040 has failed to adopt a comprehensive plan or  
19 development regulations, or county-wide planning policies within the  
20 time limits established by this chapter; or (2) a county or city that  
21 is required or chooses to plan under this chapter has adopted a  
22 comprehensive plan, development regulations, or county-wide planning  
23 policies, that are not in compliance with the requirements of this  
24 chapter.

25 **Sec. 33.** RCW 36.70A.345 and 1993 sp.s. c 6 s 5 are each amended to  
26 read as follows:

27 The governor may impose a sanction or sanctions specified under RCW  
28 36.70A.340 on: (1) A county or city that fails to designate critical  
29 areas, agricultural lands, forest lands, or mineral resource lands  
30 under RCW 36.70A.170 by the date such action was required to have been  
31 taken; (2) a county or city that fails to adopt development regulations  
32 under RCW 36.70A.060 protecting critical areas or conserving  
33 agricultural lands, forest lands, or mineral resource lands by the date  
34 such action was required to have been taken; (3) a county that fails to  
35 designate urban growth areas under RCW 36.70A.110 by the date such  
36 action was required to have been taken; and (4) a county or city that

1 fails to adopt its comprehensive plan or development regulations when  
2 such actions are required to be taken.

3 Imposition of a sanction or sanctions under this section shall be  
4 preceded by written findings by the governor, that either the county or  
5 city is not proceeding in good faith to meet the requirements of the  
6 act; or that the county or city has unreasonably delayed taking the  
7 required action. The governor shall consult with and communicate his  
8 or her findings to the appropriate growth ((~~planning~~)) management  
9 hearings board prior to imposing the sanction or sanctions. For those  
10 counties or cities that are not required to plan or have not opted in,  
11 the governor in imposing sanctions shall consider the size of the  
12 jurisdiction relative to the requirements of this chapter and the  
13 degree of technical and financial assistance provided.

14 NEW SECTION. Sec. 34. A new section is added to chapter 35.21 RCW  
15 to read as follows:

16 (1) Before a city or town adopts a law that regulates the same  
17 activity or subject matter as another provision of federal or state  
18 law, the city or town shall:

19 (a) Contact appropriate state and federal government entities  
20 regulating the same activity or subject matter to identify areas of  
21 conflict, overlap, or duplication; and

22 (b) Make every effort to avoid conflict, overlap, and duplication;

23 (2) After the adoption of a law that conflicts with, overlaps, or  
24 duplicates other laws, the city or town shall:

25 (a) Notify the state and federal entities of the adoption of the  
26 law and the areas of conflict, overlap, and duplication; and

27 (b) Make every effort to coordinate implementation of the law with  
28 the appropriate state and federal entities.

29 NEW SECTION. Sec. 35. A new section is added to chapter 36.01 RCW  
30 to read as follows:

31 (1) Before a county adopts a law that regulates the same activity  
32 or subject matter as another provision of federal or state law, the  
33 county shall:

34 (a) Contact appropriate state and federal government entities  
35 regulating the same activity or subject matter to identify areas of  
36 conflict, overlap, or duplication; and

37 (b) Make every effort to avoid conflict, overlap, and duplication;

1 (2) After the adoption of a law that conflicts with, overlaps, or  
2 duplicates other laws, the county shall:

3 (a) Notify the state and federal entities of the adoption of the  
4 law and the areas of conflict, overlap, and duplication; and

5 (b) Make every effort to coordinate implementation of the law with  
6 the appropriate state and federal entities.

7 NEW SECTION. **Sec. 36.** This act applies prospectively only and not  
8 retroactively.

9 NEW SECTION. **Sec. 37.** Section 10 of this act shall take effect  
10 July 1, 1994.

11 NEW SECTION. **Sec. 38.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected."

15 **E2SHB 2510** - CONF REPT  
16 By Conference Committee

17 ADOPTED 3/10/94

18 On page 1, line 2 of the title, after "reform;" strike the  
19 remainder of the title and insert "amending RCW 34.05.310, 34.05.370,  
20 34.05.350, 34.05.330, 34.05.325, 34.05.355, 19.85.020, 34.05.320,  
21 34.05.620, 34.05.630, 34.05.640, 34.05.660, 34.05.220, 34.05.534,  
22 36.70A.290, 36.70A.110, 36.70A.210, 36.70A.250, 36.70A.260, 36.70A.280,  
23 36.70A.310, and 36.70A.345; reenacting and amending RCW 19.85.030 and  
24 19.85.040; adding new sections to chapter 34.05 RCW; adding new  
25 sections to chapter 19.85 RCW; adding a new section to chapter 43.31  
26 RCW; adding a new section to chapter 35.21 RCW; adding a new section to  
27 chapter 36.01 RCW; creating new sections; repealing RCW 19.85.010,  
28 19.85.060, 19.85.080, 34.05.670, and 34.05.680; prescribing penalties;  
29 and providing an effective date."

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