

2 ESB 6242 - H COMM AMD  
3 By Committee on State Government

4

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

7 "Sec. 1. RCW 34.05.370 and 1988 c 288 s 313 are each amended to  
8 read as follows:

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

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

14 (a) Copies of all publications in the state register with respect  
15 to the rule or the proceeding upon which the rule is based;

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

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

23 (d) Any official transcript of oral presentations made in the  
24 proceeding on which the rule is based or, if not transcribed, any tape  
25 recording or stenographic record of them, and any memorandum prepared  
26 by a presiding official summarizing the contents of those  
27 presentations;

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

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

31 (g) Any other material placed in the file by the agency; and

32 (h) The written description of the agency's consideration of rule-  
33 making criteria required by section 3 of this act.

34 (3) Internal agency documents are exempt from inclusion in the  
35 rule-making file under subsection (2) of this section to the extent  
36 they constitute preliminary drafts, notes, recommendations, and intra-

1 agency memoranda in which opinions are expressed or policies formulated  
2 or recommended, except that a specific document is not exempt from  
3 inclusion when it is publicly cited by an agency in connection with its  
4 decision.

5 (4) Upon judicial review, the file required by this section  
6 constitutes the official agency rule-making file with respect to that  
7 rule. Unless otherwise required by another provision of law, the  
8 official agency rule-making file need not be the exclusive basis for  
9 agency action on that rule.

10 **Sec. 2.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read  
11 as follows:

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

13 (a) That immediate adoption, amendment, or repeal of a rule is  
14 necessary for the preservation of the public health, safety, or general  
15 welfare, and that observing the time requirements of notice and  
16 opportunity to comment upon adoption of a permanent rule would be  
17 contrary to the public interest; or

18 (b) That state or federal law or federal rule or a federal deadline  
19 for state receipt of federal funds requires immediate adoption of a  
20 rule,

21 the agency may dispense with those requirements and adopt, amend, or  
22 repeal the rule on an emergency basis. The agency's finding and a  
23 concise statement of the reasons for its finding shall be incorporated  
24 in the order for adoption of the emergency rule or amendment filed with  
25 the office of the code reviser under RCW 34.05.380 and with the rules  
26 review committee.

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

1       (3) The governor, in cooperation with the attorney general, shall  
2 ensure compliance with emergency rule-making requirements of this  
3 section.

4       (4) When adopting an emergency rule, an agency shall meet the  
5 requirements of section 3(1) and (2) of this act or provide written  
6 justification for its failure to provide the information.

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

9       (1) Before adopting a rule, an agency shall evaluate:

10       (a) The need for the rule;

11       (b) Whether the likely benefits of the rule justify its likely  
12 costs;

13       (c) The economic and environmental consequences of adopting the  
14 rule or failing to adopt the rule, including the agency's compliance  
15 with chapters 19.85, 43.21C, and 43.21H RCW;

16       (d) Whether alternative rule language or alternatives to adopting  
17 the rule, including the no action alternative, may achieve the same  
18 purpose at less cost;

19       (e) Whether any conflict, overlap, or duplication with any other  
20 provision of federal or state law is reasonably justified;

21       (f) Whether any differences between the proposed rule and rules  
22 adopted by the federal government on the same subject are reasonably  
23 justified, the costs and benefits that may result from such  
24 differences, and the statutory authority for the rule; and

25       (g) Whether any differences in the applicability of the rule to  
26 public and private entities are reasonably justified.

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

31       (3) Within a reasonable period of time after adopting rules, an  
32 agency shall have a plan to evaluate whether rules filed under each  
33 adopting order achieve the purpose for which they were adopted.

34       (4) Agency evaluations under subsection (1) of this section and the  
35 requirements of subsections (2) and (3) of this section are subject to  
36 the full scope of judicial review authorized in RCW 34.05.570(2)(c).

1       **Sec. 4.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read  
2 as follows:

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

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

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

25       (4) The agency head, a member of the agency head, or a presiding  
26 officer designated by the agency head shall preside at the rule-making  
27 hearing. Rule-making hearings shall be open to the public. The agency  
28 shall cause a record to be made of the hearing by stenographic,  
29 mechanical, or electronic means. Unless the agency head presides or is  
30 present at substantially all the hearings, the presiding official shall  
31 prepare a memorandum for consideration by the agency head, summarizing  
32 the contents of the presentations made at the rule-making hearing. The  
33 summarizing memorandum is a public document and shall be made available  
34 to any person in accordance with chapter 42.17 RCW.

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

1       (6) Before the adoption of a final rule, an agency shall prepare a  
2 written summary of all comments received regarding the proposed rule,  
3 and a substantive response to the comments by category or subject  
4 matter, indicating how the final rule reflects agency consideration of  
5 the comments, or why it fails to do so. The agency shall provide the  
6 written summary and response to any person upon request or from whom  
7 the agency received comment.

8       **Sec. 5.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to  
9 read as follows:

10       (1) Any person may petition an agency requesting the adoption,  
11 amendment, or repeal of any rule. Each agency may prescribe by rule  
12 the form for such petitions and the procedure for their submission,  
13 consideration, and disposition. Within sixty days after submission of  
14 a petition, the agency shall (1) either deny the petition in writing,  
15 stating its reasons for the denial, or (2) initiate rule-making  
16 proceedings in accordance with this chapter.

17       (2) If an agency headed by a nonelected official denies a petition  
18 to repeal or amend a rule under this section, the petitioner may,  
19 within thirty days of the denial, appeal to the governor. Within sixty  
20 days of receipt of the petition, the governor shall either reject the  
21 appeal in writing, stating reasons for the rejection, or order the  
22 agency to initiate rule-making proceedings in accordance with this  
23 chapter.

24       **Sec. 6.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to  
25 read as follows:

26       ~~((1))~~ At the time it files an adopted rule with the code reviser  
27 or within thirty days thereafter, an agency shall place into the rule-  
28 making file maintained under RCW 34.05.370 a concise explanatory  
29 statement about the rule, identifying ~~((a))~~ (1) the agency's reasons  
30 for adopting the rule, ~~((and (b)))~~ (2) a description of any difference  
31 between the text of the proposed rule as published in the register and  
32 the text of the rule as adopted, other than editing changes, stating  
33 the reasons for change, and (3) a written summary of the agency's  
34 substantive responses to comments or categories of comments received on  
35 the proposed rule.

36       ~~((2) Upon the request of any interested person within thirty days~~  
37 ~~after adoption of a rule, the agency shall issue a concise statement of~~

1 ~~the principal reasons for overruling the considerations urged against~~  
2 ~~its adoption.))~~

3       **Sec. 7.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are  
4 each reenacted and amended to read as follows:

5       In the adoption of any rule pursuant to RCW 34.05.320 that will  
6 have an economic impact on more than twenty percent of all industries,  
7 or more than ten percent of any one industry, the adopting agency:

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

12       (a) Establish differing compliance or reporting requirements or  
13 timetables for small businesses;

14       (b) Clarify, consolidate, or simplify the compliance and reporting  
15 requirements under the rule for small businesses;

16       (c) Establish performance rather than design standards;

17       (d) Exempt small businesses from any or all requirements of the  
18 rule; and

19       (e) Other mitigation techniques.

20       (2) Before filing notice of a proposed rule, shall prepare a small  
21 business economic impact statement in accordance with RCW 19.85.040 and  
22 file such statement with the code reviser along with the notice  
23 required under RCW 34.05.320;

24       (3) May request assistance from the business assistance center in  
25 the preparation of the small business economic impact statement.

26       **Sec. 8.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to read  
27 as follows:

28       Unless the context clearly indicates otherwise, the definitions in  
29 this section apply through this chapter.

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

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

1 (3) "Industry" means all of the businesses in this state in any one  
2 (~~three-digit~~) four-digit standard industrial classification as  
3 published by the United States department of commerce. However, if the  
4 four-digit standard industrial classification would result in the  
5 release of data that would violate state confidentiality provisions,  
6 "industry" means all businesses in a three-digit standard industrial  
7 classification.

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

10 (1) A small business economic impact statement must include:

11 (a) A brief description of the reporting, recordkeeping, and other  
12 compliance requirements of the rule, and the kinds of professional  
13 services that a small business is likely to need in order to comply  
14 with such requirements(~~. A small business economic impact statement~~  
15 ~~shall analyze,~~);

16 (b) An analysis based on existing data and any new data gathered by  
17 the agency, of the costs of compliance for businesses required to  
18 comply with the provisions of a rule adopted pursuant to RCW 34.05.320,  
19 including costs of equipment, supplies, labor, and increased  
20 administrative costs, and compare to the greatest extent possible the  
21 cost of compliance for small business with the cost of compliance for  
22 the ten percent of firms which are the largest businesses required to  
23 comply with the proposed new or amendatory rules;

24 (c) A summary of the mitigation options considered by the agency  
25 and an explanation of each option not included in the rule.

26 (2) The small business economic impact statement shall use one or  
27 more of the following as a basis for comparing costs:

28 (~~(1)~~) (a) Cost per employee;

29 (~~(2)~~) (b) Cost per hour of labor; and

30 (~~(3)~~) (c) Cost per one hundred dollars of sales(~~(+~~

31 ~~4) Any combination of (1), (2), or (3)).~~

32 (3) Agencies are encouraged to use committees pursuant to RCW  
33 34.05.310 in analyzing the costs of compliance and identifying steps to  
34 be taken to minimize the cost impact on small business.

35 **Sec. 10.** RCW 19.85.010 and 1982 c 6 s 1 are each amended to read  
36 as follows:

1       The legislature finds that small businesses in the state of  
2 Washington have in the past been subjected to rules adopted by  
3 agencies, departments, and instrumentalities of the state government  
4 which have placed a proportionately higher burden on the small business  
5 community in Washington state. The legislature also finds that such  
6 proportionately higher burdens placed on small businesses have reduced  
7 competition, reduced employment, reduced new employment opportunities,  
8 reduced innovation, and threatened the very existence of some small  
9 businesses. Therefore, it is the intent of the legislature that rules  
10 affecting the business community shall not place proportionately higher  
11 burdens on small businesses. The legislature therefore enacts this  
12 Regulatory Fairness Act to minimize such proportionately higher impacts  
13 of rules on small businesses in the future and reduce the economic  
14 impact of state rules on small business.

15       **Sec. 11.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read  
16 as follows:

17       (1) Within seven days of an agency hearing held after notification  
18 of the agency by the rules review committee pursuant to RCW 34.05.620  
19 or 34.05.630, the affected agency shall notify the committee of its  
20 action on a proposed or existing rule to which the committee objected  
21 or on a committee finding of the agency's failure to adopt rules. If  
22 the rules review committee determines, by a majority vote of its  
23 members, that the agency has failed to provide for the required  
24 hearings or notice of its action to the committee, the committee may  
25 file notice of its objections, together with a concise statement of the  
26 reasons therefor, with the code reviser within thirty days of such  
27 determination.

28       (2) If the rules review committee finds, by a majority vote of its  
29 members: (a) That the proposed or existing rule in question has not  
30 been modified, amended, withdrawn, or repealed by the agency so as to  
31 conform with the intent of the legislature, or (b) that the agency is  
32 using a policy statement, guideline, or issuance in place of a rule, or  
33 that the policy statement, guideline, or issuance is outside of the  
34 legislative intent, the rules review committee may, within thirty days  
35 from notification by the agency of its action, file with the code  
36 reviser notice of its objections together with a concise statement of  
37 the reasons therefor. Such notice and statement shall also be provided  
38 to the agency by the rules review committee.



1 (3) If the rules review committee makes an adverse finding under  
2 subsection (2) of this section, the committee may, by a (~~two-thirds~~)  
3 majority vote of its members, recommend suspension of an existing rule.  
4 Within seven days of such vote the committee shall transmit to the  
5 governor, the code reviser, and the agency written notice of its  
6 objection and recommended suspension and the concise reasons therefor.  
7 Within thirty days of receipt of the notice, the governor shall  
8 transmit to the committee, the code reviser, and the agency written  
9 approval or disapproval of the recommended suspension. If the  
10 suspension is approved by the governor, it is effective from the date  
11 of that approval and continues until ninety days after the expiration  
12 of the next regular legislative session.

13 (4) If the governor disapproves the recommendation by the rules  
14 review committee to suspend the rule, the transmittal of such decision,  
15 along with the findings of the rules review committee, shall be treated  
16 by the agency as a petition by the rules review committee to repeal the  
17 rule pursuant to RCW 34.05.330. Within sixty days the agency shall  
18 either commence appropriate rule repeal or rule amendment proceedings  
19 or state in writing why the rule was adopted within the scope of the  
20 agency's statutory authority.

21 (5) The code reviser shall publish transmittals from the rules  
22 review committee or the governor issued pursuant to subsection (1),  
23 (2), or (3) of this section in the Washington state register and shall  
24 publish in the next supplement and compilation of the Washington  
25 Administrative Code a reference to the committee's objection or  
26 recommended suspension and the governor's action on it and to the issue  
27 of the Washington state register in which the full text thereof  
28 appears.

29 (~~(5)~~) (6) The reference shall be removed from a rule published in  
30 the Washington Administrative Code if a subsequent adjudicatory  
31 proceeding determines that the rule is within the intent of the  
32 legislature or was adopted in accordance with all applicable laws,  
33 whichever was the objection of the rules review committee.

34 **Sec. 12.** RCW 19.85.060 and 1989 c 374 s 5 are each amended to read  
35 as follows:

36 An agency is not required to prepare a small business economic  
37 impact statement if the agency files a statement that:

1 (1) The rule is being adopted solely for the purpose of conformity  
2 or compliance, or both, with federal law or regulations; or

3 (2) The rule will have a minor or negligible economic impact when  
4 it does not exceed 0.001 multiplied by the average profits for  
5 businesses in any industry affected by a rule. The business assistance  
6 center shall develop guidelines ~~((for))~~ to assist agencies in  
7 determining whether a proposed rule will have minor or negligible  
8 impacts. The business assistance center may review a proposed rule  
9 that indicates that there is only a minor or negligible economic impact  
10 to determine if the agency's finding is within the guidelines developed  
11 by the business assistance center. The business assistance center is  
12 authorized to advise the joint administrative rules review committee on  
13 disputes involving agency determinations under this section.

14 NEW SECTION. Sec. 13. A new section is added to chapter 34.05 RCW  
15 to read as follows:

16 If the rules review committee by a vote of two-thirds of its  
17 members recommends to the governor that an existing rule be suspended,  
18 such recommendation shall establish a rebuttable presumption in any  
19 proceeding challenging the validity of the rule that such rule was  
20 adopted outside the scope of the authority of the agency adopting the  
21 rule.

22 **Sec. 14.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
23 read as follows:

24 Except as provided in section 13 of this act, it is the express  
25 policy of the legislature that establishment of procedures for review  
26 of administrative rules by the legislature and the notice of objection  
27 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to  
28 establish a presumption as to the legality or constitutionality of a  
29 rule in any subsequent judicial proceedings interpreting such rules.

30 NEW SECTION. Sec. 15. The department of community, trade, and  
31 economic development shall develop a model standardized format for  
32 reporting information that is commonly required from the public by  
33 state and local government agencies for permits, licenses, approvals,  
34 and services. In the development of the format, the department shall  
35 work in conjunction with representatives from state and local  
36 government agencies and representatives of the business community.

1 The department shall submit the standardized format together with  
2 recommendations for implementation to the legislature by December 31,  
3 1994.

4 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.17 RCW  
5 to read as follows:

6 (1) The governor shall, where appropriate, require state agencies  
7 with regulatory enforcement authority to designate one or more  
8 technical assistance representatives to coordinate voluntary compliance  
9 and provide technical assistance concerning compliance with the  
10 agency's laws and rules.

11 (2) An employee designated by an agency as a technical assistance  
12 representative or as a member of a technical assistance unit may not,  
13 during the period of the designation, have authority to issue orders or  
14 assess penalties on behalf of the agency. Such an employee who  
15 provides on-site consultation at an industrial or commercial facility  
16 and who observes violations of the law shall inform the owner or  
17 operator of the facility of the violations and provide technical  
18 assistance concerning compliance. On-site consultation visits by such  
19 an employee may not be regarded as inspections or investigations and no  
20 notices or citations may be issued or civil penalties assessed during  
21 such a visit. However, violations of the law must be reported to the  
22 appropriate officers within the agency. If the owner or operator of  
23 the facility does not correct the observed violations within a  
24 reasonable time, the agency may reinspect the facility and take  
25 appropriate enforcement action. If a technical assistance  
26 representative or member of a technical assistance unit observes a  
27 violation of the law that places a person in danger of death or  
28 substantial bodily harm, is causing or is likely to cause significant  
29 environmental harm, or has caused or is likely to cause physical damage  
30 to the property of others in an amount exceeding one thousand dollars,  
31 the agency may initiate enforcement action immediately upon observing  
32 the violation.

33 (3) The state, the agency, and officers or employees of the state  
34 shall not be liable for damages to a person to the extent that  
35 liability is asserted to arise from the performance by technical  
36 assistance representatives of their duties, or if liability is asserted

1 to arise from the failure of the agency to supply technical  
2 assistance."

--- END ---