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ENGROSSED SENATE BILL 6242

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Sheldon, Sellar, Moore, Anderson, Gaspard, Snyder, Quigley, Franklin, McAuliffe, Oke, Pelz, M. Rasmussen, Winsley, Drew and Ludwig; by request of Governor Lowry

Read first time 01/17/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to implementation of the recommendations of the  
2 governor's task force on regulatory reform; amending RCW 34.05.370,  
3 34.05.350, 34.05.330, 34.05.325, 34.05.355, 19.85.020, 34.05.320,  
4 34.05.620, 34.05.630, 34.05.640, and 34.05.660; reenacting and amending  
5 RCW 19.85.030 and 19.85.040; adding a new section to chapter 44.04 RCW;  
6 adding new sections to chapter 34.05 RCW; adding new sections to  
7 chapter 19.85 RCW; adding a new section to chapter 43.31 RCW; adding  
8 new sections to chapter 4.84 RCW; adding a new section to chapter 43.88  
9 RCW; creating a new section; repealing RCW 19.85.010, 19.85.060,  
10 19.85.080, 34.05.670, and 34.05.680; prescribing penalties; and  
11 providing an effective date.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 44.04 RCW  
14 to read as follows:

15 (1) The legislature recognizes that clear grants of rule-making  
16 authority are necessary for efficient and effective regulatory programs  
17 and accountability in governmental decision making, and that the agency  
18 granted rule-making authority should be the most competent to exercise  
19 jurisdiction over the subject matter. It is therefore the

1 legislature's purpose to establish processes to ensure that existing  
2 and future laws provide clear and appropriate rule-making authority.

3 (2) The standing committees of the legislature shall selectively  
4 review legislative grants of rule-making authority to determine: (a)  
5 Whether the authority granted is clear and as intended; (b) whether the  
6 legislative intent is specific and includes defined objectives; and (c)  
7 whether the grant of authority is consistent with and not duplicative  
8 of grants to other agencies. In performing such a review, priority  
9 shall be given to grants of rule-making authority to the department of  
10 revenue, the employment security department, the department of ecology,  
11 the department of labor and industries, the department of health, the  
12 department of licensing, the department of fish and wildlife, the  
13 department of natural resources, and the insurance commissioner.

14 In those instances where the review identifies statutes that do not  
15 meet these criteria, corrective legislation shall be prepared that  
16 clarifies, narrows, or repeals the grants of rule-making authority.

17 (3) The senate and the house of representatives shall ensure that  
18 bills introduced that grant rule-making authority to state agencies  
19 contain clear and specific direction regarding the authority granted.

20 (4) Appropriate standing committees of the senate and house of  
21 representatives shall prepare a regulatory note as part of the bill  
22 report on each bill before the committee that grants rule-making  
23 authority to a state agency. The regulatory note shall identify if  
24 rule making is required or authorized by the bill, describe the nature  
25 of the rule making, identify agencies to which rule making is  
26 delegated, and identify any other agencies that have rule-making  
27 authority over the same activity or subject matter. However in the  
28 event of a conflict between the note and any section of the revised  
29 code of Washington or uncodified session law, the revised code or  
30 uncodified session law shall prevail and nothing in the note shall be  
31 considered to be part of the revised code or uncodified session law.

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

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

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

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

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

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

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

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

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

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

22 (h) The written summary and response required by RCW 34.05.325(6);  
23 and

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

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

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

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

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

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

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

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

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

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

1       (4) In adopting an emergency rule, the agency shall meet the same  
2 criteria as set forth in section 4 of this act or provide written  
3 justification for its failure to provide the information.

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

6       (1) In addition to other requirements imposed by law, an agency may  
7 not adopt a rule the violation of which subjects a person to a penalty  
8 or administrative sanction; that establishes, alters, or revokes a  
9 qualification or standard for the issuance, suspension, or revocation  
10 of a license to pursue a commercial activity, trade, or profession; or  
11 that establishes, alters, or revokes a mandatory standard for a product  
12 or material that must be met before distribution or sale, unless:

13       (a) The rule is needed;

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

15       (c) There are no alternatives to the rule that would be as  
16 effective but less burdensome on those required to comply;

17       (d) Any fee imposed is reasonable and related to the cost of  
18 administration;

19       (e) The rule is clearly and simply stated, so that it can be  
20 understood by persons required to comply;

21       (f) The rule does not conflict with, or unless necessary to achieve  
22 the objectives of the statute upon which the rule is based, overlap, or  
23 duplicate any other provision of federal, state, or local law;

24       (g) The rule does not, unless necessary to achieve the objectives  
25 of the statute upon which the rule is based, differ from any provision  
26 of federal law regulating the same activity or subject matter; and

27       (h) The rule does not, unless necessary to achieve the objectives  
28 of the statute upon which the rule is based, differ in its application  
29 to public and private entities.

30       (2) Nothing in subsection (1) of this section shall be construed to  
31 change the existing standard of judicial review of agency rule making.

32       NEW SECTION. Sec. 5. A new section is added to chapter 34.05 RCW  
33 to read as follows:

34       (1) Upon adoption of any rule covered by section 4 of this act, an  
35 agency shall have a plan to: (a) Inform and educate affected persons  
36 about the rule; (b) promote voluntary compliance; (c) evaluate whether  
37 the rule achieves the purpose for which it was adopted; and (d)

1 evaluate whether the rule avoids the taking of private property for  
2 public use unless no reasonable alternative exists that advances the  
3 public interest.

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

7 (a) Provide to the business assistance center a list citing by  
8 reference the other federal, state, and local laws that regulate the  
9 same activity or subject matter;

10 (b) Coordinate implementation and enforcement of the rule with the  
11 other federal, state, and local entities regulating the same activity  
12 or subject matter by doing one or more of the following: (i) Deferring  
13 to the other entity; (ii) designating a lead agency; or (iii) entering  
14 into an agreement with the other entities specifying how the agency and  
15 entities will coordinate implementation and enforcement. If the agency  
16 is unable to meet this requirement, the agency shall report to the  
17 legislature pursuant to (c) of this subsection;

18 (c) Report to the chief clerk of the house of representatives and  
19 the secretary of the senate regarding: (i) The existence of any  
20 overlap or duplication of other federal, state, or local laws, and any  
21 differences from federal law; (ii) legislation that may be necessary to  
22 eliminate or mitigate any adverse effects of such overlap, duplication,  
23 or difference; and (iii) legislation that may be necessary to  
24 facilitate coordination with appropriate governmental entities  
25 regulating the same activity or subject matter.

26 (3) For purposes of this section, "taking" means totally destroying  
27 or rendering valueless private property, damaging by a public use in  
28 connection with an actual taking by the exercise of eminent domain, or  
29 when there is interference with use of property to owner's prejudice,  
30 with resulting diminution in value. Police action to prevent or abate  
31 actual damage to another is not considered a taking.

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

34 (1) Any person may petition an agency requesting the adoption,  
35 amendment, or repeal of any rule. Each agency may prescribe by rule  
36 the form for such petitions and the procedure for their submission,  
37 consideration, and disposition. Within sixty days after submission of  
38 a petition, the agency shall ((+1)) (a) either deny the petition in

1 writing, stating its reasons for the denial, or ~~((+2))~~ (b) initiate  
2 rule-making proceedings in accordance with this chapter.

3 (2) If an agency headed by a nonelected official denies a petition  
4 to repeal or amend a rule submitted under subsection (1) of this  
5 section, the petitioner, within thirty days of the denial, may appeal  
6 the denial to the governor. The petitioner may file notice of the  
7 appeal with the code reviser for publication in the Washington State  
8 Register. Within sixty days after receiving the appeal, the governor  
9 shall either reject the appeal in writing, stating his or her reasons  
10 for the rejection, or order the agency to initiate rule-making  
11 proceedings in accordance with this chapter. In deciding on the  
12 appeal, among other factors the governor should consider:

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

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

17 (c) The nature of complaints and other comments received from the  
18 public concerning the rule;

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

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

27 (f) Whether the statute that the rule implements has been amended  
28 or repealed by the legislature, or ruled invalid by a court.

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

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

33 (1) The agency shall make a good faith effort to insure that the  
34 information on the proposed rule published pursuant to RCW 34.05.320  
35 accurately reflects the rule to be presented and considered at the oral  
36 hearing on the rule. Written comment about a proposed rule, including  
37 supporting data, shall be accepted by an agency if received no later

1 than the time and date specified in the notice, or such later time and  
2 date established at the rule-making hearing.

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

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

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

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

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



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

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

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

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

17       The legislature finds that administrative rules adopted by state  
18 agencies can have a disproportionate impact on the state's small  
19 businesses because of the size of those businesses. This  
20 disproportionate impact reduces competition, innovation, employment,  
21 and new employment opportunities, and threatens the very existence of  
22 some small businesses. The legislature therefore enacts the regulatory  
23 fairness act, chapter . . . , Laws of 1994 (this act), with the intent  
24 of reducing the disproportionate impact of state administrative rules  
25 on small business.

26       **Sec. 10.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to  
27 read 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.

4 (4) "Taking" means totally destroying or rendering valueless  
5 private property, damaging by a public use in connection with an actual  
6 taking by the exercise of eminent domain, or when there is interference  
7 with use of property to owner's prejudice, with resulting diminution in  
8 value. Police action to prevent or abate actual damage to another is  
9 not considered a taking.

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

12 (~~In the adoption of any rule pursuant to RCW 34.05.320 that will~~  
13 ~~have an economic impact on more than twenty percent of all industries,~~  
14 ~~or more than ten percent of any one industry, the adopting agency:~~

15 (1) ~~Shall reduce the economic impact of the rule on small business~~  
16 ~~by doing one or more of the following when it is legal and feasible in~~  
17 ~~meeting the stated objective of the statutes which are the basis of the~~  
18 ~~proposed rule:~~

19 (a) ~~Establish differing compliance or reporting requirements or~~  
20 ~~timetables for small businesses;~~

21 (b) ~~Clarify, consolidate, or simplify the compliance and reporting~~  
22 ~~requirements under the rule for small businesses;~~

23 (c) ~~Establish performance rather than design standards;~~

24 (d) ~~Exempt small businesses from any or all requirements of the~~  
25 ~~rule;~~

26 (2) ~~Shall prepare a small business economic impact statement in~~  
27 ~~accordance with RCW 19.85.040 and file such statement with the code~~  
28 ~~reviser along with the notice required under RCW 34.05.320;~~

29 (3)) (1) In the adoption of a rule under RCW 34.05.320, an agency  
30 shall prepare a small business economic impact statement: (a) If the  
31 proposed rule will impose more than minor costs on businesses in an  
32 industry; or (b) if requested to do so by a majority vote of the joint  
33 administrative rules review committee within thirty days after notice  
34 of the proposed rule is published in the state register.

35 An agency shall prepare the small business economic impact  
36 statement in accordance with RCW 19.85.040, and file it with the code  
37 reviser along with the notice required under RCW 34.05.320. An agency  
38 shall file a statement prepared at the request of the joint

1 administrative rules review committee with the code reviser upon its  
2 completion before the adoption of the rule. An agency shall provide a  
3 copy of the small business economic impact statement to any person  
4 requesting it.

5 An agency may request assistance from the business assistance  
6 center in the preparation of the small business economic impact  
7 statement.

8 (2) A proposed rule will impose more than minor costs on businesses  
9 in an industry when the costs imposed will equal or exceed 0.1 percent  
10 of the average yearly profit for businesses in that industry. The  
11 business assistance center shall develop guidelines to assist agencies  
12 in determining whether a proposed rule will impose such costs. The  
13 business assistance center may review an agency determination that a  
14 proposed rule will not impose such costs, and shall advise the joint  
15 administrative rules review committee on disputes involving agency  
16 determinations under this section.

17 (3) Based upon the extent of disproportionate impact on small  
18 business identified in the statement prepared under RCW 19.85.040, the  
19 agency shall, unless reasonable justification exists to do otherwise,  
20 reduce the costs imposed by the rule on small businesses. Methods to  
21 reduce the costs on small businesses may include, but are not limited  
22 to:

23 (a) Reducing, modifying, or eliminating substantive regulatory  
24 requirements;

25 (b) Establishing performance rather than design standards;

26 (c) Simplifying, reducing, or eliminating recordkeeping and  
27 reporting requirements;

28 (d) Reducing the frequency of inspections;

29 (e) Delaying compliance timetables; or

30 (f) Reducing or modifying fine schedules for noncompliance.

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

33 (1) A small business economic impact statement must include a brief  
34 description of the reporting, recordkeeping, and other compliance  
35 requirements of the proposed rule, and the kinds of professional  
36 services that a small business is likely to need in order to comply  
37 with such requirements. ((A small business economic impact statement))  
38 It shall analyze((, based on existing data,)) the costs of compliance

1 for businesses required to comply with the (~~provisions of a~~) proposed  
2 rule adopted pursuant to RCW 34.05.320, including costs of equipment,  
3 supplies, labor, lost sales or revenue, and increased administrative  
4 costs(~~, and~~). To determine whether the proposed rule will have a  
5 disproportionate impact on small businesses, the impact statement must  
6 compare (~~to the greatest extent possible~~) the cost of compliance for  
7 small business with the cost of compliance for the ten percent of  
8 (~~firms which~~) businesses that are the largest businesses required to  
9 comply with the proposed (~~new or amendatory~~) rules(~~. The small~~  
10 business economic impact statement shall use) using one or more of the  
11 following as a basis for comparing costs:

- 12 (~~(1)~~) (a) Cost per employee;  
13 (~~(2)~~) (b) Cost per hour of labor; or  
14 (~~(3)~~) (c) Cost per one hundred dollars of sales(~~(~~  
15 (4) Any combination of (1), (2), or (3)).

16 (2) A small business economic impact statement must also include:

17 (a) A statement of the steps taken by the agency to reduce the  
18 costs of the rule on small businesses as required by RCW 19.85.030(3),  
19 or reasonable justification for not doing so, addressing, at a minimum,  
20 each of the options listed in RCW 19.85.030(3);

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

23 (c) A list of industries that will be required to comply with the  
24 rule.

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

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

33 Unless so requested by a majority vote of the joint administrative  
34 rules review committee under RCW 19.85.030, an agency is not required  
35 to comply with this chapter when adopting any rule solely for the  
36 purpose of conformity or compliance, or both, with federal law. In  
37 lieu of the statement required under RCW 19.85.030, the agency shall  
38 file a statement citing, with specificity, the federal law with which

1 the rule is being adopted to conform or comply, and describing the  
2 consequences to the state if the rule is not adopted.

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

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

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

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

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

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

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

22 (f) Agency comments or recommendations, if any, regarding statutory  
23 language, implementation, enforcement, and fiscal matters pertaining to  
24 the rule;

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

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

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

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

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

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

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

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

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

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

19 (1) Develop agency guidelines for the preparation of a small  
20 business economic impact statement and compliance with chapter 19.85  
21 RCW;

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

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

28 (4) Organize and chair a state rules coordinating committee,  
29 consisting of agency rules coordinators and interested members of the  
30 public, to develop an education and training program that includes,  
31 among other components, a component that addresses voluntary  
32 compliance, for agency personnel responsible for rule development and  
33 implementation. The business assistance center shall submit  
34 recommendations to the department of personnel for an administrative  
35 procedures training program that is based on the sharing of interagency  
36 resources.

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

- 3            (1) RCW 19.85.010 and 1982 c 6 s 1;
- 4            (2) RCW 19.85.060 and 1989 c 374 s 5; and
- 5            (3) RCW 19.85.080 and 1992 c 197 s 2.

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

8            Whenever a majority of the members of the rules review committee  
9 determines that a proposed rule is not within the intent of the  
10 legislature as expressed in the statute which the rule implements, or  
11 that an agency may not be adopting a proposed rule in accordance with  
12 all applicable provisions of law, including section 4 of this act and  
13 chapter 19.85 RCW, the committee shall give the affected agency written  
14 notice of its decision. The notice shall be given at least seven days  
15 prior to any hearing scheduled for consideration of or adoption of the  
16 proposed rule pursuant to RCW 34.05.320. The notice shall include a  
17 statement of the review committee's findings and the reasons therefor.  
18 When the agency holds a hearing on the proposed rule, the agency shall  
19 consider the review committee's decision.

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

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

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

30            (3) If the rules review committee finds by a majority vote of its  
31 members: (a) That an existing rule is not within the intent of the  
32 legislature as expressed by the statute which the rule implements, (b)  
33 that the rule has not been adopted in accordance with all applicable  
34 provisions of law, including section 4 of this act and chapter 19.85  
35 RCW, (c) that an agency is using a policy statement, guideline, or  
36 issuance in place of a rule, or (d) that the policy statement,  
37 guideline, or issuance is outside of legislative intent, the agency

1 affected shall be notified of such finding and the reasons therefor.  
2 Within thirty days of the receipt of the rules review committee's  
3 notice, the agency shall file notice of a hearing on the rules review  
4 committee's finding with the code reviser and mail notice to all  
5 persons who have made timely request of the agency for advance notice  
6 of its rule-making proceedings as provided in RCW 34.05.320. The  
7 agency's notice shall include the rules review committee's findings and  
8 reasons therefor, and shall be published in the Washington state  
9 register in accordance with the provisions of chapter 34.08 RCW.

10 (4) The agency shall consider fully all written and oral  
11 submissions regarding (a) whether the rule in question is within the  
12 intent of the legislature as expressed by the statute which the rule  
13 implements, (b) whether the rule was adopted in accordance with all  
14 applicable provisions of law, including section 4 of this act and  
15 chapter 19.85 RCW, (c) whether the agency is using a policy statement,  
16 guideline, or issuance in place of a rule, or (d) whether the policy  
17 statement, guideline, or issuance is within the legislative intent.

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

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

31 (2) If the rules review committee finds, by a majority vote of its  
32 members: (a) That the proposed or existing rule in question has not  
33 been modified, amended, withdrawn, or repealed by the agency so as to  
34 conform with the intent of the legislature, or (b) that an existing  
35 rule was not adopted in accordance with all applicable provisions of  
36 law, including section 4 of this act and chapter 19.85 RCW, or (c) that  
37 the agency is using a policy statement, guideline, or issuance in place  
38 of a rule, or that the policy statement, guideline, or issuance is



1 outside of the legislative intent, the rules review committee may,  
2 within thirty days from notification by the agency of its action, file  
3 with the code reviser notice of its objections together with a concise  
4 statement of the reasons therefor. Such notice and statement shall  
5 also be provided to the agency by the rules review committee.

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

19 (4) If the governor disapproves the recommendation of the rules  
20 review committee to suspend the rule, the transmittal of such decision,  
21 along with the findings of the rules review committee, shall be treated  
22 by the agency as a petition by the rules review committee to repeal the  
23 rule under RCW 34.05.330.

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

32 ~~((+5+))~~ (6) An election by the rules review committee to recommend  
33 suspension of a rule, whether or not the suspension is approved by the  
34 governor, establishes a presumption in any subsequent judicial review  
35 of the rule that the rule is invalid. The burden of demonstrating the  
36 rule's validity is then on the adopting agency.

37 (7) The reference shall be removed from a rule published in the  
38 Washington Administrative Code if a subsequent adjudicatory proceeding  
39 determines that the rule is within the intent of the legislature or was

1 adopted in accordance with all applicable laws, whichever was the  
2 objection of the rules review committee.

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

5 Except as provided in RCW 34.05.640(6), it is the express policy of  
6 the legislature that establishment of procedures for review of  
7 administrative rules by the legislature and the notice of objection  
8 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to  
9 establish a presumption as to the legality or constitutionality of a  
10 rule in any subsequent judicial proceedings interpreting such rules.

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

13 (1) RCW 34.05.670 and 1992 c 197 s 3; and

14 (2) RCW 34.05.680 and 1992 c 197 s 4.

15 NEW SECTION. **Sec. 22.** The department of community, trade, and  
16 economic development shall develop a standardized format for reporting  
17 information that is commonly required from the public by state and  
18 local government agencies for permits, licenses, approvals, and  
19 services. In the development of the format, the department shall work  
20 in conjunction with representatives from state and local government  
21 agencies and representatives of the business community.

22 The department shall submit the standardized format together with  
23 recommendations for implementation to the legislature by December 31,  
24 1994.

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

27 (1) This section applies only to the department of revenue, the  
28 employment security department, the department of ecology, the  
29 department of labor and industries, the department of health, the  
30 department of licensing, and the department of fish and wildlife.

31 (2) An agency listed in subsection (1) of this section may  
32 immediately impose a penalty otherwise provided for by law for a  
33 violation of a statute or administrative rule by a business entity only  
34 if the entity on which the penalty will be imposed has: (a) Previously  
35 violated the same statute or rule; or (b) willfully violated the

1 statute or rule. Where a penalty is otherwise provided, but may not be  
2 imposed under this subsection, the agency shall issue a statement of  
3 deficiency.

4 (3) A statement of deficiency shall specify: (a) The particular  
5 rule violated; (b) the steps the entity must take to comply with the  
6 rule; (c) agency personnel designated by the agency to provide  
7 technical assistance regarding compliance with the rule; and (d) a date  
8 by which the entity is required to comply with the rule. The date  
9 specified shall provide a reasonable period of time for the entity to  
10 comply with the rule, considering the size of the entity, its available  
11 resources, and the threat posed by the violation. If the entity fails  
12 to comply with the rule by the date specified, it shall be subject to  
13 the penalty otherwise provided in law.

14 (4) Subsection (2) of this section shall not apply to any violation  
15 that places a person in danger of death or substantial bodily harm, is  
16 causing or is likely to cause significant environmental harm, or has  
17 caused or is likely to cause physical damage to the property of others  
18 in an amount exceeding one thousand dollars. With regard to a statute  
19 or rule requiring the payment of a tax, subsection (1) of this section  
20 shall not apply when a business entity has paid less than eighty-five  
21 percent of the tax actually owed.

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

27 (6) Where a state agency has been delegated authority to enforce  
28 federal rules, the agency shall submit a written petition to the  
29 appropriate federal agency for authorization to comply with this  
30 section for all inspections while retaining the state's federal  
31 delegation. In such cases, this section applies only to the extent  
32 authorized by the appropriate federal agency.

33 NEW SECTION. **Sec. 24.** A new section is added to chapter 4.84 RCW  
34 to read as follows:

35 Unless the context clearly requires otherwise, the definitions in  
36 this section apply throughout sections 24 through 26 and 27 of this  
37 act.

38 (1) "Agency" means agency as defined by chapter 34.05 RCW.

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

14 (3) "Judicial review" means a judicial review as defined by chapter  
15 34.05 RCW.

16 (4) "Qualified party" means (a) an individual whose net worth did  
17 not exceed one million dollars at the time the initial petition for  
18 judicial review was filed; (b) a sole owner of an unincorporated  
19 business, or a partnership, corporation, association, or organization  
20 whose net worth did not exceed five million dollars at the time the  
21 initial petition for judicial review was filed, except that an  
22 organization described in section 501(c)(3) of the federal internal  
23 revenue code of 1954 as exempt from taxation under section 501(a) of  
24 the code and a cooperative association as defined in section 15(a) of  
25 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a  
26 party regardless of the net worth of such organization or cooperative  
27 association; or (c) a sole owner of an unincorporated business, or a  
28 partnership, corporation, association, or organization, having not more  
29 than one hundred employees at the time the initial petition for  
30 judicial review was filed.

31 (5) "Rule" means a rule as defined by chapter 34.05 RCW.

32 NEW SECTION. **Sec. 25.** A new section is added to chapter 4.84 RCW  
33 to read as follows:

34 If upon judicial review a rule is declared invalid and the party  
35 that challenged the rule is a qualified party, the party shall be  
36 awarded fees and other expenses not to exceed fifty thousand dollars.  
37 This section does not apply unless all parties to the action  
38 challenging the rule are qualified parties. If two or more qualified

1 parties join in an action challenging a rule, the fees and expenses  
2 awarded shall not in total exceed fifty thousand dollars.

3 NEW SECTION. **Sec. 26.** A new section is added to chapter 4.84 RCW  
4 to read as follows:

5 Fees and other expenses awarded under section 25 of this act shall  
6 be paid by the agency that adopted the invalid rule from operating  
7 funds appropriated to the agency within sixty days. Agencies paying  
8 fees and other expenses pursuant to section 25 of this act shall report  
9 all payments to the office of financial management within five days of  
10 paying the fees and other expenses. Fees and other expenses awarded by  
11 the court shall be subject to chapter 39.76 RCW and shall be deemed  
12 payable on the date the court announces the award.

13 NEW SECTION. **Sec. 27.** A new section is added to chapter 43.88 RCW  
14 to read as follows:

15 The office of financial management shall report annually to the  
16 legislature on the amount of fees and other expenses awarded during the  
17 preceding fiscal year under section 25 of this act. The report shall  
18 describe the number, nature, and amount of the awards, the claims  
19 involved in the controversy, and other relevant information that may  
20 aid the legislature in evaluating the scope and impact of the awards.

21 NEW SECTION. **Sec. 28.** Section 10 of this act shall take effect  
22 July 1, 1994.

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

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