

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510**

Chapter 249, Laws of 1994

(partial veto)

53rd Legislature  
1994 Regular Session

REGULATORY REFORM

EFFECTIVE DATE: 6/9/94 - Except Section 10 which takes effect  
7/1/94

Passed by the House March 10, 1994  
Yeas 62 Nays 34

BRIAN EBERSOLE

**Speaker of the  
House of Representatives**

Passed by the Senate March 10, 1994  
Yeas 26 Nays 22

JOEL PRITCHARD

**President of the Senate**

Approved April 1, 1994, with the  
exception of sections 4, 5, 6, 13,  
16(2), 20, 23, 25, 34, and 35, which  
are vetoed.

MIKE LOWRY

**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of  
the House of Representatives of the  
State of Washington, do hereby certify  
that the attached is **ENGROSSED SECOND  
SUBSTITUTE HOUSE BILL 2510** as passed  
by the House of Representatives and  
the Senate on the dates hereon set  
forth.

MARILYN SHOWALTER

**Chief Clerk**

FILED

April 1, 1994 - 11:11 a.m.

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Reams, Brough, Dorn, Dunshee, Johanson, Pruitt, Shin, Zellinsky, Carlson, R. Johnson, J. Kohl, Karahalios, Basich, Jones, Bray, R. Fisher, Holm, Moak, Sheldon, Valle, Chappell, Eide, Wolfe, B. Thomas, Dyer, King, G. Fisher, L. Johnson, Dellwo, Ogden, Roland, Grant, Jacobsen, Quall, Rayburn, Morris, Romero, Rust, Kremen, Conway, Linville, Patterson, Forner, Long, Mielke, Springer, Cothorn, Kessler, H. Myers, Tate, Backlund, Cooke, Wood and Mastin; by request of Governor Lowry)

Read first time 02/08/94.

1 AN ACT Relating to implementation of the recommendations of the  
2 governor's task force on regulatory reform; amending RCW 34.05.310,  
3 34.05.370, 34.05.350, 34.05.330, 34.05.325, 34.05.355, 19.85.020,  
4 34.05.320, 34.05.620, 34.05.630, 34.05.640, 34.05.660, 34.05.220,  
5 34.05.534, 36.70A.290, 36.70A.110, 36.70A.210, 36.70A.250, 36.70A.260,  
6 36.70A.280, 36.70A.310, and 36.70A.345; reenacting and amending RCW  
7 19.85.030 and 19.85.040; adding new sections to chapter 34.05 RCW;  
8 adding new sections to chapter 19.85 RCW; adding a new section to  
9 chapter 43.31 RCW; adding a new section to chapter 35.21 RCW; adding a  
10 new section to chapter 36.01 RCW; creating new sections; repealing RCW  
11 19.85.010, 19.85.060, 19.85.080, 34.05.670, and 34.05.680; prescribing  
12 penalties; and providing an effective date.

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

14 **Sec. 1.** RCW 34.05.310 and 1993 c 202 s 2 are each amended to read  
15 as follows:

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

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

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

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

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

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

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

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

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

22       (a) Negotiated rule making which includes:

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

26       ~~((b))~~ (ii) Soliciting participation by persons who are capable,  
27 willing, and appropriately authorized to enter into such negotiations;

28       ~~((c))~~ (iii) Assuring that participants fully recognize the  
29 consequences of not participating in the process, are committed to  
30 negotiate in good faith, and recognize the alternatives available to  
31 other parties;

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

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

38       ~~((f))~~ (vi) Providing a mechanism by which one or more parties may  
39 withdraw from the process or the negotiations may be terminated if it

1 appears that consensus cannot be reached on a draft rule that  
2 accommodates the needs of the agency, interested parties, and the  
3 general public and conforms to the legislative intent of the statute  
4 that the rule is intended to implement; and

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

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

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

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

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

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

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

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

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

32 (d) Any official transcript of oral presentations made in the  
33 proceeding on which the rule is based or, if not transcribed, any tape  
34 recording or stenographic record of them, and any memorandum prepared  
35 by a presiding official summarizing the contents of those  
36 presentations;

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

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

3 (g) Citations to data, factual information, studies, or reports on  
4 which the agency relies in the adoption of the rule, indicating where  
5 such data, factual information, studies, or reports are available for  
6 review by the public;

7 (h) The written summary and response required by RCW 34.05.325(6);  
8 and

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

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

17 (4) Upon judicial review, the file required by this section  
18 constitutes the official agency rule-making file with respect to that  
19 rule. Unless otherwise required by another provision of law, the  
20 official agency rule-making file need not be the exclusive basis for  
21 agency action on that rule.

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

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

25 (a) That immediate adoption, amendment, or repeal of a rule is  
26 necessary for the preservation of the public health, safety, or general  
27 welfare, and that observing the time requirements of notice and  
28 opportunity to comment upon adoption of a permanent rule would be  
29 contrary to the public interest; or

30 (b) That state or federal law or federal rule or a federal deadline  
31 for state receipt of federal funds requires immediate adoption of a  
32 rule,

33 the agency may dispense with those requirements and adopt, amend, or  
34 repeal the rule on an emergency basis. The agency's finding and a  
35 concise statement of the reasons for its finding shall be incorporated  
36 in the order for adoption of the emergency rule or amendment filed with  
37 the office of the code reviser under RCW 34.05.380 and with the rules  
38 review committee.

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

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

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

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

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

31 ***(a) The rule is needed;***

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

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

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

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

3 (f) Any overlap or duplication of the rule with any other provision  
4 of federal or state law is necessary to achieve the objectives of the  
5 statute upon which the rule is based or expressly authorized by  
6 statute;

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

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

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

17 (3) This section applies only to a rule the violation of which  
18 subjects a person to a penalty or administrative sanction; that  
19 establishes, alters, or revokes a qualification or standard for the  
20 issuance, suspension, or revocation of a license to pursue a commercial  
21 activity, trade, or profession; or that establishes, alters, or revokes  
22 a mandatory standard for a product or material that must be met before  
23 distribution or sale.

24 \*Sec. 4 was vetoed, see message at end of chapter.

25 **\*NEW SECTION.** Sec. 5. A new section is added to chapter 34.05 RCW  
26 to read as follows:

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

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

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

4 (b) Coordinate implementation and enforcement of the rule with the  
5 other federal and state entities regulating the same activity or  
6 subject matter by making every effort to do one or more of the  
7 following: (i) Defer to the other entity; (ii) designate a lead agency;  
8 or (iii) enter into an agreement with the other entities specifying how  
9 the agency and entities will coordinate implementation and enforcement.  
10 If the agency is unable to do this, the agency shall report to the  
11 legislature pursuant to (c) of this subsection;

12 (c) Report to the joint administrative rules review committee: (i)  
13 The existence of any overlap or duplication of other federal or state  
14 laws, any differences from federal law, and any known overlap,  
15 duplication, or conflict with local laws; and (ii) legislation that may  
16 be necessary to eliminate or mitigate any adverse effects of such  
17 overlap, duplication, or difference.

18 \*Sec. 5 was vetoed, see message at end of chapter.

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

21 (1) Any person may petition an agency requesting the adoption,  
22 amendment, or repeal of any rule. Each agency may prescribe by rule  
23 the form for such petitions and the procedure for their submission,  
24 consideration, and disposition. Within sixty days after submission of  
25 a petition, the agency shall ((+1)) (a) either deny the petition in  
26 writing, stating its reasons for the denial, or ((+2)) (b) initiate  
27 rule-making proceedings in accordance with this chapter.

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

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



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

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

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

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

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

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

17 \*Sec. 6 was vetoed, see message at end of chapter.

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

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

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

29 (3) If the agency possesses equipment capable of receiving  
30 telefacsimile transmissions or recorded telephonic communications, the  
31 agency may provide in its notice of hearing filed under RCW 34.05.320  
32 that interested parties may comment on proposed rules by these means.  
33 If the agency chooses to receive comments by these means, the notice of  
34 hearing shall provide instructions for making such comments, including,  
35 but not limited to, appropriate telephone numbers to be used; the date  
36 and time by which comments must be received; required methods to verify  
37 the receipt and authenticity of the comments; and any limitations on  
38 the number of pages for telefacsimile transmission comments and on the

1 minutes of tape recorded comments. The agency shall accept comments  
2 received by these means for inclusion in the official record if the  
3 comments are made in accordance with the agency's instructions.

4 (4) The agency head, a member of the agency head, or a presiding  
5 officer designated by the agency head shall preside at the rule-making  
6 hearing. Rule-making hearings shall be open to the public. The agency  
7 shall cause a record to be made of the hearing by stenographic,  
8 mechanical, or electronic means. Unless the agency head presides or is  
9 present at substantially all the hearings, the presiding official shall  
10 prepare a memorandum for consideration by the agency head, summarizing  
11 the contents of the presentations made at the rule-making hearing. The  
12 summarizing memorandum is a public document and shall be made available  
13 to any person in accordance with chapter 42.17 RCW.

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

19 (6) Before the adoption of a final rule, an agency shall prepare a  
20 written summary of all comments received regarding the proposed rule,  
21 and a substantive response to the comments by category or subject  
22 matter, indicating how the final rule reflects agency consideration of  
23 the comments, or why it fails to do so. The agency shall provide the  
24 written summary and response to any person upon request or from whom  
25 the agency received comment.

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

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

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

5 The legislature finds that administrative rules adopted by state  
6 agencies can have a disproportionate impact on the state's small  
7 businesses because of the size of those businesses. This  
8 disproportionate impact reduces competition, innovation, employment,  
9 and new employment opportunities, and threatens the very existence of  
10 some small businesses. The legislature therefore enacts the regulatory  
11 fairness act with the intent of reducing the disproportionate impact of  
12 state administrative rules on small business.

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

15 Unless the context clearly indicates otherwise, the definitions in  
16 this section apply through this chapter.

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

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

24 (3) "Industry" means all of the businesses in this state in any one  
25 (~~three-digit~~) four-digit standard industrial classification as  
26 published by the United States department of commerce. However, if the  
27 use of a four-digit standard industrial classification would result in  
28 the release of data that would violate state confidentiality laws,  
29 "industry" means all businesses in a three-digit standard industrial  
30 classification.

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

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

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

5       ~~((a))~~ (i) Establish differing compliance or reporting  
6 requirements or timetables for small businesses;

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

9       ~~((c))~~ (iii) Establish performance rather than design standards;

10       ~~((d))~~ (iv) Exempt small businesses from any or all requirements  
11 of the rule;

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

13       (vi) Other mitigation techniques;

14       ~~((2))~~ (b) Before filing notice of a proposed rule, shall prepare  
15 a small business economic impact statement in accordance with RCW  
16 19.85.040 and file ~~((such))~~ notice of how the person can obtain the  
17 statement with the code reviser ~~((along with))~~ as part of the notice  
18 required under RCW 34.05.320;

19       (2) If requested to do so by a majority vote of the joint  
20 administrative rules review committee within thirty days after notice  
21 of the proposed rule is published in the state register, an agency  
22 shall prepare a small business economic impact statement on the  
23 proposed rule before adoption of the rule. Upon completion, an agency  
24 shall provide a copy of the small business economic impact statement to  
25 any person requesting it.

26       (3) An agency may request assistance from the business assistance  
27 center in the preparation of the small business economic impact  
28 statement.

29       (4) The business assistance center shall develop guidelines to  
30 assist agencies in determining whether a proposed rule will impose more  
31 than minor costs on businesses in an industry and therefore require  
32 preparation of a small business economic impact statement. The  
33 business assistance center may review an agency determination that a  
34 proposed rule will not impose such costs, and shall advise the joint  
35 administrative rules review committee on disputes involving agency  
36 determinations under this section.

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

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

- 20       ~~((1))~~ (a) Cost per employee;  
21       ~~((2))~~ (b) Cost per hour of labor; or  
22       ~~((3))~~ (c) Cost per one hundred dollars of sales~~((, or~~  
23       ~~(4) Any combination of (1), (2), or (3))~~).

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

25       (a) A statement of the steps taken by the agency to reduce the  
26 costs of the rule on small businesses as required by RCW 19.85.030(1),  
27 or reasonable justification for not doing so, addressing the options  
28 listed in RCW 19.85.030(1);

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

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

35       (3) To obtain information for purposes of this section, an agency  
36 may survey a representative sample of affected businesses or trade  
37 associations and should, whenever possible, appoint a committee under  
38 RCW 34.05.310(2) to assist in the accurate assessment of the costs of

1 a proposed rule, and the means to reduce the costs imposed on small  
2 business.

3 ***\*NEW SECTION. Sec. 13.*** *A new section is added to chapter 19.85*  
4 *RCW to read as follows:*

5 *Unless so requested by a majority vote of the joint administrative*  
6 *rules review committee under RCW 19.85.030, an agency is not required*  
7 *to comply with this chapter when adopting any rule solely for the*  
8 *purpose of conformity or compliance, or both, with federal law. In*  
9 *lieu of the statement required under RCW 19.85.030, the agency shall*  
10 *file a statement citing, with specificity, the federal law with which*  
11 *the rule is being adopted to conform or comply, and describing the*  
12 *consequences to the state if the rule is not adopted.*

13 *\*Sec. 13 was vetoed, see message at end of chapter.*

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

16 (1) *At least twenty days before the rule-making hearing at which*  
17 *the agency receives public comment regarding adoption of a rule, the*  
18 *agency shall cause notice of the hearing to be published in the state*  
19 *register. The publication constitutes the proposal of a rule. The*  
20 *notice shall include all of the following:*

21 (a) *A title, a description of the rule's purpose, and any other*  
22 *information which may be of assistance in identifying the rule or its*  
23 *purpose;*

24 (b) *Citations of the statutory authority for adopting the rule and*  
25 *the specific statute the rule is intended to implement;*

26 (c) *A summary of the rule and a statement of the reasons supporting*  
27 *the proposed action;*

28 (d) *The agency personnel, with their office location and telephone*  
29 *number, who are responsible for the drafting, implementation, and*  
30 *enforcement of the rule;*

31 (e) *The name of the person or organization, whether private,*  
32 *public, or governmental, proposing the rule;*

33 (f) *Agency comments or recommendations, if any, regarding statutory*  
34 *language, implementation, enforcement, and fiscal matters pertaining to*  
35 *the rule;*

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

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

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

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

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

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

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

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

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

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

33 (1) Develop agency guidelines for the preparation of a small  
34 business economic impact statement and compliance with chapter 19.85  
35 RCW;

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

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

5 (4) Organize and chair a state rules coordinating committee,  
6 consisting of agency rules coordinators and interested members of the  
7 public, to develop an education and training program that includes,  
8 among other components, a component that addresses voluntary  
9 compliance, for agency personnel responsible for rule development and  
10 implementation. The business assistance center shall submit  
11 recommendations to the department of personnel for an administrative  
12 procedures training program that is based on the sharing of interagency  
13 resources.

14 \*NEW SECTION. **Sec. 16.** The following acts or parts of acts are  
15 each repealed:

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

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

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

19 **\*Sec. 16 was partially vetoed, see message at end of chapter.**

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

22 Whenever a majority of the members of the rules review committee  
23 determines that a proposed rule is not within the intent of the  
24 legislature as expressed in the statute which the rule implements, or  
25 that an agency may not be adopting a proposed rule in accordance with  
26 all applicable provisions of law, including section 4 of this act and  
27 chapter 19.85 RCW, the committee shall give the affected agency written  
28 notice of its decision. The notice shall be given at least seven days  
29 prior to any hearing scheduled for consideration of or adoption of the  
30 proposed rule pursuant to RCW 34.05.320. The notice shall include a  
31 statement of the review committee's findings and the reasons therefor.  
32 When the agency holds a hearing on the proposed rule, the agency shall  
33 consider the review committee's decision.

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



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

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

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

27 (4) The agency shall consider fully all written and oral  
28 submissions regarding (a) whether the rule in question is within the  
29 intent of the legislature as expressed by the statute which the rule  
30 implements, (b) whether the rule was adopted in accordance with all  
31 applicable provisions of law, including section 4 of this act if the  
32 rule was adopted after the effective date of section 4 of this act and  
33 chapter 19.85 RCW, (c) whether the agency is using a policy statement,  
34 guideline, or issuance in place of a rule, or (d) whether the policy  
35 statement, guideline, or issuance is within the legislative intent.

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

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

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

26 (3) If the rules review committee makes an adverse finding under  
27 subsection (2) of this section, the committee may, by a ~~((two-thirds))~~  
28 majority vote of its members, recommend suspension of an existing rule.  
29 Within seven days of such vote the committee shall transmit to the  
30 appropriate standing committees of the legislature, the governor, the  
31 code reviser, and the agency written notice of its objection and  
32 recommended suspension and the concise reasons therefor. Within thirty  
33 days of receipt of the notice, the governor shall transmit to the  
34 committee, the code reviser, and the agency written approval or  
35 disapproval of the recommended suspension. If the suspension is  
36 approved by the governor, it is effective from the date of that  
37 approval and continues until ninety days after the expiration of the  
38 next regular legislative session.

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

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

14       (~~(5)~~) (6) The reference shall be removed from a rule published in  
15 the Washington Administrative Code if a subsequent adjudicatory  
16 proceeding determines that the rule is within the intent of the  
17 legislature or was adopted in accordance with all applicable laws,  
18 whichever was the objection of the rules review committee.

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

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

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

35 \*Sec. 20 was vetoed, see message at end of chapter.

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

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

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

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

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

15 \*NEW SECTION. **Sec. 23.** *A new section is added to chapter 34.05*  
16 *RCW to read as follows:*

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

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

34 *(3) A statement of deficiency shall specify: (a) The particular*  
35 *rule violated; (b) the steps the entity must take to comply with the*  
36 *rule; (c) any agency personnel designated by the agency to provide*  
37 *technical assistance regarding compliance with the rule; and (d) a date*

1 *by which the entity is required to comply with the rule. The date*  
2 *specified shall provide a reasonable period of time for the entity to*  
3 *comply with the rule, considering the size of the entity, its available*  
4 *resources, and the threat posed by the violation. If the entity fails*  
5 *to comply with the rule by the date specified, it shall be subject to*  
6 *the penalty otherwise provided in law.*

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

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

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

30 *\*Sec. 23 was vetoed, see message at end of chapter.*

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

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

34 (a) Each agency may adopt rules governing the formal and informal  
35 procedures prescribed or authorized by this chapter and rules of  
36 practice before the agency, together with forms and instructions. If  
37 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. 25 was vetoed, see message at end of chapter.*

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

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

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

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

36 (4) The board shall base its decision on the record developed by  
37 the city, county, or the state and supplemented with additional  
38 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*  
15 *RCW 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 *\*Sec. 34 was vetoed, see message at end of chapter.*

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

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

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

1       ***(b) Make every effort to avoid conflict, overlap, and duplication;***  
2       ***(2) After the adoption of a law that conflicts with, overlaps, or***  
3 ***duplicates other laws, the county shall:***

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

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

8 \*Sec. 35 was vetoed, see message at end of chapter.

9       **NEW SECTION. Sec. 36.** This act applies prospectively only and not  
10 retroactively.

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

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

Passed the House March 10, 1994.

Passed the Senate March 10, 1994.

Approved by the Governor April 1, 1994, with the exception of  
certain items which were vetoed.

Filed in Office of Secretary of State April 1, 1994.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 4, 5,  
3 6, 13, 16(2), 20, 23, 25, 34, and 35, Engrossed Second Substitute House  
4 Bill No. 2510 entitled:

5 "AN ACT Relating to the implementation of the recommendations of  
6 the governor's task force on regulatory reform;"

7 On August 9, 1993, I signed Executive Order 93-06. The Executive  
8 Order directed state agencies to initiate several efforts to coordinate  
9 among themselves and to provide better and more useful information to  
10 the public. I stated three goals for regulatory reform in the Executive  
11 Order. They are:

12 To institute immediate management improvements in state regulatory  
13 functions, reducing inefficiencies, conflicts, and delays.

14 To develop long-term solutions to complex regulatory issues that, if  
15 left unresolved, could impede the orderly growth and sustained economic  
16 development of the state.



1 To ensure that any regulatory reform solutions designed to support  
2 economic benefits to the state also ensure continued protection of the  
3 environment, the health, and the safety of our citizens.

4 The Executive Order also created the Governor's Task Force on  
5 Regulatory Reform, composed of representatives from a cross-section of  
6 state citizens and interest groups. The Task Force established three  
7 subcommittees to address the major issue areas set forth in the  
8 Executive Order and made its interim recommendation in its December 17,  
9 1993 report upon which this legislation is based. The Task Force will  
10 continue its work through December 31, 1994 and will submit final  
11 recommendations to the Governor by December 1, 1994.

12 As introduced, House Bill No. 2510 met the goals I established for  
13 regulatory reform. I would have been able to sign all but one section  
14 had it passed as it was introduced. However, as passed by the  
15 Legislature, there are sections of Engrossed Second Substitute House  
16 Bill No. 2510 which I do not believe meet the goals I set for  
17 regulatory reform. In addition, many of the provisions of the bill  
18 would only increase the delays, bureaucracy, and paperwork of the  
19 rulemaking process imposing significant burdens on state agencies  
20 without providing any additional meaningful involvement or reduced  
21 burden for the regulated community. This is directly counter to the  
22 goals of regulatory reform.

23 While I am disappointed that I am unable to sign this bill in its  
24 entirety, there are several provisions I will soon incorporate into an  
25 Executive Order. In particular, the Executive Order will direct  
26 agencies engaged in rulemaking to evaluate criteria similar to those  
27 set forth in section 4 as proposed by the Task Force. I will also be  
28 directing agencies to increase the level of technical assistance they  
29 provide to businesses and to individuals intent on meeting state  
30 regulations but who may be unclear on how to comply.

31 Of all the issues addressed in the bill, section 4 served as the  
32 flash point for debate over regulatory reform during the 1994  
33 Legislative Session. The Task Force, with considerable public comment,  
34 concluded that the state agencies needed additional direction in the  
35 rulemaking process and recommended a series of criteria for the  
36 agencies to consider before adopting a rule. I fully support the  
37 concept that agencies consider these criteria in their rulemaking  
38 process. However, section 4 strays from the carefully balanced approach  
39 in the original bill. The bill provided the proper direction to  
40 agencies without creating additional, unnecessary paperwork and avoided  
41 turning rulemaking into a judicial like process which only encourages  
42 litigation. If this section is allowed to become law, the only  
43 certainty is that litigation will ensue over the meaning of its various  
44 provisions.

45 In addition, the specific criteria set forth in section 4 go well  
46 beyond the criteria proposed in the original bill. For example, this  
47 section requires an agency to determine that any overlap, duplication  
48 or difference between the rule and any federal law is necessary to  
49 achieve the objectives of the statute. There are many circumstances  
50 where differences from federal rules may be justified to protect the  
51 safety and quality of life in our state, yet these provisions would  
52 make it nearly impossible for an agency to adopt rules on a subject  
53 over which the federal government has adopted rules or passed  
54 legislation.

1 Section 4 also requires an agency to determine that the likely  
2 costs of a rule justify its likely benefits. While the original bill  
3 required agencies to consider the economic and environmental  
4 consequences of adopting a rule, the cost benefit analysis approach in  
5 section 4 goes beyond that requirement. This provision mandates a time  
6 consuming, expensive and controversial process. Although it is  
7 appropriate for agencies to consider the benefits and costs of their  
8 actions, many of the factors which should be considered, such as  
9 health, safety and environmental concerns, do not lend themselves to a  
10 formal cost-benefit determination.

11 Section 4 also requires agencies to determine that there are no  
12 reasonable alternatives proposed during the rule-making process which  
13 are less burdensome on those required to comply. This criteria creates  
14 the unacceptable assumption that impacts on the regulated community  
15 should be the only consideration for an agency when it adopts a rule.  
16 Agencies should also consider the cost to the taxpayers, to the  
17 environment and to the public's safety.

18 Section 4, in combination with section 5, was identified by state  
19 agencies as being particularly expensive to implement. The legislature  
20 did not appropriate funds in the supplemental budget to defray the  
21 added costs which this section would impose. For all of the above  
22 reasons, I am vetoing section 4.

23 Section 5 applies only to rules subject to the provisions of  
24 section 4. Therefore, I am also vetoing section 5.

25 Section 6 amends an existing statute which allows a person to  
26 petition an agency to adopt, amend, or repeal a rule, by allowing an  
27 appeal of an agency's decision to the governor. Section 6 directs the  
28 petitioner to address several specific factors which the agencies are  
29 not required to consider when they engage in rule-making. By including  
30 these as elements of the petition, the implication is made that they  
31 are also standards for rule adoption when in fact they are not. For  
32 this reason, I am vetoing section 6.

33 Section 13 is a new section which incorporates part of the  
34 requirements currently included in RCW 19.85.060. Section 13 states  
35 that an agency is not required to prepare a small business economic  
36 impact statement if the rule is adopted in order to comply with federal  
37 law. RCW 19.85.060, which section 13 replaces, provides that an agency  
38 is not required to prepare the statement if the rule is adopted to  
39 comply with federal law or regulation. While this may have been an  
40 inadvertent action by the legislature, deletion of these words  
41 increases the circumstances under which agencies will need to prepare  
42 an impact statement even though the rule is required by the federal  
43 government. For this reason, I am vetoing section 13.

44 Section 16(2) repeals RCW 19.85.060, which contains the exemption  
45 addressed in section 13. Because I am vetoing section 13, I am also  
46 vetoing section 16(2).

47 Section 20 gives the Joint Administrative Rules Review Committee  
48 (JARRC) the ability to establish a rebuttable presumption in judicial  
49 proceedings that a rule does not comply with the legislature's intent.  
50 The Task Force included this recommendation in its report. It has been  
51 my wish to sign into law those recommendations in this bill which  
52 accurately reflect the recommendations of the Task Force. However, I  
53 have serious concerns about the constitutionality of this provision  
54 under the separation of powers doctrine. A committee of the legislature  
55 cannot be given authority to invalidate a rule. See, Immigration &

1 Naturalization Service v. Chadha, 462 U.S. 919 (1983). Allowing a  
2 committee of the legislature to affect the legal status of an agency  
3 rule adopted in compliance with all statutory procedures is an  
4 unwarranted intrusion into the role of the executive branch.

5 Through section 19 of the bill the legislature's authority, to  
6 object to rules is enhanced by lowering the threshold vote necessary  
7 for JARRC to recommend suspension of a rule. In addition, if the  
8 governor does not suspend the rule, section 19 provides that JARRC's  
9 recommendation is treated by the agency as a petition to repeal the  
10 rule. JARRC also may recommend to the full Legislature corrective  
11 legislation if it is dissatisfied with the agency's response to its  
12 objections. These are appropriate means to increase the authority of  
13 JARRC. For these reasons, I am vetoing section 20.

14 Section 23 addresses the issue of technical assistance and its  
15 relationship to enforcement. The original bill included a provision  
16 requiring agencies to provide technical assistance as an alternative to  
17 traditional enforcement approaches. This provision was based on  
18 successful programs in the Department of Ecology and the Department of  
19 Labor and Industries. Many other agencies have also developed similar  
20 approaches to enforcement. Section 23 goes beyond this positive  
21 approach to technical assistance by allowing a business which requests  
22 assistance from a selected set of state agencies to avoid penalties for  
23 violation of any rules administered by the agency unless the business  
24 has previously violated the same rule or does so knowingly. While I  
25 support increased technical assistance from agencies and will include  
26 this in my Executive Order, I cannot support the idea that ignorance is  
27 an excuse to violate state rules. This provision will be more likely to  
28 further the confrontational approach many businesses have complained  
29 about instead of fostering cooperation between business and state  
30 regulators.

31 There is also a serious question about the constitutionality of  
32 this provision since it applies only to business entities. Article 1,  
33 section 12 of the Washington Constitution prohibits the granting of  
34 privileges and immunities to corporations that are not available to all  
35 others. Many individual citizens, as well as cities and counties, are  
36 required to comply with the same statutes and rules as businesses. They  
37 are not afforded the same favorable treatment this section would  
38 provide to business. For these reasons, I am vetoing section 23.

39 Section 25 modifies the requirements of the Administrative  
40 Procedure Act relating to the exhaustion of administrative remedies. A  
41 reference to the appeal provided for in section 6 is added. Since I  
42 have vetoed section 6, this section is also vetoed.

43 Sections 34 and 35 were added to Engrossed Second Substitute House  
44 Bill No. 2510 by the Conference Committee and received no discussion or  
45 debate prior to that time. They require city and county governments to  
46 expend considerable resources to coordinate their regulatory activities  
47 with the state and federal governments. As with so many sections of  
48 this bill, the goals of these two sections are sound. However, the  
49 requirements imposed by these two sections will only burden cities and  
50 counties without any benefit of the topic of coordinating local and  
51 state permitting and regulatory decisions is under active consideration  
52 by the Task Force. It is premature to enact these sections at this  
53 time. I am therefore vetoing sections 34 and 35.

54 With the exception of sections 4, 5, 6, 13, 16(2), 20, 23, 25, 34,  
55 and 35, Engrossed Second Substitute House Bill No. 2510 is approved."