

2 **ESHB 1010** - S AMD 349
3 By Senators Sheldon and Hale

4 ADOPTED AS AMENDED 4/14/95

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

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) One of its fundamental responsibilities, to the benefit of all
9 the citizens of the state, is the protection of public health and
10 safety, including health and safety in the workplace, and the
11 preservation of the extraordinary natural environment with which
12 Washington is endowed;

13 (b) Essential to this mission is the delegation of authority to
14 state agencies to implement the policies established by the
15 legislature; and that the adoption of administrative rules by these
16 agencies helps assure that these policies are clearly understood,
17 fairly applied, and uniformly enforced;

18 (c) Despite its importance, Washington's regulatory system must not
19 impose excessive, unreasonable, or unnecessary obligations; to do so
20 serves only to discredit government, makes enforcement of essential
21 regulations more difficult, and detrimentally affects the economy of
22 the state and the well-being of our citizens.

23 (2) The legislature therefore enacts chapter . . . , Laws of 1995
24 (this act), to be known as the regulatory reform act of 1995, to ensure
25 that the citizens and environment of this state receive the highest
26 level of protection, in an effective and efficient manner, without
27 stifling legitimate activities and responsible economic growth. To
28 that end, it is the intent of the legislature, in the adoption of this
29 act, that:

30 (a) Unless otherwise authorized, substantial policy decisions
31 affecting the public be made by those directly accountable to the
32 public, namely the legislature, and that state agencies not use their
33 administrative authority to create or amend regulatory programs;

34 (b) When an agency is authorized to adopt rules imposing
35 obligations on the public, that it do so responsibly: The rules it
36 adopts should be justified and reasonable, with the agency having

1 determined, based on common sense criteria established by the
2 legislature, that the obligations imposed are truly in the public
3 interest;

4 (c) Governments at all levels better coordinate their regulatory
5 efforts to avoid confusing and frustrating the public with overlapping
6 or contradictory requirements;

7 (d) The public respect the process whereby administrative rules are
8 adopted, whether or not they agree with the result: Members of the
9 public affected by administrative rules must have the opportunity for
10 a meaningful role in their development; the bases for agency action
11 must be legitimate and clearly articulated;

12 (e) Members of the public have adequate opportunity to challenge
13 administrative rules with which they have legitimate concerns through
14 meaningful review of the rule by the executive, the legislature, and
15 the judiciary. While it is the intent of the legislature that upon
16 judicial review of a rule, a court should not substitute its judgment
17 for that of an administrative agency, the court should determine
18 whether the agency decision making was rigorous and deliberative;
19 whether the agency reached its result through a process of reason; and
20 whether the agency took a hard look at the rule before its adoption;

21 (f) In order to achieve greater compliance with administrative
22 rules at less cost, that a cooperative partnership exist between
23 agencies and regulated parties that emphasizes education and assistance
24 before the imposition of penalties; and

25 (g) Workplace safety and health in this state not be diminished,
26 whether provided by constitution, by statute, or by rule.

27 **PART I**

28 **GRANTS OF AUTHORITY**

29 NEW SECTION. **Sec. 101.** A new section is added to chapter 43.12
30 RCW to read as follows:

31 For rules adopted after the effective date of this section, the
32 commissioner of public lands may not rely solely on a section of law
33 stating a statute's intent or purpose, on the enabling provisions of
34 the statute establishing the agency, or on any combination of such
35 provisions, for statutory authority to adopt any rule.

1 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.20A
2 RCW to read as follows:

3 For rules adopted after the effective date of this section, the
4 secretary may not rely solely on a section of law stating a statute's
5 intent or purpose, on the enabling provisions of the statute
6 establishing the agency, or on any combination of such provisions, for
7 statutory authority to adopt any rule.

8 **Sec. 103.** RCW 43.21A.080 and 1970 ex.s. c 62 s 8 are each amended
9 to read as follows:

10 The director of the department of ecology is authorized to adopt
11 such rules and regulations as are necessary and appropriate to carry
12 out the provisions of this chapter: PROVIDED, That the director may
13 not adopt rules after the effective date of this section that are based
14 solely on a section of law stating a statute's intent or purpose, on
15 the enabling provisions of the statute establishing the agency, or on
16 any combination of such provisions, for statutory authority to adopt
17 the rule.

18 NEW SECTION. **Sec. 104.** A new section is added to chapter 43.23
19 RCW to read as follows:

20 For rules adopted after the effective date of this section, the
21 director of agriculture may not rely solely on a section of law stating
22 a statute's intent or purpose, on the enabling provisions of the
23 statute establishing the agency, or on any combination of such
24 provisions, for statutory authority to adopt any rule.

25 **Sec. 105.** RCW 43.70.040 and 1989 1st ex.s. c 9 s 106 are each
26 amended to read as follows:

27 In addition to any other powers granted the secretary, the
28 secretary may:

29 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary
30 to carry out the provisions of ~~((this act))~~ chapter 9, Laws of 1989 1st
31 ex. sess.: PROVIDED, That for rules adopted after the effective date
32 of this section, the secretary may not rely solely on a section of law
33 stating a statute's intent or purpose, on the enabling provisions of
34 the statute establishing the agency, or on any combination of such
35 provisions, for statutory authority to adopt any rule;

1 (2) Appoint such advisory committees as may be necessary to carry
2 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
3 sess. Members of such advisory committees are authorized to receive
4 travel expenses in accordance with RCW 43.03.050 and 43.03.060. The
5 secretary and the board of health shall review each advisory committee
6 within their jurisdiction and each statutory advisory committee on a
7 biennial basis to determine if such advisory committee is needed. The
8 criteria specified in RCW 43.131.070 shall be used to determine whether
9 or not each advisory committee shall be continued;

10 (3) Undertake studies, research, and analysis necessary to carry
11 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
12 sess. in accordance with RCW 43.70.050;

13 (4) Delegate powers, duties, and functions of the department to
14 employees of the department as the secretary deems necessary to carry
15 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
16 sess.;

17 (5) Enter into contracts on behalf of the department to carry out
18 the purposes of (~~this act~~) chapter 9, Laws of 1989 1st ex. sess.;

19 (6) Act for the state in the initiation of, or the participation
20 in, any intergovernmental program to the purposes of (~~this act~~)
21 chapter 9, Laws of 1989 1st ex. sess.; or

22 (7) Accept gifts, grants, or other funds.

23 **Sec. 106.** RCW 82.01.060 and 1977 c 75 s 92 are each amended to
24 read as follows:

25 The director of revenue, hereinafter in (~~this 1967 amendatory~~
26 ~~act~~) chapter 26, Laws of 1967 ex. sess. referred to as the director,
27 through the department of revenue, hereinafter in (~~this 1967~~
28 ~~amendatory act~~) chapter 26, Laws of 1967 ex. sess. referred to as the
29 department, shall:

30 (1) Assess and collect all taxes and administer all programs
31 relating to taxes which are the responsibility of the tax commission at
32 the time (~~this 1967 amendatory act~~) chapter 26, Laws of 1967 ex.
33 sess. takes effect or which the legislature may hereafter make the
34 responsibility of the director or of the department;

35 (2) Make, adopt and publish such rules (~~and regulations~~) as he or
36 she may deem necessary or desirable to carry out the powers and duties
37 imposed upon him or her or the department by the legislature:
38 PROVIDED, That the director may not adopt rules after the effective

1 date of this section that are based solely on a section of law stating
2 a statute's intent or purpose, on the enabling provisions of the
3 statute establishing the agency, or on any combination of such
4 provisions, for statutory authority to adopt any rule;

5 ~~(3) Rules ((and regulations))~~ adopted by the tax commission ~~((prior~~
6 ~~to))~~ before the effective date of this ~~((1967-amendatory-act))~~ section
7 shall remain in force until such time as they may be revised or
8 rescinded by the director;

9 ~~((+3))~~ (4) Provide by general regulations for an adequate system
10 of departmental review of the actions of the department or of its
11 officers and employees in the assessment or collection of taxes;

12 ~~((+4))~~ (5) Maintain a tax research section with sufficient
13 technical, clerical and other employees to conduct constant observation
14 and investigation of the effectiveness and adequacy of the revenue laws
15 of this state and of the sister states in order to assist the governor,
16 the legislature and the director in estimation of revenue, analysis of
17 tax measures, and determination of the administrative feasibility of
18 proposed tax legislation and allied problems;

19 ~~((+5))~~ (6) Recommend to the governor such amendments, changes in,
20 and modifications of the revenue laws as seem proper and requisite to
21 remedy injustice and irregularities in taxation, and to facilitate the
22 assessment and collection of taxes in the most economical manner.

23 NEW SECTION. Sec. 107. A new section is added to chapter 43.24
24 RCW to read as follows:

25 For rules adopted after the effective date of this section, the
26 director of the department of licensing may not rely solely on a
27 section of law stating a statute's intent or purpose, on the enabling
28 provisions of the statute establishing the agency, or on any
29 combination of such provisions, for statutory authority to adopt any
30 rule, except rules defining or clarifying terms in, or procedures
31 necessary to the implementation of, a statute.

32 Sec. 108. RCW 46.01.110 and 1979 c 158 s 120 are each amended to
33 read as follows:

34 The director of licensing is hereby authorized to adopt and enforce
35 such reasonable rules ~~((and regulations))~~ as may be consistent with and
36 necessary to carry out the provisions relating to vehicle licenses,
37 certificates of ownership and license registration and drivers'

1 licenses not in conflict with the provisions of Title 46 RCW:
2 PROVIDED, That the director of licensing may not adopt rules after the
3 effective date of this section that are based solely on a section of
4 law stating a statute's intent or purpose, on the enabling provisions
5 of the statute establishing the agency, or on any combination of such
6 provisions, for statutory authority to adopt any rule.

7 **Sec. 109.** RCW 50.12.040 and 1973 1st ex.s. c 158 s 3 are each
8 amended to read as follows:

9 ((Regular)) Permanent and emergency rules ((and regulations)) shall
10 be adopted, amended, or repealed by the commissioner in accordance with
11 the provisions of Title 34 RCW and the rules ((or regulations)) adopted
12 pursuant thereto: PROVIDED, That the commissioner may not adopt rules
13 after the effective date of this section that are based solely on a
14 section of law stating a statute's intent or purpose, on the enabling
15 provisions of the statute establishing the agency, or on any
16 combination of such provisions, for statutory authority to adopt any
17 rule.

18 **Sec. 110.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
19 read as follows:

20 (1) Where necessary to accomplish the purposes and policies stated
21 in RCW 76.09.010, and to implement the provisions of this chapter, the
22 board shall ((promulgate)) adopt forest practices ((regulations)) rules
23 pursuant to chapter 34.05 RCW and in accordance with the procedures
24 enumerated in this section: PROVIDED, That the board may not adopt
25 rules after the effective date of this section that are based solely on
26 a section of law stating a statute's intent or purpose, on the enabling
27 provisions of the statute establishing the agency, or on any
28 combination of such provisions, for statutory authority to adopt any
29 rule.

30 (2) The board shall adopt rules that:

31 (a) Establish minimum standards for forest practices;

32 (b) Provide procedures for the voluntary development of resource
33 management plans which may be adopted as an alternative to the minimum
34 standards in (a) of this subsection if the plan is consistent with the
35 purposes and policies stated in RCW 76.09.010 and the plan meets or
36 exceeds the objectives of the minimum standards;

37 (c) Set forth necessary administrative provisions; and

1 (d) Establish procedures for the collection and administration of
2 forest practice fees as set forth by this chapter.

3 Forest practices (~~((regulations))~~) rules pertaining to water quality
4 protection shall be (~~((promulgated))~~) adopted individually by the board
5 and by the department of ecology after they have reached agreement with
6 respect thereto. All other forest practices (~~((regulations))~~) rules
7 shall be (~~((promulgated))~~) adopted by the board.

8 Forest practices (~~((regulations))~~) rules shall be administered and
9 enforced by the department except as otherwise provided in this
10 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted
11 and administered so as to give consideration to all purposes and
12 policies set forth in RCW 76.09.010.

13 (~~((+2))~~) (3) The board shall prepare proposed forest practices
14 (~~((regulations))~~) rules. In addition to any forest practices
15 (~~((regulations))~~) rules relating to water quality protection proposed by
16 the board, the department of ecology shall prepare proposed forest
17 practices (~~((regulations))~~) rules relating to water quality protection.

18 Prior to initiating the rule making process, the proposed
19 (~~((regulations))~~) rules shall be submitted for review and comments to the
20 department of fish and wildlife and to the counties of the state.
21 After receipt of the proposed forest practices (~~((regulations))~~) rules,
22 the department of fish and wildlife and the counties of the state shall
23 have thirty days in which to review and submit comments to the board,
24 and to the department of ecology with respect to its proposed
25 (~~((regulations))~~) rules relating to water quality protection. After the
26 expiration of such thirty day period the board and the department of
27 ecology shall jointly hold one or more hearings on the proposed
28 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such
29 hearing(s) any county may propose specific forest practices
30 (~~((regulations))~~) rules relating to problems existing within such county.
31 The board and the department of ecology may adopt such proposals if
32 they find the proposals are consistent with the purposes and policies
33 of this chapter.

34 **Sec. 111.** RCW 77.04.090 and 1984 c 240 s 1 are each amended to
35 read as follows:

36 The commission shall adopt permanent rules and amendments to or
37 repeals of existing rules by approval of four members by resolution,
38 entered and recorded in the minutes of the commission: PROVIDED, That

1 the commission may not adopt rules after the effective date of this
2 section that are based solely on a section of law stating a statute's
3 intent or purpose, on the enabling provisions of the statute
4 establishing the agency, or on any combination of such provisions, for
5 statutory authority to adopt any rule. The commission shall adopt
6 emergency rules by approval of four members. The commission or the
7 director, when adopting emergency rules under RCW 77.12.150, shall
8 adopt rules in conformance with chapter 34.05 RCW. Judicial notice
9 shall be taken of the rules filed and published as provided in RCW
10 34.05.380 and 34.05.210.

11 A copy of an emergency rule, certified as a true copy by a member
12 of the commission, the director, or by a person authorized in writing
13 by the director to make the certification, is admissible in court as
14 prima facie evidence of the adoption and validity of the rule.

15 NEW SECTION. **Sec. 112.** A new section is added to chapter 43.22
16 RCW to read as follows:

17 For rules adopted after the effective date of this section, the
18 director of the department of labor and industries may not rely solely
19 on a statute's statement of intent or purpose, on the enabling
20 provisions of the statute establishing the agency, or on any
21 combination of such provisions, for statutory authority to adopt any
22 rule: PROVIDED, That this section shall not apply to rules adopted
23 pursuant to chapter 39.12 RCW. It is the intent of the legislature to
24 retain the status quo and that the provisions of chapter . . . , Laws of
25 1995 (this act) shall neither explicitly or impliedly diminish nor
26 expand the rule-making authority of the department under chapter 39.12
27 RCW.

28 **Sec. 113.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
29 read as follows:

30 (1) The commissioner shall have the authority expressly conferred
31 upon him or her by or reasonably implied from the provisions of this
32 code.

33 (2) The commissioner shall execute his or her duties and shall
34 enforce the provisions of this code.

35 (3) The commissioner may:

36 (a) Make reasonable rules and regulations for effectuating any
37 provision of this code, except those relating to his or her election,

1 qualifications, or compensation: PROVIDED, That the commissioner may
2 not adopt rules after the effective date of this section that are based
3 solely on this statute, or on a statute's statement of intent or
4 purpose, or on the enabling provisions of the statute establishing the
5 agency, or any combination of such provisions, for statutory authority
6 to adopt any rule, except rules defining or clarifying terms in, or
7 procedures necessary to the implementation of a statute. No such rules
8 and regulations shall be effective prior to their being filed for
9 public inspection in the commissioner's office.

10 (b) Conduct investigations to determine whether any person has
11 violated any provision of this code.

12 (c) Conduct examinations, investigations, hearings, in addition to
13 those specifically provided for, useful and proper for the efficient
14 administration of any provision of this code.

15 **Sec. 114.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
16 read as follows:

17 (1) No person engaged in the business of insurance shall engage in
18 unfair methods of competition or in unfair or deceptive acts or
19 practices in the conduct of such business as such methods, acts, or
20 practices ~~((are defined pursuant to subsection (2) of this section.~~

21 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~
22 ~~or practices)) as are expressly defined and prohibited by this code((~~
23 ~~the commissioner may from time to time by regulation promulgated~~
24 ~~pursuant to chapter 34.05 RCW, define other methods of competition and~~
25 ~~other acts and practices in the conduct of such business reasonably~~
26 ~~found by the commissioner to be unfair or deceptive.~~

27 ~~(3) No such regulation shall be made effective prior to the~~
28 ~~expiration of thirty days after the date of the order by which it is~~
29 ~~promulgated)).~~

30 ~~((4))~~ (2) If the commissioner has cause to believe that any
31 person is violating any such ~~((regulation))~~ rule or prohibition of this
32 code, the commissioner may order such person to cease and desist
33 therefrom. The commissioner shall deliver such order to such person
34 direct or mail it to the person by registered mail with return receipt
35 requested. If the person violates the order after expiration of ten
36 days after the cease and desist order has been received by him or her,
37 he or she may be fined by the commissioner a sum not to exceed two
38 hundred and fifty dollars for each violation committed thereafter.

1 (~~(5)~~) (3) If any such (~~regulation~~) rule or prohibition of this
2 code is violated, the commissioner may take such other or additional
3 action as is permitted under the insurance code for violation of a
4 (~~regulation~~) rule or that prohibition.

5 (4) Any permanent rule that was adopted by the commissioner under
6 the authority of this section as it existed before the effective date
7 of this section, and that was in effect as of the effective date of
8 this section, shall, if otherwise valid, remain in effect until and
9 unless it is repealed by the commissioner, who shall retain the
10 authority to repeal any such rule, or is effectively repealed by an act
11 of the legislature.

12 **Sec. 115.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to
13 read as follows:

14 The insurance commissioner shall make reasonable regulations in aid
15 of the administration of this chapter which may include, but shall not
16 be limited to regulations concerning the maintenance of adequate
17 insurance, bonds, or cash deposits, information required of
18 registrants, and methods of expediting speedy and fair payments to
19 claimants: PROVIDED, That the commissioner may not adopt rules after
20 the effective date of this section that are based solely on this
21 section, a statute's statement of intent or purpose, or on the enabling
22 provisions of the statute establishing the agency, or any combination
23 of such provisions, for statutory authority to adopt any rule, except
24 rules defining or clarifying terms in, or procedures necessary to the
25 implementation of a statute.

26 **Sec. 116.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
27 amended to read as follows:

28 The commissioner may adopt, in accordance with the provisions of
29 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
30 rules and regulations as necessary or proper to carry out the
31 provisions of this chapter: PROVIDED, That the commissioner may not
32 adopt rules after the effective date of this section that are based
33 solely on this section, a statute's statement of intent or purpose, or
34 on the enabling provisions of the statute establishing the agency, or
35 any combination of such provisions, for statutory authority to adopt
36 any rule, except rules defining or clarifying terms in, or procedures
37 necessary to the implementation of a statute. Nothing in this chapter

1 shall be construed to prohibit the commissioner from requiring changes
2 in procedures previously approved by (~~him~~) the commissioner.

3 NEW SECTION. **Sec. 117.** A new section is added to chapter 70.94
4 RCW to read as follows:

5 (1) After the effective date of this section, the department may
6 adopt or amend a rule under the authority of this chapter that exceeds
7 the requirements of the federal clean air act or regulations adopted
8 under it or that imposes burdens or obligations before the scheduled
9 adoption of federal regulations addressing similar subject matter only
10 after compliance with the procedures established in section 201 of this
11 act.

12 (2) In fulfilling the requirements of section 201(1)(g)(ii) of this
13 act, the department shall consider: (a) The differences between the
14 proposed rule and the corresponding provisions of the federal clean air
15 act; (b) the air quality problem that the proposed rule would address,
16 including the sources of the problem and any factors that make the
17 problem different in the state or in a part of the state than in other
18 parts of the United States; and (c) the effect of the proposed rule in
19 eliminating the problem or reducing its severity. This section shall
20 not be interpreted to impede efforts to streamline or simplify federal
21 air regulations that are developed with participation of the public and
22 regulated entities.

23 (3) This section shall expire July 1, 1999.

24 NEW SECTION. **Sec. 118.** A new section is added to chapter 34.05
25 RCW under the subchapter heading Part III to read as follows:

26 For rules implementing statutes enacted after the effective date of
27 this section, an agency may not rely solely on the section of law
28 stating a statute's intent or purpose, or on the enabling provisions of
29 the statute establishing the agency, or on any combination of such
30 provisions, for its statutory authority to adopt the rule. An agency
31 may use the statement of intent or purpose or the agency enabling
32 provisions to interpret ambiguities in a statute's other provisions.

33 NEW SECTION. **Sec. 119.** A new section is added to chapter 34.05
34 RCW under the subchapter heading Part III to read as follows:

35 Section 118 of this act does not apply to: The commissioner of
36 public lands, the department of social and health services, the

1 department of ecology, the department of agriculture, the department of
2 health, the department of revenue, the department of licensing, the
3 department of labor and industries, the employment security department,
4 the forest practices board, the fish and wildlife commission, and the
5 office of the insurance commissioner.

6 **PART II**
7 **RULE-MAKING CRITERIA**

8 NEW SECTION. **Sec. 201.** A new section is added to chapter 34.05
9 RCW under the subchapter heading Part III to read as follows:

10 (1) Before adopting a rule described in subsection (5) of this
11 section, an agency shall:

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

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

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

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

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

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

33 (g) Determine if the rule differs from any federal regulation or
34 statute applicable to the same activity or subject matter and, if so,
35 determine that the difference is justified by the following:

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

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

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

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

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

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

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

18 (c) Promote and assist voluntary compliance; and

19 (d) Evaluate whether the rule achieves the purpose for which it was
20 adopted, including, to the maximum extent practicable, the use of
21 interim milestones to assess progress and the use of objectively
22 measurable outcomes.

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

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

30 (b) Coordinate implementation and enforcement of the rule with the
31 other federal and state entities regulating the same activity or
32 subject matter by making every effort to do one or more of the
33 following:

34 (i) Deferring to the other entity;

35 (ii) Designating a lead agency; or

36 (iii) Entering into an agreement with the other entities specifying
37 how the agency and entities will coordinate implementation and
38 enforcement.

1 If the agency is unable to comply with this subsection (4)(b), the
2 agency shall report to the legislature pursuant to (c) of this
3 subsection;

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

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

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

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

13 (i) Significant legislative rules of the departments of ecology,
14 labor and industries, health, revenue, and natural resources, the
15 employment security department, the forest practices board, the office
16 of the insurance commissioner, and to the legislative rules of the
17 department of fish and wildlife implementing chapter 75.20 RCW; and

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

23 (b) This section does not apply to:

24 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

38 (v) Rules the content of which is explicitly and specifically
39 dictated by statute; or

1 (vi) Rules that set or adjust fees or rates pursuant to legislative
2 standards.

3 (c) For purposes of this subsection:

4 (i) A "procedural rule" is a rule that adopts, amends, or repeals
5 (A) any procedure, practice, or requirement relating to any agency
6 hearings; (B) any filing or related process requirement for making
7 application to an agency for a license or permit; or (C) any policy
8 statement pertaining to the consistent internal operations of an
9 agency.

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

13 (iii) A "significant legislative rule" is a rule other than a
14 procedural or interpretive rule that (A) adopts substantive provisions
15 of law pursuant to delegated legislative authority, the violation of
16 which subjects a violator of such rule to a penalty or sanction; (B)
17 establishes, alters, or revokes any qualification or standard for the
18 issuance, suspension, or revocation of a license or permit; or (C)
19 adopts a new, or makes significant amendments to, a policy or
20 regulatory program.

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

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

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

34 (b) The costs incurred by state agencies in complying with this
35 section;

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

- 1 (d) The extent to which this section has adversely affected the
2 capacity of agencies to fulfill their legislatively prescribed mission;
3 (e) The extent to which this section has improved the acceptability
4 of state rules to those regulated; and
5 (f) Any other information considered by the office of financial
6 management to be useful in evaluating the effect of this section.

7 **PART III**
8 **PUBLIC PARTICIPATION**

9 **Sec. 301.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to
10 read as follows:

11 (1) To meet the intent of providing greater public access to
12 administrative rule making and to promote consensus among interested
13 parties, agencies shall solicit comments from the public on a subject
14 of possible rule making before ~~((publication of))~~ filing with the code
15 reviser a notice of proposed rule ~~((adoption))~~ making under RCW
16 34.05.320. The agency shall prepare a statement of ~~((intent))~~ inquiry
17 that:

- 18 ~~((States the specific statutory authority for the new rule;~~
19 ~~(b) Identifies the reasons the new rule is needed;~~
20 ~~(c) Identifies the goals of the new rule;~~
21 ~~(d) Describes))~~ Identifies the specific statute or statutes
22 authorizing the agency to adopt rules on this subject;

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

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

28 (d) Discusses the process by which the rule ~~((will))~~ might be
29 developed, including, but not limited to, negotiated rule making, pilot
30 rule making, or agency study; ~~((and))~~

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

34 The statement of ~~((intent))~~ inquiry shall be filed with the code
35 reviser for publication in the state register at least thirty days
36 before the date the agency files notice of proposed rule making under

1 RCW 34.05.320 and shall be sent to any party that has requested receipt
2 of the agency's statements of ~~((intent))~~ inquiry.

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

7 (a) ~~Negotiated rule making ((which includes:~~

8 ~~(i) Identifying individuals and organizations that have a~~
9 ~~recognized interest in or will be significantly affected by the~~
10 ~~adoption of the proposed rule;~~

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

13 ~~(iii) Assuring that participants fully recognize the consequences~~
14 ~~of not participating in the process, are committed to negotiate in good~~
15 ~~faith, and recognize the alternatives available to other parties;~~

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

19 ~~(v) Agreeing on a reasonable time period during which the agency~~
20 ~~will be bound to the rule resulting from the negotiations without~~
21 ~~substantive amendment; and~~

22 ~~(vi) Providing a mechanism by which one or more parties may~~
23 ~~withdraw from the process or the negotiations may be terminated if it~~
24 ~~appears that consensus cannot be reached on a draft rule that~~
25 ~~accommodates the needs of the agency, interested parties, and the~~
26 ~~general public and conforms to the legislative intent of the statute~~
27 ~~that the rule is intended to implement)) by which representatives of an~~
28 agency and of the interests that are affected by a subject of rule
29 making, including, where appropriate, county and city representatives,
30 seek to reach consensus on the terms of the proposed rule and on the
31 process by which it is negotiated; and

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

37 (3)(a) An agency must make a determination whether negotiated rule
38 making, pilot rule making, or another process for generating

1 participation from interested parties prior to development of the rule
2 is appropriate.

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

7 (4) This section does not apply to:

8 (a) Emergency rules adopted under RCW 34.05.350;

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

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

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

22 (e) Rules the content of which is explicitly and specifically
23 dictated by statute;

24 (f) Rules that set or adjust fees or rates pursuant to legislative
25 standards; or

26 (g) Rules that adopt, amend, or repeal:

27 (i) A procedure, practice, or requirement relating to agency
28 hearings; or

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

31 **Sec. 302.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to
32 read as follows:

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

- 1 (a) A title, a description of the rule's purpose, and any other
2 information which may be of assistance in identifying the rule or its
3 purpose;
- 4 (b) Citations of the statutory authority for adopting the rule and
5 the specific statute the rule is intended to implement;
- 6 (c) A summary of the rule and a statement of the reasons supporting
7 the proposed action;
- 8 (d) The agency personnel, with their office location and telephone
9 number, who are responsible for the drafting, implementation, and
10 enforcement of the rule;
- 11 (e) The name of the person or organization, whether private,
12 public, or governmental, proposing the rule;
- 13 (f) Agency comments or recommendations, if any, regarding statutory
14 language, implementation, enforcement, and fiscal matters pertaining to
15 the rule;
- 16 (g) Whether the rule is necessary as the result of federal law or
17 federal or state court action, and if so, a copy of such law or court
18 decision shall be attached to the purpose statement;
- 19 (h) When, where, and how persons may present their views on the
20 proposed rule;
- 21 (i) The date on which the agency intends to adopt the rule;
- 22 (j) A short explanation of the rule, its purpose, and anticipated
23 effects, including in the case of a proposal that would modify existing
24 rules, a short description of the changes the proposal would make;
25 ((and))
- 26 (k) A ~~((statement indicating how a person can obtain a))~~ copy of
27 the small business economic impact statement prepared under chapter
28 19.85 RCW, or an explanation for why the agency did not prepare the
29 statement; and
- 30 (1) A statement indicating whether section 201 of this act applies
31 to the rule adoption.
- 32 (2) Upon filing notice of the proposed rule with the code reviser,
33 the adopting agency shall have copies of the notice on file and
34 available for public inspection and shall forward three copies of the
35 notice to the rules review committee.
- 36 (3) No later than three days after its publication in the state
37 register, the agency shall cause a copy of the notice of proposed rule
38 adoption to be mailed to each person ~~((who))~~, city, and county that has
39 made a request to the agency for a mailed copy of such notices. An

1 agency may charge for the actual cost of providing ~~((individual))~~ a
2 requesting party mailed copies of these notices.

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

7 **Sec. 303.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to
8 read as follows:

9 ~~((If,))~~ (1) During the development of a rule or after its adoption,
10 an agency ~~((determines that implementation may produce unreasonable~~
11 economic, procedural, or technical burdens, agencies are encouraged
12 to)) may develop methods for measuring or testing the feasibility of
13 ~~((compliance))~~ complying with or administering the rule~~((, including~~
14 the use of voluntary pilot study groups)) and for identifying simple,
15 efficient, and economical alternatives for achieving the goal of the
16 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot
17 project shall include public notice, participation by ~~((persons who~~
18 have a recognized interest in or are significantly affected by the
19 adoption of the proposed rule)) volunteers who are or will be subject
20 to the rule, a high level of involvement from agency management,
21 ~~((consensus on issues and procedures among participants in the pilot~~
22 group, assurance of fairness, and)) reasonable completion dates, and a
23 process by which one or more parties may withdraw from the process or
24 the process may be terminated ~~((if consensus cannot be reached on the~~
25 rule)). Volunteers who agree to test a rule and attempt to meet the
26 requirements of the draft rule, to report periodically to the proposing
27 agency on the extent of their ability to meet the requirements of the
28 draft rule, and to make recommendations for improving the draft rule
29 shall not be obligated to comply fully with the rule being tested nor
30 be subject to any enforcement action or other sanction for failing to
31 comply with the requirements of the draft rule.

32 (2) An agency conducting a pilot rule project authorized under
33 subsection (1) of this section may waive one or more provisions of
34 agency rules otherwise applicable to participants in such a pilot
35 project if the agency first determines that such a waiver is in the
36 public interest and necessary to conduct the project. Such a waiver
37 may be only for a stated period of time, not to exceed the duration of
38 the project.

1 (3) The findings of the pilot project should be widely shared and,
2 where appropriate, adopted as amendments to the rule.

3 (4) If an agency conducts a pilot rule project in lieu of meeting
4 the requirements of the regulatory fairness act, chapter 19.85 RCW, the
5 agency shall ensure the following conditions are met:

6 (a) If over ten small businesses are affected, there shall be at
7 least ten small businesses in the test group and at least one-half of
8 the volunteers participating in the pilot test group shall be small
9 businesses.

10 (b)(i) If there are at least one hundred businesses affected, the
11 participation by small businesses in the test group shall be as
12 follows:

13 (A) Not less than twenty percent of the small businesses must
14 employ twenty-six to fifty employees;

15 (B) Not less than twenty percent of the small businesses must
16 employ eleven to twenty-six employees, and

17 (C) Not less than twenty percent of the small businesses must
18 employ zero to ten employees.

19 (ii) If there do not exist a sufficient number of small businesses
20 in each size category set forth in (b)(i) of this subsection willing to
21 participate in the pilot project to meet the minimum requirements of
22 that subsection, then the agency must comply with this section to the
23 maximum extent practicable.

24 (c) The agency may not terminate the pilot project before
25 completion.

26 (d) Before filing the notice of proposed rule making pursuant to
27 RCW 34.05.320, the agency must prepare a report of the pilot rule
28 project that includes:

29 (i) A description of the difficulties small businesses had in
30 complying with the pilot rule;

31 (ii) A list of the recommended revisions to the rule to make
32 compliance with the rule easier or to reduce the cost of compliance
33 with the rule by the small businesses participating in the pilot rule
34 project;

35 (iii) A written statement explaining the options it considered to
36 resolve each of the difficulties described and a statement explaining
37 its reasons for not including a recommendation by the pilot test group
38 to revise the rule; and

1 (iv) If the agency was unable to meet the requirements set forth in
2 (b)(i) of this subsection, a written explanation of why it was unable
3 to do so and the steps the agency took to include small businesses in
4 the pilot project.

5 **Sec. 304.** RCW 34.05.325 and 1994 c 249 s 7 are each amended to
6 read as follows:

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

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

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

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

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

6 (6) (~~Before the adoption of a final rule~~) (a) Before it files an
7 adopted rule with the code reviser, an agency shall prepare a (~~written~~
8 ~~summary of~~) concise explanatory statement of the rule:

9 (i) Identifying the agency's reasons for adopting the rule;

10 (ii) Describing differences between the text of the proposed rule
11 as published in the register and the text of the rule as adopted, other
12 than editing changes, stating the reasons for differences; and

13 (iii) Summarizing all comments received regarding the proposed
14 rule, and (~~a substantive response~~) responding to the comments by
15 category or subject matter, indicating how the final rule reflects
16 agency consideration of the comments, or why it fails to do so.

17 (b) The agency shall provide the (~~written summary and response~~)
18 concise explanatory statement to any person upon request or from whom
19 the agency received comment.

20 NEW SECTION. Sec. 305. RCW 34.05.355 and 1994 c 249 s 8 & 1988 c
21 288 s 310 are each repealed.

22 **PART IV**
23 **REGULATORY FAIRNESS ACT**

24 NEW SECTION. Sec. 401. A new section is added to chapter 19.85
25 RCW to read as follows:

26 (1) Unless an agency receives a written objection to the expedited
27 repeal of a rule, this chapter does not apply to a rule proposed for
28 expedited repeal pursuant to section 701 of this act. If an agency
29 receives a written objection to expedited repeal of the rule, this
30 chapter applies to the rule-making proceeding.

31 (2) This chapter does not apply to the adoption of a rule described
32 in RCW 34.05.310(4).

33 (3) An agency is not required to prepare a separate small business
34 economic impact statement under RCW 19.85.040 if it prepared an
35 analysis under section 201 of this act that meets the requirements of
36 a small business economic impact statement, and if the agency reduced

1 the costs imposed by the rule on small business to the extent required
2 by RCW 19.85.030(3). The portion of the analysis that meets the
3 requirements of RCW 19.85.040 shall be filed with the code reviser and
4 provided to any person requesting it in lieu of a separate small
5 business economic impact statement.

6 **Sec. 402.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to
7 read as follows:

8 ~~(1) ((In the adoption of any rule pursuant to RCW 34.05.320 that~~
9 ~~will impose more than minor costs on more than twenty percent of all~~
10 ~~industries, or more than ten percent of any one industry, the adopting~~
11 ~~agency:~~

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

16 ~~(i) Establish differing compliance or reporting requirements or~~
17 ~~timetables for small businesses;~~

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

20 ~~(iii) Establish performance rather than design standards;~~

21 ~~(iv) Exempt small businesses from any or all requirements of the~~
22 ~~rule;~~

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

24 ~~(vi) Other mitigation techniques;~~

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

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

36 ~~(3))~~ In the adoption of a rule under chapter 34.05 RCW, an agency
37 shall prepare a small business economic impact statement: (a) If the
38 proposed rule will impose more than minor costs on businesses in an

1 industry; or (b) if requested to do so by a majority vote of the joint
2 administrative rules review committee within forty-five days of
3 receiving the notice of proposed rule making under RCW 34.05.320.
4 However, if the agency has completed the pilot rule process as defined
5 by RCW 34.05.313 before filing the notice of a proposed rule, the
6 agency is not required to prepare a small business economic impact
7 statement.

8 An agency shall prepare the small business economic impact
9 statement in accordance with RCW 19.85.040, and file it with the code
10 reviser along with the notice required under RCW 34.05.320. An agency
11 shall file a statement prepared at the request of the joint
12 administrative rules review committee with the code reviser upon its
13 completion before the adoption of the rule. An agency shall provide a
14 copy of the small business economic impact statement to any person
15 requesting it.

16 An agency may request assistance from the business assistance
17 center in the preparation of the small business economic impact
18 statement.

19 ~~((+4))~~ (2) The business assistance center shall develop guidelines
20 to assist agencies in determining whether a proposed rule will impose
21 more than minor costs on businesses in an industry and therefore
22 require preparation of a small business economic impact statement. The
23 business assistance center may review an agency determination that a
24 proposed rule will not impose such costs, and shall advise the joint
25 administrative rules review committee on disputes involving agency
26 determinations under this section.

27 (3) Based upon the extent of disproportionate impact on small
28 business identified in the statement prepared under RCW 19.85.040, the
29 agency shall, where legal and feasible in meeting the stated objectives
30 of the statutes upon which the rule is based, reduce the costs imposed
31 by the rule on small businesses. Methods to reduce the costs on small
32 businesses may include:

33 (a) Reducing, modifying, or eliminating substantive regulatory
34 requirements;

35 (b) Simplifying, reducing, or eliminating recordkeeping and
36 reporting requirements;

37 (c) Reducing the frequency of inspections;

38 (d) Delaying compliance timetables;

39 (e) Reducing or modifying fine schedules for noncompliance; or

1 (f) Any other mitigation techniques.

2 **Sec. 403.** RCW 19.85.040 and 1994 c 249 s 12 are each amended to
3 read as follows:

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

- 19 (a) Cost per employee;
20 (b) Cost per hour of labor; or
21 (c) Cost per one hundred dollars of sales.

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

23 (a) A statement of the steps taken by the agency to reduce the
24 costs of the rule on small businesses as required by RCW
25 19.85.030(~~((1+))~~) (3), or reasonable justification for not doing so,
26 addressing the options listed in RCW 19.85.030(~~((1+))~~) (3);

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

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

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

1 NEW SECTION. **Sec. 503.** A new section is added to chapter 34.05
2 RCW under the subchapter heading Part VI to read as follows:

3 Any individual employed or holding office in any department or
4 agency of state government may submit rules warranting review to the
5 rules review committee. Any such state employee is protected under
6 chapter 42.40 RCW.

7 **Sec. 504.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
8 read as follows:

9 (1) Except as provided in subsection (2) of this section, it is the
10 express policy of the legislature that establishment of procedures for
11 review of administrative rules by the legislature and the notice of
12 objection required by RCW 34.05.630(2) and 34.05.640(2) in no way
13 serves to establish a presumption as to the legality or
14 constitutionality of a rule in any subsequent judicial proceedings
15 interpreting such rules.

16 (2) If the joint administrative rules review committee recommends
17 to the governor that an existing rule be suspended because it does not
18 conform with the intent of the legislature, the recommendation shall
19 establish a rebuttable presumption in any proceeding challenging the
20 validity of the rule that the rule is invalid. The burden of
21 demonstrating the rule's validity is then on the adopting agency.

22 NEW SECTION. **Sec. 505.** A new section is added to chapter 34.05
23 RCW under the subchapter heading Part VI to read as follows:

24 (1) The rules review committee may make reports from time to time
25 to the members of the legislature and to the public with respect to any
26 of its findings or recommendations. The committee shall keep complete
27 minutes of its meetings.

28 (2) The committee may establish ad hoc advisory boards, including
29 but not limited to, ad hoc economics or science advisory boards to
30 assist the committee in its rules review functions.

31 (3) The committee may hire staff as needed to perform functions
32 under this chapter.

33 NEW SECTION. **Sec. 506.** A new section is added to chapter 34.05
34 RCW under the subchapter heading Part VI to read as follows:

35 In the discharge of any duty imposed under this chapter, the rules
36 review committee may examine and inspect all properties, equipment,

1 facilities, files, records, and accounts of any state office,
2 department, institution, board, committee, commission, or agency, and
3 administer oaths, issue subpoenas, compel the attendance of witnesses
4 and the production of any papers, books, accounts, documents, and
5 testimony, and cause the deposition of witnesses, either residing
6 within or without the state, to be taken in the manner prescribed by
7 law for taking depositions in civil actions in the superior courts.

8 NEW SECTION. **Sec. 507.** A new section is added to chapter 34.05
9 RCW under the subchapter heading Part VI to read as follows:

10 In case of the failure on the part of any person to comply with any
11 subpoena issued in behalf of the rules review committee, or on the
12 refusal of any witness to testify to any matters regarding which he or
13 she may be lawfully interrogated, it is the duty of the superior court
14 of any county, or of the judge thereof, on application of the
15 committee, to compel obedience by proceedings for contempt, as in the
16 case of disobedience of the requirements of a subpoena issued from the
17 court or a refusal to testify in the court.

18 **Sec. 508.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to
19 read as follows:

20 It is the policy of the legislature that employees should be
21 encouraged to disclose, to the extent not expressly prohibited by law,
22 improper governmental actions, and it is the intent of the legislature
23 to protect the rights of state employees making these disclosures. It
24 is also the policy of the legislature that employees should be
25 encouraged to identify rules warranting review or provide information
26 to the rules review committee, and it is the intent of the legislature
27 to protect the rights of these employees.

28 **Sec. 509.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to
29 read as follows:

30 As used in this chapter, the terms defined in this section shall
31 have the meanings indicated unless the context clearly requires
32 otherwise.

33 (1) "Auditor" means the office of the state auditor.

34 (2) "Employee" means any individual employed or holding office in
35 any department or agency of state government.

1 (3)(a) "Improper governmental action" means any action by an
2 employee:

3 (i) Which is undertaken in the performance of the employee's
4 official duties, whether or not the action is within the scope of the
5 employee's employment; and

6 (ii) Which is in violation of any state law or rule, is an abuse of
7 authority, is of substantial and specific danger to the public health
8 or safety, or is a gross waste of public funds.

9 (b) "Improper governmental action" does not include personnel
10 actions including but not limited to employee grievances, complaints,
11 appointments, promotions, transfers, assignments, reassignments,
12 reinstatements, restorations, reemployments, performance evaluations,
13 reductions in pay, dismissals, suspensions, demotions, violations of
14 the state civil service law, alleged labor agreement violations,
15 reprimands, or any action which may be taken under chapter 41.06 (~~or~~
16 ~~28B.16~~) RCW, or other disciplinary action except as provided in RCW
17 42.40.030.

18 (4) "Use of official authority or influence" includes taking,
19 directing others to take, recommending, processing, or approving any
20 personnel action such as an appointment, promotion, transfer,
21 assignment, reassignment, reinstatement, restoration, reemployment,
22 performance evaluation, or any adverse action under chapter 41.06 (~~or~~
23 ~~28B.16~~) RCW, or other disciplinary action.

24 (5) "Whistleblower" means an employee who in good faith reports
25 alleged improper governmental action to the auditor, initiating an
26 investigation under RCW 42.40.040. For purposes of the provisions of
27 this chapter and chapter 49.60 RCW relating to reprisals and
28 retaliatory action, the term "whistleblower" also means: (a) An
29 employee who in good faith provides information to the auditor in
30 connection with an investigation under RCW 42.40.040 and an employee
31 who is believed to have reported alleged improper governmental action
32 to the auditor or to have provided information to the auditor in
33 connection with an investigation under RCW 42.40.040 but who, in fact,
34 has not reported such action or provided such information; or (b) an
35 employee who in good faith identifies rules warranting review or
36 provides information to the rules review committee, and an employee who
37 is believed to have identified rules warranting review or provided
38 information to the rules review committee but who, in fact, has not
39 done so.

1 NEW SECTION. **Sec. 602.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Civil penalty" means a monetary penalty administratively
5 issued by a regulatory agency for noncompliance with state or federal
6 law or rules. The term does not include any criminal penalty, damage
7 assessments, wages, premiums, or taxes owed, or interest or late fees
8 on any existing obligation.

9 (2) "Regulatory agency" means an agency as defined in RCW 34.05.010
10 that has the authority to issue civil penalties. The term does not
11 include the state patrol or any institution of higher education as
12 defined in RCW 28B.10.016.

13 (3) "Technical assistance" includes:

14 (a) Information on the laws, rules, and compliance methods and
15 technologies applicable to the regulatory agency's programs;

16 (b) Information on methods to avoid compliance problems;

17 (c) Assistance in applying for permits; and

18 (d) Information on the mission, goals, and objectives of the
19 program.

20 NEW SECTION. **Sec. 603.** All regulatory agencies shall develop
21 programs to encourage voluntary compliance by providing technical
22 assistance consistent with statutory requirements. The programs shall
23 include but are not limited to technical assistance visits, printed
24 information, information and assistance by telephone, training
25 meetings, and other appropriate methods to provide technical
26 assistance. In addition, all regulatory agencies shall provide upon
27 request a list of organizations, including private companies, that
28 provide technical assistance. This list shall be compiled by the
29 agencies from information submitted by the organizations and shall not
30 constitute an endorsement by an agency of any organization.

31 NEW SECTION. **Sec. 604.** (1) For the purposes of this chapter, a
32 technical assistance visit is a visit by a regulatory agency to a
33 facility, business, or other location that:

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

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

1 (2) A technical assistance visit also includes a consultative visit
2 pursuant to RCW 49.17.250.

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

7 (a) A description of the condition that is not in compliance and a
8 specific citation to the applicable law or rule;

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

10 (c) The date by which the agency requires compliance to be
11 achieved;

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

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

16 NEW SECTION. **Sec. 605.** The owner and operator shall be given a
17 reasonable period of time to correct violations identified during a
18 technical assistance visit before any civil penalty provided for by law
19 is imposed for those violations. A regulatory agency may revisit a
20 facility, business, or other location after a technical assistance
21 visit and a reasonable period of time has passed to correct violations
22 identified by the agency in writing and issue civil penalties as
23 provided for by law for any uncorrected violations.

24 NEW SECTION. **Sec. 606.** A regulatory agency that observes a
25 violation during a technical assistance visit may issue a civil penalty
26 as provided for by law if: (1) The individual or business has
27 previously been subject to an enforcement action for the same or
28 similar type of violation of the same statute or rule or has been given
29 previous notice of the same or similar type of violation of the same
30 statute or rule; or (2) the issue involves sales taxes due to the state
31 and the individual or business is not remitting previously collected
32 sales taxes to the state; or (3) the violation has a probability of
33 placing a person in danger of death or bodily harm, has a probability
34 of causing more than minor environmental harm, or has a probability of
35 causing physical damage to the property of another in an amount
36 exceeding one thousand dollars.

1 NEW SECTION. **Sec. 607.** (1) If in the course of any site
2 inspection or visit that is not a technical assistance visit, the
3 department of ecology becomes aware of conditions that are not in
4 compliance with applicable laws and rules enforced by the department
5 and are not subject to civil penalties as provided for in section 608
6 of this act, the department may issue a notice of correction to the
7 responsible party that shall include:

8 (a) A description of the condition that is not in compliance and a
9 specific citation to the applicable law or rule;

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

11 (c) The date by which the department requires compliance to be
12 achieved;

13 (d) Notice of the means to contact any technical assistance
14 services provided by the department or others; and

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

17 (2) A notice of correction is not a formal enforcement action, is
18 not subject to appeal, and is a public record.

19 (3) If the department issues a notice of correction, it shall not
20 issue a civil penalty for the violations identified in the notice of
21 correction unless the responsible party fails to comply with the
22 notice.

23 NEW SECTION. **Sec. 608.** The department of ecology may issue a
24 civil penalty provided for by law without first issuing a notice of
25 correction if: (1) The person has previously been subject to an
26 enforcement action for the same or similar type of violation of the
27 same statute or rule or has been given previous notice of the same or
28 similar type of violation of the same statute or rule; or (2)
29 compliance is not achieved by the date established by the department in
30 a previously issued notice of correction, if the department has
31 responded to any request for review of such date by reaffirming the
32 original date or establishing a new date; or (3) the violation has a
33 probability of placing a person in danger of death or bodily harm, has
34 a probability of causing more than minor environmental harm, or has a
35 probability of causing physical damage to the property of another in an
36 amount exceeding one thousand dollars.

1 NEW SECTION. **Sec. 609.** The provisions of sections 607 and 608 of
2 this act affecting civil penalties issued by the department of ecology
3 shall not apply to civil penalties for negligent discharge of oil as
4 authorized under RCW 90.56.330 or to civil penalties as authorized
5 under RCW 90.03.600 for unlawful use of water in violation of RCW
6 90.03.250 or 90.44.050.

7 NEW SECTION. **Sec. 610.** (1) Following a consultative visit
8 pursuant to RCW 49.17.250, the department of labor and industries shall
9 issue a report to the employer that the employer shall make available
10 to its employees. The report shall contain:

11 (a) A description of the condition that is not in compliance and a
12 specific citation to the applicable law or rule;

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

14 (c) The date by which the department requires compliance to be
15 achieved;

16 (d) Notice of means to contact technical assistance services
17 provided by the department; and

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

20 (2) Following a compliance inspection pursuant to RCW 49.17.120,
21 the department of labor and industries shall issue a citation for
22 violations of industrial safety and health standards. The citation
23 shall not assess a penalty if the violations:

24 (a) Are determined not to be of a serious nature;

25 (b) Have not been previously cited;

26 (c) Are not willful; and

27 (d) Do not have a mandatory penalty under chapter 49.17 RCW.

28 NEW SECTION. **Sec. 611.** (1) If in the course of any inspection or
29 visit that is not a technical assistance visit, the department of
30 agriculture, fish and wildlife, health, licensing, or natural resources
31 becomes aware of conditions that are not in compliance with applicable
32 laws and rules enforced by the department and are not subject to civil
33 penalties as provided for in section 612 of this act, the department
34 may issue a notice of correction to the responsible party that shall
35 include:

36 (a) A description of the condition that is not in compliance and a
37 specific citation to the applicable law or rule;

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

2 (c) The date by which the department requires compliance to be
3 achieved;

4 (d) Notice of the means to contact any technical assistance
5 services provided by the department or others; and

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

8 (2) A notice of correction is not a formal enforcement action, is
9 not subject to appeal, and is a public record.

10 (3) If the department issues a notice of correction, it shall not
11 issue a civil penalty for the violations identified in the notice of
12 correction unless the responsible party fails to comply with the
13 notice.

14 NEW SECTION. **Sec. 612.** The department of agriculture, fish and
15 wildlife, health, licensing, or natural resources may issue a civil
16 penalty provided for by law without first issuing a notice of
17 correction if: (1) The person has previously been subject to an
18 enforcement action for the same or similar type of violation of the
19 same statute or rule or has been given previous notice of the same or
20 similar type of violation of the same statute or rule; or (2)
21 compliance is not achieved by the date established by the department in
22 a previously issued notice of correction, if the department has
23 responded to any request for review of such date by reaffirming the
24 original date or establishing a new date; (3) the violation has a
25 probability of placing a person in danger of death or bodily harm, has
26 a probability of causing more than minor environmental harm, or has a
27 probability of causing physical damage to the property of another in an
28 amount exceeding one thousand dollars; or (4) the violation was
29 committed by a business that employed fifty or more employees on at
30 least one day in each of the preceding twelve months. In addition, the
31 department of fish and wildlife may issue a civil penalty provided for
32 by law without first issuing a notice of correction for a violation of
33 any rule dealing with seasons, catch or bag limits, gear types, or
34 geographical areas for fish or wildlife removal, reporting, or
35 disposal.

36 NEW SECTION. **Sec. 613.** The date for compliance established by the
37 department of ecology, labor and industries, agriculture, fish and

1 wildlife, health, licensing, or natural resources pursuant to section
2 607, 610, or 611 of this act respectively shall provide for a
3 reasonable time to achieve compliance. Any person receiving a notice
4 of correction pursuant to section 607 or 611 of this act or a report or
5 citation pursuant to section 610 of this act may request an extension
6 of time to achieve compliance for good cause from the issuing
7 department. Requests shall be submitted to the issuing department and
8 responded to by the issuing department in writing in accordance with
9 procedures specified by the issuing department in the notice, report,
10 or citation.

11 NEW SECTION. **Sec. 614.** The departments of revenue and labor and
12 industries and the employment security department shall undertake an
13 educational program directed at those who have the most difficulty in
14 determining their tax or premium liability. The departments may rely
15 on information from internal data, trade associations, and businesses
16 to determine which entities should be selected. The educational
17 programs may include, but not be limited to, targeted informational
18 fact sheets, self-audits, or workshops, and may be presented
19 individually by the agency or in conjunction with other agencies.

20 NEW SECTION. **Sec. 615.** The department of revenue, the department
21 of labor and industries in respect to its duties in Title 51 RCW, and
22 the employment security department shall develop and administer a pilot
23 voluntary audit program. Voluntary audits can be requested by
24 businesses from any of these agencies according to guidelines
25 established by each agency. No penalty assessments may be made against
26 participants in such a program except when the agency determines that
27 either a good faith effort has not been made by the taxpayer or premium
28 payer to comply with the law or that the taxpayer has failed to remit
29 previously collected sales taxes to the state. The persons conducting
30 the voluntary audit shall provide the business undergoing the voluntary
31 audit an audit report that describes errors or omissions found and
32 future reporting instructions. This program does not relieve a
33 business from past or future tax or premium obligations.

34 NEW SECTION. **Sec. 616.** The departments of revenue and labor and
35 industries and the employment security department shall each review the
36 penalties it issues related to taxes or premiums to determine if they

1 are consistent and provide for waivers in appropriate circumstances.
2 Each department shall report the results of its review to the
3 legislature no later than December 1, 1995.

4 NEW SECTION. **Sec. 617.** Nothing in this chapter obligates a
5 regulatory agency to conduct a technical assistance visit. The state
6 and officers or employees of the state shall not be liable for damages
7 to a person to the extent that liability is asserted to arise from
8 providing technical assistance, or if liability is asserted to arise
9 from the failure of the state or officers or employees of the state to
10 provide technical assistance. This chapter does not limit the
11 authority of any regulatory agency to take any enforcement action,
12 other than a civil penalty, authorized by law. This chapter shall not
13 limit a regulatory agency's authority to issue a civil penalty as
14 authorized by law based upon a person's failure to comply with specific
15 terms and conditions of any permit or license issued by the agency to
16 that person.

17 NEW SECTION. **Sec. 618.** Agency rules, guidelines, and procedures
18 necessary to implement sections 601 through 615, 617, and 619 through
19 621 of this act shall be established and implemented expeditiously and
20 not later than July 1, 1996.

21 NEW SECTION. **Sec. 619.** If a regulatory agency determines any part
22 of this chapter to be in conflict with federal law or program
23 requirements, in conflict with federal requirements that are a
24 prescribed condition to the allocation of federal funds to the state,
25 or in conflict with the requirements for eligibility of employers in
26 this state for federal unemployment tax credits, the conflicting part
27 of this chapter shall be inoperative solely to the extent of the
28 conflict. Any rules under this chapter shall meet federal requirements
29 that are a necessary condition to the receipt of federal funds by the
30 state or the granting of federal unemployment tax credits to employers
31 in this state.

32 NEW SECTION. **Sec. 620.** If notified by responsible federal
33 officials of any conflict of this chapter with federal law or program
34 requirements or with federal requirements that are a prescribed
35 condition to the allocation of federal funds to the state, the

1 regulatory agency notified of the conflict shall actively seek to
2 resolve the conflict. If the agency determines that the conflict
3 cannot be resolved without loss of benefits or authority to the state,
4 the agency shall notify the governor, the president of the senate, and
5 the speaker of the house of representatives in writing within thirty
6 days of making that determination.

7 NEW SECTION. **Sec. 621.** (1) By January 31, 1996, and by January
8 31st of each even-numbered year thereafter, the office of financial
9 management, after consulting with state regulatory agencies, counties,
10 and cities, and business, labor, and environmental organizations, shall
11 report to the governor and the legislature regarding the effects of
12 sections 601 through 615, 617, and 619 through 621 of this act on the
13 regulatory system in this state. The report shall document:

14 (a) Technical assistance, including but not limited to technical
15 assistance visits, provided by state regulatory agencies consistent
16 with this chapter;

17 (b) Any rules adopted, guidelines developed, or training conducted
18 to implement this chapter;

19 (c) Any changes in the appropriation, allocation, or expenditure of
20 regulatory agency resources to implement this chapter;

21 (d) Any legal action against state regulatory agencies for any
22 alleged failure to comply with this chapter, the costs to the state of
23 the action, and the result;

24 (e) The extent to which this chapter has resulted in either an
25 increase or decrease in regulatory agency use of civil penalties;

26 (f) The extent to which this chapter has contributed to any change
27 in voluntary compliance with state statutes or rules;

28 (g) The extent to which this chapter has improved the acceptability
29 or effectiveness of state regulatory procedures; and

30 (h) Any other information considered by the office of financial
31 management to be useful in evaluating the effect of this chapter.

32 (2) This section shall expire June 30, 2000.

33 NEW SECTION. **Sec. 622.** A new section is added to chapter 43.12
34 RCW to read as follows:

35 Enforcement action taken after the effective date of this section
36 by the commissioner of public lands shall be in accordance with
37 sections 611 and 612 of this act.

1 NEW SECTION. **Sec. 623.** A new section is added to chapter 43.23
2 RCW to read as follows:

3 Enforcement action taken after the effective date of this section
4 by the director or the department of agriculture shall be in accordance
5 with sections 611 and 612 of this act.

6 NEW SECTION. **Sec. 624.** A new section is added to chapter 43.24
7 RCW to read as follows:

8 Enforcement action taken after the effective date of this section
9 by the director or the department of licensing shall be in accordance
10 with sections 611 and 612 of this act.

11 NEW SECTION. **Sec. 625.** A new section is added to chapter 43.30
12 RCW to read as follows:

13 Enforcement action taken after the effective date of this section
14 by the commissioner or supervisor of public lands shall be in
15 accordance with sections 611 and 612 of this act.

16 NEW SECTION. **Sec. 626.** A new section is added to chapter 43.70
17 RCW to read as follows:

18 Enforcement action taken after the effective date of this section
19 by the director or the department shall be in accordance with sections
20 611 and 612 of this act.

21 NEW SECTION. **Sec. 627.** A new section is added to chapter 43.300
22 RCW to read as follows:

23 Enforcement action taken after the effective date of this section
24 by the director or the department shall be in accordance with sections
25 611 and 612 of this act.

26 **Sec. 628.** RCW 18.104.155 and 1993 c 387 s 21 are each amended to
27 read as follows:

28 (1) Except as provided in sections 607 through 609 and 617 of this
29 act, the department of ecology may assess a civil penalty for a
30 violation of this chapter or rules or orders of the department adopted
31 or issued pursuant to it.

32 (2) There shall be three categories of violations: Minor, serious,
33 and major.

1 (a) A minor violation is a violation that does not seriously
2 threaten public health, safety, and the environment. Minor violations
3 include, but are not limited to:

4 (i) Failure to submit completed start cards and well reports within
5 the required time;

6 (ii) Failure to submit variance requests before construction;

7 (iii) Failure to submit well construction fees;

8 (iv) Failure to place a well identification tag on a new well; and

9 (v) Minor or reparable construction problems.

10 (b) A serious violation is a violation that poses a critical or
11 serious threat to public health, safety, and the environment. Serious
12 violations include, but are not limited to:

13 (i) Improper well construction;

14 (ii) Intentional and improper location or siting of a well;

15 (iii) Construction of a well without a required permit;

16 (iv) Violation of decommissioning requirements;

17 (v) Repeated minor violations; or

18 (vi) Construction of a well by a person whose license has expired
19 or has been suspended for not more than ninety days.

20 (c) A major violation is the construction of a well by a person:

21 (i) Without a license; or

22 (ii) After the person's license has been suspended for more than
23 ninety days or revoked.

24 (3)(a) The penalty for a minor violation shall be not less than one
25 hundred dollars and not more than five hundred dollars. Before the
26 imposition of a penalty for a minor violation, the department may issue
27 an order of noncompliance to provide an opportunity for mitigation or
28 compliance.

29 (b) The penalty for a serious violation shall be not less than five
30 hundred dollars and not more than five thousand dollars.

31 (c) The penalty for a major violation shall be not less than five
32 thousand dollars and not more than ten thousand dollars.

33 (4) In determining the appropriate penalty under subsection (3) of
34 this section the department shall consider whether the person:

35 (a) Has demonstrated a general disregard for public health and
36 safety through the number and magnitude of the violations;

37 (b) Has demonstrated a disregard for the well construction laws or
38 rules in repeated or continuous violations; or

1 (c) Knew or reasonably should have known of circumstances that
2 resulted in the violation.

3 (5) Penalties provided for in this section shall be imposed
4 pursuant to RCW 43.21B.300. The department shall provide thirty days
5 written notice of a violation as provided in RCW 43.21B.300(3).

6 (6) For informational purposes, a copy of the notice of violation,
7 resulting from the improper construction of a well, that is sent to a
8 water well contractor or water well construction operator, shall also
9 be sent by the department to the well owner.

10 (7) Penalties collected by the department pursuant to this section
11 shall be deposited in the reclamation account established by chapter
12 89.16 RCW. Subject to legislative appropriation, the penalties may be
13 spent only for purposes related to the restoration and enhancement of
14 ground water resources in the state.

15 **Sec. 629.** RCW 49.17.180 and 1991 c 108 s 1 are each amended to
16 read as follows:

17 (1) Except as provided in section 610 of this act, any employer who
18 willfully or repeatedly violates the requirements of RCW 49.17.060, of
19 any safety or health standard promulgated under the authority of this
20 chapter, of any existing rule or regulation governing the conditions of
21 employment promulgated by the department, or of any order issued
22 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
23 civil penalty not to exceed seventy thousand dollars for each
24 violation. A minimum penalty of five thousand dollars shall be
25 assessed for a willful violation.

26 (2) Any employer who has received a citation for a serious
27 violation of the requirements of RCW 49.17.060, of any safety or health
28 standard promulgated under the authority of this chapter, of any
29 existing rule or regulation governing the conditions of employment
30 promulgated by the department, or of any order issued granting a
31 variance under RCW 49.17.080 or 49.17.090 as determined in accordance
32 with subsection (6) of this section, shall be assessed a civil penalty
33 not to exceed seven thousand dollars for each such violation.

34 (3) Any employer who has received a citation for a violation of the
35 requirements of RCW 49.17.060, of any safety or health standard
36 promulgated under this chapter, of any existing rule or regulation
37 governing the conditions of employment promulgated by the department,
38 or of any order issued granting a variance under RCW 49.17.080 or

1 49.17.090, where such violation is specifically determined not to be of
2 a serious nature as provided in subsection (6) of this section, may be
3 assessed a civil penalty not to exceed seven thousand dollars for each
4 such violation, unless such violation is determined to be de minimis.

5 (4) Any employer who fails to correct a violation for which a
6 citation has been issued under RCW 49.17.120 or 49.17.130 within the
7 period permitted for its correction, which period shall not begin to
8 run until the date of the final order of the board of industrial
9 insurance appeals in the case of any review proceedings under this
10 chapter initiated by the employer in good faith and not solely for
11 delay or avoidance of penalties, may be assessed a civil penalty of not
12 more than seven thousand dollars for each day during which such failure
13 or violation continues.

14 (5) Any employer who violates any of the posting requirements of
15 this chapter, or any of the posting requirements of rules promulgated
16 by the department pursuant to this chapter related to employee or
17 employee representative's rights to notice, including but not limited
18 to those employee rights to notice set forth in RCW 49.17.080,
19 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
20 be assessed a penalty not to exceed seven thousand dollars for each
21 such violation. Any employer who violates any of the posting
22 requirements for the posting of informational, educational, or training
23 materials under the authority of RCW 49.17.050(7), may be assessed a
24 penalty not to exceed seven thousand dollars for each such violation.

25 (6) For the purposes of this section, a serious violation shall be
26 deemed to exist in a work place if there is a substantial probability
27 that death or serious physical harm could result from a condition which
28 exists, or from one or more practices, means, methods, operations, or
29 processes which have been adopted or are in use in such work place,
30 unless the employer did not, and could not with the exercise of
31 reasonable diligence, know of the presence of the violation.

32 (7) The director, or his authorized representatives, shall have
33 authority to assess all civil penalties provided in this section,
34 giving due consideration to the appropriateness of the penalty with
35 respect to the number of affected employees of the employer being
36 charged, the gravity of the violation, the size of the employer's
37 business, the good faith of the employer, and the history of previous
38 violations.

1 (8) Civil penalties imposed under this chapter shall be paid to the
2 director for deposit in the supplemental pension fund established by
3 RCW 51.44.033. Civil penalties may be recovered in a civil action in
4 the name of the department brought in the superior court of the county
5 where the violation is alleged to have occurred, or the department may
6 utilize the procedures for collection of civil penalties as set forth
7 in RCW 51.48.120 through 51.48.150.

8 **Sec. 630.** RCW 70.94.431 and 1991 c 199 s 311 are each amended to
9 read as follows:

10 (1) Except as provided in sections 607 through 609 and 617 of this
11 act, and in addition to or as an alternate to any other penalty
12 provided by law, any person who violates any of the provisions of
13 chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force
14 under such chapters may incur a civil penalty in an amount not to
15 exceed ten thousand dollars per day for each violation. Each such
16 violation shall be a separate and distinct offense, and in case of a
17 continuing violation, each day's continuance shall be a separate and
18 distinct violation.

19 Any person who fails to take action as specified by an order issued
20 pursuant to this chapter shall be liable for a civil penalty of not
21 more than ten thousand dollars for each day of continued noncompliance.

22 (2) Penalties incurred but not paid shall accrue interest,
23 beginning on the ninety-first day following the date that the penalty
24 becomes due and payable, at the highest rate allowed by RCW 19.52.020
25 on the date that the penalty becomes due and payable. If violations or
26 penalties are appealed, interest shall not begin to accrue until the
27 thirty-first day following final resolution of the appeal.

28 The maximum penalty amounts established in this section may be
29 increased annually to account for inflation as determined by the state
30 office of the economic and revenue forecast council.

31 (3) Each act of commission or omission which procures, aids or
32 abets in the violation shall be considered a violation under the
33 provisions of this section and subject to the same penalty. The
34 penalties provided in this section shall be imposed pursuant to RCW
35 43.21B.300.

36 (4) All penalties recovered under this section by the department
37 shall be paid into the state treasury and credited to the air pollution
38 control account established in RCW 70.94.015 or, if recovered by the

1 authority, shall be paid into the treasury of the authority and
2 credited to its funds. If a prior penalty for the same violation has
3 been paid to a local authority, the penalty imposed by the department
4 under subsection (1) of this section shall be reduced by the amount of
5 the payment.

6 (5) To secure the penalty incurred under this section, the state or
7 the authority shall have a lien on any vessel used or operated in
8 violation of this chapter which shall be enforced as provided in RCW
9 60.36.050.

10 (6) Public or private entities that are recipients or potential
11 recipients of department grants, whether for air quality related
12 activities or not, may have such grants rescinded or withheld by the
13 department for failure to comply with provisions of this chapter.

14 (7) In addition to other penalties provided by this chapter,
15 persons knowingly under-reporting emissions or other information used
16 to set fees, or persons required to pay emission or permit fees who are
17 more than ninety days late with such payments may be subject to a
18 penalty equal to three times the amount of the original fee owed.

19 (8) By January 1, 1992, the department shall develop rules for
20 excusing excess emissions from enforcement action if such excess
21 emissions are unavoidable. The rules shall specify the criteria and
22 procedures for the department and local air authorities to determine
23 whether a period of excess emissions is excusable in accordance with
24 the state implementation plan.

25 **Sec. 631.** RCW 70.105.080 and 1987 c 109 s 12 are each amended to
26 read as follows:

27 (1) Except as provided in sections 607 through 609 and 617 of this
28 act, every person who fails to comply with any provision of this
29 chapter or of the rules adopted thereunder shall be subjected to a
30 penalty in an amount of not more than ten thousand dollars per day for
31 every such violation. Each and every such violation shall be a
32 separate and distinct offense. In case of continuing violation, every
33 day's continuance shall be a separate and distinct violation. Every
34 person who, through an act of commission or omission, procures, aids,
35 or abets in the violation shall be considered to have violated the
36 provisions of this section and shall be subject to the penalty herein
37 provided.

1 (2) The penalty provided for in this section shall be imposed
2 pursuant to the procedures in RCW 43.21B.300.

3 **Sec. 632.** RCW 70.132.050 and 1982 c 113 s 5 are each amended to
4 read as follows:

5 Except as provided in sections 607 through 609 and 617 of this act,
6 any person who violates any provision of this chapter or any rule
7 adopted under this chapter is subject to a civil penalty not exceeding
8 five hundred dollars for each violation. Each day of a continuing
9 violation is a separate violation.

10 **Sec. 633.** RCW 70.138.040 and 1987 c 528 s 4 are each amended to
11 read as follows:

12 (1) Except as provided in sections 607 through 609 and 617 of this
13 act, any person who violates any provision of a department regulation
14 or regulatory order relating to the management of special incinerator
15 ash shall incur in addition to any other penalty provided by law, a
16 penalty in an amount up to ten thousand dollars a day for every such
17 violation. Each and every such violation shall be a separate and
18 distinct offense. (~~If [In]~~) In case of continuing violation, every
19 day's continuance shall be a separate and distinct violation. Every
20 person who, through an act of commission or omission, procures, aids,
21 or abets in the violation shall be considered to have violated the
22 provisions of this section and shall be subject to the penalty herein
23 provided.

24 (2) The penalty provided for in this section shall be imposed by a
25 notice in writing, either by certified mail with return receipt
26 requested or by personal service, to the person incurring the same from
27 the department, describing the violation with reasonable particularity.
28 Within fifteen days after the notice is received, the person incurring
29 the penalty may apply in writing to the department for the remission or
30 mitigation of such penalty. Upon receipt of the application, the
31 department may remit or mitigate the penalty upon whatever terms the
32 department in its discretion deems proper, giving consideration to the
33 degree of hazard associated with the violation, provided the department
34 deems such remission or mitigation to be in the best interests of
35 carrying out the purposes of this chapter. The department shall have
36 authority to ascertain the facts regarding all such applications in
37 such reasonable manner and under such rules as it may deem proper.

1 (3) Any penalty imposed by this section shall become due and
2 payable thirty days after receipt of a notice imposing the same unless
3 application for remission or mitigation is made or petition for review
4 by the hearings board is filed. When such an application for remission
5 or mitigation is made, any penalty incurred pursuant to this section
6 shall become due and payable thirty days after receipt of notice
7 setting forth the disposition of such application.

8 (4) If the amount of any penalty is not paid to the department
9 within thirty days after it becomes due and payable, the attorney
10 general, upon the request of the director, shall bring an action in the
11 name of the state of Washington in the superior court of Thurston
12 county, or any county in which such violator may do business, to
13 recover such penalty. In all such actions, the procedure and rules of
14 evidence shall be the same as an ordinary civil action except as
15 otherwise provided in this chapter.

16 **Sec. 634.** RCW 86.16.081 and 1987 c 523 s 8 are each amended to
17 read as follows:

18 (1) Except as provided in sections 607 through 609 and 617 of this
19 act, the attorney general or the attorney for the local government
20 shall bring such injunctive, declaratory, or other actions as are
21 necessary to ensure compliance with this chapter.

22 (2) Any person who fails to comply with this chapter shall also be
23 subject to a civil penalty not to exceed one thousand dollars for each
24 violation. Each violation or each day of noncompliance shall
25 constitute a separate violation.

26 (3) The penalty provided for in this section shall be imposed by a
27 notice in writing, either by certified mail with return receipt
28 requested or by personal service, to the person incurring the same from
29 the department or local government, describing the violation with
30 reasonable particularity and ordering the act or acts constituting the
31 violation or violations to cease and desist or, in appropriate cases,
32 requiring necessary corrective action to be taken within a specific and
33 reasonable time.

34 (4) Any penalty imposed pursuant to this section by the department
35 shall be subject to review by the pollution control hearings board.
36 Any penalty imposed pursuant to this section by local government shall
37 be subject to review by the local government legislative authority.

1 Any penalty jointly imposed by the department and local government
2 shall be appealed to the pollution control hearings board.

3 **Sec. 635.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
4 read as follows:

5 Except as provided in sections 607 through 609 and 617 of this act,
6 the power is granted to the department of ecology to levy civil
7 penalties of up to one hundred dollars per day for violation of any of
8 the provisions of this chapter and chapters 43.83B, 90.22, and 90.44
9 RCW, and rules, permits, and similar documents and regulatory orders of
10 the department of ecology adopted or issued pursuant to such chapters.
11 The procedures of RCW 90.48.144 shall be applicable to all phases of
12 the levying of a penalty as well as review and appeal of the same.

13 **Sec. 636.** RCW 90.48.144 and 1992 c 73 s 27 are each amended to
14 read as follows:

15 Except as provided in sections 607 through 609 and 617 of this act,
16 every person who:

17 (1) Violates the terms or conditions of a waste discharge permit
18 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

19 (2) Conducts a commercial or industrial operation or other point
20 source discharge operation without a waste discharge permit as required
21 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

22 (3) Violates the provisions of RCW 90.48.080, or other sections of
23 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
24 pursuant to either of those chapters, shall incur, in addition to any
25 other penalty as provided by law, a penalty in an amount of up to ten
26 thousand dollars a day for every such violation. Each and every such
27 violation shall be a separate and distinct offense, and in case of a
28 continuing violation, every day's continuance shall be and be deemed to
29 be a separate and distinct violation. Every act of commission or
30 omission which procures, aids or abets in the violation shall be
31 considered a violation under the provisions of this section and subject
32 to the penalty herein provided for. The penalty amount shall be set in
33 consideration of the previous history of the violator and the severity
34 of the violation's impact on public health and/or the environment in
35 addition to other relevant factors. The penalty herein provided for
36 shall be imposed pursuant to the procedures set forth in RCW
37 43.21B.300.

1 **Sec. 637.** RCW 90.58.210 and 1986 c 292 s 4 are each amended to
2 read as follows:

3 (1) Except as provided in sections 607 through 609 and 617 of this
4 act, the attorney general or the attorney for the local government
5 shall bring such injunctive, declaratory, or other actions as are
6 necessary to insure that no uses are made of the shorelines of the
7 state in conflict with the provisions and programs of this chapter, and
8 to otherwise enforce the provisions of this chapter.

9 (2) Any person who shall fail to conform to the terms of a permit
10 issued under this chapter or who shall undertake development on the
11 shorelines of the state without first obtaining any permit required
12 under this chapter shall also be subject to a civil penalty not to
13 exceed one thousand dollars for each violation. Each permit violation
14 or each day of continued development without a required permit shall
15 constitute a separate violation.

16 (3) The penalty provided for in this section shall be imposed by a
17 notice in writing, either by certified mail with return receipt
18 requested or by personal service, to the person incurring the same from
19 the department or local government, describing the violation with
20 reasonable particularity and ordering the act or acts constituting the
21 violation or violations to cease and desist or, in appropriate cases,
22 requiring necessary corrective action to be taken within a specific and
23 reasonable time.

24 (4) Within thirty days after the notice is received, the person
25 incurring the penalty may apply in writing to the department for
26 remission or mitigation of such penalty. Upon receipt of the
27 application, the department or local government may remit or mitigate
28 the penalty upon whatever terms the department or local government in
29 its discretion deems proper. Any penalty imposed pursuant to this
30 section by the department shall be subject to review by the shorelines
31 hearings board. Any penalty imposed pursuant to this section by local
32 government shall be subject to review by the local government
33 legislative authority. Any penalty jointly imposed by the department
34 and local government shall be appealed to the shorelines hearings
35 board.

36 **Sec. 638.** RCW 90.58.560 and 1983 c 138 s 2 are each amended to
37 read as follows:

1 (1) Except as provided in sections 607 through 609 and 617 of this
2 act, a person who violates RCW 90.58.550, or any rule adopted
3 thereunder, is subject to a penalty in an amount of up to five thousand
4 dollars a day for every such violation. Each and every such violation
5 shall be a separate and distinct offense, and in case of a continuing
6 violation, every day's continuance shall be and be deemed to be a
7 separate and distinct violation. Every act of commission or omission
8 which procures, aids or abets in the violation shall be considered a
9 violation under the provisions of this section and subject to the
10 penalty provided for in this section.

11 (2) The penalty shall be imposed by a notice in writing, either by
12 certified mail with return receipt requested or by personal service, to
13 the person incurring the penalty from the director or the director's
14 representative describing such violation with reasonable particularity.
15 The director or the director's representative may, upon written
16 application therefor received within fifteen days after notice imposing
17 any penalty is received by the person incurring the penalty, and when
18 deemed to carry out the purposes of this chapter, remit or mitigate any
19 penalty provided for in this section upon such terms as he or she deems
20 proper, and shall have authority to ascertain the facts upon all such
21 applications in such manner and under such regulations as he or she may
22 deem proper.

23 (3) Any person incurring any penalty under this section may appeal
24 the penalty to the hearings board as provided for in chapter 43.21B
25 RCW. Such appeals shall be filed within thirty days of receipt of
26 notice imposing any penalty unless an application for remission or
27 mitigation is made to the department. When an application for
28 remission or mitigation is made, such appeals shall be filed within
29 thirty days of receipt of notice from the director or the director's
30 representative setting forth the disposition of the application. Any
31 penalty imposed under this section shall become due and payable thirty
32 days after receipt of a notice imposing the same unless application for
33 remission or mitigation is made or an appeal is filed. When an
34 application for remission or mitigation is made, any penalty incurred
35 hereunder shall become due and payable thirty days after receipt of
36 notice setting forth the disposition of the application unless an
37 appeal is filed from such disposition. Whenever an appeal of any
38 penalty incurred under this section is filed, the penalty shall become

1 due and payable only upon completion of all review proceedings and the
2 issuance of a final order confirming the penalty in whole or in part.

3 (4) If the amount of any penalty is not paid to the department
4 within thirty days after it becomes due and payable, the attorney
5 general, upon the request of the director, shall bring an action in the
6 name of the state of Washington in the superior court of Thurston
7 county or of any county in which such violator may do business, to
8 recover such penalty. In all such actions the procedure and rules of
9 evidence shall be the same as an ordinary civil action except as
10 otherwise in this chapter provided. All penalties recovered under this
11 section shall be paid into the state treasury and credited to the
12 general fund.

13 **Sec. 639.** RCW 90.76.080 and 1989 c 346 s 9 are each amended to
14 read as follows:

15 (1) Except as provided in sections 607 through 609 and 617 of this
16 act, a person who fails to notify the department pursuant to tank
17 notification requirements or who submits false information is subject
18 to a civil penalty not to exceed five thousand dollars per violation.

19 (2) Except as provided in sections 607 through 609 and 617 of this
20 act, a person who violates this chapter is subject to a civil penalty
21 not to exceed five thousand dollars for each tank per day of violation.

22 **PART VII**
23 **RULES REVIEW**

24 NEW SECTION. **Sec. 701.** A new section is added to chapter 34.05
25 RCW under the subchapter heading Part III to read as follows:

26 (1) Not later than June 30th of each year, each agency shall submit
27 to the code reviser, according to procedures and time lines established
28 by the code reviser, rules that it determines should be repealed by the
29 expedited repeal procedures provided for in this section. An agency
30 shall file a copy of a preproposal notice of inquiry, as provided in
31 RCW 34.05.310(1), that identifies the rule as one that is proposed for
32 expedited repeal.

33 (2) An agency may propose the expedited repeal of rules meeting one
34 or more of the following criteria:

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

4 (b) The statute on which the rule is based has been declared
5 unconstitutional by a court with jurisdiction, there is a final
6 judgment, and no statute has been enacted to replace the
7 unconstitutional statute;

8 (c) The rule is no longer necessary because of changed
9 circumstances; or

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

12 (3) The agency shall also send a copy of the preproposal notice of
13 inquiry to any person who has requested notification of copies of
14 proposals for the expedited repeal of rules or of agency rule making.
15 The preproposal notice of inquiry shall include a statement that any
16 person who objects to the repeal of the rule must file a written
17 objection to the repeal within thirty days after the preproposal notice
18 of inquiry is published. The notice of inquiry shall also include an
19 explanation of the reasons the agency believes the expedited repeal of
20 the rule is appropriate.

21 (4) The code reviser shall publish all rules proposed for expedited
22 repeal in a separate section of a regular edition of the Washington
23 state register or in a special edition of the Washington state
24 register. The publication shall be not later than July 31st of each
25 year, or in the first register published after that date.

26 (5) Any person may file a written objection to the expedited repeal
27 of a rule. The notice shall be filed with the agency rules coordinator
28 within thirty days after the notice of inquiry has been published in
29 the Washington state register. The written objection need not state
30 any reason for objecting to the expedited repeal of the rule.

31 (6) If no written objections to the expedited repeal of a rule are
32 filed with the agency within thirty days after the preproposal notice
33 of inquiry is published, the agency may enter an order repealing the
34 rule without further notice or an opportunity for a public hearing.
35 The order shall be published in the manner required by this chapter for
36 any other order of the agency adopting, amending, or repealing a rule.
37 If a written objection to the expedited repeal of the rule is filed
38 with the agency within thirty days after the notice of inquiry has been
39 published, the preproposal notice of inquiry published pursuant to this

1 section shall be considered a preproposal notice of inquiry for the
2 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
3 proceedings in accordance with the provisions of this chapter.

4 **Sec. 702.** RCW 34.05.230 and 1988 c 288 s 203 are each amended to
5 read as follows:

6 (1) If the adoption of rules is not feasible and practicable, an
7 agency is encouraged to advise the public of its current opinions,
8 approaches, and likely courses of action by means of interpretive or
9 policy statements. Current interpretive and policy statements are
10 advisory only. An agency is encouraged to convert long-standing
11 interpretive and policy statements into rules.

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

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

27 **Sec. 703.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
28 read as follows:

29 (1) Any person may petition an agency requesting the adoption,
30 amendment, or repeal of any rule. ~~((Each agency may))~~ The office of
31 financial management shall prescribe by rule the ~~((form))~~ format for
32 such petitions and the procedure for their submission, consideration,
33 and disposition and provide a standard form that may be used to
34 petition any agency. Within sixty days after submission of a petition,
35 the agency shall ~~((+1+))~~ either (a) deny the petition in writing,
36 stating (i) its reasons for the denial, specifically addressing the
37 concerns raised by the petitioner, and, where appropriate, (ii) the

1 alternative means by which it will address the concerns raised by the
2 petitioner, or ((+2)) (b) initiate rule-making proceedings in
3 accordance with this chapter.

4 (2) If an agency denies a petition to repeal or amend a rule
5 submitted under subsection (1) of this section, the petitioner, within
6 thirty days of the denial, may appeal the denial to the governor. The
7 governor shall immediately file notice of the appeal with the code
8 reviser for publication in the Washington state register. Within
9 forty-five days after receiving the appeal, the governor shall either
10 (a) deny the petition in writing, stating (i) his or her reasons for
11 the denial, specifically addressing the concerns raised by the
12 petitioner, and, (ii) where appropriate, the alternative means by which
13 he or she will address the concerns raised by the petitioner; (b) for
14 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
15 making proceedings in accordance with this chapter; or (c) for agencies
16 not listed in RCW 43.17.010, recommend that the agency initiate rule-
17 making proceedings in accordance with this chapter. The governor's
18 response to the appeal shall be published in the Washington state
19 register and copies shall be submitted to the chief clerk of the house
20 of representatives and the secretary of the senate.

21 (3) In petitioning for repeal or amendment of a rule under this
22 section, a person is encouraged to address, among other concerns:

23 (a) Whether the rule is authorized;

24 (b) Whether the rule is needed;

25 (c) Whether the rule conflicts with or duplicates other federal,
26 state, or local laws;

27 (d) Whether alternatives to the rule exist that will serve the same
28 purpose at less cost;

29 (e) Whether the rule applies differently to public and private
30 entities;

31 (f) Whether the rule serves the purposes for which it was adopted;

32 (g) Whether the costs imposed by the rule are unreasonable;

33 (h) Whether the rule is clearly and simply stated; and

34 (i) Whether the rule is different than a federal law applicable to
35 the same activity or subject matter without adequate justification.

36 (4) The business assistance center and the office of financial
37 management shall coordinate efforts among agencies to inform the public
38 about the existence of this rules review process.

1 (b) adopts. The file and materials incorporated by reference shall be
2 available for public inspection.

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

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

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

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

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

18 ~~((The concise explanatory statement required by RCW 34.05.355;~~
19 ~~(f)))~~ All petitions for exceptions to, amendment of, or repeal or
20 suspension of, the rule;

21 ~~((g)))~~ (f) Citations to data, factual information, studies, or
22 reports on which the agency relies in the adoption of the rule,
23 indicating where such data, factual information, studies, or reports
24 are available for review by the public, but this subsection (2)(f) does
25 not require the agency to include in the rule-making file any data,
26 factual information, studies, or reports gathered pursuant to chapter
27 19.85 RCW that can be identified to a particular business;

28 ~~((h)))~~ (g) The ~~((written summary and response))~~ concise
29 explanatory statement required by RCW 34.05.325(6); and

30 ~~((i)))~~ (h) Any other material placed in the file by the agency.

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

38 (4) Upon judicial review, the file required by this section
39 constitutes the official agency rule-making file with respect to that

1 rule. Unless otherwise required by another provision of law, the
2 official agency rule-making file need not be the exclusive basis for
3 agency action on that rule.

4 **Sec. 802.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to
5 read as follows:

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

8 (a) The burden of demonstrating the invalidity of agency action is
9 on the party asserting invalidity;

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

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

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

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

23 (b) The validity of any rule may be determined upon petition for a
24 declaratory judgment addressed to the superior court of Thurston
25 county, when it appears that the rule, or its threatened application,
26 interferes with or impairs or immediately threatens to interfere with
27 or impair the legal rights or privileges of the petitioner. The
28 declaratory judgment order may be entered whether or not the petitioner
29 has first requested the agency to pass upon the validity of the rule in
30 question.

31 (c) In a proceeding involving review of a rule, the court shall
32 declare the rule invalid only if it finds that: ~~((it))~~ The rule
33 violates constitutional provisions~~((τ))~~; the rule exceeds the statutory
34 authority of the agency~~((τ))~~; the rule was adopted without compliance
35 with statutory rule-making procedures~~((τ or could not conceivably have~~
36 ~~been the product of a rational decision-maker))~~; or the rule is
37 arbitrary and capricious.

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

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

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

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

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

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

15 (f) The agency has not decided all issues requiring resolution by
16 the agency;

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

22 (h) The order is inconsistent with a rule of the agency unless the
23 agency explains the inconsistency by stating facts and reasons to
24 demonstrate a rational basis for inconsistency; or

25 (i) The order is arbitrary or capricious.

26 (4) Review of other agency action.

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

29 (b) A person whose rights are violated by an agency's failure to
30 perform a duty that is required by law to be performed may file a
31 petition for review pursuant to RCW 34.05.514, seeking an order
32 pursuant to this subsection requiring performance. Within twenty days
33 after service of the petition for review, the agency shall file and
34 serve an answer to the petition, made in the same manner as an answer
35 to a complaint in a civil action. The court may hear evidence,
36 pursuant to RCW 34.05.562, on material issues of fact raised by the
37 petition and answer.

38 (c) Relief for persons aggrieved by the performance of an agency
39 action, including the exercise of discretion, or an action under (b) of

1 this subsection can be granted only if the court determines that the
2 action is:

3 (i) Unconstitutional;

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

6 (iii) Arbitrary or capricious; or

7 (iv) Taken by persons who were not properly constituted as agency
8 officials lawfully entitled to take such action.

9 **Sec. 803.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to
10 read as follows:

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

15 (1) A petitioner for judicial review of a rule need not have
16 participated in the rule-making proceeding upon which that rule is
17 based, ~~((or))~~ have petitioned for its amendment or repeal, or have
18 appealed a petition for amendment or repeal to the governor;

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

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

24 (a) The remedies would be patently inadequate;

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

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

29

PART IX

30

EQUAL ACCESS TO JUSTICE

31 NEW SECTION. **Sec. 901.** The legislature finds that certain
32 individuals, smaller partnerships, smaller corporations, and other
33 organizations may be deterred from seeking review of or defending
34 against an unreasonable agency action because of the expense involved
35 in securing the vindication of their rights in administrative
36 proceedings. The legislature further finds that because of the greater

1 resources and expertise of the state of Washington, individuals,
2 smaller partnerships, smaller corporations, and other organizations are
3 often deterred from seeking review of or defending against state agency
4 actions because of the costs for attorneys, expert witnesses, and other
5 costs. The legislature therefore adopts this equal access to justice
6 act to ensure that these parties have a greater opportunity to defend
7 themselves from inappropriate state agency actions and to protect their
8 rights.

9 NEW SECTION. **Sec. 902.** A new section is added to chapter 4.84 RCW
10 to read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout sections 902 through 904 of this act.

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

18 (2) "Agency action" means agency action as defined by chapter 34.05
19 RCW.

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

33 (4) "Judicial review" means a judicial review as defined by chapter
34 34.05 RCW.

35 (5) "Qualified party" means (a) an individual whose net worth did
36 not exceed one million dollars at the time the initial petition for
37 judicial review was filed or (b) a sole owner of an unincorporated
38 business, or a partnership, corporation, association, or organization

1 whose net worth did not exceed five million dollars at the time the
2 initial petition for judicial review was filed, except that an
3 organization described in section 501(c)(3) of the federal internal
4 revenue code of 1954 as exempt from taxation under section 501(a) of
5 the code and a cooperative association as defined in section 15(a) of
6 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party
7 regardless of the net worth of such organization or cooperative
8 association.

9 NEW SECTION. **Sec. 903.** A new section is added to chapter 4.84 RCW
10 to read as follows:

11 (1) Except as otherwise specifically provided by statute, a court
12 shall award a qualified party that prevails in a judicial review of an
13 agency action fees and other expenses, including reasonable attorneys'
14 fees, unless the court finds that the agency action was substantially
15 justified or that circumstances make an award unjust. A qualified
16 party shall be considered to have prevailed if the qualified party
17 obtained relief on a significant issue that achieves some benefit that
18 the qualified party sought.

19 (2) The amount awarded a qualified party under subsection (1) of
20 this section shall not exceed twenty-five thousand dollars. Subsection
21 (1) of this section shall not apply unless all parties challenging the
22 agency action are qualified parties. If two or more qualified parties
23 join in an action, the award in total shall not exceed twenty-five
24 thousand dollars. The court, in its discretion, may reduce the amount
25 to be awarded pursuant to subsection (1) of this section, or deny any
26 award, to the extent that a qualified party during the course of the
27 proceedings engaged in conduct that unduly or unreasonably protracted
28 the final resolution of the matter in controversy.

29 NEW SECTION. **Sec. 904.** A new section is added to chapter 4.84 RCW
30 to read as follows:

31 Fees and other expenses awarded under sections 902 and 903 of this
32 act shall be paid by the agency over which the party prevails from
33 operating funds appropriated to the agency within sixty days. Agencies
34 paying fees and other expenses pursuant to sections 902 and 903 of this
35 act shall report all payments to the office of financial management
36 within five days of paying the fees and other expenses. Fees and other
37 expenses awarded by the court shall be subject to the provisions of

1 chapter 39.76 RCW and shall be deemed payable on the date the court
2 announces the award.

3 NEW SECTION. **Sec. 905.** A new section is added to chapter 43.88
4 RCW to read as follows:

5 The office of financial management shall report annually to the
6 legislature on the amount of fees and other expenses awarded during the
7 preceding fiscal year pursuant to sections 902 through 904 of this act.
8 The report shall describe the number, nature, and amount of the awards,
9 the claims involved in the controversy, and other relevant information
10 that may aid the legislature in evaluating the scope and impact of the
11 awards.

12 **PART X**

13 **BUSINESS LICENSE INFORMATION**

14 NEW SECTION. **Sec. 1001.** The master license system of the
15 department of licensing is a proven, progressive program for one-stop
16 state licensing. This flexible system should be expanded into a state-
17 wide shared data base to facilitate combined licensing processes at
18 local, state, and federal levels as a benefit to the business community
19 through improved customer service.

20 In order to achieve this goal the department of licensing should
21 expand the license information management system, offered by the master
22 license system, to include local and federal licensing requirements,
23 making this information readily accessible at appropriate locations
24 throughout the state. In addition, the department should develop a
25 pilot program expanding the capabilities of the master licensing system
26 to local and federal levels in an efficient manner; and provide access
27 to the expanded master licensing system for all jurisdictions within
28 the state of Washington.

29 NEW SECTION. **Sec. 1002.** (1) The department shall solicit advice
30 and recommendations for planning and establishing policy for a combined
31 licensing pilot project and license information management system.
32 Advice and assistance shall be solicited from:

- 33 (a) The business assistance center;
34 (b) The office of the secretary of state;
35 (c) The department of revenue;

- 1 (d) The department of labor and industries;
2 (e) The employment security department;
3 (f) The Washington state association of counties;
4 (g) The association of Washington cities;
5 (h) The department of information services;
6 (i) The small business improvement council; and
7 (j) The cities chosen under section 1005 of this act.
8 (2) The department may create ad hoc advisory committees for
9 purposes of subsection (1) of this section.
10 (3) This section shall expire July 1, 1997.

11 NEW SECTION. **Sec. 1003.** By December 31, 1995, the department of
12 licensing, with advice and recommendations provided in section 1002 of
13 this act, shall develop a plan for the state-wide license information
14 management system. This plan shall include:

- 15 (1) The scope and phases of the project, listing areas of
16 responsibility for each phase;
17 (2) Analysis of the costs and benefits, as well as funding sources,
18 staffing levels, and technological issues involved in completing the
19 project; and
20 (3) A computer prototype for demonstration of the new license
21 information system to interested jurisdictions.

22 NEW SECTION. **Sec. 1004.** By December 31, 1995, the department of
23 licensing, with advice and recommendations provided in section 1002 of
24 this act, shall develop a plan for a pilot combined licensing program.
25 The plan shall include:

- 26 (1) The scope and phases of the project, listing areas of
27 responsibility for each phase;
28 (2) Analysis of the costs and benefits, as well as funding sources,
29 staffing levels, and technological issues involved in completing the
30 project;
31 (3) The use of the state unified business identifier as the key
32 number for identifying persons and businesses, for licensing purposes,
33 throughout local, state and, if appropriate, federal levels of
34 government;
35 (4) Steps leading to the expansion of the department's master
36 license automated system, to be used for combined licensing processes
37 at selected local service jurisdictions;

1 (5) Development of common technology for information dissemination,
2 access, and delivery at appropriate service locations through the
3 master license system, including remote field input of master business
4 application information;

5 (6) Adoption of the state's master business application to become
6 the standard for all registration or licensing applications used at
7 local and state levels, and federal levels where appropriate; and

8 (7) Necessary training for staff at service locations.

9 NEW SECTION. **Sec. 1005.** By December 31, 1996, the department of
10 licensing shall:

11 (1) Expand the license information management system, in order to
12 provide on-line local, state, and federal business registration and
13 licensing requirements;

14 (2) Include specific licensing requirements for local jurisdictions
15 in the license information packet;

16 (3) Provide the capability to distribute the information packets at
17 the appropriate service locations;

18 (4) Provide the ability for local jurisdictions to access, store,
19 and update the license requirements data of their own jurisdiction; and

20 (5) Provide training to all organizations providing services using
21 the master license information management system.

22 NEW SECTION. **Sec. 1006.** A new section is added to chapter 19.02
23 RCW to read as follows:

24 (1) By June 30, 1997, the department shall have a pilot combined
25 licensing project fully operational in at least two cities within the
26 state of Washington, with at least one city west of the Cascade
27 mountains and at least one city east of the Cascade mountains.

28 (2) By January 31, 1997, the department shall make an interim
29 report to the legislature on the progress of the pilot combined
30 licensing project.

31 (3) By January 31, 1998, the department shall have evaluated the
32 pilot combined licensing project and reported to the legislature with
33 a plan for transition of the pilot project into an ongoing program.
34 The transition plan shall include cost, funding sources, and staffing
35 needs for the ongoing program.

1 (4) Upon approval and continued funding of the transition plan by
2 the legislature under this section, the master license system shall
3 implement a transition from the pilot program to the ongoing program.

4 **Sec. 1007.** RCW 19.02.075 and 1992 c 107 s 2 are each amended to
5 read as follows:

6 (1) ~~((Beginning June 1, 1992,))~~ The department shall collect a fee
7 of fifteen dollars on each master application ~~((and five dollars on
8 each license information packet. From June 1, 1992, to June 30, 1992,
9 twelve dollars of the master application fee shall be deposited in the
10 general fund and three dollars deposited in the master license fund.
11 Thereafter,))~~. The entire master application fee shall be deposited in
12 the master license fund. ~~((License information packet fees shall be
13 deposited in the general fund.))~~

14 (2) ~~((Beginning July 1, 1992,))~~ The department shall collect a fee
15 of nine dollars on each renewal application. Renewal application fees
16 shall be deposited in the master license fund.

17 **PART XI**
18 **MISCELLANEOUS**

19 NEW SECTION. **Sec. 1101.** Part headings as used in this act do not
20 constitute any part of the law.

21 NEW SECTION. **Sec. 1102.** Sections 201, 301 through 305, 401
22 through 405, and 801 of this act shall apply to all rule making for
23 which a statement of proposed rule making under RCW 34.05.320 is filed
24 after the effective date of this section.

25 NEW SECTION. **Sec. 1103.** Sections 601 through 615, 617, and 619
26 through 621 of this act shall constitute a new chapter in Title 43 RCW.

27 NEW SECTION. **Sec. 1104.** If specific funding for the purposes of
28 sections 704 and 1001 through 1007 of this act, referencing this act by
29 bill and section numbers, is not provided by June 30, 1995, in the
30 omnibus appropriations act, sections 704 and 1001 through 1007 of this
31 act shall be null and void.

