

2 **E2SHB 2221** - S COMM AMD  
3 By Committee on Government Operations

4

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

7

"PART I

8

**GRANTS OF RULE-MAKING AUTHORITY**

9 **Sec. 101.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to  
10 read as follows:

11 (1) The legislature hereby finds and declares that the forest land  
12 resources are among the most valuable of all resources in the state;  
13 that a viable forest products industry is of prime importance to the  
14 state's economy; that it is in the public interest for public and  
15 private commercial forest lands to be managed consistent with sound  
16 policies of natural resource protection; that coincident with  
17 maintenance of a viable forest products industry, it is important to  
18 afford protection to forest soils, fisheries, wildlife, water quantity  
19 and quality, air quality, recreation, and scenic beauty.

20 (2) The legislature further finds and declares it to be in the  
21 public interest of this state to create and maintain through the  
22 adoption of this chapter a comprehensive state-wide system of laws and  
23 forest practices regulations which will achieve the following purposes  
24 and policies:

25 (a) Afford protection to, promote, foster and encourage timber  
26 growth, and require such minimum reforestation of commercial tree  
27 species on forest lands as will reasonably utilize the timber growing  
28 capacity of the soil following current timber harvest;

29 (b) Afford protection to forest soils and public resources by  
30 utilizing all reasonable methods of technology in conducting forest  
31 practices;

32 (c) Recognize both the public and private interest in the  
33 profitable growing and harvesting of timber;

34 (d) Promote efficiency by permitting maximum operating freedom  
35 consistent with the other purposes and policies stated herein;

1 (e) Provide for regulation of forest practices so as to avoid  
2 unnecessary duplication in such regulation;

3 (f) Provide for interagency input and intergovernmental and tribal  
4 coordination and cooperation;

5 (g) Achieve compliance with all applicable requirements of federal  
6 and state law with respect to nonpoint sources of water pollution from  
7 forest practices;

8 (h) To consider reasonable land use planning goals and concepts  
9 contained in local comprehensive plans and zoning regulations; and

10 (i) Foster cooperation among managers of public resources, forest  
11 landowners, Indian tribes and the citizens of the state.

12 The authority of the board to adopt forest practices rules is  
13 prescribed by this subsection (2) and RCW 76.09.040. The board may not  
14 adopt forest practices rules based solely on any other section of law  
15 stating a statute's intent or purpose, on the enabling provisions of  
16 the statute establishing the agency, or on any combination of such  
17 provisions.

18 (3) The legislature further finds and declares that it is also in  
19 the public interest of the state to encourage forest landowners to  
20 undertake corrective and remedial action to reduce the impact of mass  
21 earth movements and fluvial processes.

22 (4) The legislature further finds and declares that it is in the  
23 public interest that the applicants for state forest practice permits  
24 should assist in paying for the cost of review and permitting necessary  
25 for the environmental protection of these resources.

26 **Sec. 102.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to  
27 read as follows:

28 (1) Where necessary to accomplish the purposes and policies  
29 specifically stated in RCW 76.09.010(2), and to implement the  
30 provisions of this chapter, the board shall (~~promulgate~~) adopt forest  
31 practices (~~regulations~~) rules pursuant to chapter 34.05 RCW and in  
32 accordance with the procedures enumerated in this section that:

33 (a) Establish minimum standards for forest practices;

34 (b) Provide procedures for the voluntary development of resource  
35 management plans which may be adopted as an alternative to the minimum  
36 standards in (a) of this subsection if the plan is consistent with the  
37 purposes and policies specifically stated in RCW 76.09.010(2) and the  
38 plan meets or exceeds the objectives of the minimum standards;

- 1 (c) Set forth necessary administrative provisions; and  
2 (d) Establish procedures for the collection and administration of  
3 forest practice fees as set forth by this chapter.

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

9 Forest practices (~~((regulations))~~) rules shall be administered and  
10 enforced by the department except as otherwise provided in this  
11 chapter. Such (~~((regulations))~~) rules shall be (~~((promulgated))~~) adopted  
12 and administered so as to give consideration to all purposes and  
13 policies specifically set forth in RCW 76.09.010(2).

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

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

35 NEW SECTION. Sec. 103. A new section is added to chapter 43.22  
36 RCW to read as follows:

37 For rules adopted after the effective date of this act, the  
38 director of the department of labor and industries may not rely solely

1 on a statute's statement of intent or purpose, on the enabling  
2 provisions of the statute establishing the agency, or on any  
3 combination of such provisions, for statutory authority to adopt any  
4 rule. This section does not apply to rules adopted under chapter 39.12  
5 RCW.

6 **Sec. 104.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to  
7 read as follows:

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

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

13 (3) The commissioner may:

14 (a) Make reasonable rules and regulations for effectuating any  
15 provision of this code, except those relating to his or her election,  
16 qualifications, or compensation. However, the commissioner may not  
17 adopt rules after the effective date of this act that are based solely  
18 on this statute, or on a statute's statement of intent or purpose, or  
19 on the enabling provisions of the statute establishing the agency, or  
20 any combination of such provisions, for statutory authority to adopt  
21 any rule, except rules defining or clarifying terms in, or procedures  
22 necessary to the implementation of, a statute. No such rules and  
23 regulations shall be effective prior to their being filed for public  
24 inspection in the commissioner's office.

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

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

30 **Sec. 105.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to  
31 read as follows:

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

36 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~  
37 ~~or practices as)) are expressly defined and prohibited by this code((7~~

1 the commissioner may from time to time by regulation promulgated  
2 pursuant to chapter 34.05 RCW, define other methods of competition and  
3 other acts and practices in the conduct of such business reasonably  
4 found by the commissioner to be unfair or deceptive.

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

8 ~~((4))~~ (2) If the commissioner has cause to believe that any  
9 person is violating any such ((regulation)) rule or prohibition of this  
10 code, the commissioner may order such person to cease and desist  
11 therefrom. The commissioner shall deliver such order to such person  
12 direct or mail it to the person by registered mail with return receipt  
13 requested. If the person violates the order after expiration of ten  
14 days after the cease and desist order has been received by him or her,  
15 he or she may be fined by the commissioner a sum not to exceed two  
16 hundred and fifty dollars for each violation committed thereafter.

17 ~~((5))~~ (3) If any such ((regulation)) rule or prohibition of this  
18 code is violated, the commissioner may take such other or additional  
19 action as is permitted under the insurance code for violation of a  
20 ((regulation)) rule or that prohibition.

21 (4) Any permanent rule that was adopted by the commissioner under  
22 the authority of this section as it existed before the effective date  
23 of this act, and that was in effect as of the effective date of this  
24 act, shall, if otherwise valid, remain in effect until and unless it is  
25 repealed by the commissioner, who shall retain the authority to repeal  
26 any such rule, or is effectively repealed by an act of the legislature.

27 **Sec. 106.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to  
28 read as follows:

29 The insurance commissioner shall make reasonable regulations in aid  
30 of the administration of this chapter which may include, but shall not  
31 be limited to regulations concerning the maintenance of adequate  
32 insurance, bonds, or cash deposits, information required of  
33 registrants, and methods of expediting speedy and fair payments to  
34 claimants. However, the commissioner may not adopt rules after the  
35 effective date of this act that are based solely on this section, a  
36 statute's statement of intent or purpose, or on the enabling provisions  
37 of the statute establishing the agency, or any combination of such  
38 provisions, for statutory authority to adopt any rule, except rules

1 defining or clarifying terms in, or procedures necessary to the  
2 implementation of, a statute.

3 **Sec. 107.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each  
4 amended to read as follows:

5 The commissioner may adopt, in accordance with the provisions of  
6 the Administrative Procedure Act, chapter 34.05 RCW, ((promulgate))  
7 rules and regulations as necessary or proper to carry out the  
8 provisions of this chapter. However, the commissioner may not adopt  
9 rules after the effective date of this act that are based solely on  
10 this section, a statute's statement of intent or purpose, or on the  
11 enabling provisions of the statute establishing the agency, or any  
12 combination of such provisions, for statutory authority to adopt any  
13 rule, except rules defining or clarifying terms in, or procedures  
14 necessary to the implementation of, a statute. Nothing in this chapter  
15 shall be construed to prohibit the commissioner from requiring changes  
16 in procedures previously approved by ((him)) the commissioner.

17 NEW SECTION. **Sec. 108.** A new section is added to chapter 34.05  
18 RCW under the subchapter heading "Part III" to read as follows:

19 No board or commission established under Title 18 RCW whose sole  
20 function is to perform regulatory or licensing functions with respect  
21 to a specific profession or occupation, other than a health-related  
22 profession or occupation, may adopt or enforce a rule that establishes  
23 education requirements in excess of a baccalaureate degree in order to  
24 qualify for licensing unless those requirements are mandated by  
25 statute.

26 NEW SECTION. **Sec. 109.** A new section is added to chapter 34.05  
27 RCW to read as follows:

28 RCW 34.05.322 does not apply to the commissioner of public lands,  
29 the department of ecology, the department of agriculture, the  
30 department of health, the department of revenue, the department of  
31 licensing, the employment security department, the fish and wildlife  
32 commission, the department of labor and industries, the forest  
33 practices board, and the office of the insurance commissioner.

34 **PART II**  
35 **RULE-MAKING REQUIREMENTS**

1       **Sec. 201.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to  
2 read as follows:

3       (1) To meet the intent of providing greater public access to  
4 administrative rule making and to promote consensus among interested  
5 parties, agencies shall solicit comments from the public on a subject  
6 of possible rule making before filing with the code reviser a notice of  
7 proposed rule making under RCW 34.05.320. The agency shall prepare a  
8 statement of inquiry that:

9       (a) Identifies the specific statute or statutes authorizing the  
10 agency to adopt rules on this subject;

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

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

16       (d) Discusses the process by which the rule might be developed,  
17 including, but not limited to, negotiated rule making, pilot rule  
18 making, or agency study;

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

22       The statement of inquiry shall be filed with the code reviser (~~for~~  
23 ~~publication~~) and published in the state register at least thirty days  
24 before the date the agency files notice of proposed rule making under  
25 RCW 34.05.320 and shall be sent to any party that has requested receipt  
26 of the agency's statements of inquiry.

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

31       (a) Negotiated rule making by which representatives of an agency  
32 and of the interests that are affected by a subject of rule making,  
33 including, where appropriate, county and city representatives, seek to  
34 reach consensus on the terms of the proposed rule and on the process by  
35 which it is negotiated; and

36       (b) Pilot rule making which includes testing the feasibility of  
37 complying with or administering draft new rules or draft amendments to  
38 existing rules through the use of volunteer pilot groups in various

1 areas and circumstances, as provided in RCW 34.05.313 or as otherwise  
2 provided by the agency.

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

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

11 (4) This section does not apply to:

12 (a) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

28 (f) Rules that set or adjust fees or rates pursuant to legislative  
29 standards; or

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

31 (i) A procedure, practice, or requirement relating to agency  
32 hearings; or

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

35 **Sec. 202.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to  
36 read as follows:

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



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

3 (b) Determine that the rule is needed to achieve the general goals  
4 and specific objectives stated under (a) of this subsection, and  
5 analyze alternatives to rule making and the consequences of not  
6 adopting the rule;

7 (c) Determine that the probable benefits of the rule are greater  
8 than its probable costs, taking into account both the qualitative and  
9 quantitative benefits and costs and the specific directives of the  
10 statute being implemented;

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

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

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

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

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

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

30 (h) Coordinate the content of the rule, to the maximum extent  
31 practicable, with other federal, state, and local laws applicable to  
32 the same activity or subject matter.

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

37 (3) Before adopting rules described in subsection (5) of this  
38 section, an agency shall place in the rule-making file a rule

1 implementation plan for rules filed under each adopting order. The  
2 plan shall describe how the agency intends to:

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

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

6 (c) Promote and assist voluntary compliance; and

7 (d) Evaluate whether the rule achieves the purpose for which it was  
8 adopted, including, to the maximum extent practicable, the use of  
9 interim milestones to assess progress and the use of objectively  
10 measurable outcomes.

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

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

18 (b) Coordinate implementation and enforcement of the rule with the  
19 other federal and state entities regulating the same activity or  
20 subject matter by making every effort to do one or more of the  
21 following:

22 (i) Deferring to the other entity;

23 (ii) Designating a lead agency; (~~(or)~~)

24 (iii) Entering into an agreement with the other entities specifying  
25 how the agency and entities will coordinate implementation and  
26 enforcement; or

27 (iv) Applying the rule in a manner conforming to federal standards  
28 to the greatest extent possible.

29 If the agency is unable to comply with this subsection (4)(b), the  
30 agency shall report to the legislature pursuant to (c) of this  
31 subsection;

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

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

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

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

3 (i) Significant legislative rules of the departments of ecology,  
4 labor and industries, health, revenue, and natural resources, the  
5 employment security department, the forest practices board, the office  
6 of the insurance commissioner, and to the legislative rules of the  
7 department of fish and wildlife implementing chapter 75.20 RCW; and

8 (ii) Any rule of any agency, if this section is voluntarily made  
9 applicable to the rule by the agency, or is made applicable to the rule  
10 by a majority vote of the joint administrative rules review committee  
11 within (~~forty-five~~) sixty days of receiving the notice of proposed  
12 rule making under RCW 34.05.320.

13 (b) This section does not apply to:

14 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

30 (vi) Rules that set or adjust fees or rates pursuant to legislative  
31 standards.

32 (c) For purposes of this subsection:

33 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
34 (A) any procedure, practice, or requirement relating to any agency  
35 hearings; (B) any filing or related process requirement for making  
36 application to an agency for a license or permit; or (C) any policy  
37 statement pertaining to the consistent internal operations of an  
38 agency.

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

4 (iii) A "significant legislative rule" is a rule other than a  
5 procedural or interpretive rule that (A) adopts substantive provisions  
6 of law pursuant to delegated legislative authority, the violation of  
7 which subjects a violator of such rule to a penalty or sanction; (B)  
8 establishes, alters, or revokes any qualification or standard for the  
9 issuance, suspension, or revocation of a license or permit; or (C)  
10 adopts a new, or makes significant amendments to, a policy or  
11 regulatory program.

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

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

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

25 (b) The costs incurred by state agencies in complying with this  
26 section;

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

30 (d) The extent to which this section has adversely affected the  
31 capacity of agencies to fulfill their legislatively prescribed mission;

32 (e) The extent to which this section has improved the acceptability  
33 of state rules to those regulated; and

34 (f) Any other information considered by the office of financial  
35 management to be useful in evaluating the effect of this section.

36 NEW SECTION. **Sec. 203.** A new section is added to chapter 34.05  
37 RCW under the subchapter heading "Part III" to read as follows:

1 Each state agency shall, by June 30th of each year, identify and  
2 prepare a list of major subjects of potential rule making anticipated  
3 for the ensuing fiscal year. The list must be made available upon  
4 request to any person and must be published by the agency in the  
5 Washington State Register. The list must also be submitted to the  
6 director of financial management and to any other state agency that may  
7 reasonably be expected to have an interest in the subject of rules that  
8 will be adopted.

9 **Sec. 204.** RCW 34.05.330 and 1995 c 403 s 703 are each amended to  
10 read as follows:

11 (1) Any person may petition an agency requesting the adoption,  
12 amendment, or repeal of any rule. The office of financial management  
13 shall prescribe by rule the format for such petitions and the procedure  
14 for their submission, consideration, and disposition and provide a  
15 standard form that may be used to petition any agency. Within sixty  
16 days after submission of a petition, the agency shall either (a) deny  
17 the petition in writing, stating (i) its reasons for the denial,  
18 specifically addressing the concerns raised by the petitioner, and,  
19 where appropriate, (ii) the alternative means by which it will address  
20 the concerns raised by the petitioner, or (b) initiate rule-making  
21 proceedings in accordance with this chapter.

22 (2) If an agency denies a petition to repeal or amend a rule  
23 submitted under subsection (1) of this section, and the petition  
24 alleges that the rule is not within the intent of the legislature or  
25 was not adopted in accordance with all applicable provisions of law,  
26 the person may petition for review of the rule by the joint  
27 administrative rules review committee under RCW 34.05.655.

28 (3) If an agency denies a petition to repeal or amend a rule  
29 submitted under subsection (1) of this section, the petitioner, within  
30 thirty days of the denial, may appeal the denial to the governor. The  
31 governor shall immediately file notice of the appeal with the code  
32 reviser for publication in the Washington state register. Within  
33 forty-five days after receiving the appeal, the governor shall either  
34 (a) deny the petition in writing, stating (i) his or her reasons for  
35 the denial, specifically addressing the concerns raised by the  
36 petitioner, and, (ii) where appropriate, the alternative means by which  
37 he or she will address the concerns raised by the petitioner; (b) for  
38 agencies listed in RCW 43.17.010, direct the agency to initiate rule-

1 making proceedings in accordance with this chapter; or (c) for agencies  
2 not listed in RCW 43.17.010, recommend that the agency initiate rule-  
3 making proceedings in accordance with this chapter. The governor's  
4 response to the appeal shall be published in the Washington state  
5 register and copies shall be submitted to the chief clerk of the house  
6 of representatives and the secretary of the senate.

7 ~~((+3))~~ (4) In petitioning for repeal or amendment of a rule under  
8 this section, a person is encouraged to address, among other concerns:

9 (a) Whether the rule is authorized;

10 (b) Whether the rule is needed;

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

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

15 (e) Whether the rule applies differently to public and private  
16 entities;

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

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

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

20 (i) Whether the rule is different than a federal law applicable to  
21 the same activity or subject matter without adequate justification; and

22 (j) Whether the rule was adopted according to all applicable  
23 provisions of law.

24 ~~((+4))~~ (5) The business assistance center and the office of  
25 financial management shall coordinate efforts among agencies to inform  
26 the public about the existence of this rules review process.

27 ~~((+5))~~ (6) The office of financial management shall initiate the  
28 rule making required by subsection (1) of this section by September 1,  
29 1995.

30 NEW SECTION. Sec. 205. A new section is added to chapter 34.05  
31 RCW to read as follows:

32 (1) A person may petition an agency requesting that an existing  
33 rule be subject to readoption. The office of financial management  
34 shall prescribe by rule the format for the petitions and the procedure  
35 for their submission, consideration, and disposition and provide a  
36 standard form that may be used to petition any agency. Within sixty  
37 days after submission of a petition, the agency shall either (a) deny  
38 the petition in writing, stating (i) its reasons for the denial,

1 specifically addressing each item listed in subsection (3) of this  
2 section and, where appropriate, (ii) the alternative means by which it  
3 will address the concerns raised by the petitioner, or (b) initiate the  
4 readoption procedure in accordance with this section.

5 (2) If an agency denies a petition submitted under subsection (1)  
6 of this section, the petitioner, within thirty days of the denial, may  
7 appeal the denial to the joint administrative rules review committee.  
8 Within sixty days after receiving the appeal, the committee shall, by  
9 a majority vote of its members, either (a) deny the appeal in writing,  
10 stating its reasons for the denial, or (b) direct the agency to  
11 initiate the readoption procedure in accordance with this section. The  
12 agency shall initiate the readoption procedure by the date specified by  
13 the committee.

14 (3) An agency's written denial under subsection (1) of this section  
15 must address each of the following:

16 (a) Whether the rule is authorized;

17 (b) Whether the rule is needed;

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

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

22 (e) Whether the rule applies differently to public and private  
23 entities;

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

25 (g) Whether the benefits of the rule are greater than its costs;

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

27 (i) Whether there is adequate justification if the rule is  
28 different than a federal law applicable to the same activity or subject  
29 matter.

30 Persons are encouraged to address each of these issues in their  
31 petition to the agency.

32 (4) For purposes of this section, "readoption" means that the text  
33 of the existing rule is submitted under RCW 34.05.320 as a proposed  
34 rule and is then subject to the rule-making process set forth in this  
35 chapter. However, an agency need not submit a statement of inquiry  
36 under RCW 34.05.310 for an existing rule subject to readoption.

37 (5) A decision by an agency under subsection (1) of this section to  
38 deny a petition for readoption is not subject to judicial review.

1 (6) The office of financial management shall initiate the rule  
2 making required by subsection (1) of this section by July 1, 1996.

3 **Sec. 206.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to  
4 read as follows:

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

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

11 (b) That state or federal law or federal rule or a federal deadline  
12 for state receipt of federal funds requires immediate adoption of a  
13 rule,

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

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

31 (3) Within seven days after the rule is adopted, any person may  
32 petition the governor requesting the immediate repeal of a rule adopted  
33 on an emergency basis by any department listed in RCW 43.17.010.  
34 Within seven days after submission of the petition, the governor shall  
35 either deny the petition in writing, stating his or her reasons for the  
36 denial, or order the immediate repeal of the rule. In ruling on the  
37 petition, the governor shall consider only whether the conditions in  
38 subsection (1) of this section were met such that adoption of the rule



1 on an emergency basis was necessary. If the governor orders the repeal  
2 of the emergency rule, any sanction imposed based on that rule is void.  
3 This subsection shall not be construed to prohibit adoption of any rule  
4 as a permanent rule.

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

8 **Sec. 207.** RCW 19.85.030 and 1995 c 403 s 402 are each amended to  
9 read as follows:

10 (1) In the adoption of a rule under chapter 34.05 RCW, an agency  
11 shall prepare a small business economic impact statement: (a) If the  
12 proposed rule will impose more than minor costs on businesses in an  
13 industry; or (b) if requested to do so by a majority vote of the joint  
14 administrative rules review committee within ~~((forty-five))~~ sixty days  
15 of receiving the notice of proposed rule making under RCW 34.05.320.  
16 However, if the agency has completed the pilot rule process as defined  
17 by RCW 34.05.313 before filing the notice of a proposed rule, the  
18 agency is not required to prepare a small business economic impact  
19 statement.

20 An agency shall prepare the small business economic impact  
21 statement in accordance with RCW 19.85.040, and file it with the code  
22 reviser along with the notice required under RCW 34.05.320. An agency  
23 shall file a statement prepared at the request of the joint  
24 administrative rules review committee with the code reviser upon its  
25 completion before the adoption of the rule. An agency shall provide a  
26 copy of the small business economic impact statement to any person  
27 requesting it.

28 An agency may request assistance from the business assistance  
29 center in the preparation of the small business economic impact  
30 statement.

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

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

7 (a) Reducing, modifying, or eliminating substantive regulatory  
8 requirements;

9 (b) Simplifying, reducing, or eliminating recordkeeping and  
10 reporting requirements;

11 (c) Reducing the frequency of inspections;

12 (d) Delaying compliance timetables;

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

14 (f) Any other mitigation techniques.

15 **PART III**

16 **LEGISLATIVE REVIEW**

17 **Sec. 301.** RCW 34.05.610 and 1988 c 288 s 601 are each amended to  
18 read as follows:

19 (1) There is hereby created a joint administrative rules review  
20 committee which shall be a bipartisan committee consisting of four  
21 senators and four representatives from the state legislature. The  
22 senate members of the committee shall be appointed by the president of  
23 the senate, and the house members of the committee shall be appointed  
24 by the speaker of the house. Not more than two members from each house  
25 may be from the same political party. The appointing authorities shall  
26 also appoint one alternate member from each caucus of each house. All  
27 appointments to the committee are subject to approval by the caucuses  
28 to which the appointed members belong.

29 (2) Members and alternates shall be appointed as soon as possible  
30 after the legislature convenes in regular session in an odd-numbered  
31 year, and their terms shall extend until their successors are appointed  
32 and qualified at the next regular session of the legislature in an odd-  
33 numbered year or until such ((members)) persons no longer serve in the  
34 legislature, whichever occurs first. Members and alternates may be  
35 reappointed to ((a)) the committee.

36 (3) The president of the senate shall appoint the chairperson in  
37 even-numbered years and the vice chairperson in odd-numbered years from

1 among committee membership. The speaker of the house shall appoint the  
2 chairperson in odd-numbered years and the vice chairperson in even-  
3 numbered years from among committee membership. Such appointments  
4 shall be made in January of each year as soon as possible after a  
5 legislative session convenes.

6 (4) The chairperson of the committee shall cause all meeting  
7 notices and committee documents to be sent to the members and  
8 alternates. A vacancy (~~on the committee~~) shall be filled by  
9 appointment of a legislator from the same political party as the  
10 original appointment. The appropriate appointing authority shall make  
11 the appointment within thirty days of the vacancy occurring.

12 **Sec. 302.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to  
13 read as follows:

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

27 **Sec. 303.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to  
28 read as follows:

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

32 (~~The rules review committee may review an agency's use of~~  
33 ~~policy statements, guidelines, and issuances that are of general~~  
34 ~~applicability, or their equivalents to determine whether or not an~~  
35 ~~agency has failed to adopt a rule or whether they are within the intent~~  
36 ~~of the legislature as expressed by the governing statute~~) All agency

1 policy and interpretive statements are subject to selective review by  
2 the legislature.

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

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

32 **Sec. 304.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to  
33 read as follows:

34 (1) Within seven days of an agency hearing held after notification  
35 of the agency by the rules review committee pursuant to RCW 34.05.620  
36 or 34.05.630, the affected agency shall notify the committee of its  
37 intended action on a proposed or existing rule to which the committee  
38 objected or on a committee finding of the agency's failure to adopt

1 rules. (~~If the rules review committee determines, by a majority vote~~  
2 ~~of its members, that the agency has failed to provide for the required~~  
3 ~~hearings or notice of its action to the committee, the committee may~~  
4 ~~file notice of its objections, together with a concise statement of the~~  
5 ~~reasons therefor, with the code reviser within thirty days of such~~  
6 ~~determination.))~~)

7 (2) If the rules review committee finds(~~(7)~~) by a majority vote of  
8 its members: (a) That the proposed or existing rule in question (~~has~~  
9 ~~not been~~) will not be modified, amended, withdrawn, or repealed by the  
10 agency so as to conform with the intent of the legislature, (~~or~~) (b)  
11 that an existing rule was not adopted in accordance with all applicable  
12 provisions of law, (~~including section 4 of this act if the rule was~~  
13 ~~adopted after the effective date of section 4 of this act and chapter~~  
14 ~~19.85 RCW,~~) or (c) that the agency (~~is using a policy statement,~~  
15 ~~guideline, or issuance in place of a rule, or that the policy~~  
16 ~~statement, guideline, or issuance is outside of the legislative~~  
17 ~~intent~~) will not replace the policy or interpretive statement with a  
18 rule, the rules review committee may, within thirty days from  
19 notification by the agency of its intended action, file with the code  
20 reviser notice of its objections together with a concise statement of  
21 the reasons therefor. Such notice and statement shall also be provided  
22 to the agency by the rules review committee.

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

36 (4) (~~If the governor disapproves the recommendation of the rules~~  
37 ~~review committee to suspend the rule, the transmittal of such decision,~~  
38 ~~along with the findings of the rules review committee, shall be treated~~

1 by the agency as a petition by the rules review committee to repeal the  
2 rule under RCW 34.05.330.

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

11 ~~((6))~~ (5) The reference shall be removed from a rule published in  
12 the Washington Administrative Code if a subsequent adjudicatory  
13 proceeding determines that the rule is within the intent of the  
14 legislature or was adopted in accordance with all applicable laws,  
15 whichever was the objection of the rules review committee.

16 NEW SECTION. Sec. 305. RCW 34.05.645 and 1995 c 403 s 501 are  
17 each repealed.

18 **Sec. 306.** RCW 34.05.655 and 1995 c 403 s 502 are each amended to  
19 read as follows:

20 (1) Any person may petition the rules review committee for a review  
21 of ~~((that rule))~~ a proposed or existing rule or a policy or  
22 interpretive statement. Within thirty days of the receipt of the  
23 petition, the rules review committee shall acknowledge receipt of the  
24 petition and describe any initial action taken. If the rules review  
25 committee rejects the petition, a written statement of the reasons for  
26 rejection shall be included.

27 (2) A person may petition the rules review committee under  
28 subsection (1) of this section requesting review of an existing rule  
29 only if the person has petitioned the agency to amend or repeal the  
30 rule under RCW 34.05.330(1) and the petition was denied.

31 (3) A petition for review of a rule under subsection (1) of this  
32 section must:

33 (a) Identify with specificity the proposed or existing rule to be  
34 reviewed;

35 (b) Identify the specific statute identified by the agency as  
36 authorizing the rule, the specific statute that the rule interprets or

1 implements, and, if applicable, the specific statute the department is  
2 alleged not to have followed in adopting the rule;

3 (c) State the reasons why the petitioner believes that the rule is  
4 not within the intent of the legislature, or that its adoption was not  
5 or is not in accordance with law, and provide documentation to support  
6 these statements;

7 (d) Identify any known judicial action regarding the rule or  
8 statutes identified in the petition.

9 A petition to review an existing rule must also include a copy of  
10 the agency's denial of a petition to amend or repeal the rule issued  
11 under RCW 34.05.330(1) and, if available, a copy of the governor's  
12 denial issued under RCW 34.05.330(3).

13 (4) A petition for review of a policy or interpretive statement  
14 under subsection (1) of this section must:

15 (a) Identify the specific statement to be reviewed;

16 (b) Identify the specific statute that the rule interprets or  
17 implements;

18 (c) State the reasons why the petitioner believes that the  
19 statement meets the definition of a rule under RCW 34.05.010 and should  
20 have been adopted according to the procedures of this chapter;

21 (d) Identify any known judicial action regarding the statement or  
22 statutes identified in the petition.

23 (5) Within ninety days of receipt of the petition, the rules review  
24 committee shall make a final decision on the rule for which the  
25 petition for review was not previously rejected.

26 NEW SECTION. Sec. 307. A new section is added to chapter 34.05  
27 RCW under the subchapter heading "Part VI" to read as follows:

28 Within sixty days of receiving a notice of proposed rule making  
29 under RCW 34.05.320, the committee may, by majority vote: (1) Require  
30 the agency to prepare a small business economic impact statement under  
31 chapter 19.85 RCW regarding the proposed rule, and to file the  
32 statement with the code reviser and the committee before adoption of  
33 the rule; and (2) require an agency to comply with RCW 34.05.328 in the  
34 adoption of the proposed rule.

35 **PART IV**

36 **DISCLOSURE EXEMPTION**

1        NEW SECTION.    **Sec. 401.**    A new section is added to chapter 42.17  
2    RCW to read as follows:

3        The disclosure requirements of this chapter do not apply to  
4    information gathered under chapter 19.85 RCW or RCW 34.05.328 that can  
5    be identified to a particular business.

6        **Sec. 402.**    RCW 34.05.370 and 1995 c 403 s 801 are each amended to  
7    read as follows:

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

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

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

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

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

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

27        (e) All petitions for exceptions to, amendment of, or repeal or  
28   suspension of, the rule;

29        (f) Citations to data, factual information, studies, or reports on  
30   which the agency relies in the adoption of the rule, indicating where  
31   such data, factual information, studies, or reports are available for  
32   review by the public, but this subsection (2)(f) does not require the  
33   agency to include in the rule-making file any data, factual  
34   information, studies, or reports gathered pursuant to chapter 19.85 RCW  
35   or RCW 34.05.328 that can be identified to a particular business;

36        (g) The concise explanatory statement required by RCW 34.05.325(6);  
37   and

38        (h) Any other material placed in the file by the agency.



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

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

13 **Sec. 403.** RCW 50.13.060 and 1993 c 281 s 59 are each amended to  
14 read as follows:

15 (1) Governmental agencies, including law enforcement agencies,  
16 prosecuting agencies, and the executive branch, whether state, local,  
17 or federal shall have access to information or records deemed private  
18 and confidential under this chapter if the information or records are  
19 needed by the agency for official purposes and:

20 (a) The agency submits an application in writing to the employment  
21 security department for the records or information containing a  
22 statement of the official purposes for which the information or records  
23 are needed and specific identification of the records or information  
24 sought from the department; and

25 (b) The director, commissioner, chief executive, or other official  
26 of the agency has verified the need for the specific information in  
27 writing either on the application or on a separate document; and

28 (c) The agency requesting access has served a copy of the  
29 application for records or information on the individual or employing  
30 unit whose records or information are sought and has provided the  
31 department with proof of service. Service shall be made in a manner  
32 which conforms to the civil rules for superior court. The requesting  
33 agency shall include with the copy of the application a statement to  
34 the effect that the individual or employing unit may contact the public  
35 records officer of the employment security department to state any  
36 objections to the release of the records or information. The  
37 employment security department shall not act upon the application of  
38 the requesting agency until at least five days after service on the

1 concerned individual or employing unit. The employment security  
2 department shall consider any objections raised by the concerned  
3 individual or employing unit in deciding whether the requesting agency  
4 needs the information or records for official purposes.

5 (2) The requirements of subsections (1) and (7) of this section  
6 shall not apply to the state legislative branch. The state legislature  
7 shall have access to information or records deemed private and  
8 confidential under this chapter, if the legislature or a legislative  
9 committee finds that the information or records are necessary and for  
10 official purposes. If the employment security department does not make  
11 information or records available as provided in this subsection, the  
12 legislature may exercise its authority granted by chapter 44.16 RCW.

13 (3) In cases of emergency the governmental agency requesting access  
14 shall not be required to formally comply with the provisions of  
15 subsection (1) of this section at the time of the request if the  
16 procedures required by subsection (1) of this section are complied with  
17 by the requesting agency following the receipt of any records or  
18 information deemed private and confidential under this chapter. An  
19 emergency is defined as a situation in which irreparable harm or damage  
20 could occur if records or information are not released immediately.

21 (4) The requirements of subsection (1)(c) of this section shall not  
22 apply to governmental agencies where the procedures would frustrate the  
23 investigation of possible violations of criminal laws or to the release  
24 of employing unit names, addresses, number of employees, and wage data  
25 for the purpose of state governmental agencies preparing small business  
26 economic impact statements under chapter 19.85 RCW or preparing cost  
27 benefit analysis under RCW 34.05.328(1)(c).

28 (5) Governmental agencies shall have access to certain records or  
29 information, limited to such items as names, addresses, social security  
30 numbers, and general information about benefit entitlement or employer  
31 information possessed by the department, for comparison purposes with  
32 records or information possessed by the requesting agency to detect  
33 improper or fraudulent claims, or to determine potential tax liability  
34 or employer compliance with registration and licensing requirements.  
35 In those cases the governmental agency shall not be required to comply  
36 with subsection (1)(c) of this section, but the requirements of the  
37 remainder of subsection (1) must be satisfied.

38 (6) Disclosure to governmental agencies of information or records  
39 obtained by the employment security department from the federal

1 government shall be governed by any applicable federal law or any  
2 agreement between the federal government and the employment security  
3 department where so required by federal law. When federal law does not  
4 apply to the records or information state law shall control.

5 (7) The disclosure of any records or information by a governmental  
6 agency which has obtained the records or information under this section  
7 is prohibited unless the disclosure is directly connected to the  
8 official purpose for which the records or information were obtained.

9 (8) In conducting periodic salary or fringe benefit studies  
10 pursuant to law, the department of personnel shall have access to  
11 records of the employment security department as may be required for  
12 such studies. For such purposes, the requirements of subsection (1)(c)  
13 of this section need not apply.

14 **PART V**  
15 **MISCELLANEOUS**

16 **Sec. 501.** RCW 34.05.230 and 1995 c 403 s 702 are each amended to  
17 read as follows:

18 (1) If the adoption of rules is not feasible and practicable, an  
19 agency is encouraged to advise the public of its current opinions,  
20 approaches, and likely courses of action by means of interpretive or  
21 policy statements. Current interpretive and policy statements are  
22 advisory only. To better inform and involve the public, an agency is  
23 encouraged to convert long-standing interpretive and policy statements  
24 into rules.

25 (2) A person may petition an agency requesting the conversion of  
26 interpretive and policy statements into rules. Upon submission, the  
27 agency shall notify the joint administrative rules review committee of  
28 the petition. Within sixty days after submission of a petition, the  
29 agency shall either deny the petition in writing, stating its reasons  
30 for the denial, or initiate rule-making proceedings in accordance with  
31 this chapter.

32 (3) Each agency shall maintain a roster of interested persons,  
33 consisting of persons who have requested in writing to be notified of  
34 all interpretive and policy statements issued by that agency. Each  
35 agency shall update the roster once each year and eliminate persons who  
36 do not indicate a desire to continue on the roster. Whenever an agency  
37 issues an interpretive or policy statement, it shall send a copy of the

1 statement to each person listed on the roster. The agency may charge  
2 a nominal fee to the interested person for this service.

3 (4) Whenever an agency issues an interpretive or policy statement,  
4 it shall submit to the code reviser for publication in the Washington  
5 State Register a statement describing the subject matter of the  
6 interpretive or policy statement, and listing the person at the agency  
7 from whom a copy of the interpretive or policy statement may be  
8 obtained.

9 (5) Where an agency is not a party to the action, an interpretive  
10 or policy statement is not admissible in a judicial action as evidence  
11 of the proper interpretation of state law.

12 **Sec. 502.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each  
13 amended to read as follows:

14 (1) The commissioner may hold a hearing for any purpose within the  
15 scope of this code as he or she may deem necessary. The commissioner  
16 shall hold a hearing:

17 (a) If required by any provision of this code; or

18 (b) Upon written demand for a hearing made by any person aggrieved  
19 by any act, threatened act, or failure of the commissioner to act, if  
20 such failure is deemed an act under any provision of this code, or by  
21 any report, promulgation, or order of the commissioner other than an  
22 order on a hearing of which such person was given actual notice or at  
23 which such person appeared as a party, or order pursuant to the order  
24 on such hearing.

25 (2) Any such demand for a hearing shall specify in what respects  
26 such person is so aggrieved and the grounds to be relied upon as basis  
27 for the relief to be demanded at the hearing.

28 (3) Unless a person aggrieved by a written order of the  
29 commissioner demands a hearing thereon within ninety days after  
30 receiving notice of such order, or in the case of a licensee under  
31 Title 48 RCW within ninety days after the commissioner has mailed the  
32 order to the licensee at the most recent address shown in the  
33 commissioner's licensing records for the licensee, the right to such  
34 hearing shall conclusively be deemed to have been waived.

35 (4) If a hearing is demanded by a licensee whose license has been  
36 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall  
37 hold such hearing demanded within thirty days after receipt of the  
38 demand or within thirty days of the effective date of a temporary

1 license suspension issued after such demand, unless postponed by mutual  
2 consent.

3 (5) Any hearing held under this section must be conducted by an  
4 administrative law judge unless the person demanding the hearing agrees  
5 in writing to have an employee of the commissioner conduct the hearing.

6 NEW SECTION. Sec. 503. Part headings used in this act are not any  
7 part of the law."

8 **E2SHB 2221** - S COMM AMD  
9 By Committee on Government Operations

10

11 In line 1 of the title, after "reform;" strike the remainder of the  
12 title and insert "amending RCW 76.09.010, 76.09.040, 48.02.060,  
13 48.30.010, 48.44.050, 48.46.200, 34.05.310, 34.05.328, 34.05.330,  
14 34.05.350, 19.85.030, 34.05.610, 34.05.620, 34.05.630, 34.05.640,  
15 34.05.655, 34.05.370, 50.13.060, 34.05.230, and 48.04.010; adding a new  
16 section to chapter 43.22 RCW; adding new sections to chapter 34.05 RCW;  
17 adding a new section to chapter 42.17 RCW; creating a new section; and  
18 repealing RCW 34.05.645."

--- END ---