

2 **SB 6037** - S AMD - 275

3 By Senators Sheldon, A. Anderson, Hale, Loveland, Gaspard, Haugen,  
4 Wojahn, Snyder, Winsley, Quigley and Rinehart

5 ADOPTED 3/15/95

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

8 "NEW SECTION. **Sec. 1.** The legislature has enacted a large number  
9 of statutes conferring on boards, commissions, departments, and other  
10 agencies of the executive branch of government the authority to adopt  
11 rules to supplement and implement those statutes. The legislature has  
12 found that this delegation of its authority has resulted in rules being  
13 adopted without sufficient consideration of need, cost-effectiveness,  
14 conflict and duplication, and conformity with legislative intent. The  
15 legislature finds that it must provide a procedure for oversight and  
16 review of rules adopted under this delegation of legislative power to  
17 curtail excessive regulation and to establish a system of  
18 accountability so that a state agency must justify its use of  
19 regulatory authority before imposing undue costs on citizens that  
20 detrimentally affect the economy of Washington. It is the intent of  
21 sections 2 through 12 of this act to establish a method for early,  
22 continuing, and effective review, accountability, and oversight. It is  
23 the further intent of sections 2 through 12 of this act to provide for  
24 an initial thorough review by a commission with sufficient authority,  
25 expertise, independence, and time to perform that responsibility. It  
26 is the further intent of sections 2 through 12 of this act to provide  
27 review by the legislature of those rules disapproved by the commission.  
28 Sections 2 through 12 of this act are intended to provide a method of  
29 oversight and review of rules to assist the governor and the  
30 legislature in their supervisory and oversight functions.

31 NEW SECTION. **Sec. 2.** (1) The Washington independent regulatory  
32 review commission is created, to consist of five members to be known as  
33 commissioners. One member of the commission shall be appointed by the  
34 governor to serve at his or her pleasure, and one member each shall be  
35 appointed by the four caucuses of the legislature having the largest  
36 membership. No member of the legislature or any other officer or

1 employee of state government may serve as a member of the commission.  
2 However, a commission member may serve on advisory boards and  
3 commissions, or on other boards and commissions that do not adopt any  
4 rules that may come before the commission for review under this  
5 chapter.

6 (2) Of the original members, the two members appointed by the house  
7 of representatives shall serve for initial terms of two years, and the  
8 two members appointed by the senate shall serve for initial terms of  
9 three years. Thereafter, each appointment is for a term of three  
10 years, and such appointments must be made in the same manner as the  
11 original appointments. From the time of original appointment to the  
12 commission, no commissioner may serve more than two full terms. A  
13 commissioner initially appointed to serve the remainder of an unexpired  
14 term is, in addition eligible to be appointed to, and to serve, two  
15 full terms.

16 (3) All vacancies must be filled, for the remainder of the  
17 unexpired term, in the same manner as original appointments. A  
18 commissioner, upon the expiration of his or her term, will continue to  
19 hold office until his or her successor is appointed.

20 (4) The commissioners shall be compensated in accordance with RCW  
21 43.03.250. The commissioners are also entitled to reimbursement for  
22 travel and other necessary expenses incurred as a result of their  
23 duties as members of the commission. Commissioners are not eligible  
24 for state retirement under chapter 41.40 RCW by virtue of their service  
25 on the commission.

26 (5) Except as authorized under this section and except for the  
27 governor's appointee who serves at the governor's pleasure, no  
28 commissioner may be removed from office during his or her term. The  
29 governor may, with the approval by resolution of two-thirds of the  
30 members of the senate, upon clear and convincing evidence of  
31 misfeasance or malfeasance in office or neglect of duty, remove a  
32 commissioner before the expiration of the term. The governor shall  
33 provide the commissioner so removed with a detailed written statement  
34 of the reasons for the removal.

35 (6) No commissioner may participate in deliberations regarding a  
36 rule that significantly affects the operation or activities of an  
37 organization (except a nonprofit organization certified under section  
38 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
39 U.S.C. Sec. 501(c)(3)) in which the commissioner holds a nonsalaried

1 position) in which the commissioner, or any member of his or her  
2 immediate family, has a substantial economic interest or serves as an  
3 officer, director, trustee, partner, or employee. Within ninety days  
4 of appointment, and annually thereafter, each commissioner shall file  
5 with the public disclosure commission a statement of financial affairs  
6 under RCW 42.17.240. Before a vote upon a rule in which a commissioner  
7 feels he or she or any other commissioner has a potential conflict of  
8 interest, the commissioner shall disclose the potential conflict and  
9 request a ruling from the chairman of the commission upon the question  
10 of whether the potential conflict disqualifies the commissioner from  
11 voting on the rule. Any commissioner may challenge the ruling of the  
12 chairman, and in such case the question must be resolved by majority  
13 vote of the commission. The chairman or a majority of the  
14 commissioners may request the executive ethics board under RCW  
15 42.52.360 to provide advice regarding conflicts of interest, and such  
16 advice, when given, is binding upon the commission.

17 (7) The commission shall elect a chairman, who shall serve for a  
18 term of two years and until his or her successor is elected. The  
19 chairman shall preside at meetings of the commission and shall execute  
20 documents relating to the formal actions of the commission.

21 (8) The commission shall meet at least once a month at such times  
22 and places as set by the chairman. Meetings are subject to chapter  
23 42.30 RCW. A commissioner who fails to attend three consecutive  
24 meetings without cause shall be removed as a commissioner by the  
25 authority appointing that commissioner.

26 (9) The commission shall annually file a report of its activities  
27 of the prior year with the governor, the chief clerk of the house of  
28 representatives, and the secretary of the senate.

29 NEW SECTION. **Sec. 3.** The commission shall appoint an executive  
30 director whose annual salary is determined under RCW 43.03.028. The  
31 executive director shall perform such duties and have such powers as  
32 the commission prescribes in order to implement and enforce sections 1  
33 through 12 of this act. In addition to the performance of  
34 administrative duties, the commission may delegate to the executive  
35 director authority with respect to, but not limited to, determinations  
36 under sections 4 and 5 of this act. The delegation does not eliminate  
37 a party's right of appeal to the commission. In addition, the  
38 commission shall appoint a chief counsel who is not subject to the

1 supervision of the attorney general and whose annual salary is  
2 determined under RCW 43.03.028. The commission shall employ or  
3 contract with such others as it may from time to time find necessary  
4 for the proper performance of its duties.

5 NEW SECTION. **Sec. 4.** (1) After receipt of the statement of  
6 inquiry under RCW 34.05.310, if the commission has reason to believe  
7 that the contemplated rule would violate the review criteria  
8 established in section 6(2) of this act, the commission shall notify  
9 the adopting agency of its concerns and the means whereby these  
10 concerns may be addressed.

11 (2) If an agency indicates in the statement of inquiry that it does  
12 not intend to provide an opportunity for interested parties to  
13 participate in the rule-making process before publication of the  
14 proposed rule under RCW 34.05.310(2), but the commission believes that  
15 such an opportunity may be appropriate, the commission shall so notify  
16 the agency. The notification does not create any obligation on the  
17 part of the agency. Upon request, the commission may assist an agency  
18 in facilitating the public participation.

19 NEW SECTION. **Sec. 5.** After the commission receives the notice of  
20 proposed rule adoption under RCW 34.05.320:

21 (1) If the commission has reason to believe that the proposed rule  
22 would violate the review criteria established in section 6(2) of this  
23 act, the commission shall notify the adopting agency in writing of its  
24 concerns and the means whereby these concerns may be addressed;

25 (2) If the commission has reason to believe that the proposed rule  
26 would not violate the review criteria established in section 6(2) of  
27 this act, or that review by the commission is otherwise not necessary  
28 to achieve the objectives of section 1 of this act, the commission may  
29 so notify the adopting agency. The commission shall submit a copy of  
30 this notification to the secretary of the senate and the chief clerk of  
31 the house of representatives, for distribution to the chairs of the  
32 appropriate standing committees.

33 The agency shall include any notification received under subsection  
34 (1) or (2) of this section, and any agency response in the rule-making  
35 file.

36 NEW SECTION. **Sec. 6.** (1) The commission shall approve without

1 review under subsection (2) of this section: (a) A rule filed with it  
2 for which a preproposal statement of inquiry was not required under RCW  
3 34.05.310; (b) a rule developed through the use of negotiated rule  
4 making under RCW 34.05.310 or involving pilot rule making under RCW  
5 34.05.313 where the commission finds review of the rule is not  
6 necessary to achieve the objectives of section 1 of this act; and (c)  
7 a rule not subject to review in accordance with the notification given  
8 the agency under section 5(2) of this act.

9 (2) The commission shall review all rules filed with it that are  
10 not approved without review under subsection (1) of this section to  
11 determine the following:

12 (a) Whether the rule is within the statutory authority of the  
13 agency as expressed by the legislature when it enacted the statute upon  
14 which the rule is based. In formulating its determination, the  
15 commission shall solicit and consider written comments from the  
16 appropriate standing committees of the legislature and current members  
17 of the legislature and any pertinent opinions of the Washington courts.

18 (b) Whether, in adopting the rule, the agency has complied with all  
19 applicable provisions of law, including chapter 19.85 RCW and section  
20 9 of this act.

21 (3) In reviewing rules filed with it, the commission shall give  
22 priority to those rules it has reason to believe are not within the  
23 statutory authority of the agency or that conflict with an existing  
24 federal or state law.

25 (4) The commission shall adopt rules governing the procedures it  
26 uses in reviewing rules filed with it. The rules must provide for an  
27 orderly review and specify the methods, standards, presumptions, and  
28 principles the commission uses, and the limitations it observes, in  
29 reviewing rules for compliance with the standards in subsection (2) of  
30 this section. The rules adopted by the commission must attempt to  
31 ensure: (a) Adequate and equal opportunity for all interested parties  
32 to participate in the rule review process; and (b) that the commission  
33 does not substitute its judgment for that of the rule-making agency as  
34 expressed in the substantive content of the rule under review.

35 (5) The commission and staff shall not accept comments regarding a  
36 rule under review within seventy-two hours before a commission meeting  
37 on that rule. The commission and staff shall note all documents,  
38 telephone calls, personal visits, or other communication regarding a  
39 rule under review and make them a part of the commission's public

1 record.

2 (6) The commission may establish ad hoc advisory boards, including  
3 but not limited to, ad hoc economic or science advisory boards to  
4 assist it in the review of a rule.

5 NEW SECTION. **Sec. 7.** (1) By a majority vote of its members, the  
6 commission shall either approve a rule filed with it for review, and  
7 transmit it to the code reviser for filing, or disapprove it within  
8 forty-five working days after the rule has been filed with it for  
9 review. If the commission fails to act within forty-five days, the  
10 rule is deemed to have been approved, and the adopting agency may  
11 transmit it to the code reviser for filing.

12 (2) If the commission disapproves a rule, it shall return the rule  
13 to the adopting agency within the forty-five-day period specified in  
14 subsection (1) of this section, accompanied by a statement specifying  
15 the reasons for disapproval. Within seven days of the issuance of the  
16 notice, the commission shall provide the adopting agency with a written  
17 decision detailing the specific regulatory review criteria that the  
18 rule failed to meet, and a summary of the documents and testimony  
19 relied on by the commission in reaching its final decision. The  
20 commission may not disapprove a rule except for failure to comply with  
21 the standards set forth in section 6(2) of this act.

22 (3) The commission shall file the notice of disapproval required by  
23 subsection (2) of this section with the code reviser for publication in  
24 the Washington State Register. The commission shall provide the  
25 written decision required by subsection (2) of this section to anyone  
26 requesting it, and shall submit it to the secretary of the senate and  
27 the chief clerk of the house of representatives for distribution to the  
28 chairs of the appropriate standing committees.

29 (4) If an agency determines on its own that a rule filed for review  
30 should be returned by the commission before the completion of the  
31 commission's review, it may request the return of the rule. The filing  
32 agency shall memorialize in writing all requests for the return of a  
33 rule no later than seven days after the request. The agency may refile  
34 the rule with the commission for review within one hundred eighty days  
35 as specified in RCW 34.05.335, or refile it in accordance with RCW  
36 34.05.320.

37 (5) The commission shall not initiate the return of a rule under  
38 subsection (4) of this section as an alternative to disapproval under

1 subsection (2) of this section.

2 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of an  
3 agency's receipt of the written decision required by section 7 of this  
4 act, the agency may rewrite and refile a rule returned to it under that  
5 section without complying with the notice and hearing requirements of  
6 RCW 34.05.320, unless the provisions of the rule are substantially  
7 changed. If the rule is substantially changed or is not filed within  
8 one hundred twenty days of receipt of the written decision, the agency  
9 may start a new process to adopt the rule, in full compliance with this  
10 chapter. The commission may, upon a showing of good cause, grant an  
11 extension to the one hundred twenty-day period specified in this  
12 subsection.

13 (2) Upon refiling of a previously disapproved rule to the  
14 commission under subsection (1) of this section, the commission shall  
15 review the refiled rule only for those reasons expressly identified in  
16 the written decision required by section 7 of this act, or for those  
17 issues arising as a result of a substantial change to a provision of  
18 the rule or as a result of intervening statutory changes or intervening  
19 court orders or decisions. Review of the refiled rule must be done  
20 according to the same time limits as for review of a newly submitted  
21 rule.

22 (3) When an agency refiles a withdrawn or disapproved rule with the  
23 commission, it shall identify the prior withdrawn or disapproved rule  
24 by its date of filing with the commission, shall specify the portion of  
25 the prior rule-making record that should be included in the refiling,  
26 and shall submit to the commission a copy of the prior rule-making  
27 record if that record has been returned to the agency by the  
28 commission.

29 (4) When the commission disapproves a rule, the agency may  
30 nonetheless adopt the rule and file it with the code reviser within the  
31 sixty-day period after the last day of the next regular legislative  
32 session after the date on which the rule was disapproved, unless the  
33 statute cited by the agency as authorizing the rule is amended by the  
34 legislature.

35 NEW SECTION. **Sec. 9.** (1) Before adopting a rule subject to review  
36 by the commission, an agency shall:

37 (a) Clearly state in detail the general goals and specific

1 objectives of the statute that the rule implements and the specific  
2 objectives the agency seeks to achieve;

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 the rule that will achieve the general goals  
15 and the 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) Coordinate the rule, to the maximum extent practicable, with  
20 other federal, state, and local laws applicable to the same  
21 circumstances and list, by citation, duplicative, inconsistent, or  
22 conflicting laws;

23 (g) Determine that the rule does not impose more stringent  
24 performance requirements on private entities than on public entities  
25 unless required to do so by federal or state law;

26 (h) Determine if the rule differs from any applicable federal  
27 regulation or statute and, if so, determine that the difference is  
28 justified by the following:

29 (i) State statutory authority that explicitly allows the agency to  
30 differ from federal standards; or

31 (ii) Substantial evidence that the difference is necessary to  
32 achieve the specific objectives of the authorizing state statute;

33 (i) Describe how the agency will monitor and evaluate on an ongoing  
34 basis whether the rule in fact achieves the general goals and specific  
35 objectives stated under (a) of this subsection, including, to the  
36 maximum extent practicable, the use of interim milestones to assess  
37 progress and the use of objectively measurable outcomes;

38 (j) Describe how the agency will implement and enforce the rule and  
39 encourage voluntary compliance with the rule;



1 (k) Describe which resources the agency intends to use to implement  
2 the rule; and

3 (1) Document compliance with the requirements of this section in  
4 the rule-making file.

5 (2) Before adopting a rule subject to review by the commission, an  
6 agency shall include in the rule-making file a written plan that  
7 describes:

8 (a) The methods the agency will use in making a reasonable attempt  
9 to notify those to whom the rule applies of the adoption of the rule  
10 and how they may get more information on how to comply with the rule;  
11 and

12 (b) How the agency will provide adequate sources of information and  
13 technical assistance to those to whom the rule applies to assist them  
14 in voluntarily complying with the rule.

15 (3) For rules implementing statutes enacted after the effective  
16 date of this act, except emergency rules adopted under RCW 34.05.350,  
17 an agency may not rely solely on the statute's statement of intent or  
18 purpose, or on the enabling provisions of the statute establishing the  
19 agency, or on any combination of such provisions, for its statutory  
20 authority to adopt the rule. An agency may use the statement of intent  
21 or purpose or the agency enabling provisions to interpret ambiguities  
22 in a statute's other provisions.

23 NEW SECTION. **Sec. 10.** In the discharge of any duty imposed under  
24 this chapter, the commission or personnel under its authority may  
25 examine and inspect all properties, equipment, facilities, files,  
26 records, and accounts of any state office, department, institution,  
27 board, committee, commission, or agency, and administer oaths, issue  
28 subpoenas, compel the attendance of witnesses and the production of any  
29 papers, books, accounts, documents, and testimony, and cause the  
30 deposition of witnesses, either residing within or outside the state,  
31 to be taken in the manner prescribed by law for taking depositions in  
32 civil actions in the superior courts.

33 In case of the failure on the part of a person to comply with any  
34 subpoena issued in behalf of the commission, or on the refusal of a  
35 witness to testify to matters regarding which he or she may be lawfully  
36 interrogated, the superior court of any county, or the judge thereof,  
37 shall, on application of the commission, compel obedience by  
38 proceedings for contempt, as in the case of disobedience of the

1 requirements of a subpoena issued from the court or a refusal to  
2 testify in court.

3 NEW SECTION. **Sec. 11.** The commission, either on its motion or on  
4 the request of an individual, agency, corporation, member of the  
5 legislature, or any other entity that may be affected by a rule, may  
6 also petition an agency requesting the adoption, amendment, or repeal  
7 of a rule under RCW 34.05.330. The commission shall petition an agency  
8 under RCW 34.05.330 requesting the adoption of a rule if it believes  
9 that the agency is using a policy statement or guidelines in place of  
10 a rule. The commission may also make recommendations to the  
11 legislature and the governor for statutory changes whenever it finds  
12 that an existing rule or procedure may be contrary to the public  
13 interest.

14 Where the commission finds that an existing rule is not being  
15 enforced as required by law, the commission shall notify the  
16 responsible agency and submit a copy of this notification to the chief  
17 clerk of the house of representatives and the secretary of the senate  
18 for distribution to the appropriate standing committees.

19 NEW SECTION. **Sec. 12.** The commission shall act as a clearinghouse  
20 for complaints, comments, and other input from members of the  
21 legislature and from the public regarding rules, proposed rules, and  
22 administrative procedures. The commission shall maintain accurate  
23 records regarding complaints and comments it receives and shall  
24 maintain the records according to departmental and subject matter  
25 categories. When the commission files its annual report under section  
26 2 of this act, the commission shall include within it a summary of  
27 public complaint and comment along with any recommendations the  
28 commission may offer for statutory change as the result of public  
29 complaint and comment.

30 The commission shall develop and implement training programs and  
31 other aids to assist state agencies in complying with the review  
32 criteria in section 6(2) of this act.

33 NEW SECTION. **Sec. 13.** By January 31, 1997, and by January 31st of  
34 each odd-numbered year thereafter, the joint committee on performance  
35 audits, after consulting with state agencies and business, labor, and  
36 environmental organizations, shall report to the governor and the

1 legislature regarding the impact of the independent regulatory review  
2 commission on the regulatory system in this state. The report shall  
3 document:

4 (1) If, and in what way, oversight and review by the commission  
5 affected the substance of rules that ultimately went into effect;

6 (2) Each rule that the commission disapproved, and the legislative  
7 action, if any, in response to the disapproval;

8 (3) The costs incurred by state agencies in complying with the  
9 legislative rule-making criteria and the requests of the commission;

10 (4) Any legal action maintained based upon the alleged failure of  
11 an agency to adopt a rule in compliance with the rule-making criteria,  
12 the costs to the state of the action, and the result;

13 (5) The extent to which the existence of the commission and the  
14 review process has resulted in the increased inappropriate use by the  
15 agencies of policy statements and guidelines in place of rules;

16 (6) The extent to which the efforts of the commission have led to  
17 increased use of negotiated rule making and pilot rules, and  
18 alternative dispute resolution techniques in the regulatory process;

19 (7) The extent to which agencies have responded to petitions from  
20 the commission to adopt, amend, or repeal a rule;

21 (8) The extent to which the commission's decisions and activities  
22 have adversely affected the capacity of agencies to fulfill their  
23 legislatively prescribed missions;

24 (9) The extent to which the commission's decisions and activities  
25 have improved the acceptability of state rules to those regulated; and

26 (10) Any other information considered by the joint committee on  
27 performance audits to be useful in evaluating the impact of the  
28 commission on the regulatory system in this state.

29 **Sec. 14.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to read  
30 as follows:

31 The definitions set forth in this section shall apply throughout  
32 this chapter, unless the context clearly requires otherwise.

33 (1) "Adjudicative proceeding" means a proceeding before an agency  
34 in which an opportunity for hearing before that agency is required by  
35 statute or constitutional right before or after the entry of an order  
36 by the agency. Adjudicative proceedings also include all cases of  
37 licensing and rate making in which an application for a license or rate  
38 change is denied except as limited by RCW 66.08.150, or a license is

1 revoked, suspended, or modified, or in which the granting of an  
2 application is contested by a person having standing to contest under  
3 the law.

4 (2) "Agency" means any state board, commission, department,  
5 institution of higher education, or officer, authorized by law to make  
6 rules or to conduct adjudicative proceedings, except those in the  
7 legislative or judicial branches, the governor, or the attorney general  
8 except to the extent otherwise required by law and any local  
9 governmental entity that may request the appointment of an  
10 administrative law judge under chapter 42.41 RCW.

11 (3) "Agency action" means licensing, the implementation or  
12 enforcement of a statute, the adoption or application of an agency rule  
13 or order, the imposition of sanctions, or the granting or withholding  
14 of benefits.

15 Agency action does not include an agency decision regarding (a)  
16 contracting or procurement of goods, services, public works, and the  
17 purchase, lease, or acquisition by any other means, including eminent  
18 domain, of real estate, as well as all activities necessarily related  
19 to those functions, or (b) determinations as to the sufficiency of a  
20 showing of interest filed in support of a representation petition, or  
21 mediation or conciliation of labor disputes or arbitration of labor  
22 disputes under a collective bargaining law or similar statute, or (c)  
23 any sale, lease, contract, or other proprietary decision in the  
24 management of public lands or real property interests, or (d) the  
25 granting of a license, franchise, or permission for the use of  
26 trademarks, symbols, and similar property owned or controlled by the  
27 agency.

28 (4) "Agency head" means the individual or body of individuals in  
29 whom the ultimate legal authority of the agency is vested by any  
30 provision of law. If the agency head is a body of individuals, a  
31 majority of those individuals constitutes the agency head.

32 (5) "Commission" means the independent regulatory review commission  
33 created under section 2 of this act.

34 (6) "Entry" of an order means the signing of the order by all  
35 persons who are to sign the order, as an official act indicating that  
36 the order is to be effective.

37 ~~((6))~~ (7) "Filing" of a document that is required to be filed  
38 with an agency means delivery of the document to a place designated by  
39 the agency by rule for receipt of official documents, or in the absence

1 of such designation, at the office of the agency head.

2 ~~((+7))~~ (8) "Institutions of higher education" are the University  
3 of Washington, Washington State University, Central Washington  
4 University, Eastern Washington University, Western Washington  
5 University, The Evergreen State College, the various community  
6 colleges, and the governing boards of each of the above, and the  
7 various colleges, divisions, departments, or offices authorized by the  
8 governing board of the institution involved to act for the institution,  
9 all of which are sometimes referred to in this chapter as  
10 "institutions."

11 ~~((+8))~~ (9) "Interpretive statement" means a written expression of  
12 the opinion of an agency, entitled an interpretive statement by the  
13 agency head or its designee, as to the meaning of a statute or other  
14 provision of law, of a court decision, or of an agency order.

15 ~~((+9))~~ (10)(a) "License" means a franchise, permit, certification,  
16 approval, registration, charter, or similar form of authorization  
17 required by law, but does not include (i) a license required solely for  
18 revenue purposes, or (ii) a certification of an exclusive bargaining  
19 representative, or similar status, under a collective bargaining law or  
20 similar statute, or (iii) a license, franchise, or permission for use  
21 of trademarks, symbols, and similar property owned or controlled by the  
22 agency.

23 (b) "Licensing" includes the agency process respecting the  
24 issuance, denial, revocation, suspension, or modification of a license.

25 ~~((+10))~~ (11)(a) "Order," without further qualification, means a  
26 written statement of particular applicability that finally determines  
27 the legal rights, duties, privileges, immunities, or other legal  
28 interests of a specific person or persons.

29 (b) "Order of adoption" means the official written statement by  
30 which an agency adopts, amends, or repeals a rule.

31 ~~((+11))~~ (12) "Party to agency proceedings," or "party" in a  
32 context so indicating, means:

33 (a) A person to whom the agency action is specifically directed; or

34 (b) A person named as a party to the agency proceeding or allowed  
35 to intervene or participate as a party in the agency proceeding.

36 ~~((+12))~~ (13) "Party to judicial review or civil enforcement  
37 proceedings," or "party" in a context so indicating, means:

38 (a) A person who files a petition for a judicial review or civil  
39 enforcement proceeding; or

1 (b) A person named as a party in a judicial review or civil  
2 enforcement proceeding, or allowed to participate as a party in a  
3 judicial review or civil enforcement proceeding.

4 (~~((13))~~) (14) "Person" means any individual, partnership,  
5 corporation, association, governmental subdivision or unit thereof, or  
6 public or private organization or entity of any character, and includes  
7 another agency.

8 (~~((14))~~) (15) "Policy statement" means a written description of the  
9 current approach of an agency, entitled a policy statement by the  
10 agency head or its designee, to implementation of a statute or other  
11 provision of law, of a court decision, or of an agency order, including  
12 where appropriate the agency's current practice, procedure, or method  
13 of action based upon that approach.

14 (~~((15))~~) (16) "Rule" means any agency order, directive, or  
15 regulation of general applicability (a) the violation of which subjects  
16 a person to a penalty or administrative sanction; (b) which  
17 establishes, alters, or revokes any procedure, practice, or requirement  
18 relating to agency hearings; (c) which establishes, alters, or revokes  
19 any qualification or requirement relating to the enjoyment of benefits  
20 or privileges conferred by law; (d) which establishes, alters, or  
21 revokes any qualifications or standards for the issuance, suspension,  
22 or revocation of licenses to pursue any commercial activity, trade, or  
23 profession; or (e) which establishes, alters, or revokes any mandatory  
24 standards for any product or material which must be met before  
25 distribution or sale. The term includes the amendment or repeal of a  
26 prior rule, but does not include (i) statements concerning only the  
27 internal management of an agency and not affecting private rights or  
28 procedures available to the public, (ii) declaratory rulings issued  
29 pursuant to RCW 34.05.240, (iii) traffic restrictions for motor  
30 vehicles, bicyclists, and pedestrians established by the secretary of  
31 transportation or his designee where notice of such restrictions is  
32 given by official traffic control devices, or (iv) rules of  
33 institutions of higher education involving standards of admission,  
34 academic advancement, academic credit, graduation and the granting of  
35 degrees, employment relationships, or fiscal processes.

36 (~~((16) "Rules review committee" or "committee" means the joint  
37 administrative rules review committee created pursuant to RCW 34.05.610  
38 for the purpose of selectively reviewing existing and proposed rules of  
39 state agencies.))~~)

1 (17) "Rule making" means the process for formulation and adoption  
2 of a rule.

3 (18) "Service," except as otherwise provided in this chapter, means  
4 posting in the United States mail, properly addressed, postage prepaid,  
5 or personal service. Service by mail is complete upon deposit in the  
6 United States mail. Agencies may, by rule, authorize service by  
7 electronic telefacsimile transmission, where copies are mailed  
8 simultaneously, or by commercial parcel delivery company.

9 **Sec. 15.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to read  
10 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 under RCW 34.05.320. The  
16 agency shall prepare a statement of ~~((intent))~~ inquiry that:

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

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

24 (c) Discusses the process by which the rule ~~((will))~~ might be  
25 developed, including, but not limited to, negotiated rule making, pilot  
26 rule making, or agency study; ~~((and~~

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

30 The statement of ~~((intent))~~ inquiry shall be filed with the code  
31 reviser for publication in the state register and shall be sent to the  
32 commission and any party that has requested receipt of the agency's  
33 statements of ~~((intent))~~ inquiry.

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

38 (a) Negotiated rule making which includes:

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

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

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

9 (iv) Establishing guidelines to encourage consideration of all  
10 pertinent issues, to set reasonable completion deadlines, and to  
11 provide fair and objective settlement of disputes that may arise;

12 (v) Agreeing on a reasonable time period during which the agency  
13 will be bound to the rule resulting from the negotiations without  
14 substantive amendment; and

15 (vi) Providing a mechanism by which one or more parties may  
16 withdraw from the process or the negotiations may be terminated if it  
17 appears that consensus cannot be reached on a draft rule that  
18 accommodates the needs of the agency, interested parties, and the  
19 general public and conforms to the legislative intent of the statute  
20 that the rule is intended to implement; and

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

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

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

32 (4) This section does not apply to:

33 (a) Emergency rules adopted under RCW 34.05.350;

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

36 (c) Rules adopting or incorporating by reference without material  
37 change federal statutes or rules, rules of other Washington state  
38 agencies, shoreline master programs other than those governing  
39 shorelines of state-wide significance, or, as referenced by Washington



1 state law, national consensus codes that generally establish industry  
2 standards, if the material adopted or incorporated regulates the same  
3 subject matter and conduct as the adopting or incorporating rule;

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

7 (e) Rules whose content is explicitly and specifically dictated by  
8 statute;

9 (f) Rules that establish, alter, or repeal (i) a procedure,  
10 practice, or requirement relating to agency hearings, or (ii) a filing  
11 or related process requirement for applying to an agency for a license.

12 **Sec. 16.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to  
13 read as follows:

14 (1) No sooner than thirty days after publication of the statement  
15 of inquiry under RCW 34.05.310, and at least twenty days before the  
16 rule-making hearing at which the agency receives public comment  
17 regarding adoption of a rule, the agency shall cause notice of the  
18 hearing to be published in the state register. The publication  
19 constitutes the proposal of a rule. The notice shall include all of  
20 the following:

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

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

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

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

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

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

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

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

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

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

7 (k) A statement indicating how a person can obtain a copy of the  
8 small business economic impact statement prepared under chapter 19.85  
9 RCW, or an explanation for why the agency did not prepare the  
10 statement.

11 (2) Upon filing notice of the proposed rule with the code reviser,  
12 the adopting agency shall have copies of the notice on file and  
13 available for public inspection and shall forward three copies of the  
14 notice to the ~~((rules review committee))~~ regulatory review commission.

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

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

24 **Sec. 17.** RCW 34.05.335 and 1989 c 175 s 8 are each amended to read  
25 as follows:

26 (1) A proposed rule may be withdrawn by the proposing agency at any  
27 time before adoption. A withdrawn rule may not be adopted unless it is  
28 again proposed in accordance with RCW 34.05.320.

29 (2) Before adopting a rule, an agency shall consider the written  
30 and oral submissions, or any memorandum summarizing oral submissions.

31 (3) Rules not adopted and filed with the ~~((code reviser))~~  
32 commission within one hundred eighty days after publication of the text  
33 as last proposed in the register shall be regarded as withdrawn. An  
34 agency may not thereafter adopt the proposed rule without refileing it  
35 in accordance with RCW 34.05.320. The ~~((code reviser))~~ commission  
36 shall give notice of the withdrawal to the code reviser for publication  
37 in the register.

38 (4) An agency may not adopt a rule before the time established in

1 the published notice, or such later time established on the record or  
2 by publication in the state register.

3 **Sec. 18.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read  
4 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)) regulatory review commission.

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 the rule  
26 as a permanent rule, and is actively undertaking the appropriate  
27 procedures to adopt the rule as a permanent rule. This section does  
28 not relieve any agency from compliance with any law requiring that its  
29 permanent rules be approved by designated persons or bodies before they  
30 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. 19.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to read  
9 as follows:

10 (1) Each agency shall maintain an official rule-making file for  
11 each rule that it (a) proposes by publication in the state register, or  
12 (b) adopts. The file and materials incorporated by reference shall be  
13 available for public inspection. Each agency shall provide a copy of  
14 all materials in its file to the commission upon its request.

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

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

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

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

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

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

31 (f) All petitions for exceptions to, amendment of, or repeal or  
32 suspension of, the rule;

33 (g) Citations to data, factual information, studies, or reports on  
34 which the agency relies in the adoption of the rule, indicating where  
35 such data, factual information, studies, or reports are available for  
36 review by the public;

37 (h) The written summary and response required by RCW 34.05.325(6);  
38 and

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

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

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

14 **Sec. 20.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to  
15 read as follows:

16 (1) Each agency shall file (~~in the office of the code reviser~~)  
17 with the commission a certified copy of all rules it adopts, except for  
18 rules contained in tariffs filed with or published by the Washington  
19 utilities and transportation commission. Upon its approval of a rule,  
20 the commission shall file the rule with the code reviser. The code  
21 reviser shall place upon each rule a notation of the time and date of  
22 filing and shall keep a permanent register of filed rules open to  
23 public inspection. In filing a rule, each agency shall use the  
24 standard form prescribed for this purpose by the code reviser.

25 (2) Emergency rules adopted under RCW 34.05.350 become effective  
26 upon filing unless a later date is specified in the order of adoption.  
27 All other rules become effective upon the expiration of thirty days  
28 after the date of filing, unless a later date is required by statute or  
29 specified in the order of adoption.

30 (3) A rule may become effective immediately upon its filing with  
31 the code reviser or on any subsequent date earlier than that  
32 established by subsection (2) of this section, if the agency  
33 establishes that effective date in the adopting order and finds that:

34 (a) Such action is required by the state or federal Constitution,  
35 a statute, or court order;

36 (b) The rule only delays the effective date of another rule that is  
37 not yet effective; or

38 (c) The earlier effective date is necessary because of imminent

1 peril to the public health, safety, or welfare.

2 The finding and a brief statement of the reasons therefor required  
3 by this subsection shall be made a part of the order adopting the rule.

4 (4) With respect to a rule made effective pursuant to subsection  
5 (3) of this section, each agency shall make reasonable efforts to make  
6 the effective date known to persons who may be affected by it.

7 **Sec. 21.** RCW 42.17.2401 and 1993 sp.s. c 2 s 18, 1993 c 492 s 488,  
8 and 1993 c 281 s 43 are each reenacted and amended to read as follows:

9 For the purposes of RCW 42.17.240, the term "executive state  
10 officer" includes:

11 (1) The chief administrative law judge, the director of  
12 agriculture, the administrator of the office of marine safety, the  
13 administrator of the Washington basic health plan, the director of the  
14 department of services for the blind, the director of the state system  
15 of community and technical colleges, the director of community, trade,  
16 and economic development, the secretary of corrections, the director of  
17 ecology, the commissioner of employment security, the chairman of the  
18 energy facility site evaluation council, the director of the energy  
19 office, the secretary of the state finance committee, the director of  
20 financial management, the director of fish and wildlife, the executive  
21 secretary of the forest practices appeals board, the director of the  
22 gambling commission, the director of general administration, the  
23 secretary of health, the administrator of the Washington state health  
24 care authority, the executive secretary of the health care facilities  
25 authority, the executive secretary of the higher education facilities  
26 authority, the executive secretary of the horse racing commission, the  
27 executive secretary of the human rights commission, the executive  
28 director of the independent regulatory review commission, the executive  
29 secretary of the indeterminate sentence review board, the director of  
30 the department of information services, the director of the interagency  
31 committee for outdoor recreation, the executive director of the state  
32 investment board, the director of labor and industries, the director of  
33 licensing, the director of the lottery commission, the director of the  
34 office of minority and women's business enterprises, the director of  
35 parks and recreation, the director of personnel, the executive director  
36 of the public disclosure commission, the director of retirement  
37 systems, the director of revenue, the secretary of social and health  
38 services, the chief of the Washington state patrol, the executive

1 secretary of the board of tax appeals, (~~the director of trade and~~  
2 ~~economic development,~~) the secretary of transportation, the secretary  
3 of the utilities and transportation commission, the director of  
4 veterans affairs, the president of each of the regional and state  
5 universities and the president of The Evergreen State College, each  
6 district and each campus president of each state community college;

7 (2) Each professional staff member of the office of the governor;

8 (3) Each professional staff member of the legislature; and

9 (4) Central Washington University board of trustees, board of  
10 trustees of each community college, each member of the state board for  
11 community and technical colleges, state convention and trade center  
12 board of directors, committee for deferred compensation, Eastern  
13 Washington University board of trustees, Washington economic  
14 development finance authority, The Evergreen State College board of  
15 trustees, forest practices appeals board, forest practices board,  
16 gambling commission, Washington health care facilities authority, each  
17 member of the Washington health services commission, higher education  
18 coordinating board, higher education facilities authority, horse racing  
19 commission, state housing finance commission, human rights commission,  
20 independent regulatory review commission, indeterminate sentence review  
21 board, board of industrial insurance appeals, information services  
22 board, interagency committee for outdoor recreation, state investment  
23 board, liquor control board, lottery commission, marine oversight  
24 board, (~~oil and gas conservation committee,~~) Pacific Northwest  
25 electric power and conservation planning council, parks and recreation  
26 commission, personnel appeals board, board of pilotage commissioners,  
27 pollution control hearings board, public disclosure commission, public  
28 pension commission, shorelines hearing board, public employees'  
29 benefits board, board of tax appeals, transportation commission,  
30 University of Washington board of regents, utilities and transportation  
31 commission, Washington state maritime commission, Washington personnel  
32 resources board, Washington public power supply system executive board,  
33 Washington State University board of regents, Western Washington  
34 University board of trustees, and fish and wildlife commission.

35 NEW SECTION. **Sec. 22.** The following acts or parts of acts are  
36 each repealed:

37 (1) RCW 34.05.610 and 1988 c 288 s 601, 1983 c 53 s 1, & 1981 c 324  
38 s 5;

1 (2) RCW 34.05.620 and 1994 c 249 s 17, 1988 c 288 s 602, 1987 c 451  
2 s 1, & 1981 c 324 s 6;

3 (3) RCW 34.05.630 and 1993 c 249 s 18, 1993 c 277 s 1, 1988 c 288  
4 s 603, 1987 c 451 s 2, & 1981 c 324 s 7;

5 (4) RCW 34.05.640 and 1994 c 249 s 19, 1993 c 277 s 2, 1988 c 288  
6 s 604, 1987 c 451 s 3, & 1981 c 324 s 8;

7 (5) RCW 34.05.650 and 1988 c 288 s 605, 1987 c 451 s 4, & 1981 c  
8 324 s 9; and

9 (6) RCW 34.05.660 and 1988 c 288 s 606 & 1981 c 324 s 10.

10 NEW SECTION. **Sec. 23.** Sections 1 through 13 of this act are added  
11 to chapter 34.05 RCW.

12 NEW SECTION. **Sec. 24.** If specific funding for the purposes of  
13 this act, referencing this act by bill number, is not provided by June  
14 30, 1995, in the omnibus appropriations act, this act is null and  
15 void."

16 **SB 6037** - S AMD - 275

17 By Senators Sheldon, A. Anderson, Hale, Loveland, Gaspard, Haugen,  
18 Wojahn, Snyder, Winsley, Quigley and Rinehart

19 ADOPTED 3/15/95

20 On page 1, line 2 of the title, after "commission;" strike the  
21 remainder of the title and insert "amending RCW 34.05.010, 34.05.310,  
22 34.05.320, 34.05.335, 34.05.350, 34.05.370, and 34.05.380; reenacting  
23 and amending RCW 42.17.2401; adding new sections to chapter 34.05 RCW;  
24 creating a new section; and repealing RCW 34.05.610, 34.05.620,  
25 34.05.630, 34.05.640, 34.05.650, and 34.05.660."

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