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ENGROSSED SUBSTITUTE HOUSE BILL 2747

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State of Washington

54th Legislature

1996 Regular Session

By House Committee on Government Operations (originally sponsored by Representatives Mastin, Reams, Silver and Johnson)

Read first time 01/26/96.

1 AN ACT Relating to regulatory reform; amending RCW 34.05.322,  
2 34.05.370, 34.05.620, 34.05.630, 34.05.640, 76.09.010, 76.09.040,  
3 48.02.060, 48.44.050, 48.46.200, 34.05.328, 34.05.570, 34.05.375,  
4 4.84.350, 48.04.010, and 48.30.010; reenacting and amending RCW  
5 34.05.514; adding new sections to chapter 34.05 RCW; and adding a new  
6 section to chapter 43.22 RCW.

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

8 **Sec. 1.** RCW 34.05.322 and 1995 c 403 s 118 are each amended to  
9 read as follows:

10 (1) For rules implementing statutes enacted after July 23, 1995, an  
11 agency, other than one listed in subsection (2) of this section, may  
12 not rely solely on the section of law stating a statute's intent or  
13 purpose, or on the enabling provisions of the statute establishing the  
14 agency, or on any combination of such provisions, for its statutory  
15 authority to adopt the rule.

16 (2) The commissioner of public lands, the department of social and  
17 health services, the department of ecology, the department of  
18 agriculture, the department of health, the department of revenue, the  
19 department of licensing, the department of labor and industries, the

1 employment security department, the forest practices board, the fish  
2 and wildlife commission, and the office of the insurance commissioner  
3 may not adopt any rule relying solely on the section of law stating a  
4 statute's intent or purpose, or on the enabling provisions of the  
5 statute establishing the agency, or on any combination of such  
6 provisions for its statutory authority to adopt a rule after July 23,  
7 1995.

8 (3) This section does not apply to rules adopted under chapter  
9 39.12 RCW.

10 (4) An agency may use the statement of intent or purpose or the  
11 agency enabling provisions to interpret ambiguities in a statute's  
12 other provisions.

13 NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW  
14 under the subchapter heading "Part III" to read as follows:

15 (1) At the time it files an adopted rule with the code reviser or  
16 within thirty days thereafter, an agency shall place into the rule-  
17 making file maintained under RCW 34.05.370 a concise explanatory  
18 statement about the rule, identifying (a) the agency's reasons for  
19 adopting the rule, and (b) a description of any difference between the  
20 text of the proposed rule as published in the register and the text of  
21 the rule as adopted, other than editing changes, stating the reasons  
22 for change.

23 (2) Only the reasons contained in the concise explanatory statement  
24 may be used by any party as justifications for the adoption of the rule  
25 in any proceeding in which its validity is at issue.

26 **Sec. 3.** RCW 34.05.370 and 1995 c 403 s 801 are each amended to  
27 read as follows:

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

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

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

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

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

5 (d) Any official transcript of oral presentations made in the  
6 proceeding on which the rule is based or, if not transcribed, any tape  
7 recording or stenographic record of them, and any memorandum prepared  
8 by a presiding official summarizing the contents of those  
9 presentations;

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

12 (f) Citations to data, factual information, studies, or reports on  
13 which the agency relies in the adoption of the rule, indicating where  
14 such data, factual information, studies, or reports are available for  
15 review by the public, but this subsection (2)(f) does not require the  
16 agency to include in the rule-making file any data, factual  
17 information, studies, or reports gathered pursuant to chapter 19.85 RCW  
18 that can be identified to a particular business;

19 (g) The concise explanatory statement required by RCW 34.05.325(6);  
20 and

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

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

29 (4) Upon judicial review, the file required by this section  
30 constitutes the official agency rule-making file with respect to that  
31 rule. ~~((Unless otherwise required by another provision of law, the  
32 official agency rule-making file need not be the exclusive basis for  
33 agency action on that rule.))~~ Except as provided in section 2 of this  
34 act or otherwise required by a provision of law, the official agency  
35 rule-making file need not constitute the exclusive basis for agency  
36 action on that rule or for judicial review thereof.

37 **Sec. 4.** RCW 34.05.514 and 1995 c 347 s 113 and 1995 c 292 s 9 are  
38 each reenacted and amended to read as follows:

1 (1) Except as provided in subsections (2) and (3) of this section,  
2 proceedings for review under this chapter shall be instituted by paying  
3 the fee required under RCW 36.18.020 and filing a petition in the  
4 superior court, at the petitioner's option, for (a) Thurston county,  
5 (b) the county of the petitioner's residence or principal place of  
6 business, or (c) in any county where the property owned by the  
7 petitioner and affected by the contested decision is located.

8 (2) For proceedings involving institutions of higher education, the  
9 petition shall be filed either in the county in which the principal  
10 office of the institution involved is located or in the county of a  
11 branch campus if the action involves such branch.

12 (3) Proceedings to enjoin application of a rule brought under RCW  
13 34.05.310(1) or 34.05.320(3) shall be instituted by filing a petition  
14 in the superior court of the county in which the local government  
15 exercises jurisdiction.

16 **Sec. 5.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to read  
17 as follows:

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

30 (2) Within forty-five days of receiving a notice of proposed rule  
31 making under RCW 34.05.320, the committee may, by majority vote:

32 (a) Request an agency that has not prepared a small business  
33 economic impact statement regarding the proposed rule under RCW  
34 19.85.030 to prepare and file with the code reviser and the committee  
35 such a document before the final adoption of the rule;

36 (b) Require an agency to make the determinations, prepare the  
37 documents, and otherwise fully comply with RCW 34.05.328 (1) through  
38 (4).

1       **Sec. 6.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to read  
2 as follows:

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

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

11       (3) If the rules review committee finds by a majority vote of its  
12 members: (a) That an existing rule is not within the intent of the  
13 legislature as expressed by the statute which the rule implements, (b)  
14 that the rule has not been adopted in accordance with all applicable  
15 provisions of law, including (~~section 4 of this act if the rule was~~  
16 ~~adopted after the effective date of section 4 of this act and~~) chapter  
17 19.85 RCW, (c) that an agency is using a policy statement, guideline,  
18 or issuance in place of a rule, or (d) that the policy statement,  
19 guideline, or issuance is outside of legislative intent, the agency  
20 affected shall be notified of such finding and the reasons therefor.

21       (4) The committee's notice may:

22       (a) Recommend that the agency defer the rule-making process until  
23 clarification by the legislature of its intent;

24       (b) Recommend that the agency comply with all applicable laws,  
25 including this chapter and chapter 19.85 RCW;

26       (c) Notify the agency that a policy statement, guideline, or  
27 issuance (i) is being used in place of a rule or (ii) is outside  
28 legislative intent.

29       (5)(a) A committee notification under subsection (4)(c)(i) of this  
30 section may recommend that the agency adopt the policy statement,  
31 guideline, or issuance as a rule in accordance with the procedures of  
32 this chapter.

33       (b) A committee notification under subsection (4)(c)(ii) of this  
34 section may recommend that the agency stop using or applying the policy  
35 statement, guideline, or issuance.

36       (c) The agency may continue to use or apply the policy statement,  
37 guideline, or issuance pending its review by the agency under this  
38 section and RCW 34.05.640.

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

9       (~~(4)~~) (7) The agency shall consider fully all written and oral  
10 submissions regarding (a) whether the rule in question is within the  
11 intent of the legislature as expressed by the statute which the rule  
12 implements, (b) whether the rule was adopted in accordance with all  
13 applicable provisions of law, including (~~section 4 of this act if the~~  
14 ~~rule was adopted after the effective date of section 4 of this act~~  
15 ~~and~~) chapter 19.85 RCW, (c) whether the agency is using a policy  
16 statement, guideline, or issuance in place of a rule, or (d) whether  
17 the policy statement, guideline, or issuance is within the legislative  
18 intent.

19       **Sec. 7.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to read  
20 as follows:

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

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

1 (c) that the agency is using a policy statement, guideline, or issuance  
2 in place of a rule, or that the policy statement, guideline, or  
3 issuance is outside of the legislative intent, the rules review  
4 committee may, within thirty days from notification by the agency of  
5 its action, file with the code reviser notice of its objections  
6 together with a concise statement of the reasons therefor. Such notice  
7 and statement shall also be provided to the agency by the rules review  
8 committee.

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

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

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

35 (6) The reference shall be removed from a rule published in the  
36 Washington Administrative Code if a subsequent adjudicatory proceeding  
37 determines that the rule is within the intent of the legislature or was  
38 adopted in accordance with all applicable laws, whichever was the  
39 objection of the rules review committee.

1       **Sec. 8.** RCW 76.09.010 and 1993 c 3 s 1 are each amended to read as  
2 follows:

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

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

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

21       (b) Afford protection to forest soils and public resources by  
22 utilizing all reasonable methods of technology in conducting forest  
23 practices;

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

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

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

30       (f) Provide for interagency input and intergovernmental and tribal  
31 coordination and cooperation;

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

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

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

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

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

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

15        **Sec. 9.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to read  
16 as follows:

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

22        (a) Establish minimum standards for forest practices;

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

28        (c) Set forth necessary administrative provisions; and

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

31        Forest practices (~~regulations~~) rules pertaining to water quality  
32 protection shall be (~~promulgated~~) adopted individually by the board  
33 and by the department of ecology after they have reached agreement with  
34 respect thereto. All other forest practices (~~regulations~~) rules  
35 shall be (~~promulgated~~) adopted by the board.

36        Forest practices (~~regulations~~) rules shall be administered and  
37 enforced by the department except as otherwise provided in this  
38 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted

1 and administered so as to give consideration to all purposes and  
2 policies specifically set forth in RCW 76.09.010(2).

3 ((+2)) (3) The board shall prepare proposed forest practices  
4 ((regulations)) rules. In addition to any forest practices  
5 ((regulations)) rules relating to water quality protection proposed by  
6 the board, the department of ecology shall prepare proposed forest  
7 practices ((regulations)) rules relating to water quality protection.

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

24 NEW SECTION. Sec. 10. A new section is added to chapter 43.22 RCW  
25 to read as follows:

26 For rules adopted after the effective date of this section, the  
27 director of the department of labor and industries may not rely solely  
28 on a statute's statement of intent or purpose, on the enabling  
29 provisions of the statute establishing the agency, or on any  
30 combination of such provisions, for statutory authority to adopt any  
31 rule: PROVIDED, That this section shall not apply to rules adopted  
32 pursuant to chapter 39.12 RCW.

33 **Sec. 11.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to  
34 read as follows:

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

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

3 (3) The commissioner may:

4 (a) Make reasonable rules and regulations for effectuating any  
5 provision of this code, except those relating to his or her election,  
6 qualifications, or compensation: PROVIDED, That the commissioner may  
7 not adopt rules after the effective date of this section that are based  
8 solely on this statute, or on a statute's statement of intent or  
9 purpose, or on the enabling provisions of the statute establishing the  
10 agency, or any combination of such provisions, for statutory authority  
11 to adopt any rule, except rules defining or clarifying terms in, or  
12 procedures necessary to the implementation of a statute. No such rules  
13 and regulations shall be effective prior to their being filed for  
14 public inspection in the commissioner's office.

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

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

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

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

34 **Sec. 13.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each  
35 amended to read as follows:

36 The commissioner may adopt, in accordance with the provisions of  
37 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)

1 rules and regulations as necessary or proper to carry out the  
2 provisions of this chapter: PROVIDED, That the commissioner may not  
3 adopt rules after the effective date of this section that are based  
4 solely on this section, a statute's statement of intent or purpose, or  
5 on the enabling provisions of the statute establishing the agency, or  
6 any combination of such provisions, for statutory authority to adopt  
7 any rule, except rules defining or clarifying terms in, or procedures  
8 necessary to the implementation of a statute. Nothing in this chapter  
9 shall be construed to prohibit the commissioner from requiring changes  
10 in procedures previously approved by ~~((him))~~ the commissioner.

11 **Sec. 14.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to  
12 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) Promote and assist voluntary compliance; and

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

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

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

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

36 (i) Deferring to the other entity;

37 (ii) Designating a lead agency; or

1 (iii) Entering into an agreement with the other entities specifying  
2 how the agency and entities will coordinate implementation and  
3 enforcement.

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

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

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

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

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

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

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

27 (b) This section does not apply to:

28 (i) Emergency rules adopted under RCW 34.05.350;

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

31 (iii) Rules adopting or incorporating by reference without material  
32 change federal statutes or regulations, Washington state statutes,  
33 rules of other Washington state agencies, shoreline master programs  
34 other than those programs governing shorelines of state-wide  
35 significance, or, as referenced by Washington state law, national  
36 consensus codes that generally establish industry standards, if the  
37 material adopted or incorporated regulates the same subject matter and  
38 conduct as the adopting or incorporating rule, however, the exemption  
39 in this subsection (5)(b)(iii) does not apply if the rule adopted is

1 the rule of another Washington state agency, which rule was not adopted  
2 in accordance with this section. Any doubts as to whether this  
3 requirement has been met shall be resolved in favor of causing the  
4 rules to be subjected to the requirements of this section;

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

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

10 (vi) Rules that set or adjust fees or rates pursuant to legislative  
11 standards.

12 (c) For purposes of this subsection:

13 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
14 (A) any procedure, practice, or requirement relating to any agency  
15 hearings; (B) any filing or related process requirement for making  
16 application to an agency for a license or permit; or (C) any policy  
17 statement pertaining to the consistent internal operations of an  
18 agency.

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

22 (iii) A "significant legislative rule" is a rule other than a  
23 procedural or interpretive rule that (A) adopts substantive provisions  
24 of law pursuant to delegated legislative authority, the violation of  
25 which subjects a violator of such rule to a penalty or sanction; (B)  
26 establishes, alters, or revokes any qualification or standard for the  
27 issuance, suspension, or revocation of a license or permit; or (C)  
28 adopts a new, or makes significant amendments to, a policy or  
29 regulatory program.

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

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

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

4 (b) The costs incurred by state agencies in complying with this  
5 section;

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

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

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

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

15 NEW SECTION. **Sec. 15.** A new section is added to chapter 34.05 RCW  
16 under the subchapter heading "Part III" to read as follows:

17 If an amendment is made to a subsection of an existing significant  
18 legislative rule, then the entire section must be processed in  
19 accordance with RCW 34.05.328.

20 **Sec. 16.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
21 read as follows:

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

24 (a) Except as provided in subsections (2) and (3) of this section,  
25 the burden of demonstrating the invalidity of agency action is on the  
26 party asserting invalidity;

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

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

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

35 (2) Review of rules. (a) A rule may be reviewed by petition for  
36 declaratory judgment filed pursuant to this subsection or in the  
37 context of any other review proceeding under this section. In an

1 action challenging the validity of a rule, the agency shall be made a  
2 party to the proceeding.

3 (b) The validity of any rule may be determined upon petition for a  
4 declaratory judgment addressed to the superior court of Thurston  
5 county, when it appears that the rule, or its threatened application,  
6 interferes with or impairs or immediately threatens to interfere with  
7 or impair the legal rights or privileges of the petitioner. The burden  
8 of demonstrating the validity of any rule is on the agency. The  
9 declaratory judgment order may be entered whether or not the petitioner  
10 has first requested the agency to pass upon the validity of the rule in  
11 question.

12 (c) In a proceeding involving review of a rule, the court shall  
13 declare the rule invalid only if it finds that: The rule violates  
14 constitutional provisions; the rule exceeds the statutory authority of  
15 the agency; the rule was adopted without compliance with statutory  
16 rule-making procedures; or the rule is arbitrary and capricious.

17 (3) Review of agency orders in adjudicative proceedings. The  
18 burden of proof is on the agency to demonstrate that any challenged  
19 provision of (a) through (i) of this subsection was not violated. The  
20 court shall grant relief from an agency order in an adjudicative  
21 proceeding only if it determines that:

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

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

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

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

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

33 (f) The agency has not decided all issues requiring resolution by  
34 the agency;

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

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

4 (i) The order is arbitrary or capricious.

5 (4) Review of other agency action.

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

8 (b) A person whose rights are violated by an agency's failure to  
9 perform a duty that is required by law to be performed may file a  
10 petition for review pursuant to RCW 34.05.514, seeking an order  
11 pursuant to this subsection requiring performance. Within twenty days  
12 after service of the petition for review, the agency shall file and  
13 serve an answer to the petition, made in the same manner as an answer  
14 to a complaint in a civil action. The court may hear evidence,  
15 pursuant to RCW 34.05.562, on material issues of fact raised by the  
16 petition and answer.

17 (c) Relief for persons aggrieved by the performance of an agency  
18 action, including the exercise of discretion, or an action under (b) of  
19 this subsection can be granted only if the court determines that the  
20 action is:

21 (i) Unconstitutional;

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

24 (iii) Arbitrary or capricious; or

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

27 **Sec. 17.** RCW 34.05.375 and 1988 c 288 s 314 are each amended to  
28 read as follows:

29 No rule proposed after July 1, 1989, is valid unless it is adopted  
30 in substantial compliance with RCW 34.05.310 through 34.05.395.  
31 Inadvertent failure to mail notice of a proposed rule adoption to any  
32 person as required by RCW 34.05.320(3) does not invalidate a rule. No  
33 action based upon this section may be maintained to contest the  
34 validity of any rule unless it is commenced within ((two)) seven years  
35 after the effective date of the rule.

36 NEW SECTION. **Sec. 18.** A new section is added to chapter 34.05 RCW  
37 to read as follows:

1 (1) A person may petition an agency requesting that an existing  
2 rule be subject to readoption. The office of financial management  
3 shall prescribe by rule the format for such petitions and the procedure  
4 for their submission, consideration, and disposition and provide a  
5 standard form that may be used to petition any agency. Within sixty  
6 days after submission of a petition, the agency shall either (a) deny  
7 the petition in writing, stating (i) its reasons for the denial,  
8 specifically addressing each item listed in subsection (3) of this  
9 section and, where appropriate, (ii) the alternative means by which it  
10 will address the concerns raised by the petitioner, or (b) initiate the  
11 readoption procedure in accordance with this section.

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

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

23 (a) Whether the rule is authorized;

24 (b) Whether the rule is needed;

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

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

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

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

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

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

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

37 Persons are encouraged to address each of these issues in their  
38 petition to the agency.

1 (4) For purposes of this section, "readoption" means that the text  
2 of the existing rule is submitted under RCW 34.05.320 as a proposed  
3 rule and is then subject to the rule-making process set forth in this  
4 chapter. However, an agency need not submit a statement of inquiry  
5 under RCW 34.05.310 for an existing rule subject to readoption. Unless  
6 readopted, an existing rule subject to readoption is automatically  
7 repealed one hundred eighty days after publication of the text as a  
8 proposed rule in the Washington State Register.

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

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

13 NEW SECTION. **Sec. 19.** A new section is added to chapter 34.05 RCW  
14 under the subchapter heading "Part V" to read as follows:

15 (1) Except as provided in subsection (2) of this section, after  
16 December 31, 2000, the following agencies may not rely solely on a  
17 statute's statement of intent or purpose or the enabling provisions of  
18 the statute establishing the agency, or any combination of such  
19 provisions, for the agency's statutory authority to have adopted a rule  
20 challenged after December 31, 2000: The commissioner of public lands,  
21 the department of social and health services, the department of  
22 ecology, the department of agriculture, the department of health, the  
23 department of revenue, the department of licensing, the department of  
24 labor and industries, the employment security department, the forest  
25 practices board, the fish and wildlife commission, and the office of  
26 the insurance commissioner.

27 (2) This section does not apply to rules adopted under chapter  
28 39.12 RCW.

29 **Sec. 20.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to  
30 read as follows:

31 (1) Except as otherwise specifically provided by statute, a court  
32 shall award a qualified party that prevails in a judicial review of an  
33 agency action fees and other expenses, including reasonable attorneys'  
34 fees, unless the court finds that the agency action was substantially  
35 justified or that circumstances make an award unjust. A qualified  
36 party shall be considered to have prevailed if the qualified party

1 obtained relief on a significant issue that achieves some benefit that  
2 the qualified party sought.

3 (2) The amount awarded a qualified party under subsection (1) of  
4 this section shall not exceed:

5 (a) For cases involving rule validity:

6 (i) Twenty-five thousand dollars for superior court cases; and

7 (ii) Fifteen thousand dollars for appeals to the court of appeals  
8 and the supreme court; and

9 (b) For cases involving other agency action:

10 (i) Fifty thousand dollars for superior court cases; and

11 (ii) Fifteen thousand dollars for appeals to the court of appeals  
12 and the supreme court.

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

22 (4) Qualified parties shall receive awards under this section for  
23 cases pending July 23, 1995.

24 **Sec. 21.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended  
25 to read as follows:

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

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

30 (b) Upon written demand for a hearing made by any person aggrieved  
31 by any act, threatened act, or failure of the commissioner to act, if  
32 such failure is deemed an act under any provision of this code, or by  
33 any report, promulgation, or order of the commissioner other than an  
34 order on a hearing of which such person was given actual notice or at  
35 which such person appeared as a party, or order pursuant to the order  
36 on such hearing.

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

4 (3) Unless a person aggrieved by a written order of the  
5 commissioner demands a hearing thereon within ninety days after  
6 receiving notice of such order, or in the case of a licensee under  
7 Title 48 RCW within ninety days after the commissioner has mailed the  
8 order to the licensee at the most recent address shown in the  
9 commissioner's licensing records for the licensee, the right to such  
10 hearing shall conclusively be deemed to have been waived.

11 (4) If a hearing is demanded by a licensee whose license has been  
12 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall  
13 hold such hearing demanded within thirty days after receipt of the  
14 demand or within thirty days of the effective date of a temporary  
15 license suspension issued after such demand, unless postponed by mutual  
16 consent.

17 (5) Any hearing held pursuant to this section shall be conducted by  
18 an administrative law judge unless the person demanding the hearing  
19 agrees in writing to have an employee of the commissioner conduct the  
20 hearing.

21 **Sec. 22.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to  
22 read as follows:

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

27 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~  
28 ~~or practices as)) are expressly defined and prohibited by this code((~~  
29 ~~the commissioner may from time to time by regulation promulgated~~  
30 ~~pursuant to chapter 34.05 RCW, define other methods of competition and~~  
31 ~~other acts and practices in the conduct of such business reasonably~~  
32 ~~found by the commissioner to be unfair or deceptive.~~

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

36 ~~((4))~~ (2) If the commissioner has cause to believe that any  
37 person is violating any such ~~((regulation))~~ rule or prohibition of this  
38 code, the commissioner may order such person to cease and desist

1 therefrom. The commissioner shall deliver such order to such person  
2 direct or mail it to the person by registered mail with return receipt  
3 requested. If the person violates the order after expiration of ten  
4 days after the cease and desist order has been received by him or her,  
5 he or she may be fined by the commissioner a sum not to exceed two  
6 hundred and fifty dollars for each violation committed thereafter.

7 ~~((5))~~ (3) If any such ~~((regulation))~~ rule or prohibition of this  
8 code is violated, the commissioner may take such other or additional  
9 action as is permitted under the insurance code for violation of a  
10 ~~((regulation))~~ rule or that prohibition.

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

--- END ---