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**ENGROSSED SENATE BILL 6037**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators Sheldon, Hale, Rinehart, Haugen, Drew, Oke, Kohl, Fairley, Franklin, Snyder, Quigley, Bauer, McAuliffe, Fraser, Sutherland and Gaspard

Read first time 02/27/95. Referred to Committee on Government Operations.

1 AN ACT Relating to the creation of the Washington independent  
2 regulatory affairs commission; amending RCW 34.05.010, 34.05.310,  
3 34.05.320, 34.05.335, 34.05.350, 34.05.370, and 34.05.380; reenacting  
4 and amending RCW 42.17.2401; adding new sections to chapter 34.05 RCW;  
5 creating a new section; and repealing RCW 34.05.610, 34.05.620,  
6 34.05.630, 34.05.640, 34.05.650, and 34.05.660.

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

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

1 detrimentally affect the economy of Washington. It is the intent of  
2 sections 2 through 12 of this act to establish a method for early,  
3 continuing, and effective review, accountability, and oversight. It is  
4 the further intent of sections 2 through 12 of this act to provide for  
5 an initial thorough review by a commission with sufficient authority,  
6 expertise, independence, and time to perform that responsibility. It  
7 is the further intent of sections 2 through 12 of this act to provide  
8 review by the legislature of those rules disapproved by the commission.  
9 Sections 2 through 12 of this act are intended to provide a method of  
10 oversight and review of rules to assist the governor and the  
11 legislature in their supervisory and oversight functions.

12 NEW SECTION. **Sec. 2.** (1) The Washington independent regulatory  
13 review commission is created, to consist of five members to be known as  
14 commissioners. One member of the commission shall be appointed by the  
15 governor to serve at his or her pleasure, and one member each shall be  
16 appointed by the four caucuses of the legislature having the largest  
17 membership. No member of the legislature or any other officer or  
18 employee of state government may serve as a member of the commission.  
19 However, a commission member may serve on advisory boards and  
20 commissions, or on other boards and commissions that do not adopt any  
21 rules that may come before the commission for review under this  
22 chapter.

23 (2) Of the original members, the two members appointed by the house  
24 of representatives shall serve for initial terms of two years, and the  
25 two members appointed by the senate shall serve for initial terms of  
26 three years. Thereafter, each appointment is for a term of three  
27 years, and such appointments must be made in the same manner as the  
28 original appointments. From the time of original appointment to the  
29 commission, no commissioner may serve more than two full terms. A  
30 commissioner initially appointed to serve the remainder of an unexpired  
31 term is, in addition eligible to be appointed to, and to serve, two  
32 full terms.

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

37 (4) The commissioners shall be compensated in accordance with RCW  
38 43.03.250. The commissioners are also entitled to reimbursement for

1 travel and other necessary expenses incurred as a result of their  
2 duties as members of the commission. Commissioners are not eligible  
3 for state retirement under chapter 41.40 RCW by virtue of their service  
4 on the commission.

5 (5) Except as authorized under this section and except for the  
6 governor's appointee who serves at the governor's pleasure, no  
7 commissioner may be removed from office during his or her term. The  
8 governor may, with the approval by resolution of two-thirds of the  
9 members of the senate, upon clear and convincing evidence of  
10 misfeasance or malfeasance in office or neglect of duty, remove a  
11 commissioner before the expiration of the term. The governor shall  
12 provide the commissioner so removed with a detailed written statement  
13 of the reasons for the removal.

14 (6) No commissioner may participate in deliberations regarding a  
15 rule that significantly affects the operation or activities of an  
16 organization (except a nonprofit organization certified under section  
17 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
18 U.S.C. Sec. 501(c)(3)) in which the commissioner holds a nonsalaried  
19 position) in which the commissioner, or any member of his or her  
20 immediate family, has a substantial economic interest or serves as an  
21 officer, director, trustee, partner, or employee. Within ninety days  
22 of appointment, and annually thereafter, each commissioner shall file  
23 with the public disclosure commission a statement of financial affairs  
24 under RCW 42.17.240. Before a vote upon a rule in which a commissioner  
25 feels he or she or any other commissioner has a potential conflict of  
26 interest, the commissioner shall disclose the potential conflict and  
27 request a ruling from the chairman of the commission upon the question  
28 of whether the potential conflict disqualifies the commissioner from  
29 voting on the rule. Any commissioner may challenge the ruling of the  
30 chairman, and in such case the question must be resolved by majority  
31 vote of the commission. The chairman or a majority of the  
32 commissioners may request the executive ethics board under RCW  
33 42.52.360 to provide advice regarding conflicts of interest, and such  
34 advice, when given, is binding upon the commission.

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

1 (8) The commission shall meet at least once a month at such times  
2 and places as set by the chairman. Meetings are subject to chapter  
3 42.30 RCW. A commissioner who fails to attend three consecutive  
4 meetings without cause shall be removed as a commissioner by the  
5 authority appointing that commissioner.

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

9 NEW SECTION. **Sec. 3.** The commission shall appoint an executive  
10 director whose annual salary is determined under RCW 43.03.028. The  
11 executive director shall perform such duties and have such powers as  
12 the commission prescribes in order to implement and enforce sections 1  
13 through 12 of this act. In addition to the performance of  
14 administrative duties, the commission may delegate to the executive  
15 director authority with respect to, but not limited to, determinations  
16 under sections 4 and 5 of this act. The delegation does not eliminate  
17 a party's right of appeal to the commission. In addition, the  
18 commission shall appoint a chief counsel who is not subject to the  
19 supervision of the attorney general and whose annual salary is  
20 determined under RCW 43.03.028. The commission shall employ or  
21 contract with such others as it may from time to time find necessary  
22 for the proper performance of its duties.

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

29 (2) If an agency indicates in the statement of inquiry that it does  
30 not intend to provide an opportunity for interested parties to  
31 participate in the rule-making process before publication of the  
32 proposed rule under RCW 34.05.310(2), but the commission believes that  
33 such an opportunity may be appropriate, the commission shall so notify  
34 the agency. The notification does not create any obligation on the  
35 part of the agency. Upon request, the commission may assist an agency  
36 in facilitating the public participation.

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

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

7        (2) If the commission has reason to believe that the proposed rule  
8 would not violate the review criteria established in section 6(2) of  
9 this act, or that review by the commission is otherwise not necessary  
10 to achieve the objectives of section 1 of this act, the commission may  
11 so notify the adopting agency. The commission shall submit a copy of  
12 this notification to the secretary of the senate and the chief clerk of  
13 the house of representatives, for distribution to the chairs of the  
14 appropriate standing committees.

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

18        NEW SECTION.    **Sec. 6.** (1) The commission shall approve without  
19 review under subsection (2) of this section: (a) A rule filed with it  
20 for which a preproposal statement of inquiry was not required under RCW  
21 34.05.310; (b) a rule developed through the use of negotiated rule  
22 making under RCW 34.05.310 or involving pilot rule making under RCW  
23 34.05.313 where the commission finds review of the rule is not  
24 necessary to achieve the objectives of section 1 of this act; and (c)  
25 a rule not subject to review in accordance with the notification given  
26 the agency under section 5(2) of this act.

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

30        (a) Whether the rule is within the statutory authority of the  
31 agency as expressed by the legislature when it enacted the statute upon  
32 which the rule is based. In formulating its determination, the  
33 commission shall solicit and consider written comments from the  
34 appropriate standing committees of the legislature and current members  
35 of the legislature and any pertinent opinions of the Washington courts.

36        (b) Whether, in adopting the rule, the agency has complied with all  
37 applicable provisions of law, including chapter 19.85 RCW and section  
38 9 of this act.

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

5 (4) The commission shall adopt rules governing the procedures it  
6 uses in reviewing rules filed with it. The rules must provide for an  
7 orderly review and specify the methods, standards, presumptions, and  
8 principles the commission uses, and the limitations it observes, in  
9 reviewing rules for compliance with the standards in subsection (2) of  
10 this section. The rules adopted by the commission must attempt to  
11 ensure: (a) Adequate and equal opportunity for all interested parties  
12 to participate in the rule review process; and (b) that the commission  
13 does not substitute its judgment for that of the rule-making agency as  
14 expressed in the substantive content of the rule under review.

15 (5) The commission and staff shall not accept comments regarding a  
16 rule under review within seventy-two hours before a commission meeting  
17 on that rule. The commission and staff shall note all documents,  
18 telephone calls, personal visits, or other communication regarding a  
19 rule under review and make them a part of the commission's public  
20 record.

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

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

31 (2) If the commission disapproves a rule, it shall return the rule  
32 to the adopting agency within the forty-five-day period specified in  
33 subsection (1) of this section, accompanied by a statement specifying  
34 the reasons for disapproval. Within seven days of the issuance of the  
35 notice, the commission shall provide the adopting agency with a written  
36 decision detailing the specific regulatory review criteria that the  
37 rule failed to meet, and a summary of the documents and testimony  
38 relied on by the commission in reaching its final decision. The

1 commission may not disapprove a rule except for failure to comply with  
2 the standards set forth in section 6(2) of this act.

3 (3) The commission shall file the notice of disapproval required by  
4 subsection (2) of this section with the code reviser for publication in  
5 the Washington State Register. The commission shall provide the  
6 written decision required by subsection (2) of this section to anyone  
7 requesting it, and shall submit it to the secretary of the senate and  
8 the chief clerk of the house of representatives for distribution to the  
9 chairs of the appropriate standing committees.

10 (4) If an agency determines on its own that a rule filed for review  
11 should be returned by the commission before the completion of the  
12 commission's review, it may request the return of the rule. The filing  
13 agency shall memorialize in writing all requests for the return of a  
14 rule no later than seven days after the request. The agency may refile  
15 the rule with the commission for review within one hundred eighty days  
16 as specified in RCW 34.05.335, or refile it in accordance with RCW  
17 34.05.320.

18 (5) The commission shall not initiate the return of a rule under  
19 subsection (4) of this section as an alternative to disapproval under  
20 subsection (2) of this section.

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

32 (2) Upon refiling of a previously disapproved rule to the  
33 commission under subsection (1) of this section, the commission shall  
34 review the refiled rule only for those reasons expressly identified in  
35 the written decision required by section 7 of this act, or for those  
36 issues arising as a result of a substantial change to a provision of  
37 the rule or as a result of intervening statutory changes or intervening  
38 court orders or decisions. Review of the refiled rule must be done

1 according to the same time limits as for review of a newly submitted  
2 rule.

3 (3) When an agency refiles a withdrawn or disapproved rule with the  
4 commission, it shall identify the prior withdrawn or disapproved rule  
5 by its date of filing with the commission, shall specify the portion of  
6 the prior rule-making record that should be included in the refiling,  
7 and shall submit to the commission a copy of the prior rule-making  
8 record if that record has been returned to the agency by the  
9 commission.

10 (4) When the commission disapproves a rule, the agency may  
11 nonetheless adopt the rule and file it with the code reviser within the  
12 sixty-day period after the last day of the next regular legislative  
13 session after the date on which the rule was disapproved, unless the  
14 statute cited by the agency as authorizing the rule is amended by the  
15 legislature.

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

18 (a) Clearly state in detail the general goals and specific  
19 objectives of the statute that the rule implements and the specific  
20 objectives the agency seeks to achieve;

21 (b) Determine that the rule is needed to achieve the general goals  
22 and specific objectives stated under (a) of this subsection, and  
23 analyze alternatives to rule making and the consequences of not  
24 adopting the rule;

25 (c) Determine that the probable benefits of the rule are greater  
26 than its probable costs, taking into account both the qualitative and  
27 quantitative benefits and costs and the specific directives of the  
28 statute being implemented;

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

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

37 (f) Coordinate the rule, to the maximum extent practicable, with  
38 other federal, state, and local laws applicable to the same

1 circumstances and list, by citation, duplicative, inconsistent, or  
2 conflicting laws;

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

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

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

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

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

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

20 (k) Describe which resources the agency intends to use to implement  
21 the rule; and

22 (l) Document compliance with the requirements of this section in  
23 the rule-making file.

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

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

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

34 (3) For rules implementing statutes enacted after the effective  
35 date of this act, except emergency rules adopted under RCW 34.05.350,  
36 an agency may not rely solely on the statute's statement of intent or  
37 purpose, or on the enabling provisions of the statute establishing the  
38 agency, or on any combination of such provisions, for its statutory  
39 authority to adopt the rule. An agency may use the statement of intent

1 or purpose or the agency enabling provisions to interpret ambiguities  
2 in a statute's other provisions.

3 NEW SECTION. **Sec. 10.** In the discharge of any duty imposed under  
4 this chapter, the commission or personnel under its authority may  
5 examine and inspect all properties, equipment, facilities, files,  
6 records, and accounts of any state office, department, institution,  
7 board, committee, commission, or agency, and administer oaths, issue  
8 subpoenas, compel the attendance of witnesses and the production of any  
9 papers, books, accounts, documents, and testimony, and cause the  
10 deposition of witnesses, either residing within or outside the state,  
11 to be taken in the manner prescribed by law for taking depositions in  
12 civil actions in the superior courts.

13 In case of the failure on the part of a person to comply with any  
14 subpoena issued in behalf of the commission, or on the refusal of a  
15 witness to testify to matters regarding which he or she may be lawfully  
16 interrogated, the superior court of any county, or the judge thereof,  
17 shall, on application of the commission, compel obedience by  
18 proceedings for contempt, as in the case of disobedience of the  
19 requirements of a subpoena issued from the court or a refusal to  
20 testify in court.

21 NEW SECTION. **Sec. 11.** The commission, either on its motion or on  
22 the request of an individual, agency, corporation, member of the  
23 legislature, or any other entity that may be affected by a rule, may  
24 also petition an agency requesting the adoption, amendment, or repeal  
25 of a rule under RCW 34.05.330. The commission shall petition an agency  
26 under RCW 34.05.330 requesting the adoption of a rule if it believes  
27 that the agency is using a policy statement or guidelines in place of  
28 a rule. The commission may also make recommendations to the  
29 legislature and the governor for statutory changes whenever it finds  
30 that an existing rule or procedure may be contrary to the public  
31 interest.

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

1        NEW SECTION.    **Sec. 12.** The commission shall act as a clearinghouse  
2 for complaints, comments, and other input from members of the  
3 legislature and from the public regarding rules, proposed rules, and  
4 administrative procedures. The commission shall maintain accurate  
5 records regarding complaints and comments it receives and shall  
6 maintain the records according to departmental and subject matter  
7 categories. When the commission files its annual report under section  
8 2 of this act, the commission shall include within it a summary of  
9 public complaint and comment along with any recommendations the  
10 commission may offer for statutory change as the result of public  
11 complaint and comment.

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

15        NEW SECTION.    **Sec. 13.** By January 31, 1997, and by January 31st of  
16 each odd-numbered year thereafter, the joint committee on performance  
17 audits, after consulting with state agencies and business, labor, and  
18 environmental organizations, shall report to the governor and the  
19 legislature regarding the impact of the independent regulatory review  
20 commission on the regulatory system in this state. The report shall  
21 document:

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) "Adjudicative proceeding" means a proceeding before an agency  
14 in which an opportunity for hearing before that agency is required by  
15 statute or constitutional right before or after the entry of an order  
16 by the agency. Adjudicative proceedings also include all cases of  
17 licensing and rate making in which an application for a license or rate  
18 change is denied except as limited by RCW 66.08.150, or a license is  
19 revoked, suspended, or modified, or in which the granting of an  
20 application is contested by a person having standing to contest under  
21 the law.

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

29 (3) "Agency action" means licensing, the implementation or  
30 enforcement of a statute, the adoption or application of an agency rule  
31 or order, the imposition of sanctions, or the granting or withholding  
32 of benefits.

33 Agency action does not include an agency decision regarding (a)  
34 contracting or procurement of goods, services, public works, and the  
35 purchase, lease, or acquisition by any other means, including eminent  
36 domain, of real estate, as well as all activities necessarily related  
37 to those functions, or (b) determinations as to the sufficiency of a  
38 showing of interest filed in support of a representation petition, or

1 mediation or conciliation of labor disputes or arbitration of labor  
2 disputes under a collective bargaining law or similar statute, or (c)  
3 any sale, lease, contract, or other proprietary decision in the  
4 management of public lands or real property interests, or (d) the  
5 granting of a license, franchise, or permission for the use of  
6 trademarks, symbols, and similar property owned or controlled by the  
7 agency.

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

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

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

17 (~~(6)~~) (7) "Filing" of a document that is required to be filed  
18 with an agency means delivery of the document to a place designated by  
19 the agency by rule for receipt of official documents, or in the absence  
20 of such designation, at the office of the agency head.

21 (~~(7)~~) (8) "Institutions of higher education" are the University  
22 of Washington, Washington State University, Central Washington  
23 University, Eastern Washington University, Western Washington  
24 University, The Evergreen State College, the various community  
25 colleges, and the governing boards of each of the above, and the  
26 various colleges, divisions, departments, or offices authorized by the  
27 governing board of the institution involved to act for the institution,  
28 all of which are sometimes referred to in this chapter as  
29 "institutions."

30 (~~(8)~~) (9) "Interpretive statement" means a written expression of  
31 the opinion of an agency, entitled an interpretive statement by the  
32 agency head or its designee, as to the meaning of a statute or other  
33 provision of law, of a court decision, or of an agency order.

34 (~~(9)~~) (10)(a) "License" means a franchise, permit, certification,  
35 approval, registration, charter, or similar form of authorization  
36 required by law, but does not include (i) a license required solely for  
37 revenue purposes, or (ii) a certification of an exclusive bargaining  
38 representative, or similar status, under a collective bargaining law or  
39 similar statute, or (iii) a license, franchise, or permission for use

1 of trademarks, symbols, and similar property owned or controlled by the  
2 agency.

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

5 (~~(10)~~) (11)(a) "Order," without further qualification, means a  
6 written statement of particular applicability that finally determines  
7 the legal rights, duties, privileges, immunities, or other legal  
8 interests of a specific person or persons.

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

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

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

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

16 (~~(12)~~) (13) "Party to judicial review or civil enforcement  
17 proceedings," or "party" in a context so indicating, means:

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

20 (b) A person named as a party in a judicial review or civil  
21 enforcement proceeding, or allowed to participate as a party in a  
22 judicial review or civil enforcement proceeding.

23 (~~(13)~~) (14) "Person" means any individual, partnership,  
24 corporation, association, governmental subdivision or unit thereof, or  
25 public or private organization or entity of any character, and includes  
26 another agency.

27 (~~(14)~~) (15) "Policy statement" means a written description of the  
28 current approach of an agency, entitled a policy statement by the  
29 agency head or its designee, to implementation of a statute or other  
30 provision of law, of a court decision, or of an agency order, including  
31 where appropriate the agency's current practice, procedure, or method  
32 of action based upon that approach.

33 (~~(15)~~) (16) "Rule" means any agency order, directive, or  
34 regulation of general applicability (a) the violation of which subjects  
35 a person to a penalty or administrative sanction; (b) which  
36 establishes, alters, or revokes any procedure, practice, or requirement  
37 relating to agency hearings; (c) which establishes, alters, or revokes  
38 any qualification or requirement relating to the enjoyment of benefits  
39 or privileges conferred by law; (d) which establishes, alters, or

1 revokes any qualifications or standards for the issuance, suspension,  
2 or revocation of licenses to pursue any commercial activity, trade, or  
3 profession; or (e) which establishes, alters, or revokes any mandatory  
4 standards for any product or material which must be met before  
5 distribution or sale. The term includes the amendment or repeal of a  
6 prior rule, but does not include (i) statements concerning only the  
7 internal management of an agency and not affecting private rights or  
8 procedures available to the public, (ii) declaratory rulings issued  
9 pursuant to RCW 34.05.240, (iii) traffic restrictions for motor  
10 vehicles, bicyclists, and pedestrians established by the secretary of  
11 transportation or his designee where notice of such restrictions is  
12 given by official traffic control devices, or (iv) rules of  
13 institutions of higher education involving standards of admission,  
14 academic advancement, academic credit, graduation and the granting of  
15 degrees, employment relationships, or fiscal processes.

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

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

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

28 **Sec. 15.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to read  
29 as follows:

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

- 36 ~~((States the specific statutory authority for the new rule;~~  
37 ~~(b) Identifies the reasons the new rule is needed;~~  
38 ~~(c) Identifies the goals of the new rule;~~

1       ~~(d) Describes~~) Identifies the specific statute or statutes  
2 authorizing the agency to adopt rules on this subject;

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

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

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

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

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

19       (a) Negotiated rule making which includes:

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

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

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

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

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

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

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

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

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

12 (4) This section does not apply to:

13 (a) Emergency rules adopted under RCW 34.05.350;

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

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

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

26 (e) Rules whose content is explicitly and specifically dictated by  
27 statute;

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

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

33 (1) No sooner than thirty days after publication of the statement  
34 of inquiry under RCW 34.05.310, and at least twenty days before the  
35 rule-making hearing at which the agency receives public comment  
36 regarding adoption of a rule, the agency shall cause notice of the  
37 hearing to be published in the state register. The publication

1 constitutes the proposal of a rule. The notice shall include all of  
2 the following:

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

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

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

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

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

15 (f) Agency comments or recommendations, if any, regarding statutory  
16 language, implementation, enforcement, and fiscal matters pertaining to  
17 the rule;

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

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

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

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

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

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

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

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

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

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

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

12 (3) Rules not adopted and filed with the ~~((code reviser))~~  
13 commission within one hundred eighty days after publication of the text  
14 as last proposed in the register shall be regarded as withdrawn. An  
15 agency may not thereafter adopt the proposed rule without refileing it  
16 in accordance with RCW 34.05.320. The ~~((code reviser))~~ commission  
17 shall give notice of the withdrawal to the code reviser for publication  
18 in the register.

19 (4) An agency may not adopt a rule before the time established in  
20 the published notice, or such later time established on the record or  
21 by publication in the state register.

22 **Sec. 18.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to read  
23 as follows:

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

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

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

33 the agency may dispense with those requirements and adopt, amend, or  
34 repeal the rule on an emergency basis. The agency's finding and a  
35 concise statement of the reasons for its finding shall be incorporated  
36 in the order for adoption of the emergency rule or amendment filed with

1 the office of the code reviser under RCW 34.05.380 and with the ((rules  
2 review committee)) regulatory review commission.

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

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

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

29 **Sec. 19.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to read  
30 as follows:

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

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

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

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

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

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

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

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

16 (g) Citations to data, factual information, studies, or reports on  
17 which the agency relies in the adoption of the rule, indicating where  
18 such data, factual information, studies, or reports are available for  
19 review by the public;

20 (h) The written summary and response required by RCW 34.05.325(6);  
21 and

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

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

30 (4) Upon judicial review, the file required by this section  
31 constitutes the official agency rule-making file with respect to that  
32 rule. Unless otherwise required by another provision of law, the  
33 official agency rule-making file need not be the exclusive basis for  
34 agency action on that rule.

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

37 (1) Each agency shall file (~~in the office of the code reviser~~)  
38 with the commission a certified copy of all rules it adopts, except for

1 rules contained in tariffs filed with or published by the Washington  
2 utilities and transportation commission. Upon its approval of a rule,  
3 the commission shall file the rule with the code reviser. The code  
4 reviser shall place upon each rule a notation of the time and date of  
5 filing and shall keep a permanent register of filed rules open to  
6 public inspection. In filing a rule, each agency shall use the  
7 standard form prescribed for this purpose by the code reviser.

8 (2) Emergency rules adopted under RCW 34.05.350 become effective  
9 upon filing unless a later date is specified in the order of adoption.  
10 All other rules become effective upon the expiration of thirty days  
11 after the date of filing, unless a later date is required by statute or  
12 specified in the order of adoption.

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

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

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

21 (c) The earlier effective date is necessary because of imminent  
22 peril to the public health, safety, or welfare.

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

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

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

30 For the purposes of RCW 42.17.240, the term "executive state  
31 officer" includes:

32 (1) The chief administrative law judge, the director of  
33 agriculture, the administrator of the office of marine safety, the  
34 administrator of the Washington basic health plan, the director of the  
35 department of services for the blind, the director of the state system  
36 of community and technical colleges, the director of community, trade,  
37 and economic development, the secretary of corrections, the director of  
38 ecology, the commissioner of employment security, the chairman of the

1 energy facility site evaluation council, the director of the energy  
2 office, the secretary of the state finance committee, the director of  
3 financial management, the director of fish and wildlife, the executive  
4 secretary of the forest practices appeals board, the director of the  
5 gambling commission, the director of general administration, the  
6 secretary of health, the administrator of the Washington state health  
7 care authority, the executive secretary of the health care facilities  
8 authority, the executive secretary of the higher education facilities  
9 authority, the executive secretary of the horse racing commission, the  
10 executive secretary of the human rights commission, the executive  
11 director of the independent regulatory review commission, the executive  
12 secretary of the indeterminate sentence review board, the director of  
13 the department of information services, the director of the interagency  
14 committee for outdoor recreation, the executive director of the state  
15 investment board, the director of labor and industries, the director of  
16 licensing, the director of the lottery commission, the director of the  
17 office of minority and women's business enterprises, the director of  
18 parks and recreation, the director of personnel, the executive director  
19 of the public disclosure commission, the director of retirement  
20 systems, the director of revenue, the secretary of social and health  
21 services, the chief of the Washington state patrol, the executive  
22 secretary of the board of tax appeals, (~~the director of trade and~~  
23 ~~economic development,~~) the secretary of transportation, the secretary  
24 of the utilities and transportation commission, the director of  
25 veterans affairs, the president of each of the regional and state  
26 universities and the president of The Evergreen State College, each  
27 district and each campus president of each state community college;

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

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

30 (4) Central Washington University board of trustees, board of  
31 trustees of each community college, each member of the state board for  
32 community and technical colleges, state convention and trade center  
33 board of directors, committee for deferred compensation, Eastern  
34 Washington University board of trustees, Washington economic  
35 development finance authority, The Evergreen State College board of  
36 trustees, forest practices appeals board, forest practices board,  
37 gambling commission, Washington health care facilities authority, each  
38 member of the Washington health services commission, higher education  
39 coordinating board, higher education facilities authority, horse racing

1 commission, state housing finance commission, human rights commission,  
2 independent regulatory review commission, indeterminate sentence review  
3 board, board of industrial insurance appeals, information services  
4 board, interagency committee for outdoor recreation, state investment  
5 board, liquor control board, lottery commission, marine oversight  
6 board, (~~oil and gas conservation committee,~~) Pacific Northwest  
7 electric power and conservation planning council, parks and recreation  
8 commission, personnel appeals board, board of pilotage commissioners,  
9 pollution control hearings board, public disclosure commission, public  
10 pension commission, shorelines hearing board, public employees'  
11 benefits board, board of tax appeals, transportation commission,  
12 University of Washington board of regents, utilities and transportation  
13 commission, Washington state maritime commission, Washington personnel  
14 resources board, Washington public power supply system executive board,  
15 Washington State University board of regents, Western Washington  
16 University board of trustees, and fish and wildlife commission.

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

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

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

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

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

27 (5) RCW 34.05.650 and 1988 c 288 s 605, 1987 c 451 s 4, & 1981 c  
28 324 s 9; and

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

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

32 NEW SECTION. **Sec. 24.** If specific funding for the purposes of  
33 this act, referencing this act by bill number, is not provided by June  
34 30, 1995, in the omnibus appropriations act, this act is null and void.

--- END ---