

2 **E2SHB 2510** - S COMM AMD
3 By Committee on Labor and Commerce

4 RULED WITHIN SCOPE; ADOPTED AS AMENDED 3/2/94

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

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 44.04 RCW
8 to read as follows:

9 (1) The legislature recognizes that clear grants of rule-making
10 authority are necessary for efficient and effective regulatory programs
11 and accountability in governmental decision making, and that the agency
12 granted rule-making authority should be the most competent to exercise
13 jurisdiction over the subject matter. It is therefore the
14 legislature's purpose to establish processes to ensure that existing
15 and future laws provide clear and appropriate rule-making authority.

16 (2) The standing committees of the legislature shall selectively
17 review legislative grants of rule-making authority to determine: (a)
18 Whether the authority granted is clear and as intended; (b) whether the
19 legislative intent is specific and includes defined objectives; and (c)
20 whether the grant of authority is consistent with and not duplicative
21 of grants to other agencies. In performing such a review, priority
22 shall be given to grants of rule-making authority to the department of
23 revenue, the employment security department, the department of ecology,
24 the department of labor and industries, the department of health, the
25 department of licensing, the department of fish and wildlife, the
26 department of natural resources, and the insurance commissioner.

27 In those instances where the review identifies statutes that do not
28 meet these criteria, corrective legislation shall be prepared that
29 clarifies, narrows, or repeals the grants of rule-making authority.

30 (3) The senate and the house of representatives shall ensure that
31 bills introduced that grant rule-making authority to state agencies
32 contain clear and specific direction regarding the authority granted.

33 (4) Appropriate standing committees of the senate and house of
34 representatives shall prepare a regulatory note as part of the bill
35 report on each bill before the committee that grants rule-making
36 authority to a state agency. The regulatory note shall identify if

1 rule making is required or authorized by the bill, describe the nature
2 of the rule making, identify agencies to which rule making is
3 delegated, and identify any other agencies that have rule-making
4 authority over the same activity or subject matter. However in the
5 event of a conflict between the note and any section of the revised
6 code of Washington or uncodified session law, the revised code or
7 uncodified session law shall prevail and nothing in the note shall be
8 considered to be part of the revised code or uncodified session law.

9 **Sec. 2.** RCW 34.05.310 and 1993 c 202 s 2 are each amended to read
10 as follows:

11 (1) To meet the intent of providing greater public access to
12 administrative rule making and to promote consensus among interested
13 parties, agencies (~~are encouraged to:~~

14 (1)) shall solicit comments from the public on a subject of
15 possible rule making before publication of a notice of proposed rule
16 adoption under RCW 34.05.320. (~~This process can be accomplished by~~
17 ~~having a notice published in the state register of the subject under~~
18 ~~active consideration and indicating where, when, and how persons may~~
19 ~~comment; and)) The agency shall prepare a statement of intent that:~~

20 (a) States the specific statutory authority for the new rule;

21 (b) Identifies the reasons the new rule is needed;

22 (c) Identifies the goals of the new rule;

23 (d) Describes the process by which the rule will be developed,
24 including, but not limited to, negotiated rule making, pilot rule
25 making, or agency study; and

26 (e) Specifies the process by which interested parties can
27 effectively participate in the formulation of the new rule.

28 The statement of intent shall be filed with the code reviser for
29 publication in the state register and shall be sent to identifiable
30 interested parties. Interested parties may include, but are not
31 limited to, trade associations, interest groups, specific businesses,
32 the business assistance center, chambers of commerce, local
33 governments, labor organizations, environmental groups, consumer
34 protection groups, citizen organizations, state agencies, and any other
35 appropriate entity.

36 (2) Agencies are encouraged to develop and use new procedures for
37 reaching agreement among interested parties before publication of

1 notice and the adoption hearing on a proposed rule. Examples of new
2 procedures include, but are not limited to:

3 (a) Negotiated rule making which includes:

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

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

9 ~~((c))~~ (iii) Assuring that participants fully recognize the
10 consequences of not participating in the process, are committed to
11 negotiate in good faith, and recognize the alternatives available to
12 other parties;

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

16 ~~((e))~~ (v) Agreeing on a reasonable time period during which the
17 agency will be bound to the rule resulting from the negotiations
18 without substantive amendment; and

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

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

28 (3)(a) Agencies must make a determination whether negotiated rule
29 making, pilot rule making, or another process for generating
30 participation from interested parties prior to development of the rule
31 is appropriate.

32 (b) Agencies must include a written justification in the rule-
33 making file if an opportunity for interested parties to participate in
34 the rule-making process prior to publication of the proposed rule has
35 not been provided.

36 **Sec. 3.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
37 read as follows:

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

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

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

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

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

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

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

21 (f) All petitions for exceptions to, amendment of, or repeal or
22 suspension of, the rule; (~~and~~)

23 (g) Citations to all data, factual information, studies, or reports
24 on which the agency relies in the adoption of the rule, indicating
25 where such data, factual information, studies, or reports are available
26 for review by the public;

27 (h) The written summary and response required by RCW 34.05.325(6);
28 and

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

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

37 (4) Upon judicial review, the file required by this section
38 constitutes the official agency rule-making file with respect to that
39 rule. Unless otherwise required by another provision of law, the

1 official agency rule-making file need not be the exclusive basis for
2 agency action on that rule.

3 **Sec. 4.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read
4 as follows:

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

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

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

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

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

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

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

5 (4) In adopting an emergency rule, the agency shall meet the same
6 criteria as set forth in section 5 of this act or provide written
7 justification for its failure to provide the information.

8 NEW SECTION. Sec. 5. A new section is added to chapter 34.05 RCW
9 to read as follows:

10 (1) In addition to other requirements imposed by law, an agency may
11 not adopt a rule the violation of which subjects a person to a penalty
12 or administrative sanction; that establishes, alters, or revokes a
13 qualification or standard for the issuance, suspension, or revocation
14 of a license to pursue a commercial activity, trade, or profession; or
15 that establishes, alters, or revokes a mandatory standard for a product
16 or material that must be met before distribution or sale, unless:

17 (a) The rule is needed;

18 (b) The likely benefits of the rule justify its likely costs;

19 (c) There are no alternatives to the rule that would be as
20 effective but less burdensome on those required to comply;

21 (d) Any fee imposed is reasonable and related to the cost of
22 administration;

23 (e) The rule is clearly and simply stated, so that it can be
24 understood by persons required to comply;

25 (f) The rule does not conflict with, or unless necessary to achieve
26 the objectives of the statute upon which the rule is based, overlap, or
27 duplicate any other provision of federal, state, or local law;

28 (g) The rule does not, unless necessary to achieve the objectives
29 of the statute upon which the rule is based, differ from any provision
30 of federal law regulating the same activity or subject matter; and

31 (h) The rule does not, unless necessary to achieve the objectives
32 of the statute upon which the rule is based, differ in its application
33 to public and private entities.

34 (2) Nothing in subsection (1) of this section shall be construed to
35 change the existing standard of judicial review of agency rule making.

36 NEW SECTION. Sec. 6. A new section is added to chapter 34.05 RCW
37 to read as follows:

1 (1) Upon adoption of any rule covered by section 5 of this act, an
2 agency shall have a plan to: (a) Inform and educate affected persons
3 about the rule; (b) promote voluntary compliance; (c) evaluate whether
4 the rule achieves the purpose for which it was adopted; and (d)
5 evaluate whether the rule avoids the taking of private property for
6 public use unless no reasonable alternative exists that advances the
7 public interest.

8 (2) Upon the adoption of a rule covered by section 5 of this act
9 regulating the same activity or subject matter as another provision of
10 federal, state, or local law, an agency shall do all of the following:

11 (a) Provide to the business assistance center a list citing by
12 reference the other federal, state, and local laws that regulate the
13 same activity or subject matter;

14 (b) Coordinate implementation and enforcement of the rule with the
15 other federal, state, and local entities regulating the same activity
16 or subject matter by doing one or more of the following: (i) Deferring
17 to the other entity; (ii) designating a lead agency; or (iii) entering
18 into an agreement with the other entities specifying how the agency and
19 entities will coordinate implementation and enforcement. If the agency
20 is unable to meet this requirement, the agency shall report to the
21 legislature pursuant to (c) of this subsection;

22 (c) Report to the chief clerk of the house of representatives and
23 the secretary of the senate regarding: (i) The existence of any
24 overlap or duplication of other federal, state, or local laws, and any
25 differences from federal law; (ii) legislation that may be necessary to
26 eliminate or mitigate any adverse effects of such overlap, duplication,
27 or difference; and (iii) legislation that may be necessary to
28 facilitate coordination with appropriate governmental entities
29 regulating the same activity or subject matter.

30 (3) For purposes of this section, "taking" means totally destroying
31 or rendering valueless private property, damaging by a public use in
32 connection with an actual taking by the exercise of eminent domain, or
33 when there is interference with use of property to owner's prejudice,
34 with resulting diminution in value. Police action to prevent or abate
35 actual damage to another is not considered a taking.

36 **Sec. 7.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
37 read as follows:

1 (1) Any person may petition an agency requesting the adoption,
2 amendment, or repeal of any rule. Each agency may prescribe by rule
3 the form for such petitions and the procedure for their submission,
4 consideration, and disposition. Within sixty days after submission of
5 a petition, the agency shall ~~((+1))~~ (a) either deny the petition in
6 writing, stating its reasons for the denial, or ~~((+2))~~ (b) initiate
7 rule-making proceedings in accordance with this chapter.

8 (2) If an agency headed by a nonelected official denies a petition
9 to repeal or amend a rule submitted under subsection (1) of this
10 section, the petitioner, within thirty days of the denial, may appeal
11 the denial to the governor. The petitioner may file notice of the
12 appeal with the code reviser for publication in the Washington State
13 Register. Within sixty days after receiving the appeal, the governor
14 shall either reject the appeal in writing, stating his or her reasons
15 for the rejection, or order the agency to initiate rule-making
16 proceedings in accordance with this chapter. In deciding on the
17 appeal, among other factors the governor should consider:

18 (a) Whether the agency complied with sections 5 and 6 of this act;

19 (b) Whether the agency has established an adequate internal rules
20 review process, allowing public participation, and has subjected the
21 rule to that review;

22 (c) The nature of complaints and other comments received from the
23 public concerning the rule;

24 (d) Whether the rule conflicts with, overlaps, or duplicates any
25 other provision of federal, state, or local law and, if so, whether the
26 agency has taken steps to mitigate any adverse effects of the conflict,
27 overlap, or duplication;

28 (e) The extent to which technology, social or economic conditions,
29 or other relevant factors have changed since the rule was adopted, and
30 whether, given those changes, the rule continues to be necessary and
31 appropriate;

32 (f) Whether the statute that the rule implements has been amended
33 or repealed by the legislature, or ruled invalid by a court.

34 (3) The governor's office shall provide a copy of the governor's
35 ruling under subsection (2) of this section to anyone upon request.

36 **Sec. 8.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read
37 as follows:

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

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

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

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

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

38 (6) Before the adoption of a final rule, an agency shall prepare a
39 written summary of all comments received regarding the proposed rule,

1 and a substantive response to the comments by category or subject
2 matter, indicating how the final rule reflects agency consideration of
3 the comments, or why it fails to do so. The agency shall provide the
4 written summary and response to any person upon request or from whom
5 the agency received comment.

6 **Sec. 9.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
7 read as follows:

8 ~~((1))~~ At the time it files an adopted rule with the code reviser
9 or within thirty days thereafter, an agency shall place into the rule-
10 making file maintained under RCW 34.05.370 a concise explanatory
11 statement about the rule, identifying ~~((a))~~ (1) the agency's reasons
12 for adopting the rule, and ~~((b))~~ (2) a description of any difference
13 between the text of the proposed rule as published in the register and
14 the text of the rule as adopted, other than editing changes, stating
15 the reasons for change.

16 ~~((2) Upon the request of any interested person within thirty days~~
17 ~~after adoption of a rule, the agency shall issue a concise statement of~~
18 ~~the principal reasons for overruling the considerations urged against~~
19 ~~its adoption.))~~

20 NEW SECTION. **Sec. 10.** A new section is added to chapter 19.85 RCW
21 to read as follows:

22 The legislature finds that administrative rules adopted by state
23 agencies can have a disproportionate impact on the state's small
24 businesses because of the size of those businesses. This
25 disproportionate impact reduces competition, innovation, employment,
26 and new employment opportunities, and threatens the very existence of
27 some small businesses. The legislature therefore enacts the regulatory
28 fairness act, chapter . . . , Laws of 1994 (this act), with the intent
29 of reducing the disproportionate impact of state administrative rules
30 on small business.

31 **Sec. 11.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to
32 read as follows:

33 Unless the context clearly indicates otherwise, the definitions in
34 this section apply through this chapter.

35 (1) "Small business" means any business entity, including a sole
36 proprietorship, corporation, partnership, or other legal entity, that

1 is owned and operated independently from all other businesses, that has
2 the purpose of making a profit, and that has fifty or fewer employees.

3 (2) "Small business economic impact statement" means a statement
4 meeting the requirements of RCW 19.85.040 prepared by a state agency
5 pursuant to RCW 19.85.030.

6 (3) "Industry" means all of the businesses in this state in any one
7 (~~three-digit~~) four-digit standard industrial classification as
8 published by the United States department of commerce.

9 (4) "Taking" means totally destroying or rendering valueless
10 private property, damaging by a public use in connection with an actual
11 taking by the exercise of eminent domain, or when there is interference
12 with use of property to owner's prejudice, with resulting diminution in
13 value. Police action to prevent or abate actual damage to another is
14 not considered a taking.

15 **Sec. 12.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
16 each reenacted and amended to read as follows:

17 (~~In the adoption of any rule pursuant to RCW 34.05.320 that will~~
18 ~~have an economic impact on more than twenty percent of all industries,~~
19 ~~or more than ten percent of any one industry, the adopting agency:~~

20 (1) ~~Shall reduce the economic impact of the rule on small business~~
21 ~~by doing one or more of the following when it is legal and feasible in~~
22 ~~meeting the stated objective of the statutes which are the basis of the~~
23 ~~proposed rule:~~

24 (a) ~~Establish differing compliance or reporting requirements or~~
25 ~~timetables for small businesses;~~

26 (b) ~~Clarify, consolidate, or simplify the compliance and reporting~~
27 ~~requirements under the rule for small businesses;~~

28 (c) ~~Establish performance rather than design standards;~~

29 (d) ~~Exempt small businesses from any or all requirements of the~~
30 ~~rule;~~

31 (2) ~~Shall prepare a small business economic impact statement in~~
32 ~~accordance with RCW 19.85.040 and file such statement with the code~~
33 ~~reviser along with the notice required under RCW 34.05.320;~~

34 (3)) (1) In the adoption of a rule under RCW 34.05.320, an agency
35 shall prepare a small business economic impact statement: (a) If the
36 proposed rule will impose more than minor costs on businesses in an
37 industry; or (b) if requested to do so by a majority vote of the joint

1 administrative rules review committee within thirty days after notice
2 of the proposed rule is published in the state register.

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

11 An agency may request assistance from the business assistance
12 center in the preparation of the small business economic impact
13 statement.

14 (2) A proposed rule will impose more than minor costs on businesses
15 in an industry when the costs imposed will equal or exceed 0.1 percent
16 of the average yearly profit for businesses in that industry. The
17 business assistance center shall develop guidelines to assist agencies
18 in determining whether a proposed rule will impose such costs. The
19 business assistance center may review an agency determination that a
20 proposed rule will not impose such costs, and shall advise the joint
21 administrative rules review committee on disputes involving agency
22 determinations under this section.

23 (3) Based upon the extent of disproportionate impact on small
24 business identified in the statement prepared under RCW 19.85.040, the
25 agency shall, unless reasonable justification exists to do otherwise,
26 reduce the costs imposed by the rule on small businesses. Methods to
27 reduce the costs on small businesses may include, but are not limited
28 to:

29 (a) Reducing, modifying, or eliminating substantive regulatory
30 requirements;

31 (b) Establishing performance rather than design standards;

32 (c) Simplifying, reducing, or eliminating recordkeeping and
33 reporting requirements;

34 (d) Reducing the frequency of inspections;

35 (e) Delaying compliance timetables; or

36 (f) Reducing or modifying fine schedules for noncompliance.

37 **Sec. 13.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
38 each reenacted and amended to read as follows:

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

- 18 ((+1)) (a) Cost per employee;
19 ((+2)) (b) Cost per hour of labor; or
20 ((+3)) (c) Cost per one hundred dollars of sales((+
21 (4) Any combination of (1), (2), or (3)).

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

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

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

29 (c) A list of industries that will be required to comply with the
30 rule.

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

37 NEW SECTION. Sec. 14. A new section is added to chapter 19.85 RCW
38 to read as follows:

1 Unless so requested by a majority vote of the joint administrative
2 rules review committee under RCW 19.85.030, an agency is not required
3 to comply with this chapter when adopting any rule solely for the
4 purpose of conformity or compliance, or both, with federal law. In
5 lieu of the statement required under RCW 19.85.030, the agency shall
6 file a statement citing, with specificity, the federal law with which
7 the rule is being adopted to conform or comply, and describing the
8 consequences to the state if the rule is not adopted.

9 **Sec. 15.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read
10 as follows:

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

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

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

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

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

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

28 (f) Agency comments or recommendations, if any, regarding statutory
29 language, implementation, enforcement, and fiscal matters pertaining to
30 the rule;

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

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

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

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

4 (k) A statement indicating how a person can obtain a copy of the
5 small business economic impact statement~~((, if applicable, and a~~
6 ~~statement of steps taken to minimize the economic impact in accordance~~
7 ~~with RCW 19.85.030))~~ prepared under chapter 19.85 RCW, or an
8 explanation for why the agency did not prepare the statement.

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

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

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

22 NEW SECTION. Sec. 16. A new section is added to chapter 43.31 RCW
23 to read as follows:

24 To assist state agencies in reducing regulatory costs to small
25 business and to promote greater public participation in the rule-making
26 process, the business assistance center shall:

27 (1) Develop agency guidelines for the preparation of a small
28 business economic impact statement and compliance with chapter 19.85
29 RCW;

30 (2) Review and provide comments to agencies on draft or final small
31 business economic impact statements;

32 (3) Advise the joint administrative rules review committee on
33 whether an agency reasonably assessed the costs of a proposed rule and
34 reduced the costs for small business as required by chapter 19.85 RCW;
35 and

36 (4) Organize and chair a state rules coordinating committee,
37 consisting of agency rules coordinators and interested members of the
38 public, to develop an education and training program that includes,

1 among other components, a component that addresses voluntary
2 compliance, for agency personnel responsible for rule development and
3 implementation. The business assistance center shall submit
4 recommendations to the department of personnel for an administrative
5 procedures training program that is based on the sharing of interagency
6 resources.

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

- 9 (1) RCW 19.85.010 and 1982 c 6 s 1;
10 (2) RCW 19.85.060 and 1989 c 374 s 5; and
11 (3) RCW 19.85.080 and 1992 c 197 s 2.

12 **Sec. 18.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
13 read as follows:

14 Whenever a majority of the members of the rules review committee
15 determines that a proposed rule is not within the intent of the
16 legislature as expressed in the statute which the rule implements, or
17 that an agency may not be adopting a proposed rule in accordance with
18 all applicable provisions of law, including section 5 of this act and
19 chapter 19.85 RCW, the committee shall give the affected agency written
20 notice of its decision. The notice shall be given at least seven days
21 prior to any hearing scheduled for consideration of or adoption of the
22 proposed rule pursuant to RCW 34.05.320. The notice shall include a
23 statement of the review committee's findings and the reasons therefor.
24 When the agency holds a hearing on the proposed rule, the agency shall
25 consider the review committee's decision.

26 **Sec. 19.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read
27 as follows:

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

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

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

18 (4) The agency shall consider fully all written and oral
19 submissions regarding (a) whether the rule in question is within the
20 intent of the legislature as expressed by the statute which the rule
21 implements, (b) whether the rule was adopted in accordance with all
22 applicable provisions of law, including section 5 of this act and
23 chapter 19.85 RCW, (c) whether the agency is using a policy statement,
24 guideline, or issuance in place of a rule, or (d) whether the policy
25 statement, guideline, or issuance is within the legislative intent.

26 **Sec. 20.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
27 as follows:

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

1 (2) If the rules review committee finds, by a majority vote of its
2 members: (a) That the proposed or existing rule in question has not
3 been modified, amended, withdrawn, or repealed by the agency so as to
4 conform with the intent of the legislature, or (b) that an existing
5 rule was not adopted in accordance with all applicable provisions of
6 law, including section 5 of this act and chapter 19.85 RCW, or (c) that
7 the agency is using a policy statement, guideline, or issuance in place
8 of a rule, or that the policy statement, guideline, or issuance is
9 outside of the legislative intent, the rules review committee may,
10 within thirty days from notification by the agency of its action, file
11 with the code reviser notice of its objections together with a concise
12 statement of the reasons therefor. Such notice and statement shall
13 also be provided to the agency by the rules review committee.

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

27 (4) If the governor disapproves the recommendation of the rules
28 review committee to suspend the rule, the transmittal of such decision,
29 along with the findings of the rules review committee, shall be treated
30 by the agency as a petition by the rules review committee to repeal the
31 rule under RCW 34.05.330.

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

1 ~~((5))~~ (6) An election by the rules review committee to recommend
2 suspension of a rule, whether or not the suspension is approved by the
3 governor, establishes a presumption in any subsequent judicial review
4 of the rule that the rule is invalid. The burden of demonstrating the
5 rule's validity is then on the adopting agency.

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

11 **Sec. 21.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
12 read as follows:

13 Except as provided in RCW 34.05.640(6), it is the express policy of
14 the legislature that establishment of procedures for review of
15 administrative rules by the legislature and the notice of objection
16 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to
17 establish a presumption as to the legality or constitutionality of a
18 rule in any subsequent judicial proceedings interpreting such rules.

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

- 21 (1) RCW 34.05.670 and 1992 c 197 s 3; and
22 (2) RCW 34.05.680 and 1992 c 197 s 4.

23 NEW SECTION. **Sec. 23.** The department of community, trade, and
24 economic development shall develop a standardized format for reporting
25 information that is commonly required from the public by state and
26 local government agencies for permits, licenses, approvals, and
27 services. In the development of the format, the department shall work
28 in conjunction with representatives from state and local government
29 agencies and representatives of the business community.

30 The department shall submit the standardized format together with
31 recommendations for implementation to the legislature by December 31,
32 1994.

33 NEW SECTION. **Sec. 24.** A new section is added to chapter 34.05 RCW
34 to read as follows:

1 (1) This section applies only to the department of revenue, the
2 employment security department, the department of ecology, the
3 department of labor and industries, the department of health, the
4 department of licensing, and the department of fish and wildlife.

5 (2) An agency listed in subsection (1) of this section may
6 immediately impose a penalty otherwise provided for by law for a
7 violation of a statute or administrative rule by a business entity only
8 if the entity on which the penalty will be imposed has: (a) Previously
9 violated the same statute or rule; or (b) willfully violated the
10 statute or rule. Where a penalty is otherwise provided, but may not be
11 imposed under this subsection, the agency shall issue a statement of
12 deficiency.

13 (3) A statement of deficiency shall specify: (a) The particular
14 rule violated; (b) the steps the entity must take to comply with the
15 rule; (c) agency personnel designated by the agency to provide
16 technical assistance regarding compliance with the rule; and (d) a date
17 by which the entity is required to comply with the rule. The date
18 specified shall provide a reasonable period of time for the entity to
19 comply with the rule, considering the size of the entity, its available
20 resources, and the threat posed by the violation. If the entity fails
21 to comply with the rule by the date specified, it shall be subject to
22 the penalty otherwise provided in law.

23 (4) Subsection (2) of this section shall not apply to any violation
24 that places a person in danger of death or substantial bodily harm, is
25 causing or is likely to cause significant environmental harm, or has
26 caused or is likely to cause physical damage to the property of others
27 in an amount exceeding one thousand dollars. With regard to a statute
28 or rule requiring the payment of a tax, subsection (1) of this section
29 shall not apply when a business entity has paid less than eighty-five
30 percent of the tax actually owed.

31 (5) The state, the agency, and officers or employees of the state
32 shall not be liable for damages to any person to the extent that
33 liability is asserted to arise from the technical assistance provided
34 under this section, or if liability is asserted to arise from the
35 failure of the agency to supply technical assistance.

36 (6) Where a state agency has been delegated authority to enforce
37 federal rules, the agency shall submit a written petition to the
38 appropriate federal agency for authorization to comply with this
39 section for all inspections while retaining the state's federal

1 delegation. In such cases, this section applies only to the extent
2 authorized by the appropriate federal agency.

3 NEW SECTION. **Sec. 25.** A new section is added to chapter 4.84 RCW
4 to read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout sections 25 through 27 and 28 of this
7 act.

8 (1) "Agency" means agency as defined by chapter 34.05 RCW.

9 (2) "Fees and other expenses" includes the reasonable expenses of
10 expert witnesses, the reasonable cost of a study, analysis, engineering
11 report, test, or project that is found by the court to be necessary for
12 the preparation of the party's case, and reasonable attorneys' fees.
13 Reasonable attorneys' fees shall be based on the prevailing market
14 rates for the kind and quality of services furnished, except that (a)
15 no expert witness may be compensated at a rate in excess of the highest
16 rates of compensation for expert witnesses paid by the state of
17 Washington, and (b) attorneys' fees shall not be awarded in excess of
18 one hundred fifty dollars per hour unless the court determines that an
19 increase in the cost of living or a special factor, such as the limited
20 availability of qualified attorneys for the proceedings involved,
21 justifies a higher fee.

22 (3) "Judicial review" means a judicial review as defined by chapter
23 34.05 RCW.

24 (4) "Qualified party" means (a) an individual whose net worth did
25 not exceed one million dollars at the time the initial petition for
26 judicial review was filed; (b) a sole owner of an unincorporated
27 business, or a partnership, corporation, association, or organization
28 whose net worth did not exceed five million dollars at the time the
29 initial petition for judicial review was filed, except that an
30 organization described in section 501(c)(3) of the federal internal
31 revenue code of 1954 as exempt from taxation under section 501(a) of
32 the code and a cooperative association as defined in section 15(a) of
33 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
34 party regardless of the net worth of such organization or cooperative
35 association; or (c) a sole owner of an unincorporated business, or a
36 partnership, corporation, association, or organization, having not more
37 than one hundred employees at the time the initial petition for
38 judicial review was filed.

1 (5) "Rule" means a rule as defined by chapter 34.05 RCW.

2 NEW SECTION. **Sec. 26.** A new section is added to chapter 4.84 RCW
3 to read as follows:

4 If upon judicial review a rule is declared invalid and the party
5 that challenged the rule is a qualified party, the party shall be
6 awarded fees and other expenses not to exceed fifty thousand dollars.
7 This section does not apply unless all parties to the action
8 challenging the rule are qualified parties. If two or more qualified
9 parties join in an action challenging a rule, the fees and expenses
10 awarded shall not in total exceed fifty thousand dollars.

11 NEW SECTION. **Sec. 27.** A new section is added to chapter 4.84 RCW
12 to read as follows:

13 Fees and other expenses awarded under section 26 of this act shall
14 be paid by the agency that adopted the invalid rule from operating
15 funds appropriated to the agency within sixty days. Agencies paying
16 fees and other expenses pursuant to section 26 of this act shall report
17 all payments to the office of financial management within five days of
18 paying the fees and other expenses. Fees and other expenses awarded by
19 the court shall be subject to chapter 39.76 RCW and shall be deemed
20 payable on the date the court announces the award.

21 NEW SECTION. **Sec. 28.** A new section is added to chapter 43.88 RCW
22 to read as follows:

23 The office of financial management shall report annually to the
24 legislature on the amount of fees and other expenses awarded during the
25 preceding fiscal year under section 26 of this act. The report shall
26 describe the number, nature, and amount of the awards, the claims
27 involved in the controversy, and other relevant information that may
28 aid the legislature in evaluating the scope and impact of the awards.

29 NEW SECTION. **Sec. 29.** Section 11 of this act shall take effect
30 July 1, 1994.

31 NEW SECTION. **Sec. 30.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected."

1 **E2SHB 2510** - S COMM AMD
2 By Committee on Labor and Commerce

3 ADOPTED AS AMENDED 3/2/94

4 On page 1, line 2 of the title, after "reform;" strike the
5 remainder of the title and insert "amending RCW 34.05.310, 34.05.370,
6 34.05.350, 34.05.330, 34.05.325, 34.05.355, 19.85.020, 34.05.320,
7 34.05.620, 34.05.630, 34.05.640, and 34.05.660; reenacting and amending
8 RCW 19.85.030 and 19.85.040; adding a new section to chapter 44.04 RCW;
9 adding new sections to chapter 34.05 RCW; adding new sections to
10 chapter 19.85 RCW; adding a new section to chapter 43.31 RCW; adding
11 new sections to chapter 4.84 RCW; adding a new section to chapter 43.88
12 RCW; creating a new section; repealing RCW 19.85.010, 19.85.060,
13 19.85.080, 34.05.670, and 34.05.680; prescribing penalties; and
14 providing an effective date."

--- END ---