

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

4

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 34.05.370 and 1988 c 288 s 313 are each amended to
10 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) That immediate adoption, amendment, or repeal of a rule is
18 necessary for the preservation of the public health, safety, or general
19 welfare, and that observing the time requirements of notice and
20 opportunity to comment upon adoption of a permanent rule would be
21 contrary to the public interest; or

22 (b) That state or federal law or federal rule or a federal deadline
23 for state receipt of federal funds requires immediate adoption of a
24 rule,

25 the agency may dispense with those requirements and adopt, amend, or
26 repeal the rule on an emergency basis. The agency's finding and a
27 concise statement of the reasons for its finding shall be incorporated
28 in the order for adoption of the emergency rule or amendment filed with
29 the office of the code reviser under RCW 34.05.380 and with the rules
30 review committee.

31 (2) An emergency rule adopted under this section takes effect upon
32 filing with the code reviser, unless a later date is specified in the
33 order of adoption, and may not remain in effect for longer than one
34 hundred twenty days after filing. Identical or substantially similar
35 emergency rules may not be adopted in sequence unless conditions have
36 changed or the agency has filed notice of its intent to adopt the rule
37 as a permanent rule, and is actively undertaking the appropriate
38 procedures to adopt the rule as a permanent rule. This section does

1 not relieve any agency from compliance with any law requiring that its
2 permanent rules be approved by designated persons or bodies before they
3 become effective.

4 (3) Within seven days after the rule is adopted, any person may
5 petition the governor requesting the immediate repeal of a rule adopted
6 on an emergency basis by any agency headed by a nonelected official.
7 Within seven days after submission of the petition, the governor shall
8 either deny the petition in writing, stating his or her reasons for the
9 denial, or order the immediate repeal of the rule. In ruling on the
10 petition, the governor shall consider only whether the conditions in
11 subsection (1) of this section were met such that adoption of the rule
12 on an emergency basis was necessary. If the governor orders the repeal
13 of the emergency rule, any agency action based on that rule is void.
14 This subsection shall not be construed to prohibit adoption of any rule
15 as a permanent rule.

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

19 NEW SECTION. Sec. 4. A new section is added to chapter 34.05 RCW
20 to read as follows:

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

28 (a) The rule is needed;

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

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

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

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

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

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

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

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

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

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

18 (2) Upon the adoption of a rule covered by section 4 of this act
19 regulating the same activity or subject matter as another provision of
20 federal, state, or local law, an agency shall do all of the following:

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

24 (b) Coordinate implementation and enforcement of the rule with the
25 other federal, state, and local entities regulating the same activity
26 or subject matter by doing one or more of the following: (i) Deferring
27 to the other entity; (ii) designating a lead agency; or (iii) entering
28 into an agreement with the other entities specifying how the agency and
29 entities will coordinate implementation and enforcement. If the agency
30 is unable to meet this requirement, the agency shall report to the
31 legislature pursuant to (c) of this subsection;

32 (c) Report to the chief clerk of the house of representatives and
33 the secretary of the senate regarding: (i) The existence of any
34 overlap or duplication of other federal, state, or local laws, and any
35 differences from federal law; (ii) legislation that may be necessary to
36 eliminate or mitigate any adverse effects of such overlap, duplication,
37 or difference; and (iii) legislation that may be necessary to

1 facilitate coordination with appropriate governmental entities
2 regulating the same activity or subject matter.

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

9 **Sec. 6.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
10 read as follows:

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

18 (2) If an agency headed by a nonelected official denies a petition
19 to repeal or amend a rule submitted under subsection (1) of this
20 section, the petitioner, within thirty days of the denial, may appeal
21 the denial to the governor. The petitioner may file notice of the
22 appeal with the code reviser for publication in the Washington State
23 Register. Within sixty days after receiving the appeal, the governor
24 shall either reject the appeal in writing, stating his or her reasons
25 for the rejection, or order the agency to initiate rule-making
26 proceedings in accordance with this chapter. In deciding on the
27 appeal, among other factors the governor should consider:

28 (a) Whether the agency complied with sections 4 and 5 of this act;

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

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

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

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

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

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

9 **Sec. 7.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read
10 as follows:

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

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

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

33 (4) The agency head, a member of the agency head, or a presiding
34 officer designated by the agency head shall preside at the rule-making
35 hearing. Rule-making hearings shall be open to the public. The agency
36 shall cause a record to be made of the hearing by stenographic,
37 mechanical, or electronic means. Unless the agency head presides or is
38 present at substantially all the hearings, the presiding official shall

1 prepare a memorandum for consideration by the agency head, summarizing
2 the contents of the presentations made at the rule-making hearing. The
3 summarizing memorandum is a public document and shall be made available
4 to any person in accordance with chapter 42.17 RCW.

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

10 (6) Before the adoption of a final rule, an agency shall prepare a
11 written summary of all comments received regarding the proposed rule,
12 and a substantive response to the comments by category or subject
13 matter, indicating how the final rule reflects agency consideration of
14 the comments, or why it fails to do so. The agency shall provide the
15 written summary and response to any person upon request or from whom
16 the agency received comment.

17 **Sec. 8.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
18 read as follows:

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

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

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.85 RCW
32 to read as follows:

33 The legislature finds that administrative rules adopted by state
34 agencies can have a disproportionate impact on the state's small
35 businesses because of the size of those businesses. This
36 disproportionate impact reduces competition, innovation, employment,
37 and new employment opportunities, and threatens the very existence of

1 some small businesses. The legislature therefore enacts the regulatory
2 fairness act, chapter . . ., Laws of 1994 (this act), with the intent
3 of reducing the disproportionate impact of state administrative rules
4 on small business.

5 **Sec. 10.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to
6 read as follows:

7 Unless the context clearly indicates otherwise, the definitions in
8 this section apply through this chapter.

9 (1) "Small business" means any business entity, including a sole
10 proprietorship, corporation, partnership, or other legal entity, that
11 is owned and operated independently from all other businesses, that has
12 the purpose of making a profit, and that has fifty or fewer employees.

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

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

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

25 **Sec. 11.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
26 each reenacted and amended to read as follows:

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

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

34 (a) ~~Establish differing compliance or reporting requirements or~~
35 ~~timetables for small businesses;~~

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

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

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

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

7 ~~(3))~~ (1) In the adoption of a rule under RCW 34.05.320, an agency
8 shall prepare a small business economic impact statement: (a) If the
9 proposed rule will impose more than minor costs on businesses in an
10 industry; or (b) if requested to do so by a majority vote of the joint
11 administrative rules review committee within thirty days after notice
12 of the proposed rule is published in the state register.

13 An agency shall prepare the small business economic impact
14 statement in accordance with RCW 19.85.040, and file it with the code
15 reviser along with the notice required under RCW 34.05.320. An agency
16 shall file a statement prepared at the request of the joint
17 administrative rules review committee with the code reviser upon its
18 completion before the adoption of the rule. An agency shall provide a
19 copy of the small business economic impact statement to any person
20 requesting it.

21 An agency may request assistance from the business assistance
22 center in the preparation of the small business economic impact
23 statement.

24 (2) A proposed rule will impose more than minor costs on businesses
25 in an industry when the costs imposed will equal or exceed 0.1 percent
26 of the average yearly profit for businesses in that industry. The
27 business assistance center shall develop guidelines to assist agencies
28 in determining whether a proposed rule will impose such costs. The
29 business assistance center may review an agency determination that a
30 proposed rule will not impose such costs, and shall advise the joint
31 administrative rules review committee on disputes involving agency
32 determinations under this section.

33 (3) Based upon the extent of disproportionate impact on small
34 business identified in the statement prepared under RCW 19.85.040, the
35 agency shall, unless reasonable justification exists to do otherwise,
36 reduce the costs imposed by the rule on small businesses. Methods to
37 reduce the costs on small businesses may include, but are not limited
38 to:

- 1 (a) Reducing, modifying, or eliminating substantive regulatory
- 2 requirements;
- 3 (b) Establishing performance rather than design standards;
- 4 (c) Simplifying, reducing, or eliminating recordkeeping and
- 5 reporting requirements;
- 6 (d) Reducing the frequency of inspections;
- 7 (e) Delaying compliance timetables; or
- 8 (f) Reducing or modifying fine schedules for noncompliance.

9 **Sec. 12.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
10 each reenacted and amended to read as follows:

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

- 28 ((+1)) (a) Cost per employee;
- 29 ((+2)) (b) Cost per hour of labor; or
- 30 ((+3)) (c) Cost per one hundred dollars of sales((+)
- 31 (4) Any combination of (1), (2), or (3)).

32 (2) A small business economic impact statement must also include:
33 (a) A statement of the steps taken by the agency to reduce the
34 costs of the rule on small businesses as required by RCW 19.85.030(3),
35 or reasonable justification for not doing so, addressing, at a minimum,
36 each of the options listed in RCW 19.85.030(3);

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

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

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

9 NEW SECTION. Sec. 13. A new section is added to chapter 19.85 RCW
10 to read as follows:

11 Unless so requested by a majority vote of the joint administrative
12 rules review committee under RCW 19.85.030, an agency is not required
13 to comply with this chapter when adopting any rule solely for the
14 purpose of conformity or compliance, or both, with federal law. In
15 lieu of the statement required under RCW 19.85.030, the agency shall
16 file a statement citing, with specificity, the federal law with which
17 the rule is being adopted to conform or comply, and describing the
18 consequences to the state if the rule is not adopted.

19 **Sec. 14.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read
20 as follows:

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

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

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

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

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

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

1 (f) Agency comments or recommendations, if any, regarding statutory
2 language, implementation, enforcement, and fiscal matters pertaining to
3 the rule;

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

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

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

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

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

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

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

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

31 NEW SECTION. Sec. 15. A new section is added to chapter 43.31 RCW
32 to read as follows:

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

36 (1) Develop agency guidelines for the preparation of a small
37 business economic impact statement and compliance with chapter 19.85
38 RCW;

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

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

7 (4) Organize and chair a state rules coordinating committee,
8 consisting of agency rules coordinators and interested members of the
9 public, to develop an education and training program that includes,
10 among other components, a component that addresses voluntary
11 compliance, for agency personnel responsible for rule development and
12 implementation. The business assistance center shall submit
13 recommendations to the department of personnel for an administrative
14 procedures training program that is based on the sharing of interagency
15 resources.

16 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
17 each repealed:

18 (1) RCW 19.85.010 and 1982 c 6 s 1;

19 (2) RCW 19.85.060 and 1989 c 374 s 5; and

20 (3) RCW 19.85.080 and 1992 c 197 s 2.

21 **Sec. 17.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
22 read as follows:

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

35 **Sec. 18.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read
36 as follows:

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

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

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

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

34 **Sec. 19.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
35 as follows:

36 (1) Within seven days of an agency hearing held after notification
37 of the agency by the rules review committee pursuant to RCW 34.05.620
38 or 34.05.630, the affected agency shall notify the committee of its

1 action on a proposed or existing rule to which the committee objected
2 or on a committee finding of the agency's failure to adopt rules. If
3 the rules review committee determines, by a majority vote of its
4 members, that the agency has failed to provide for the required
5 hearings or notice of its action to the committee, the committee may
6 file notice of its objections, together with a concise statement of the
7 reasons therefor, with the code reviser within thirty days of such
8 determination.

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

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

35 (4) If the governor disapproves the recommendation of the rules
36 review committee to suspend the rule, the transmittal of such decision,
37 along with the findings of the rules review committee, shall be treated
38 by the agency as a petition by the rules review committee to repeal the
39 rule under RCW 34.05.330.

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

9 ~~((5))~~ (6) An election by the rules review committee to recommend
10 suspension of a rule, whether or not the suspension is approved by the
11 governor, establishes a presumption in any subsequent judicial review
12 of the rule that the rule is invalid. The burden of demonstrating the
13 rule's validity is then on the adopting agency.

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

19 **Sec. 20.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
20 read as follows:

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

27 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
28 each repealed:

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

31 NEW SECTION. **Sec. 22.** The department of community, trade, and
32 economic development shall develop a standardized format for reporting
33 information that is commonly required from the public by state and
34 local government agencies for permits, licenses, approvals, and
35 services. In the development of the format, the department shall work

1 in conjunction with representatives from state and local government
2 agencies and representatives of the business community.

3 The department shall submit the standardized format together with
4 recommendations for implementation to the legislature by December 31,
5 1994.

6 NEW SECTION. **Sec. 23.** A new section is added to chapter 34.05 RCW
7 to read as follows:

8 (1) This section applies only to the department of revenue, the
9 employment security department, the department of ecology, the
10 department of labor and industries, the department of health, the
11 department of licensing, and the department of fish and wildlife.

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

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

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

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

6 (6) Where a state agency has been delegated authority to enforce
7 federal rules, the agency shall submit a written petition to the
8 appropriate federal agency for authorization to comply with this
9 section for all inspections while retaining the state's federal
10 delegation. In such cases, this section applies only to the extent
11 authorized by the appropriate federal agency.

12 NEW SECTION. **Sec. 24.** A new section is added to chapter 4.84 RCW
13 to read as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout sections 24 through 26 and 27 of this
16 act.

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

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

31 (3) "Judicial review" means a judicial review as defined by chapter
32 34.05 RCW.

33 (4) "Qualified party" means (a) an individual whose net worth did
34 not exceed one million dollars at the time the initial petition for
35 judicial review was filed; (b) a sole owner of an unincorporated
36 business, or a partnership, corporation, association, or organization
37 whose net worth did not exceed five million dollars at the time the
38 initial petition for judicial review was filed, except that an

1 organization described in section 501(c)(3) of the federal internal
2 revenue code of 1954 as exempt from taxation under section 501(a) of
3 the code and a cooperative association as defined in section 15(a) of
4 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
5 party regardless of the net worth of such organization or cooperative
6 association; or (c) a sole owner of an unincorporated business, or a
7 partnership, corporation, association, or organization, having not more
8 than one hundred employees at the time the initial petition for
9 judicial review was filed.

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

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

13 If upon judicial review a rule is declared invalid and the party
14 that challenged the rule is a qualified party, the party shall be
15 awarded fees and other expenses not to exceed fifty thousand dollars.
16 This section does not apply unless all parties to the action
17 challenging the rule are qualified parties. If two or more qualified
18 parties join in an action challenging a rule, the fees and expenses
19 awarded shall not in total exceed fifty thousand dollars.

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

22 Fees and other expenses awarded under section 25 of this act shall
23 be paid by the agency that adopted the invalid rule from operating
24 funds appropriated to the agency within sixty days. Agencies paying
25 fees and other expenses pursuant to section 25 of this act shall report
26 all payments to the office of financial management within five days of
27 paying the fees and other expenses. Fees and other expenses awarded by
28 the court shall be subject to chapter 39.76 RCW and shall be deemed
29 payable on the date the court announces the award.

30 NEW SECTION. **Sec. 27.** A new section is added to chapter 43.88 RCW
31 to read as follows:

32 The office of financial management shall report annually to the
33 legislature on the amount of fees and other expenses awarded during the
34 preceding fiscal year under section 25 of this act. The report shall
35 describe the number, nature, and amount of the awards, the claims

1 involved in the controversy, and other relevant information that may
2 aid the legislature in evaluating the scope and impact of the awards.

3 NEW SECTION. **Sec. 28.** Section 10 of this act shall take effect
4 July 1, 1994.

5 NEW SECTION. **Sec. 29.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected."

9 **E2SHB 2510** - S COMM AMD
10 By Committee on Labor and Commerce

11
12 On page 1, line 2 of the title, after "reform;" strike the
13 remainder of the title and insert "amending RCW 34.05.370, 34.05.350,
14 34.05.330, 34.05.325, 34.05.355, 19.85.020, 34.05.320, 34.05.620,
15 34.05.630, 34.05.640, and 34.05.660; reenacting and amending RCW
16 19.85.030 and 19.85.040; adding a new section to chapter 44.04 RCW;
17 adding new sections to chapter 34.05 RCW; adding new sections to
18 chapter 19.85 RCW; adding a new section to chapter 43.31 RCW; adding
19 new sections to chapter 4.84 RCW; adding a new section to chapter 43.88
20 RCW; creating a new section; repealing RCW 19.85.010, 19.85.060,
21 19.85.080, 34.05.670, and 34.05.680; prescribing penalties; and
22 providing an effective date."

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