

2 SHB 1010 - H AMD **FAILED 2/1/95 032**

3 By Representatives Rust and Mastin

4

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

7

"PART I - RULE-MAKING AUTHORITY

8 NEW SECTION. **Sec. 101.** The legislature finds that the volume and
9 complexity of state agency rules has increased to the point that new
10 rule-making procedures are necessary. Significant rules should undergo
11 a more in-depth analysis and differences from federal law should be
12 justified. An expedited process for the repeal of unnecessary agency
13 rules should be established. Pilot and negotiated rule-making
14 procedures should be clarified. A standardized format for petitions to
15 adopt, amend, or repeal a rule should be developed, as well as a
16 process for the appeal of these agency decisions to the governor. The
17 joint administrative rules review committee should be strengthened.
18 Fees and expenses should be awarded to qualified parties successfully
19 challenging a rule. To accomplish these goals, the legislature intends
20 to modify the rule-making provisions of the administrative procedure
21 act and the requirements of the regulatory fairness act.

22 NEW SECTION. **Sec. 102.** A new section is added to chapter 34.05
23 RCW under the subchapter heading Part III to read as follows:

24 (1) Before adopting a rule described in subsection (4) of this
25 section, an agency shall:

26 (a) Clearly state in detail the general goals and specific
27 objectives of the statute that the rule implements and the specific
28 objectives that the agency seeks to achieve;

29 (b) Determine that the rule is needed to achieve the general goals
30 and specific objectives stated under (a) of this subsection, and
31 analyze alternatives to rule making and the consequences of not
32 adopting the rule;

33 (c) Determine that the probable benefits of the rule are greater
34 than its probable costs, taking into account both the qualitative and

1 quantitative benefits and costs and the specific directives of the
2 statute being implemented;

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

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

11 (f) Coordinate the rule, to the maximum extent practicable, with
12 other federal, state, and local laws applicable to the same
13 circumstances and list, by citation, duplicative, inconsistent, or
14 conflicting laws;

15 (g) Describe the process by which local governments will be
16 notified of the subject of possible rule making and describe the
17 process for coordinating the rule with local ordinances applicable to
18 the same circumstances;

19 (h) Determine that the rule does not impose more stringent
20 performance requirements on private entities than on public entities
21 unless required to do so by federal or state law;

22 (i) Determine if the rule differs from any applicable federal
23 regulation or statute and, if so, determine that the difference is
24 justified by the following:

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

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

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

34 (k) Describe how the agency will implement and enforce the rule and
35 encourage voluntary compliance with the rule; and

36 (l) Describe which resources the agency intends to use to implement
37 the rule.

38 (2) Before adopting a rule, the agency shall place evidence in the
39 rule-making file documenting agency compliance with the requirement of

1 subsection (1) of this section. Agency determinations under subsection
2 (1)(e) and (i) of this section shall each be supported by substantial
3 evidence. Agency compliance with the requirements of subsection (1)(a)
4 through (d), (f), (g), (h), (j), (k), and (l) of this section shall, as
5 a whole, be supported by substantial evidence.

6 (3) Before adopting a rule described in subsection (5) of this
7 section, an agency shall include in the rule-making file a written plan
8 that describes:

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

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

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

24 (5)(a) Subsections (1) through (3) of this section shall apply only
25 to:

26 (i) Significant legislative rules of the departments of ecology,
27 labor and industries, and revenue, and the employment security
28 department, and to significant legislative rules of the department of
29 fish and wildlife implementing chapter 75.20 RCW; and

30 (ii) Legislative rules of any agency, if such rules are designated
31 as significant by the joint administrative rules review committee
32 pursuant to (d) of this subsection.

33 (b) Notwithstanding (a) of this subsection, subsections (1) through
34 (3) of this section shall not apply to:

35 (i) Emergency rules adopted pursuant to RCW 34.05.350;

36 (ii) Rules relating to internal governmental operations;

37 (iii) Rules adopting or incorporating by reference without material
38 change federal statutes or rules, rules of other Washington state
39 agencies, shoreline master programs, or, as referenced by Washington

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

5 (iv) Rules that simply correct typographical errors, make address
6 or name changes, clarify language without changing intent, or conform
7 language in the rule to mandated statutory changes or judicial
8 decisions, as long as the need for conformance is specific; or

9 (v) Rules that set or adjust fees or rates pursuant to legislative
10 standards.

11 (c) For purposes of this subsection:

12 (i) A "procedural rule" is a rule that establishes, alters, or
13 revokes (A) any procedure, practice, or requirement relating to any
14 agency hearings, or (B) any filing or related process requirement for
15 making application to an agency for a license.

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

19 (iii) A "legislative rule" includes a rule other than a procedural
20 or interpretive rule that (A) adopts substantive provisions of law
21 pursuant to delegated legislative authority, the violation of which
22 subjects a violator of such rule to a penalty or sanction, or (B)
23 establishes, alters, or revokes any qualification or standard for the
24 issuance, suspension, or revocation of a license.

25 (iv) A legislative rule is "significant" if it (A) adopts a new
26 policy or regulatory program, (B) establishes a new set of
27 qualifications or standards for the issuance, suspension, or revocation
28 of a license, (C) makes significant amendments to an existing policy or
29 regulatory program or existing qualification or standard for the
30 issuance, suspension, or revocation of a license that likely are to
31 generate controversy, (D) is designated as such by the agency, or (E)
32 is designated as such by the joint administrative rules review
33 committee pursuant to (d) of this subsection.

34 (d) At the time of filing a notice of proposed rule making pursuant
35 to RCW 34.05.320, an agency shall designate whether it considers the
36 rule contemplated to be developed a significant legislative rule and
37 shall so inform the joint administrative rules review committee of that
38 designation by providing to that committee a copy of that notice. The
39 joint administrative rules review committee by a majority vote within

1 thirty days of receipt of the notice may designate the contemplated
2 rule as significant and so inform the agency.

3 (e) An agency may voluntarily adopt a rule other than a significant
4 legislative rule under the factors listed in subsection (1) of this
5 section. Such a decision by the agency shall be included in the filing
6 of the notice of proposed rule making made pursuant to RCW 34.05.320.

7 (6) By January 31, 1996, and by January 31st of each even-numbered
8 year thereafter, the office of financial management, after consulting
9 with state agencies, and business, labor, and environmental
10 organizations, shall report to the governor and the legislature
11 regarding the effects of this section on the regulatory system in this
12 state. The report shall document:

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

16 (b) The costs incurred by state agencies in complying with this
17 section;

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

21 (d) The extent to which this section has resulted in the increased
22 inappropriate use by the agencies of policy statements and guidelines
23 in place of rules;

24 (e) The extent to which this section has adversely affected the
25 capacity of agencies to fulfill their legislatively prescribed mission;

26 (f) The extent to which this section has improved the acceptability
27 of state rules to those regulated; and

28 (g) Any other information considered by the office of financial
29 management to be useful in evaluating the effect of this section.

30 (7) This section expires June 30, 2000.

31 NEW SECTION. **Sec. 103.** A new section is added to chapter 34.05
32 RCW under the subchapter heading Part III to read as follows:

33 (1) Not later than June 30th of each year, each agency shall submit
34 to the code reviser, according to procedures and time lines established
35 by the code reviser, rules that it determines should be repealed by the
36 expedited repeal procedures provided for in this section. An agency
37 shall file a copy of a preproposal notice of intent, as provided in RCW
38 34.05.310(1), that identifies the rule as one that is proposed for

1 expedited repeal.

2 (2) An agency may propose the expedited repeal of rules meeting one
3 or more of the following criteria:

4 (a) The statute on which the rule is based has been repealed and
5 has not been replaced by another statute providing statutory authority
6 for the rule;

7 (b) The statute on which the rule is based has been declared
8 unconstitutional by a court with jurisdiction, there is a final
9 judgment, and no statute has been enacted to replace the
10 unconstitutional statute;

11 (c) The rule is no longer necessary because of changed
12 circumstances; or

13 (d) Other rules of the agency or of another agency govern the same
14 activity as the rule, making the rule redundant.

15 (3) The agency shall also send a copy of the preproposal notice of
16 intent to any person who has requested notification of copies of
17 proposals for the expedited repeal of rules or of agency rule making.
18 The preproposal notice of intent shall include a statement that any
19 person who objects to the repeal of the rule must file a written
20 objection to the repeal within thirty days after the preproposal notice
21 of intent is published. The notice of intent shall also include an
22 explanation of the reasons the agency believes the expedited repeal of
23 the rule is appropriate.

24 (4) The code reviser shall publish all rules proposed for expedited
25 repeal in a separate section of a regular edition of the Washington
26 state register or in a special edition of the Washington state
27 register. The publication shall be not later than July 31st, or in the
28 first register published after that date.

29 (5) Any person may file a written objection to the expedited repeal
30 of a rule. The notice shall be filed with the agency rules coordinator
31 within thirty days after the notice of intent has been published in the
32 Washington state register. The written objection need not state any
33 reason for objecting to the expedited repeal of the rule.

34 (6) If no written objections to the expedited repeal of a rule are
35 filed with the agency within thirty days after the preproposal notice
36 of intent is published, the agency may enter an order repealing the
37 rule without further notice or an opportunity for a public hearing.
38 The order shall be published in the manner required by this chapter for
39 any other order of the agency adopting, amending, or repealing a rule.

1 If a written objection to the expedited repeal of the rule is filed
2 with the agency within thirty days after the notice of intent has been
3 published, the preproposal notice of intent published pursuant to this
4 section shall be considered a preproposal notice of intent for the
5 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
6 proceedings in accordance with the provisions of this chapter.

7 **Sec. 104.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to
8 read as follows:

9 (1) Unless an agency makes a determination pursuant to subsection
10 (3) of this section, to meet the intent of providing greater public
11 access to administrative rule making and to promote consensus among
12 interested parties, ((agencies)) it shall solicit comments from the
13 public on a subject of possible rule making before publication of a
14 notice of proposed rule adoption under RCW 34.05.320. The agency shall
15 prepare a statement of intent that:

- 16 (a) States the specific statutory authority for the new rule;
- 17 (b) Identifies the reasons the new rule is needed or the issue the
18 agency is exploring to determine if a new rule is needed;
- 19 (c) Identifies the goals of the new rule;
- 20 (d) Describes the process by which the rule will be developed,
21 including, but not limited to, negotiated rule making((~~7~~)) or pilot
22 rule making(~~(, or agency study)~~); and
- 23 (e) Specifies the process by which interested parties can
24 effectively participate in the formulation of the new rule.

25 The statement of intent shall be filed with the code reviser for
26 publication in the state register and shall be ((~~sent~~)) provided to any
27 party that has requested receipt of the agency's statements of intent.

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

- 32 (a) Negotiated rule making which ((~~includes:~~
- 33 ~~(i) Identifying individuals and organizations that have a~~
34 ~~recognized interest in or will be significantly affected by the~~
35 ~~adoption of the proposed rule;~~
- 36 ~~(ii) Soliciting participation by persons who are capable, willing,~~
37 ~~and appropriately authorized to enter into such negotiations;~~
- 38 ~~(iii) Assuring that participants fully recognize the consequences~~

1 of not participating in the process, are committed to negotiate in good
2 faith, and recognize the alternatives available to other parties;

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

6 (v) ~~Agreeing on a reasonable time period during which the agency~~
7 ~~will be bound to the rule resulting from the negotiations without~~
8 ~~substantive amendment; and~~

9 (vi) ~~Providing a mechanism by which one or more parties may~~
10 ~~withdraw from the process or the negotiations may be terminated if it~~
11 ~~appears that consensus cannot be reached on a draft rule that~~
12 ~~accommodates the needs of the agency, interested parties, and the~~
13 ~~general public and conforms to the legislative intent of the statute~~
14 ~~that the rule is intended to implement)) means a process by which
15 representatives of an agency and of the interests who are affected by
16 a subject of rule making seek to reach consensus on the terms of the
17 proposed rule and on the process by which it is negotiated; and~~

18 (b) Pilot rule making which includes testing the ((draft of a
19 proposed rule)) feasibility of complying with or administering new
20 draft rules or draft revisions to adopted rules through the use of
21 volunteer pilot ((study)) groups in various areas and circumstances, as
22 provided in RCW 34.05.313.

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

27 (b) ~~An agency must)) If the agency determines that an opportunity
28 for interested parties to participate in the rule-making process before
29 publication of the proposed rule is not necessary to achieve the
30 objectives of subsection (1) of this section, not later than the date
31 it publishes the proposed rule for comment pursuant to RCW 34.05.320 it
32 shall include ((a written justification)) in the rule-making file ((if
33 an opportunity for interested parties to participate in the rule-making
34 process prior to publication of the proposed rule has not been
35 provided)) a written statement explaining the reasons for not providing
36 such an opportunity and shall mail the statement to any person who has
37 requested copies of the agency's statements of intent.~~

38 (4) The provisions of this section do not apply to:

39 (a) The adoption of an emergency rule pursuant to RCW 34.05.350;

1 (b) The adoption of a rule relating to internal governmental
2 operations;

3 (c) The amendment of a rule that had adopted or incorporated by
4 reference without material change federal statutes or rules, rules of
5 other Washington state agencies, laws or rules of local governments, or
6 national consensus codes that generally establish industry standards,
7 and that simply revise the version of such adopted or incorporated
8 material; or

9 (d) The adoption of a rule that simply corrects typographical
10 errors, makes address or name changes, clarifies language without
11 changing intent, or conforms language in the rule to statutory changes
12 or judicial decisions.

13 **Sec. 105.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to
14 read as follows:

15 ~~((If,))~~ (1) During the development of a rule or after its adoption,
16 an agency ~~((determines that implementation may produce unreasonable~~
17 economic, procedural, or technical burdens, agencies are encouraged
18 to)) may develop methods for measuring or testing the feasibility of
19 ~~((compliance))~~ complying with or administering the rule~~((, including~~
20 ~~the use of voluntary pilot study groups))~~ and for identifying simple,
21 efficient, and economical alternatives for achieving the goal of the
22 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot
23 project shall include public notice, participation by ~~((persons who~~
24 have a recognized interest in or are significantly affected by the
25 adoption of the proposed rule)) volunteers who are or will be subject
26 to the rule, a high level of involvement from agency management,
27 ~~((consensus on issues and procedures among participants in the pilot~~
28 group, assurance of fairness, and)) reasonable completion dates, and a
29 process by which one or more parties may withdraw from the process or
30 the process may be terminated ~~((if consensus cannot be reached on the~~
31 rule)). Volunteers who agree to test a rule and attempt to meet the
32 requirements of the draft rule, to report periodically to the proposing
33 agency on the extent of their ability to meet the requirements of the
34 draft rule, and to make recommendations for improving the draft rule
35 shall not be obligated to comply fully with the rule being tested nor
36 be subject to any enforcement action or other sanction for failing to
37 comply with the requirements of the draft rule.

38 (2) An agency conducting a pilot rule project authorized under

1 subsection (1) of this section may waive one or more provisions of
2 agency rules otherwise applicable to participants in such a pilot
3 project if the agency first determines that such a waiver is in the
4 public interest and necessary to conduct the project. Such a waiver
5 may be only for a stated period of time, not to exceed the duration of
6 the project.

7 (3) The findings of the pilot project should be widely shared and,
8 where appropriate, adopted as amendments to the rule.

9 (4) If an agency conducts a pilot rule project in lieu of meeting
10 the requirements of the regulatory fairness act, chapter 19.85 RCW, the
11 agency shall ensure the following conditions are met:

12 (a) If over ten small businesses are affected, there shall be at
13 least ten small businesses in the test group and at least one-half of
14 the volunteers participating in the pilot test group shall be small
15 businesses.

16 (b)(i) If there are at least one hundred businesses affected, the
17 participation by small businesses in the test group shall be as
18 follows:

19 (A) Not less than twenty percent of the small businesses must
20 employ twenty-six to fifty employees;

21 (B) Not less than twenty percent of the small businesses must
22 employ eleven to twenty-six employees, and

23 (C) Not less than twenty percent of the small businesses must
24 employ zero to ten employees.

25 (ii) If there do not exist a sufficient number of small businesses
26 in each size category set forth in (b)(i) of this subsection willing to
27 participate in the pilot project to meet the minimum requirements of
28 that subsection, then the agency must comply with this section to the
29 maximum extent practicable.

30 (c) The agency may not terminate the pilot project before the
31 project has been completed.

32 (d) Before filing the notice of proposed rule making pursuant to
33 RCW 34.05.320, the agency must prepare a report of the pilot rule
34 project that includes:

35 (i) A description of the difficulties small businesses had in
36 complying with the pilot rule;

37 (ii) A list of the recommended revisions to the rule to make
38 compliance with the rule easier or to reduce the cost of compliance
39 with the rule by the small businesses participating in the pilot rule

1 project;

2 (iii) A written statement explaining the options it considered to
3 resolve each of the difficulties described and a statement explaining
4 its reasons for not including a recommendation by the pilot test group
5 to revise the rule; and

6 (iv) If the agency was unable to meet the requirements set forth in
7 (b)(i) of this subsection, a written explanation of why it was unable
8 to do so and the steps the agency took to include small businesses in
9 the pilot project.

10 **Sec. 106.** RCW 34.05.325 and 1994 c 249 s 7 are each amended to
11 read as follows:

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

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

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

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

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

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

11 (6) ~~((Before the adoption of a final rule))~~ (a) Except as otherwise
12 provided in (c) of this subsection, at the time it files an adopted
13 rule with the code reviser, or within thirty days thereafter, an agency
14 shall prepare a ~~((written summary of))~~ concise explanatory statement of
15 the rule:

16 (i) Identifying the agency's reasons for adopting the rule;

17 (ii) Describing differences between the text of the proposed rule
18 as published in the register and the text of the rule as adopted, other
19 than editing changes, stating the reasons for differences; and

20 (iii) Summarizing all comments received regarding the proposed
21 rule, and ~~((a substantive response))~~ responding to the comments by
22 category or subject matter, indicating how the final rule reflects
23 agency consideration of the comments, or why it fails to do so.

24 (b) The agency shall provide the ~~((written summary and response))~~
25 concise explanatory statement to any person upon request or from whom
26 the agency received comment.

27 (c) This subsection does not apply to rules described in RCW
28 34.05.310(4).

29 **Sec. 107.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
30 read as follows:

31 (1) Any person may petition an agency requesting the adoption,
32 amendment, or repeal of any rule. ~~((Each agency may))~~ The office of
33 financial management shall prescribe by rule the ~~((form))~~ format for
34 such petitions and the procedure for their submission, consideration,
35 and disposition and provide a standard form that may be used to
36 petition any agency. Within sixty days after submission of a petition,
37 the agency shall ~~((+1))~~ either (a) deny the petition in writing,
38 stating (i) its reasons for the denial, specifically addressing the

1 concerns raised by the petitioner, and, where appropriate, (ii) the
2 alternative means by which it will address the concerns raised by the
3 petitioner, or ((+2)) (b) initiate rule-making proceedings in
4 accordance with this chapter.

5 (2) If an agency denies a petition to repeal or amend a rule
6 submitted under subsection (1) of this section, the petitioner, within
7 thirty days of the denial, may appeal the denial to the governor. The
8 governor shall immediately file notice of the appeal with the code
9 reviser for publication in the Washington state register. Within
10 forty-five days after receiving the appeal, the governor either (a)
11 shall deny the petition in writing, stating (i) his or her reasons for
12 the denial, specifically addressing the concerns raised by the
13 petitioner, and, (ii) where appropriate, the alternative means by which
14 he or she will address the concerns raised by the petitioner; (b) for
15 agencies listed in RCW 43.17.010, shall direct the agency to initiate
16 rule-making proceedings in accordance with this chapter; (c) for
17 agencies not listed in RCW 43.17.010, shall recommend that the agency
18 initiate rule-making proceedings in accordance with this chapter; or
19 (d) to the extent the agency itself would have authority, may rescind
20 all or a severable portion of a rule of an agency named in RCW
21 43.17.010. In exercising his or her authority, the governor shall act
22 by an executive order that is subject to the provisions of this chapter
23 applicable to the adoption and effectiveness of a rule. The governor's
24 response to the appeal shall be published in the Washington state
25 register and copies shall be submitted to the chief clerk of the house
26 of representatives and the secretary of the senate.

27 (3) In petitioning for repeal or amendment of a rule under this
28 section, a person is encouraged to address, among other concerns:

29 (a) Whether the rule is authorized;

30 (b) Whether the rule is needed;

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

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

35 (e) Whether the rule applies differently to public and private
36 entities;

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

38 (g) Whether the costs imposed by the rule are unreasonable; and

39 (h) Whether the rule is clearly and simply stated.

1 (4) The business assistance center and the office of financial
2 management shall coordinate efforts among agencies to inform the public
3 about the existence of this rules review process.

4 (5) The office of financial management shall initiate the rule
5 making required by subsection (1) of this section by September 1, 1995.

6 **Sec. 108.** RCW 34.05.375 and 1988 c 288 s 314 are each amended to
7 read as follows:

8 (1) No rule proposed after July 1, 1989, is valid unless it is
9 adopted in substantial compliance with RCW 34.05.310 through 34.05.395.
10 Inadvertent failure to mail notice of a proposed rule adoption to any
11 person as required by RCW 34.05.320(3) does not invalidate a rule.
12 ((No action based upon this section may be maintained to contest the
13 validity of any rule unless it is commenced within two years after the
14 effective date of the rule.))

15 (2)(a) Except as otherwise provided in (b) of this subsection, an
16 action based upon this section to contest the validity of a rule shall
17 be commenced within two years after the effective date of the rule.

18 (b) An action based upon a claim that an agency failed to comply
19 with section 102 of this act shall be commenced within ninety days
20 after the effective date of the rule being contested. Nothing in this
21 subsection limits the authority of a court to review a rule under RCW
22 34.05.570(2).

23 NEW SECTION. **Sec. 109.** A new section is added to chapter 19.85
24 RCW to read as follows:

25 (1) Unless an agency receives a written objection to the expedited
26 repeal of a rule, this chapter does not apply to a rule proposed for
27 expedited repeal pursuant to section 103 of this act. If an agency
28 receives a written objection to expedited repeal of the rule, this
29 chapter applies to the rule-making proceeding.

30 (2) This chapter does not apply to the adoption of a rule described
31 in RCW 34.05.310(4).

32 (3) An agency is not required to prepare a separate statement under
33 this chapter if it prepared an analysis under section 102(1) of this
34 act that makes the findings required and includes the mitigation
35 required by this chapter and designates that part of the analysis that
36 meets the requirements of this chapter.

1 **Sec. 110.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to
2 read as follows:

3 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will
4 impose more than minor costs on more than twenty percent of all
5 industries, or more than ten percent of any one industry, the adopting
6 agency:

7 (a) Shall reduce the economic impact of the rule on small business
8 by doing one or more of the following when it is legal and feasible in
9 meeting the stated objective of the statutes which are the basis of the
10 proposed rule:

11 (i) Establish differing compliance or reporting requirements or
12 timetables for small businesses;

13 (ii) Clarify, consolidate, or simplify the compliance and reporting
14 requirements under the rule for small businesses;

15 (iii) Establish performance rather than design standards;

16 (iv) Exempt small businesses from any or all requirements of the
17 rule;

18 (v) Reduce or modify fine schedules for noncompliance; and

19 (vi) Other mitigation techniques;

20 (b) Before filing notice of a proposed rule, shall either:

21 (i) Prepare a small business economic impact statement in
22 accordance with RCW 19.85.040 and file notice of how the person can
23 obtain the statement with the code reviser as part of the notice
24 required under RCW 34.05.320; or

25 (ii) Complete the pilot rule process as defined by RCW 34.05.313
26 before filing the notice of a proposed rule.

27 (2) If requested to do so by a majority vote of the joint
28 administrative rules review committee within thirty days after notice
29 of the proposed rule is published in the state register, an agency
30 shall prepare a small business economic impact statement on the
31 proposed rule before adoption of the rule. Upon completion, an agency
32 shall provide a copy of the small business economic impact statement to
33 any person requesting it.

34 (3) An agency may request assistance from the business assistance
35 center in the preparation of the small business economic impact
36 statement.

37 (4) The business assistance center shall develop guidelines to
38 assist agencies in determining whether a proposed rule will impose more
39 than minor costs on businesses in an industry and therefore require

1 preparation of a small business economic impact statement. The
2 business assistance center may review an agency determination that a
3 proposed rule will not impose such costs, and shall advise the joint
4 administrative rules review committee on disputes involving agency
5 determinations under this section.

6 **Sec. 111.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

34 (h) The written summary and response required by RCW 34.05.325(6);
35 ((and))

36 (i) Evidence that the rule complies with section 102 (1) and (2) of
37 this act; and

38 (j) Any other material placed in the file by the agency.

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

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

13 **Sec. 112.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to
14 read as follows:

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

17 (a) The burden of demonstrating the invalidity of agency action is
18 on the party asserting invalidity;

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

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

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

27 (2) Review of rules. (a) A rule may be reviewed by petition for
28 declaratory judgment filed pursuant to this subsection or in the
29 context of any other review proceeding under this section. In an
30 action challenging the validity of a rule, the agency shall be made a
31 party to the proceeding.

32 (b) The validity of any rule may be determined upon petition for a
33 declaratory judgment addressed to the superior court of Thurston
34 county, when it appears that the rule, or its threatened application,
35 interferes with or impairs or immediately threatens to interfere with
36 or impair the legal rights or privileges of the petitioner. The
37 declaratory judgment order may be entered whether or not the petitioner
38 has first requested the agency to pass upon the validity of the rule in

1 question.

2 (c) In a proceeding involving review of a rule, the court shall
3 declare the rule invalid only if it finds that: ~~((it))~~ The rule
4 violates constitutional provisions~~((7))~~; the rule exceeds the statutory
5 authority of the agency~~((7))~~; the rule was adopted without compliance
6 with statutory rule-making procedures~~((7 or could not conceivably have~~
7 ~~been the product of a rational decision-maker))~~; the rule is not
8 supported by substantial evidence as required under section 102 (1) or
9 (2) of this act; or the rule is arbitrary and capricious.

10 (3) Review of agency orders in adjudicative proceedings. The court
11 shall grant relief from an agency order in an adjudicative proceeding
12 only if it determines that:

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

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

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

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

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

24 (f) The agency has not decided all issues requiring resolution by
25 the agency;

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

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

34 (i) The order is arbitrary or capricious.

35 (4) Review of other agency action.

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

38 (b) A person whose rights are violated by an agency's failure to
39 perform a duty that is required by law to be performed may file a

1 petition for review pursuant to RCW 34.05.514, seeking an order
2 pursuant to this subsection requiring performance. Within twenty days
3 after service of the petition for review, the agency shall file and
4 serve an answer to the petition, made in the same manner as an answer
5 to a complaint in a civil action. The court may hear evidence,
6 pursuant to RCW 34.05.562, on material issues of fact raised by the
7 petition and answer.

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

12 (i) Unconstitutional;

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

15 (iii) Arbitrary or capricious; or

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

18 NEW SECTION. **Sec. 113.** RCW 34.05.355 and 1994 c 249 s 8 & 1988 c
19 288 s 310 are each repealed.

20 **PART II - TECHNICAL ASSISTANCE**

21 NEW SECTION. **Sec. 201.** The legislature finds that, due to the
22 volume and complexity of laws and rules it is appropriate for
23 regulatory agencies to adopt programs and policies encouraging
24 voluntary compliance by those affected by specific rules. The
25 legislature recognizes that a cooperative partnership between agencies
26 and regulated parties that emphasizes education and assistance before
27 the imposition of penalties will achieve greater compliance with laws
28 and rules and that most individuals and businesses who are subject to
29 regulation will attempt to comply with the law, particularly if they
30 are given sufficient information. In this context, enforcement should
31 assure that the majority of a regulated community that complies with
32 the law are not placed at a competitive disadvantage and that a
33 continuing failure to comply that is within the control of a party who
34 has received technical assistance is considered by an agency when it
35 determines the amount of any civil penalty that is issued.

1 NEW SECTION. **Sec. 202.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Civil penalty" means a monetary penalty administratively
5 issued by a regulatory agency for noncompliance with state or federal
6 law or rules. The term does not include any criminal penalty, damage
7 assessments, wages, premiums, or taxes owed, or interest or late fees
8 on any existing obligation.

9 (2) "Regulatory agency" means an agency as defined in RCW 34.05.010
10 that has the authority to issue civil penalties. The term does not
11 include the state patrol or any institution of higher education as
12 defined in RCW 28B.10.016.

13 (3) "Technical assistance" includes:

14 (a) Information on the laws, rules, and compliance methods and
15 technologies applicable to the regulatory agency's programs;

16 (b) Information on methods to avoid compliance problems;

17 (c) Assistance in applying for permits; and

18 (d) Information on the mission, goals, and objectives of the
19 program.

20 NEW SECTION. **Sec. 203.** All regulatory agencies shall develop
21 programs to encourage voluntary compliance by providing technical
22 assistance consistent with statutory requirements and the limits of the
23 agency's budget. The programs shall include but are not limited to
24 technical assistance visits.

25 NEW SECTION. **Sec. 204.** (1) For the purposes of this chapter, a
26 technical assistance visit is a visit by a regulatory agency to a
27 facility, business, or other location that:

28 (a) Has been requested or is voluntarily accepted; and

29 (b) Is declared by the regulatory agency at the beginning of the
30 visit to be a technical assistance visit.

31 (2) A technical assistance visit also includes a consultative visit
32 pursuant to RCW 49.17.250.

33 (3) During a technical assistance visit, or within a reasonable
34 time thereafter, a regulatory agency shall inform the owner or operator
35 of the facility of any violations of law or agency rules identified by
36 the agency and provide technical assistance concerning compliance.

1 NEW SECTION. **Sec. 205.** The owner and operator shall be given a
2 reasonable period of time to correct violations identified during a
3 technical assistance visit before any civil penalty provided for by law
4 is imposed for those violations. A regulatory agency may revisit a
5 facility, business, or other location after a technical assistance
6 visit and a reasonable period of time has passed to correct violations
7 identified by the agency in writing and issue civil penalties as
8 provided for by law for any uncorrected violations.

9 NEW SECTION. **Sec. 206.** A regulatory agency that observes a
10 violation during a technical assistance visit may issue a civil penalty
11 as provided for by law if: (1) The individual or business has
12 previously been subject to an enforcement action for the same or
13 similar type of violation of the same statute or rule or has been given
14 previous notice of the same or similar type of violation of the same
15 statute or rule; or (2) the issue involves sales taxes due to the state
16 and the individual or business is not remitting previously collected
17 sales taxes to the state; or (3) the violation has a probability of
18 placing a person in danger of death or bodily harm, has a probability
19 of causing more than minor environmental harm, or has a probability of
20 causing physical damage to the property of another in an amount
21 exceeding one thousand dollars.

22 NEW SECTION. **Sec. 207.** (1) If in the course of any site
23 inspection or visit that is not a technical assistance visit, the
24 department of ecology becomes aware of conditions that are not in
25 compliance with applicable laws and rules enforced by the department
26 and are not subject to civil penalties as provided for in section 208
27 of this act, the department may issue a notice of correction to the
28 responsible party that shall include:

29 (a) A description of the condition that is not in compliance and a
30 specific citation to the applicable law or rule;

31 (b) A statement of what is required to achieve compliance;

32 (c) The date by which the department requires compliance to be
33 achieved;

34 (d) Notice of the means to contact any technical assistance
35 services provided by the department or others; and

36 (e) Notice of when, where, and to whom a request to extend the time
37 to achieve compliance for good cause may be filed with the department.

1 (2) A notice of correction is not a formal enforcement action, is
2 not subject to appeal, and is a public record.

3 (3) If the department issues a notice of correction, it shall not
4 issue a civil penalty for the violations identified in the notice of
5 correction unless the responsible party fails to comply with the
6 notice.

7 NEW SECTION. **Sec. 208.** The department of ecology may issue a
8 civil penalty provided for by law without first issuing a notice of
9 correction if: (1) The person has previously been subject to an
10 enforcement action for the same or similar type of violation of the
11 same statute or rule or has been given previous notice of the same or
12 similar type of violation of the same statute or rule; or (2)
13 compliance is not achieved by the date established by the department in
14 a previously issued notice of correction, if the department has
15 responded to any request for review of such date by reaffirming the
16 original date or establishing a new date; or (3) the violation has a
17 probability of placing a person in danger of death or bodily harm, has
18 a probability of causing more than minor environmental harm, or has a
19 probability of causing physical damage to the property of another in an
20 amount exceeding one thousand dollars.

21 NEW SECTION. **Sec. 209.** The provisions of sections 207 and 208 of
22 this act affecting civil penalties issued by the department of ecology
23 shall not apply to civil penalties for negligent discharge of oil as
24 authorized under RCW 90.56.330 or to civil penalties as authorized
25 under RCW 90.03.600 for unlawful use of water in violation of RCW
26 90.03.250 or 90.44.050.

27 NEW SECTION. **Sec. 210.** (1) Following a consultative visit
28 pursuant to RCW 49.17.250, the department of labor and industries shall
29 issue a report to the employer that the employer shall make available
30 to its employees. The report shall contain:

31 (a) A description of the condition that is not in compliance and a
32 specific citation to the applicable law or rule;

33 (b) A statement of what is required to achieve compliance;

34 (c) The date by which the department requires compliance to be
35 achieved;

36 (d) Notice of means to contact technical assistance services

1 provided by the department; and

2 (e) Notice of when, where, and to whom a request to extend the time
3 to achieve compliance for good cause may be filed with the department.

4 (2) Following a compliance inspection pursuant to RCW 49.17.120,
5 the department of labor and industries shall issue a citation for
6 violations of industrial safety and health standards. The citation
7 shall not assess a penalty if the violations:

8 (a) Are determined not to be of a serious nature;

9 (b) Have not been previously cited;

10 (c) Are not willful; and

11 (d) Do not have a mandatory penalty under chapter 49.17 RCW.

12 NEW SECTION. **Sec. 211.** The date for compliance established by the
13 department of ecology or the department of labor and industries
14 pursuant to section 207 or 210 of this act respectively shall provide
15 for a reasonable time to achieve compliance. Any person receiving a
16 notice of correction pursuant to section 207 of this act or a report or
17 citation pursuant to section 210 of this act may request an extension
18 of time to achieve compliance for good cause from the issuing
19 department. Requests shall be submitted to the issuing department and
20 responded to by the issuing department in writing in accordance with
21 procedures specified by the issuing department in the notice, report,
22 or citation.

23 NEW SECTION. **Sec. 212.** The departments of revenue and labor and
24 industries and the employment security department shall undertake an
25 educational program directed at those who have the most difficulty in
26 determining their tax or premium liability. The departments may rely
27 on information from internal data, trade associations, and businesses
28 to determine which entities should be selected. The educational
29 programs may include, but not be limited to, targeted informational
30 fact sheets, self-audits, or workshops, and may be presented
31 individually by the agency or in conjunction with other agencies.

32 NEW SECTION. **Sec. 213.** The department of revenue, the department
33 of labor and industries in respect to its duties in Title 51 RCW, and
34 the employment security department shall develop and administer a pilot
35 voluntary audit program. Voluntary audits can be requested by
36 businesses from any of these agencies according to guidelines

1 established by each agency. No penalty assessments may be made against
2 participants in such a program except when the agency determines that
3 either a good faith effort has not been made by the taxpayer or premium
4 payer to comply with the law or that the taxpayer has failed to remit
5 previously collected sales taxes to the state. The persons conducting
6 the voluntary audit shall provide the business undergoing the voluntary
7 audit an audit report that describes errors or omissions found and
8 future reporting instructions. This program does not relieve a
9 business from past or future tax or premium obligations.

10 NEW SECTION. **Sec. 214.** The departments of revenue and labor and
11 industries and the employment security department shall each review the
12 penalties it issues related to taxes or premiums to determine if they
13 are consistent and provide for waivers in appropriate circumstances.
14 Each department shall report the results of its review to the
15 legislature no later than December 1, 1995.

16 NEW SECTION. **Sec. 215.** Nothing in this chapter obligates a
17 regulatory agency to conduct a technical assistance visit. The state
18 and officers or employees of the state shall not be liable for damages
19 to a person to the extent that liability is asserted to arise from
20 providing technical assistance, or if liability is asserted to arise
21 from the failure of the state or officers or employees of the state to
22 provide technical assistance. This chapter does not limit the
23 authority of any regulatory agency to take any enforcement action,
24 other than a civil penalty, authorized by law. This chapter shall not
25 limit a regulatory agency's authority to issue a civil penalty as
26 authorized by law based upon a person's failure to comply with specific
27 terms and conditions of any permit or license issued by the agency to
28 that person.

29 NEW SECTION. **Sec. 216.** Agency rules, guidelines, and procedures
30 necessary to implement this act shall be established and implemented
31 expeditiously and not later than July 1, 1996.

32 NEW SECTION. **Sec. 217.** If a regulatory agency determines any part
33 of this chapter to be in conflict with federal law or program
34 requirements, in conflict with federal requirements that are a
35 prescribed condition to the allocation of federal funds to the state,

1 or in conflict with the requirements for eligibility of employers in
2 this state for federal unemployment tax credits, the conflicting part
3 of this chapter shall be inoperative solely to the extent of the
4 conflict. Any rules under this chapter shall meet federal requirements
5 that are a necessary condition to the receipt of federal funds by the
6 state or the granting of federal unemployment tax credits to employers
7 in this state.

8 NEW SECTION. **Sec. 218.** If notified by responsible federal
9 officials of any conflict of this chapter with federal law or program
10 requirements or with federal requirements that are a prescribed
11 condition to the allocation of federal funds to the state, the
12 regulatory agency notified of the conflict shall actively seek to
13 resolve the conflict. If the agency determines that the conflict
14 cannot be resolved without loss of benefits or authority to the state,
15 the agency shall notify the governor, the president of the senate, and
16 the speaker of the house of representatives in writing within thirty
17 days of making that determination.

18 NEW SECTION. **Sec. 219.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 220.** (1) By January 31, 1996, and by January
23 31st of each even-numbered year thereafter, the office of financial
24 management, after consulting with state regulatory agencies, and
25 business, labor, and environmental organizations, shall report to the
26 governor and the legislature regarding the effects of this chapter on
27 the regulatory system in this state. The report shall document:

28 (a) Technical assistance, including but not limited to technical
29 assistance visits, provided by state regulatory agencies consistent
30 with this chapter;

31 (b) Any rules adopted, guidelines developed, or training conducted
32 to implement this chapter;

33 (c) Any changes in the appropriation, allocation, or expenditure of
34 regulatory agency resources to implement this chapter;

35 (d) Any legal action against state regulatory agencies for any
36 alleged failure to comply with this chapter, the costs to the state of

1 the action, and the result;

2 (e) The extent to which this chapter has resulted in either an
3 increase or decrease in regulatory agency use of civil penalties;

4 (f) The extent to which this chapter has contributed to any change
5 in voluntary compliance with state statutes or rules;

6 (g) The extent to which this chapter has improved the acceptability
7 or effectiveness of state regulatory procedures; and

8 (h) Any other information considered by the office of financial
9 management to be useful in evaluating the effect of this chapter.

10 (2) This section shall expire June 30, 2000.

11 **Sec. 221.** RCW 18.104.155 and 1993 c 387 s 21 are each amended to
12 read as follows:

13 (1) Except as provided in sections 207 through 209 of this act, the
14 department of ecology may assess a civil penalty for a violation of
15 this chapter or rules or orders of the department adopted or issued
16 pursuant to it.

17 (2) There shall be three categories of violations: Minor, serious,
18 and major.

19 (a) A minor violation is a violation that does not seriously
20 threaten public health, safety, and the environment. Minor violations
21 include, but are not limited to:

22 (i) Failure to submit completed start cards and well reports within
23 the required time;

24 (ii) Failure to submit variance requests before construction;

25 (iii) Failure to submit well construction fees;

26 (iv) Failure to place a well identification tag on a new well; and

27 (v) Minor or reparable construction problems.

28 (b) A serious violation is a violation that poses a critical or
29 serious threat to public health, safety, and the environment. Serious
30 violations include, but are not limited to:

31 (i) Improper well construction;

32 (ii) Intentional and improper location or siting of a well;

33 (iii) Construction of a well without a required permit;

34 (iv) Violation of decommissioning requirements;

35 (v) Repeated minor violations; or

36 (vi) Construction of a well by a person whose license has expired
37 or has been suspended for not more than ninety days.

38 (c) A major violation is the construction of a well by a person:

1 (i) Without a license; or
2 (ii) After the person's license has been suspended for more than
3 ninety days or revoked.

4 (3)(a) The penalty for a minor violation shall be not less than one
5 hundred dollars and not more than five hundred dollars. Before the
6 imposition of a penalty for a minor violation, the department may issue
7 an order of noncompliance to provide an opportunity for mitigation or
8 compliance.

9 (b) The penalty for a serious violation shall be not less than five
10 hundred dollars and not more than five thousand dollars.

11 (c) The penalty for a major violation shall be not less than five
12 thousand dollars and not more than ten thousand dollars.

13 (4) In determining the appropriate penalty under subsection (3) of
14 this section the department shall consider whether the person:

15 (a) Has demonstrated a general disregard for public health and
16 safety through the number and magnitude of the violations;

17 (b) Has demonstrated a disregard for the well construction laws or
18 rules in repeated or continuous violations; or

19 (c) Knew or reasonably should have known of circumstances that
20 resulted in the violation.

21 (5) Penalties provided for in this section shall be imposed
22 pursuant to RCW 43.21B.300. The department shall provide thirty days
23 written notice of a violation as provided in RCW 43.21B.300(3).

24 (6) For informational purposes, a copy of the notice of violation,
25 resulting from the improper construction of a well, that is sent to a
26 water well contractor or water well construction operator, shall also
27 be sent by the department to the well owner.

28 (7) Penalties collected by the department pursuant to this section
29 shall be deposited in the reclamation account established by chapter
30 89.16 RCW. Subject to legislative appropriation, the penalties may be
31 spent only for purposes related to the restoration and enhancement of
32 ground water resources in the state.

33 **Sec. 222.** RCW 49.17.180 and 1991 c 108 s 1 are each amended to
34 read as follows:

35 (1) Except as provided in section 210 of this act, any employer who
36 willfully or repeatedly violates the requirements of RCW 49.17.060, of
37 any safety or health standard promulgated under the authority of this
38 chapter, of any existing rule or regulation governing the conditions of

1 employment promulgated by the department, or of any order issued
2 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
3 civil penalty not to exceed seventy thousand dollars for each
4 violation. A minimum penalty of five thousand dollars shall be
5 assessed for a willful violation.

6 (2) Any employer who has received a citation for a serious
7 violation of the requirements of RCW 49.17.060, of any safety or health
8 standard promulgated under the authority of this chapter, of any
9 existing rule or regulation governing the conditions of employment
10 promulgated by the department, or of any order issued granting a
11 variance under RCW 49.17.080 or 49.17.090 as determined in accordance
12 with subsection (6) of this section, shall be assessed a civil penalty
13 not to exceed seven thousand dollars for each such violation.

14 (3) Any employer who has received a citation for a violation of the
15 requirements of RCW 49.17.060, of any safety or health standard
16 promulgated under this chapter, of any existing rule or regulation
17 governing the conditions of employment promulgated by the department,
18 or of any order issued granting a variance under RCW 49.17.080 or
19 49.17.090, where such violation is specifically determined not to be of
20 a serious nature as provided in subsection (6) of this section, may be
21 assessed a civil penalty not to exceed seven thousand dollars for each
22 such violation, unless such violation is determined to be de minimis.

23 (4) Any employer who fails to correct a violation for which a
24 citation has been issued under RCW 49.17.120 or 49.17.130 within the
25 period permitted for its correction, which period shall not begin to
26 run until the date of the final order of the board of industrial
27 insurance appeals in the case of any review proceedings under this
28 chapter initiated by the employer in good faith and not solely for
29 delay or avoidance of penalties, may be assessed a civil penalty of not
30 more than seven thousand dollars for each day during which such failure
31 or violation continues.

32 (5) Any employer who violates any of the posting requirements of
33 this chapter, or any of the posting requirements of rules promulgated
34 by the department pursuant to this chapter related to employee or
35 employee representative's rights to notice, including but not limited
36 to those employee rights to notice set forth in RCW 49.17.080,
37 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
38 be assessed a penalty not to exceed seven thousand dollars for each
39 such violation. Any employer who violates any of the posting

1 requirements for the posting of informational, educational, or training
2 materials under the authority of RCW 49.17.050(7), may be assessed a
3 penalty not to exceed seven thousand dollars for each such violation.

4 (6) For the purposes of this section, a serious violation shall be
5 deemed to exist in a work place if there is a substantial probability
6 that death or serious physical harm could result from a condition which
7 exists, or from one or more practices, means, methods, operations, or
8 processes which have been adopted or are in use in such work place,
9 unless the employer did not, and could not with the exercise of
10 reasonable diligence, know of the presence of the violation.

11 (7) The director, or his authorized representatives, shall have
12 authority to assess all civil penalties provided in this section,
13 giving due consideration to the appropriateness of the penalty with
14 respect to the number of affected employees of the employer being
15 charged, the gravity of the violation, the size of the employer's
16 business, the good faith of the employer, and the history of previous
17 violations.

18 (8) Civil penalties imposed under this chapter shall be paid to the
19 director for deposit in the supplemental pension fund established by
20 RCW 51.44.033. Civil penalties may be recovered in a civil action in
21 the name of the department brought in the superior court of the county
22 where the violation is alleged to have occurred, or the department may
23 utilize the procedures for collection of civil penalties as set forth
24 in RCW 51.48.120 through 51.48.150.

25 **Sec. 223.** RCW 70.94.431 and 1991 c 199 s 311 are each amended to
26 read as follows:

27 (1) Except as provided in sections 207 through 209 of this act, and
28 in addition to or as an alternate to any other penalty provided by law,
29 any person who violates any of the provisions of chapter 70.94 RCW,
30 chapter 70.120 RCW, or any of the rules in force under such chapters
31 may incur a civil penalty in an amount not to exceed ten thousand
32 dollars per day for each violation. Each such violation shall be a
33 separate and distinct offense, and in case of a continuing violation,
34 each day's continuance shall be a separate and distinct violation.

35 Any person who fails to take action as specified by an order issued
36 pursuant to this chapter shall be liable for a civil penalty of not
37 more than ten thousand dollars for each day of continued noncompliance.

38 (2) Penalties incurred but not paid shall accrue interest,

1 beginning on the ninety-first day following the date that the penalty
2 becomes due and payable, at the highest rate allowed by RCW 19.52.020
3 on the date that the penalty becomes due and payable. If violations or
4 penalties are appealed, interest shall not begin to accrue until the
5 thirty-first day following final resolution of the appeal.

6 The maximum penalty amounts established in this section may be
7 increased annually to account for inflation as determined by the state
8 office of the economic and revenue forecast council.

9 (3) Each act of commission or omission which procures, aids or
10 abets in the violation shall be considered a violation under the
11 provisions of this section and subject to the same penalty. The
12 penalties provided in this section shall be imposed pursuant to RCW
13 43.21B.300.

14 (4) All penalties recovered under this section by the department
15 shall be paid into the state treasury and credited to the air pollution
16 control account established in RCW 70.94.015 or, if recovered by the
17 authority, shall be paid into the treasury of the authority and
18 credited to its funds. If a prior penalty for the same violation has
19 been paid to a local authority, the penalty imposed by the department
20 under subsection (1) of this section shall be reduced by the amount of
21 the payment.

22 (5) To secure the penalty incurred under this section, the state or
23 the authority shall have a lien on any vessel used or operated in
24 violation of this chapter which shall be enforced as provided in RCW
25 60.36.050.

26 (6) Public or private entities that are recipients or potential
27 recipients of department grants, whether for air quality related
28 activities or not, may have such grants rescinded or withheld by the
29 department for failure to comply with provisions of this chapter.

30 (7) In addition to other penalties provided by this chapter,
31 persons knowingly under-reporting emissions or other information used
32 to set fees, or persons required to pay emission or permit fees who are
33 more than ninety days late with such payments may be subject to a
34 penalty equal to three times the amount of the original fee owed.

35 (8) By January 1, 1992, the department shall develop rules for
36 excusing excess emissions from enforcement action if such excess
37 emissions are unavoidable. The rules shall specify the criteria and
38 procedures for the department and local air authorities to determine
39 whether a period of excess emissions is excusable in accordance with

1 the state implementation plan.

2 **Sec. 224.** RCW 70.105.080 and 1987 c 109 s 12 are each amended to
3 read as follows:

4 (1) Except as provided in sections 207 through 209 of this act,
5 every person who fails to comply with any provision of this chapter or
6 of the rules adopted thereunder shall be subjected to a penalty in an
7 amount of not more than ten thousand dollars per day for every such
8 violation. Each and every such violation shall be a separate and
9 distinct offense. In case of continuing violation, every day's
10 continuance shall be a separate and distinct violation. Every person
11 who, through an act of commission or omission, procures, aids, or abets
12 in the violation shall be considered to have violated the provisions of
13 this section and shall be subject to the penalty herein provided.

14 (2) The penalty provided for in this section shall be imposed
15 pursuant to the procedures in RCW 43.21B.300.

16 **Sec. 225.** RCW 70.132.050 and 1982 c 113 s 5 are each amended to
17 read as follows:

18 Except as provided in sections 207 through 209 of this act, any
19 person who violates any provision of this chapter or any rule adopted
20 under this chapter is subject to a civil penalty not exceeding five
21 hundred dollars for each violation. Each day of a continuing violation
22 is a separate violation.

23 **Sec. 226.** RCW 70.138.040 and 1987 c 528 s 4 are each amended to
24 read as follows:

25 (1) Except as provided in sections 207 through 209 of this act, any
26 person who violates any provision of a department regulation or
27 regulatory order relating to the management of special incinerator ash
28 shall incur in addition to any other penalty provided by law, a penalty
29 in an amount up to ten thousand dollars a day for every such violation.
30 Each and every such violation shall be a separate and distinct offense.
31 ~~((If [In]))~~ In case of continuing violation, every day's continuance
32 shall be a separate and distinct violation. Every person who, through
33 an act of commission or omission, procures, aids, or abets in the
34 violation shall be considered to have violated the provisions of this
35 section and shall be subject to the penalty herein provided.

36 (2) The penalty provided for in this section shall be imposed by a

1 notice in writing, either by certified mail with return receipt
2 requested or by personal service, to the person incurring the same from
3 the department, describing the violation with reasonable particularity.
4 Within fifteen days after the notice is received, the person incurring
5 the penalty may apply in writing to the department for the remission or
6 mitigation of such penalty. Upon receipt of the application, the
7 department may remit or mitigate the penalty upon whatever terms the
8 department in its discretion deems proper, giving consideration to the
9 degree of hazard associated with the violation, provided the department
10 deems such remission or mitigation to be in the best interests of
11 carrying out the purposes of this chapter. The department shall have
12 authority to ascertain the facts regarding all such applications in
13 such reasonable manner and under such rules as it may deem proper.

14 (3) Any penalty imposed by this section shall become due and
15 payable thirty days after receipt of a notice imposing the same unless
16 application for remission or mitigation is made or petition for review
17 by the hearings board is filed. When such an application for remission
18 or mitigation is made, any penalty incurred pursuant to this section
19 shall become due and payable thirty days after receipt of notice
20 setting forth the disposition of such application.

21 (4) If the amount of any penalty is not paid to the department
22 within thirty days after it becomes due and payable, the attorney
23 general, upon the request of the director, shall bring an action in the
24 name of the state of Washington in the superior court of Thurston
25 county, or any county in which such violator may do business, to
26 recover such penalty. In all such actions, the procedure and rules of
27 evidence shall be the same as an ordinary civil action except as
28 otherwise provided in this chapter.

29 **Sec. 227.** RCW 86.16.081 and 1987 c 523 s 8 are each amended to
30 read as follows:

31 (1) Except as provided in sections 207 through 209 of this act, the
32 attorney general or the attorney for the local government shall bring
33 such injunctive, declaratory, or other actions as are necessary to
34 ensure compliance with this chapter.

35 (2) Any person who fails to comply with this chapter shall also be
36 subject to a civil penalty not to exceed one thousand dollars for each
37 violation. Each violation or each day of noncompliance shall
38 constitute a separate violation.

1 (3) The penalty provided for in this section shall be imposed by a
2 notice in writing, either by certified mail with return receipt
3 requested or by personal service, to the person incurring the same from
4 the department or local government, describing the violation with
5 reasonable particularity and ordering the act or acts constituting the
6 violation or violations to cease and desist or, in appropriate cases,
7 requiring necessary corrective action to be taken within a specific and
8 reasonable time.

9 (4) Any penalty imposed pursuant to this section by the department
10 shall be subject to review by the pollution control hearings board.
11 Any penalty imposed pursuant to this section by local government shall
12 be subject to review by the local government legislative authority.
13 Any penalty jointly imposed by the department and local government
14 shall be appealed to the pollution control hearings board.

15 **Sec. 228.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
16 read as follows:

17 Except as provided in sections 207 through 209 of this act, the
18 power is granted to the department of ecology to levy civil penalties
19 of up to one hundred dollars per day for violation of any of the
20 provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW,
21 and rules, permits, and similar documents and regulatory orders of the
22 department of ecology adopted or issued pursuant to such chapters. The
23 procedures of RCW 90.48.144 shall be applicable to all phases of the
24 levying of a penalty as well as review and appeal of the same.

25 **Sec. 229.** RCW 90.48.144 and 1992 c 73 s 27 are each amended to
26 read as follows:

27 Except as provided in sections 207 through 209 of this act, every
28 person who:

29 (1) Violates the terms or conditions of a waste discharge permit
30 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

31 (2) Conducts a commercial or industrial operation or other point
32 source discharge operation without a waste discharge permit as required
33 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

34 (3) Violates the provisions of RCW 90.48.080, or other sections of
35 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
36 pursuant to either of those chapters, shall incur, in addition to any
37 other penalty as provided by law, a penalty in an amount of up to ten

1 thousand dollars a day for every such violation. Each and every such
2 violation shall be a separate and distinct offense, and in case of a
3 continuing violation, every day's continuance shall be and be deemed to
4 be a separate and distinct violation. Every act of commission or
5 omission which procures, aids or abets in the violation shall be
6 considered a violation under the provisions of this section and subject
7 to the penalty herein provided for. The penalty amount shall be set in
8 consideration of the previous history of the violator and the severity
9 of the violation's impact on public health and/or the environment in
10 addition to other relevant factors. The penalty herein provided for
11 shall be imposed pursuant to the procedures set forth in RCW
12 43.21B.300.

13 **Sec. 230.** RCW 90.58.210 and 1986 c 292 s 4 are each amended to
14 read as follows:

15 (1) Except as provided in sections 207 through 209 of this act, the
16 attorney general or the attorney for the local government shall bring
17 such injunctive, declaratory, or other actions as are necessary to
18 insure that no uses are made of the shorelines of the state in conflict
19 with the provisions and programs of this chapter, and to otherwise
20 enforce the provisions of this chapter.

21 (2) Any person who shall fail to conform to the terms of a permit
22 issued under this chapter or who shall undertake development on the
23 shorelines of the state without first obtaining any permit required
24 under this chapter shall also be subject to a civil penalty not to
25 exceed one thousand dollars for each violation. Each permit violation
26 or each day of continued development without a required permit shall
27 constitute a separate violation.

28 (3) The penalty provided for in this section shall be imposed by a
29 notice in writing, either by certified mail with return receipt
30 requested or by personal service, to the person incurring the same from
31 the department or local government, describing the violation with
32 reasonable particularity and ordering the act or acts constituting the
33 violation or violations to cease and desist or, in appropriate cases,
34 requiring necessary corrective action to be taken within a specific and
35 reasonable time.

36 (4) Within thirty days after the notice is received, the person
37 incurring the penalty may apply in writing to the department for
38 remission or mitigation of such penalty. Upon receipt of the

1 application, the department or local government may remit or mitigate
2 the penalty upon whatever terms the department or local government in
3 its discretion deems proper. Any penalty imposed pursuant to this
4 section by the department shall be subject to review by the shorelines
5 hearings board. Any penalty imposed pursuant to this section by local
6 government shall be subject to review by the local government
7 legislative authority. Any penalty jointly imposed by the department
8 and local government shall be appealed to the shorelines hearings
9 board.

10 **Sec. 231.** RCW 90.58.560 and 1983 c 138 s 2 are each amended to
11 read as follows:

12 (1) Except as provided in sections 207 through 209 of this act, a
13 person who violates RCW 90.58.550, or any rule adopted thereunder, is
14 subject to a penalty in an amount of up to five thousand dollars a day
15 for every such violation. Each and every such violation shall be a
16 separate and distinct offense, and in case of a continuing violation,
17 every day's continuance shall be and be deemed to be a separate and
18 distinct violation. Every act of commission or omission which
19 procures, aids or abets in the violation shall be considered a
20 violation under the provisions of this section and subject to the
21 penalty provided for in this section.

22 (2) The penalty shall be imposed by a notice in writing, either by
23 certified mail with return receipt requested or by personal service, to
24 the person incurring the penalty from the director or the director's
25 representative describing such violation with reasonable particularity.
26 The director or the director's representative may, upon written
27 application therefor received within fifteen days after notice imposing
28 any penalty is received by the person incurring the penalty, and when
29 deemed to carry out the purposes of this chapter, remit or mitigate any
30 penalty provided for in this section upon such terms as he or she deems
31 proper, and shall have authority to ascertain the facts upon all such
32 applications in such manner and under such regulations as he or she may
33 deem proper.

34 (3) Any person incurring any penalty under this section may appeal
35 the penalty to the hearings board as provided for in chapter 43.21B
36 RCW. Such appeals shall be filed within thirty days of receipt of
37 notice imposing any penalty unless an application for remission or
38 mitigation is made to the department. When an application for

1 remission or mitigation is made, such appeals shall be filed within
2 thirty days of receipt of notice from the director or the director's
3 representative setting forth the disposition of the application. Any
4 penalty imposed under this section shall become due and payable thirty
5 days after receipt of a notice imposing the same unless application for
6 remission or mitigation is made or an appeal is filed. When an
7 application for remission or mitigation is made, any penalty incurred
8 hereunder shall become due and payable thirty days after receipt of
9 notice setting forth the disposition of the application unless an
10 appeal is filed from such disposition. Whenever an appeal of any
11 penalty incurred under this section is filed, the penalty shall become
12 due and payable only upon completion of all review proceedings and the
13 issuance of a final order confirming the penalty in whole or in part.

14 (4) If the amount of any penalty is not paid to the department
15 within thirty days after it becomes due and payable, the attorney
16 general, upon the request of the director, shall bring an action in the
17 name of the state of Washington in the superior court of Thurston
18 county or of any county in which such violator may do business, to
19 recover such penalty. In all such actions the procedure and rules of
20 evidence shall be the same as an ordinary civil action except as
21 otherwise in this chapter provided. All penalties recovered under this
22 section shall be paid into the state treasury and credited to the
23 general fund.

24 **Sec. 232.** RCW 90.76.080 and 1989 c 346 s 9 are each amended to
25 read as follows:

26 (1) Except as provided in sections 207 through 209 of this act, a
27 person who fails to notify the department pursuant to tank notification
28 requirements or who submits false information is subject to a civil
29 penalty not to exceed five thousand dollars per violation.

30 (2) Except as provided in sections 207 through 209 of this act, a
31 person who violates this chapter is subject to a civil penalty not to
32 exceed five thousand dollars for each tank per day of violation.

33 **PART III - RULES REVIEW**

34 NEW SECTION. **Sec. 301.** The joint administrative rules review
35 committee shall not render a decision on a rule unless a quorum is
36 present. A quorum shall consist of at least five members of the

1 committee. Once a quorum is established, a majority of the quorum may
2 render any decision except a suspension recommendation. A
3 recommendation to suspend a rule under RCW 34.05.640 shall require a
4 majority vote of the entire membership of the rules review committee.

5 NEW SECTION. **Sec. 302.** (1) Any person potentially impacted by a
6 proposed rule or currently impacted by an existing rule may petition
7 the rules review committee for a review of that rule. Within thirty
8 days of the receipt of the petition, the rules review committee shall
9 acknowledge receipt of the petition and describe the initial action
10 taken. If the rules review committee rejects the petition, a written
11 statement of the reasons for rejection shall be included.

12 (2) Within ninety days of receipt of the petition, the rules review
13 committee shall make a final decision on the rule.

14 NEW SECTION. **Sec. 303.** Any individual employed or holding office
15 in any department or agency of state government may submit rules
16 warranting review to the rules review committee. Any such state
17 employee is protected under chapter 42.40 RCW.

18 **Sec. 304.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
19 read as follows:

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

27 (2) An election by the rules review committee to recommend
28 suspension of a rule, whether or not the suspension is approved by the
29 governor, and if the suspension recommendation is not subsequently
30 withdrawn, establishes a presumption in any subsequent judicial review
31 of the rule that the rule is invalid. The burden of demonstrating the
32 rule's validity is then on the adopting agency.

33 NEW SECTION. **Sec. 305.** (1) The rules review committee may make
34 reports from time to time to the members of the legislature and to the
35 public with respect to any of its findings or recommendations. The

1 committee shall keep complete minutes of its meetings.

2 (2) The committee may establish ad hoc advisory boards, including
3 but not limited to, ad hoc economics or science advisory boards to
4 assist the committee in its rules review functions.

5 (3) The committee may hire staff as needed to perform functions
6 under this chapter.

7 NEW SECTION. **Sec. 306.** In the discharge of any duty imposed under
8 this chapter, the rules review committee may examine and inspect all
9 properties, equipment, facilities, files, records, and accounts of any
10 state office, department, institution, board, committee, commission, or
11 agency, and administer oaths, issue subpoenas, compel the attendance of
12 witnesses and the production of any papers, books, accounts, documents,
13 and testimony, and cause the deposition of witnesses, either residing
14 within or without the state, to be taken in the manner prescribed by
15 law for taking depositions in civil actions in the superior courts.

16 NEW SECTION. **Sec. 307.** In case of the failure on the part of any
17 person to comply with any subpoena issued in behalf of the rules review
18 committee, or on the refusal of any witness to testify to any matters
19 regarding which he or she may be lawfully interrogated, it is the duty
20 of the superior court of any county, or of the judge thereof, on
21 application of the committee, to compel obedience by proceedings for
22 contempt, as in the case of disobedience of the requirements of a
23 subpoena issued from the court or a refusal to testify in the court.

24 **Sec. 308.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to
25 read as follows:

26 It is the policy of the legislature that employees should be
27 encouraged to disclose, to the extent not expressly prohibited by law,
28 improper governmental actions, and it is the intent of the legislature
29 to protect the rights of state employees making these disclosures. It
30 is also the policy of the legislature that employees should be
31 encouraged to identify rules warranting review or provide information
32 to the rules review committee, and it is the intent of the legislature
33 to protect the rights of these employees.

34 **Sec. 309.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to
35 read as follows:

1 As used in this chapter, the terms defined in this section shall
2 have the meanings indicated unless the context clearly requires
3 otherwise.

4 (1) "Auditor" means the office of the state auditor.

5 (2) "Employee" means any individual employed or holding office in
6 any department or agency of state government.

7 (3)(a) "Improper governmental action" means any action by an
8 employee:

9 (i) Which is undertaken in the performance of the employee's
10 official duties, whether or not the action is within the scope of the
11 employee's employment; and

12 (ii) Which is in violation of any state law or rule, is an abuse of
13 authority, is of substantial and specific danger to the public health
14 or safety, or is a gross waste of public funds.

15 (b) "Improper governmental action" does not include personnel
16 actions including but not limited to employee grievances, complaints,
17 appointments, promotions, transfers, assignments, reassignments,
18 reinstatements, restorations, reemployments, performance evaluations,
19 reductions in pay, dismissals, suspensions, demotions, violations of
20 the state civil service law, alleged labor agreement violations,
21 reprimands, or any action which may be taken under chapter 41.06 (~~or~~
22 ~~28B.16~~) RCW, or other disciplinary action except as provided in RCW
23 42.40.030.

24 (4) "Use of official authority or influence" includes taking,
25 directing others to take, recommending, processing, or approving any
26 personnel action such as an appointment, promotion, transfer,
27 assignment, reassignment, reinstatement, restoration, reemployment,
28 performance evaluation, or any adverse action under chapter 41.06 (~~or~~
29 ~~28B.16~~) RCW, or other disciplinary action.

30 (5) "Whistleblower" means an employee who in good faith reports
31 alleged improper governmental action to the auditor, initiating an
32 investigation under RCW 42.40.040. For purposes of the provisions of
33 this chapter and chapter 49.60 RCW relating to reprisals and
34 retaliatory action, the term "whistleblower" also means: (a) An
35 employee who in good faith provides information to the auditor in
36 connection with an investigation under RCW 42.40.040 and an employee
37 who is believed to have reported alleged improper governmental action
38 to the auditor or to have provided information to the auditor in
39 connection with an investigation under RCW 42.40.040 but who, in fact,

1 has not reported such action or provided such information; or (b) an
2 employee who in good faith identifies rules warranting review or
3 provides information to the rules review committee, and an employee who
4 is believed to have identified rules warranting review or provided
5 information to the rules review committee but who, in fact, has not
6 done so.

7 **Sec. 310.** RCW 42.40.030 and 1989 c 284 s 2 are each amended to
8 read as follows:

9 (1) An employee shall not directly or indirectly use or attempt to
10 use the employee's official authority or influence for the purpose of
11 intimidating, threatening, coercing, commanding, influencing, or
12 attempting to intimidate, threaten, coerce, command, or influence any
13 individual for the purpose of interfering with the right of the
14 individual to: (a) Disclose to the auditor (or representative thereof)
15 information concerning improper governmental action; or (b) identify
16 rules warranting review or provide information to the rules review
17 committee.

18 (2) Nothing in this section authorizes an individual to disclose
19 information otherwise prohibited by law.

20 **PART IV - FEES AND EXPENSES**

21 NEW SECTION. **Sec. 401.** A new section is added to chapter 4.84 RCW
22 to read as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this section and sections 402 through 404
25 of this act.

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

27 (2) "Fees and other expenses" includes the reasonable expenses of
28 expert witnesses, the reasonable cost of a study, analysis, engineering
29 report, test, or project that is found by the court to be necessary for
30 the preparation of the party's case, and reasonable attorneys' fees.
31 Reasonable attorneys' fees shall be based on the prevailing market
32 rates for the kind and quality of services furnished, except that (a)
33 no expert witness may be compensated at a rate in excess of the highest
34 rates of compensation for expert witnesses paid by the state of
35 Washington, and (b) attorneys' fees shall not be awarded in excess of
36 one hundred fifty dollars per hour unless the court determines that an

1 increase in the cost-of-living or a special factor, such as the limited
2 availability of qualified attorneys for the proceedings involved,
3 justifies a higher fee.

4 (3) "Judicial review" means a judicial review as defined by chapter
5 34.05 RCW.

6 (4) "Qualified party" means (a) an individual whose net worth did
7 not exceed one million dollars at the time the initial petition for
8 judicial review was filed; or (b) a sole owner of an unincorporated
9 business, or a partnership, corporation, association, or organization
10 having not more than one million dollars in gross receipts, as reported
11 to the department of revenue, in the calendar year prior to when the
12 initial petition for judicial review was filed, except that an
13 organization described in section 501(c)(3) of the federal internal
14 revenue code of 1954 as exempt from taxation under section 501(a) of
15 the code and a cooperative association as defined in section 15(a) of
16 the agricultural marketing act (12 U.S.C. Sec. 1141J(a)), may be a
17 party regardless of the net worth of such organization or cooperative
18 association.

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

20 NEW SECTION. Sec. 402. A new section is added to chapter 4.84 RCW
21 to read as follows:

22 If upon judicial review a rule is declared invalid and the party
23 that challenged the rule is a qualified party, the party shall be
24 awarded fees and other expenses not to exceed twenty-five thousand
25 dollars.

26 NEW SECTION. Sec. 403. A new section is added to chapter 4.84 RCW
27 to read as follows:

28 Fees and other expenses awarded under section 402 of this act shall
29 be paid by the agency that adopted the invalid rule from operating
30 funds appropriated to the agency within sixty days. Agencies paying
31 fees and other expenses pursuant to section 402 of this act shall
32 report all payments to the office of financial management within five
33 days of paying the fees and other expenses. Fees and other expenses
34 awarded by the court shall be subject to chapter 39.76 RCW and shall be
35 deemed payable on the date the court announces the award.

36 NEW SECTION. Sec. 404. A new section is added to chapter 43.88

1 RCW to read as follows:

2 The office of financial management shall report annually to the
3 legislature on the amount of fees and other expenses awarded during the
4 preceding fiscal year under section 402 of this act. The report shall
5 describe the number, nature, and amount of the awards, the claims
6 involved in the controversy, and other relevant information that may
7 aid the legislature in evaluating the scope and impact of the awards.

8 **PART V - MISCELLANEOUS**

9 NEW SECTION. **Sec. 501.** Sections 201 through 213, 215, 217, 218,
10 and 220 of this act shall constitute a new chapter in Title 43 RCW.

11 NEW SECTION. **Sec. 502.** Sections 301 through 303 and 305 through
12 307 of this act are each added to chapter 34.05 RCW.

13 NEW SECTION. **Sec. 503.** As used in this act, part headings do not
14 constitute any part of the law."

15 **SHB 1010** - H AMD
16 By Representative

17
18 On page 1, line 1 of the title, after "reform;" strike the
19 remainder of the title and insert "amending RCW 34.05.310, 34.05.313,
20 34.05.325, 34.05.330, 34.05.375, 19.85.030, 34.05.370, 34.05.570,
21 18.104.155, 49.17.180, 70.94.431, 70.105.080, 70.132.050, 70.138.040,
22 86.16.081, 90.03.600, 90.48.144, 90.58.210, 90.58.560, 90.76.080,
23 34.05.660, 42.40.010, 42.40.020, and 42.40.030; adding new sections to
24 chapter 34.05 RCW; adding a new section to chapter 19.85 RCW; adding
25 new sections to chapter 4.84 RCW; adding a new section to chapter 43.88
26 RCW; adding a new chapter to Title 43 RCW; creating new sections;
27 repealing RCW 34.05.355; and prescribing penalties."

--- END ---