

2 **SHB 2747 - H AMD 209 ADOPTED 2-12-96**

3 By Representative Mastin

4

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

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

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

15 (2) The commissioner of public lands, the department of social and
16 health services, the department of ecology, the department of
17 agriculture, the department of health, the department of revenue, the
18 department of licensing, the department of labor and industries, the
19 employment security department, the forest practices board, the fish
20 and wildlife commission, and the office of the insurance commissioner
21 may not adopt any rule relying solely on the section of law stating a
22 statute's intent or purpose, or on the enabling provisions of the
23 statute establishing the agency, or on any combination of such
24 provisions for its statutory authority to adopt a rule after July 23,
25 1995.

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

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

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

33 (1) At the time it files an adopted rule with the code reviser or
34 within thirty days thereafter, an agency shall place into the rule-
35 making file maintained under RCW 34.05.370 a concise explanatory
36 statement about the rule, identifying (a) the agency's reasons for

1 adopting the rule, and (b) a description of any difference between the
2 text of the proposed rule as published in the register and the text of
3 the rule as adopted, other than editing changes, stating the reasons
4 for change.

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

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

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

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

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

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

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

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

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

31 (f) Citations to data, factual information, studies, or reports on
32 which the agency relies in the adoption of the rule, indicating where
33 such data, factual information, studies, or reports are available for
34 review by the public, but this subsection (2)(f) does not require the
35 agency to include in the rule-making file any data, factual
36 information, studies, or reports gathered pursuant to chapter 19.85 RCW
37 that can be identified to a particular business;

1 (g) The concise explanatory statement required by RCW 34.05.325(6);
2 and

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

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

11 (4) Upon judicial review, the file required by this section
12 constitutes the official agency rule-making file with respect to that
13 rule. ~~((Unless otherwise required by another provision of law, the
14 official agency rule-making file need not be the exclusive basis for
15 agency action on that rule.))~~ Except as provided in section 2 of this
16 act or otherwise required by a provision of law, the official agency
17 rule-making file need not constitute the exclusive basis for agency
18 action on that rule or for judicial review thereof.

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

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

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

32 (3) Proceedings to enjoin application of a rule brought under RCW
33 34.05.310(1) or 34.05.320(3) shall be instituted by filing a petition
34 in the superior court of the county in which the local government
35 exercises jurisdiction.

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

1 (1) Whenever a majority of the members of the rules review
2 committee determines that a proposed rule is not within the intent of
3 the legislature as expressed in the statute which the rule implements,
4 or that an agency may not be adopting a proposed rule in accordance
5 with all applicable provisions of law, including (~~section 4 of this~~
6 ~~act and~~)) chapter 19.85 RCW, the committee shall give the affected
7 agency written notice of its decision. The notice shall be given at
8 least seven days prior to any hearing scheduled for consideration of or
9 adoption of the proposed rule pursuant to RCW 34.05.320. The notice
10 shall include a statement of the review committee's findings and the
11 reasons therefor. When the agency holds a hearing on the proposed
12 rule, the agency shall consider the review committee's decision.

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

15 (a) Request an agency that has not prepared a small business
16 economic impact statement regarding the proposed rule under RCW
17 19.85.030 to prepare and file with the code reviser and the committee
18 such a document before the final adoption of the rule;

19 (b) Require an agency to make the determinations, prepare the
20 documents, and otherwise fully comply with RCW 34.05.328 (1) through
21 (4).

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

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

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

32 (3) If the rules review committee finds by a majority vote of its
33 members: (a) That an existing rule is not within the intent of the
34 legislature as expressed by the statute which the rule implements, (b)
35 that the rule has not been adopted in accordance with all applicable
36 provisions of law, including (~~section 4 of this act if the rule was~~
37 ~~adopted after the effective date of section 4 of this act and~~)) chapter
38 19.85 RCW, (c) that an agency is using a policy statement, guideline,

1 or issuance in place of a rule, or (d) that the policy statement,
2 guideline, or issuance is outside of legislative intent, the agency
3 affected shall be notified of such finding and the reasons therefor.

4 (4) The committee's notice may:

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

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

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

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

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

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

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

30 ~~((+4))~~ (7) The agency shall consider fully all written and oral
31 submissions regarding (a) whether the rule in question is within the
32 intent of the legislature as expressed by the statute which the rule
33 implements, (b) whether the rule was adopted in accordance with all
34 applicable provisions of law, including ~~((section 4 of this act if the~~
35 ~~rule was adopted after the effective date of section 4 of this act~~
36 ~~and))~~ chapter 19.85 RCW, (c) whether the agency is using a policy
37 statement, guideline, or issuance in place of a rule, or (d) whether
38 the policy statement, guideline, or issuance is within the legislative
39 intent.

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

3 (1) Within seven days of an agency hearing held after notification
4 of the agency by the rules review committee pursuant to RCW 34.05.620
5 or 34.05.630, the affected agency shall notify the committee of its
6 action on a proposed or existing rule to which the committee objected
7 or on a committee finding of the agency's failure to adopt rules. If
8 the rules review committee determines, by a majority vote of its
9 members, that the agency has failed to provide for the required
10 hearings or notice of its action to the committee, the committee may
11 file notice of its objections, together with a concise statement of the
12 reasons therefor, with the code reviser within thirty days of such
13 determination.

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

29 (3) If the rules review committee makes an adverse finding under
30 subsection (2) of this section, the committee may, by a majority vote
31 of its members, recommend suspension of an existing rule. Within seven
32 days of such vote the committee shall transmit to the appropriate
33 standing committees of the legislature, the governor, the code reviser,
34 and the agency written notice of its objection and recommended
35 suspension and the concise reasons therefor. Within thirty days of
36 receipt of the notice, the governor shall transmit to the committee,
37 the code reviser, and the agency written approval or disapproval of the
38 recommended suspension. If the suspension is approved by the governor,
39 it is effective from the date of that approval and continues until

1 ninety days after the expiration of the next regular legislative
2 session.

3 (4) If the governor disapproves the recommendation of the rules
4 review committee to suspend the rule, the transmittal of such decision,
5 along with the findings of the rules review committee, shall be treated
6 by the agency as a petition by the rules review committee to repeal the
7 rule under RCW 34.05.330.

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

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

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

23 (1) The legislature hereby finds and declares that the forest land
24 resources are among the most valuable of all resources in the state;
25 that a viable forest products industry is of prime importance to the
26 state's economy; that it is in the public interest for public and
27 private commercial forest lands to be managed consistent with sound
28 policies of natural resource protection; that coincident with
29 maintenance of a viable forest products industry, it is important to
30 afford protection to forest soils, fisheries, wildlife, water quantity
31 and quality, air quality, recreation, and scenic beauty.

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

37 (a) Afford protection to, promote, foster and encourage timber
38 growth, and require such minimum reforestation of commercial tree

1 species on forest lands as will reasonably utilize the timber growing
2 capacity of the soil following current timber harvest;

3 (b) Afford protection to forest soils and public resources by
4 utilizing all reasonable methods of technology in conducting forest
5 practices;

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

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

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

12 (f) Provide for interagency input and intergovernmental and tribal
13 coordination and cooperation;

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

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

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

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

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

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

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

37 (1) Where necessary to accomplish the purposes and policies
38 specifically stated in RCW 76.09.010(2), and to implement the

1 provisions of this chapter, the board shall (~~promulgate~~) adopt forest
2 practices (~~regulations~~) rules pursuant to chapter 34.05 RCW and in
3 accordance with the procedures enumerated in this section that:

4 (a) Establish minimum standards for forest practices;

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

10 (c) Set forth necessary administrative provisions; and

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

13 Forest practices (~~regulations~~) rules pertaining to water quality
14 protection shall be (~~promulgated~~) adopted individually by the board
15 and by the department of ecology after they have reached agreement with
16 respect thereto. All other forest practices (~~regulations~~) rules
17 shall be (~~promulgated~~) adopted by the board.

18 Forest practices (~~regulations~~) rules shall be administered and
19 enforced by the department except as otherwise provided in this
20 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted
21 and administered so as to give consideration to all purposes and
22 policies specifically set forth in RCW 76.09.010(2).

23 (~~(2)~~) (3) The board shall prepare proposed forest practices
24 (~~regulations~~) rules. In addition to any forest practices
25 (~~regulations~~) rules relating to water quality protection proposed by
26 the board, the department of ecology shall prepare proposed forest
27 practices (~~regulations~~) rules relating to water quality protection.

28 Prior to initiating the rule making process, the proposed
29 (~~regulations~~) rules shall be submitted for review and comments to the
30 department of fish and wildlife and to the counties of the state.
31 After receipt of the proposed forest practices (~~regulations~~) rules,
32 the department of fish and wildlife and the counties of the state shall
33 have thirty days in which to review and submit comments to the board,
34 and to the department of ecology with respect to its proposed
35 (~~regulations~~) rules relating to water quality protection. After the
36 expiration of such thirty day period the board and the department of
37 ecology shall jointly hold one or more hearings on the proposed
38 (~~regulations~~) rules pursuant to chapter 34.05 RCW. At such
39 hearing(s) any county may propose specific forest practices

1 ((~~regulations~~)) rules relating to problems existing within such county.
2 The board and the department of ecology may adopt such proposals if
3 they find the proposals are consistent with the purposes and policies
4 of this chapter.

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.22 RCW
6 to read as follows:

7 For rules adopted after the effective date of this section, the
8 director of the department of labor and industries may not rely solely
9 on a statute's statement of intent or purpose, on the enabling
10 provisions of the statute establishing the agency, or on any
11 combination of such provisions, for statutory authority to adopt any
12 rule: PROVIDED, That this section shall not apply to rules adopted
13 pursuant to chapter 39.12 RCW.

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

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

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

21 (3) The commissioner may:

22 (a) Make reasonable rules and regulations for effectuating any
23 provision of this code, except those relating to his or her election,
24 qualifications, or compensation: PROVIDED, That the commissioner may
25 not adopt rules after the effective date of this section that are based
26 solely on this statute, or on a statute's statement of intent or
27 purpose, or on the enabling provisions of the statute establishing the
28 agency, or any combination of such provisions, for statutory authority
29 to adopt any rule, except rules defining or clarifying terms in, or
30 procedures necessary to the implementation of a statute. No such rules
31 and regulations shall be effective prior to their being filed for
32 public inspection in the commissioner's office.

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

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

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

3 The insurance commissioner shall make reasonable regulations in aid
4 of the administration of this chapter which may include, but shall not
5 be limited to regulations concerning the maintenance of adequate
6 insurance, bonds, or cash deposits, information required of
7 registrants, and methods of expediting speedy and fair payments to
8 claimants: PROVIDED, That the commissioner may not adopt rules after
9 the effective date of this section that are based solely on this
10 section, a statute's statement of intent or purpose, or on the enabling
11 provisions of the statute establishing the agency, or any combination
12 of such provisions, for statutory authority to adopt any rule, except
13 rules defining or clarifying terms in, or procedures necessary to the
14 implementation of a statute.

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

17 The commissioner may adopt, in accordance with the provisions of
18 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
19 rules and regulations as necessary or proper to carry out the
20 provisions of this chapter: PROVIDED, That the commissioner may not
21 adopt rules after the effective date of this section that are based
22 solely on this section, a statute's statement of intent or purpose, or
23 on the enabling provisions of the statute establishing the agency, or
24 any combination of such provisions, for statutory authority to adopt
25 any rule, except rules defining or clarifying terms in, or procedures
26 necessary to the implementation of a statute. Nothing in this chapter
27 shall be construed to prohibit the commissioner from requiring changes
28 in procedures previously approved by (~~him~~) the commissioner.

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

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

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

35 (b) Determine that the rule is needed to achieve the general goals
36 and specific objectives stated under (a) of this subsection, and

1 analyze alternatives to rule making and the consequences of not
2 adopting the rule;

3 (c) Determine that the probable benefits of the rule are greater
4 than its probable costs, taking into account both the qualitative and
5 quantitative benefits and costs and the specific directives of the
6 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

1 (c) Promote and assist voluntary compliance; and

2 (d) Evaluate whether the rule achieves the purpose for which it was
3 adopted, including, to the maximum extent practicable, the use of
4 interim milestones to assess progress and the use of objectively
5 measurable outcomes.

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

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

13 (b) Coordinate implementation and enforcement of the rule with the
14 other federal and state entities regulating the same activity or
15 subject matter by making every effort to do one or more of the
16 following:

17 (i) Deferring to the other entity;

18 (ii) Designating a lead agency; or

19 (iii) Entering into an agreement with the other entities specifying
20 how the agency and entities will coordinate implementation and
21 enforcement.

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

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

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

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

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

34 (i) Significant legislative rules of the departments of ecology,
35 labor and industries, health, revenue, social and health services, and
36 natural resources, the employment security department, the forest
37 practices board, the office of the insurance commissioner, and to the
38 legislative rules of the department of fish and wildlife implementing
39 chapter 75.20 RCW; and

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

6 (b) This section does not apply to:

7 (i) Emergency rules adopted under RCW 34.05.350;

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

10 (iii) Rules adopting or incorporating by reference without material
11 change federal statutes or regulations, Washington state statutes,
12 rules of other Washington state agencies, shoreline master programs
13 other than those programs governing shorelines of state-wide
14 significance, or, as referenced by Washington state law, national
15 consensus codes that generally establish industry standards, if the
16 material adopted or incorporated regulates the same subject matter and
17 conduct as the adopting or incorporating rule, however, the exemption
18 in this subsection (5)(b)(iii) does not apply if the rule adopted is
19 the rule of another Washington state agency, which rule was not adopted
20 in accordance with this section. Any doubts as to whether this
21 requirement has been met shall be resolved in favor of causing the
22 rules to be subjected to the requirements of this section;

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

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

28 (vi) Rules that set or adjust fees or rates pursuant to legislative
29 standards.

30 (c) For purposes of this subsection:

31 (i) A "procedural rule" is a rule that adopts, amends, or repeals
32 (A) any procedure, practice, or requirement relating to any agency
33 hearings; (B) any filing or related process requirement for making
34 application to an agency for a license or permit; or (C) any policy
35 statement pertaining to the consistent internal operations of an
36 agency.

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

1 (iii) A "significant legislative rule" is a rule other than a
2 procedural or interpretive rule that (A) adopts substantive provisions
3 of law pursuant to delegated legislative authority, the violation of
4 which subjects a violator of such rule to a penalty or sanction; (B)
5 establishes, alters, or revokes any qualification or standard for the
6 issuance, suspension, or revocation of a license or permit; or (C)
7 adopts a new, or makes significant amendments to, a policy or
8 regulatory program.

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

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

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

22 (b) The costs incurred by state agencies in complying with this
23 section;

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (b) The validity of any rule may be determined upon petition for a
22 declaratory judgment addressed to the superior court of Thurston
23 county, when it appears that the rule, or its threatened application,
24 interferes with or impairs or immediately threatens to interfere with
25 or impair the legal rights or privileges of the petitioner. The burden
26 of demonstrating the validity of any rule is on the agency. The
27 declaratory judgment order may be entered whether or not the petitioner
28 has first requested the agency to pass upon the validity of the rule in
29 question.

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

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

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

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

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

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

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

12 (f) The agency has not decided all issues requiring resolution by
13 the agency;

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

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

22 (i) The order is arbitrary or capricious.

23 (4) Review of other agency action.

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

26 (b) A person whose rights are violated by an agency's failure to
27 perform a duty that is required by law to be performed may file a
28 petition for review pursuant to RCW 34.05.514, seeking an order
29 pursuant to this subsection requiring performance. Within twenty days
30 after service of the petition for review, the agency shall file and
31 serve an answer to the petition, made in the same manner as an answer
32 to a complaint in a civil action. The court may hear evidence,
33 pursuant to RCW 34.05.562, on material issues of fact raised by the
34 petition and answer.

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

39 (i) Unconstitutional;

- 1 (ii) Outside the statutory authority of the agency or the authority
2 conferred by a provision of law;
3 (iii) Arbitrary or capricious; or
4 (iv) Taken by persons who were not properly constituted as agency
5 officials lawfully entitled to take such action.

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

8 No rule proposed after July 1, 1989, is valid unless it is adopted
9 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. No
12 action based upon this section may be maintained to contest the
13 validity of any rule unless it is commenced within ~~((two))~~ seven years
14 after the effective date of the rule.

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

17 (1) A person may petition an agency requesting that an existing
18 rule be subject to readoption. The office of financial management
19 shall prescribe by rule the format for such petitions and the procedure
20 for their submission, consideration, and disposition and provide a
21 standard form that may be used to petition any agency. Within sixty
22 days after submission of a petition, the agency shall either (a) deny
23 the petition in writing, stating (i) its reasons for the denial,
24 specifically addressing each item listed in subsection (3) of this
25 section and, where appropriate, (ii) the alterative means by which it
26 will address the concerns raised by the petitioner, or (b) initiate the
27 readoption procedure in accordance with this section.

28 (2) If an agency denies a petition submitted under subsection (1)
29 of this section, the petitioner, within thirty days of the denial, may
30 appeal the denial to the joint administrative rules review committee.
31 Within sixty days after receiving the appeal, the committee shall, by
32 a majority vote of its members, either (a) deny the appeal in writing,
33 stating its reasons for the denial, or (b) direct the agency to
34 initiate the readoption procedure in accordance with this section. The
35 agency shall initiate the readoption procedure by the date specified by
36 the committee.

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

3 (a) Whether the rule is authorized;

4 (b) Whether the rule is needed;

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

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

9 (e) Whether the rule applies differently to public and private
10 entities;

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

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

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

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

17 Persons are encouraged to address each of these issues in their
18 petition to the agency.

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

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

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

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

33 (1) Except as provided in subsection (2) of this section, after
34 December 31, 2000, the following agencies may not rely solely on a
35 statute's statement of intent or purpose or the enabling provisions of
36 the statute establishing the agency, or any combination of such
37 provisions, for the agency's statutory authority to have adopted a rule
38 challenged after December 31, 2000: The commissioner of public lands,

1 the department of social and health services, the department of
2 ecology, the department of agriculture, the department of health, the
3 department of revenue, the department of licensing, the department of
4 labor and industries, the employment security department, the forest
5 practices board, the fish and wildlife commission, and the office of
6 the insurance commissioner.

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

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

11 (1) Except as otherwise specifically provided by statute, a court
12 shall award a qualified party that prevails in a judicial review of an
13 agency action fees and other expenses, including reasonable attorneys'
14 fees, unless the court finds that the agency action was substantially
15 justified or that circumstances make an award unjust. A qualified
16 party shall be considered to have prevailed if the qualified party
17 obtained relief on a significant issue that achieves some benefit that
18 the qualified party sought.

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

21 (a) For cases involving rule validity:

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

23 (ii) Fifteen thousand dollars for appeals to the court of appeals
24 and the supreme court; and

25 (b) For cases involving other agency action:

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

27 (ii) Fifteen thousand dollars for appeals to the court of appeals
28 and the supreme court.

29 (3) Subsection (1) of this section shall not apply unless all
30 parties challenging the agency action are qualified parties. If two or
31 more qualified parties join in an action, the award in total shall not
32 exceed twenty-five thousand dollars. The court, in its discretion, may
33 reduce the amount to be awarded pursuant to subsection (1) of this
34 section, or deny any award, to the extent that a qualified party during
35 the course of the proceedings engaged in conduct that unduly or
36 unreasonably protracted the final resolution of the matter in
37 controversy.

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

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

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

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

9 (b) Upon written demand for a hearing made by any person aggrieved
10 by any act, threatened act, or failure of the commissioner to act, if
11 such failure is deemed an act under any provision of this code, or by
12 any report, promulgation, or order of the commissioner other than an
13 order on a hearing of which such person was given actual notice or at
14 which such person appeared as a party, or order pursuant to the order
15 on such hearing.

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

19 (3) Unless a person aggrieved by a written order of the
20 commissioner demands a hearing thereon within ninety days after
21 receiving notice of such order, or in the case of a licensee under
22 Title 48 RCW within ninety days after the commissioner has mailed the
23 order to the licensee at the most recent address shown in the
24 commissioner's licensing records for the licensee, the right to such
25 hearing shall conclusively be deemed to have been waived.

26 (4) If a hearing is demanded by a licensee whose license has been
27 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall
28 hold such hearing demanded within thirty days after receipt of the
29 demand or within thirty days of the effective date of a temporary
30 license suspension issued after such demand, unless postponed by mutual
31 consent.

32 (5) Any hearing held pursuant to this section shall be conducted by
33 an administrative law judge unless the person demanding the hearing
34 agrees in writing to have an employee of the commissioner conduct the
35 hearing.

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

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

5 ~~(2) In addition to such unfair methods and unfair or deceptive acts~~
6 ~~or practices as))~~ are expressly defined and prohibited by this code(~~(~~
7 ~~the commissioner may from time to time by regulation promulgated~~
8 ~~pursuant to chapter 34.05 RCW, define other methods of competition and~~
9 ~~other acts and practices in the conduct of such business reasonably~~
10 ~~found by the commissioner to be unfair or deceptive.~~

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

14 ~~((+4))~~ (2) If the commissioner has cause to believe that any
15 person is violating any such ~~((regulation))~~ rule or prohibition of this
16 code, the commissioner may order such person to cease and desist
17 therefrom. The commissioner shall deliver such order to such person
18 direct or mail it to the person by registered mail with return receipt
19 requested. If the person violates the order after expiration of ten
20 days after the cease and desist order has been received by him or her,
21 he or she may be fined by the commissioner a sum not to exceed two
22 hundred and fifty dollars for each violation committed thereafter.

23 ~~((+5))~~ (3) If any such ~~((regulation))~~ rule or prohibition of this
24 code is violated, the commissioner may take such other or additional
25 action as is permitted under the insurance code for violation of a
26 ~~((regulation))~~ rule or that prohibition.

27 (4) Any permanent rule that was adopted by the commissioner under
28 the authority of this section as it existed before the effective date
29 of this section, and that was in effect as of the effective date of
30 this section, shall, if otherwise valid, remain in effect until and
31 unless it is repealed by the commissioner, who shall retain the
32 authority to repeal any such rule, or is effectively repealed by an act
33 of the legislature."

1 **SHB 2747** - H AMD
2 By Representative Mastin

3

4 On page 1, line 1 of the title, after "reform;" strike the
5 remainder of the title and insert "amending RCW 34.05.322, 34.05.370,
6 34.05.620, 34.05.630, 34.05.640, 76.09.010, 76.09.040, 48.02.060,
7 48.44.050, 48.46.200, 34.05.328, 34.05.570, 34.05.375, 4.84.350,
8 48.04.010, and 48.30.010; reenacting and amending RCW 34.05.514; adding
9 new sections to chapter 34.05 RCW; and adding a new section to chapter
10 43.22 RCW."

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