

2 **ESHB 1010** - S COMM AMD
3 By Committee on Government Operations

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds regulatory reform is
8 an issue citizens of this state have demanded over the last several
9 years.

10 The legislature also finds that state agencies shoulder a
11 significant responsibility to implement the policies established by the
12 legislature. This responsibility requires that agency personnel, and
13 particularly agency directors, commissioners, and secretaries carefully
14 review proposed rule making, taking into consideration alternative
15 approaches to achieving objectives established by the legislature.

16 The legislature further recognizes and hereby reaffirms the state's
17 responsibility to protect health and safety of workers as required by
18 Article II, section 35 of the state Constitution. Adoption of this act
19 is not intended to undermine the significant protections currently
20 provided to this state's workers whether by the Constitution, by law,
21 or by rule.

22 **PART I**
23 **GRANTS OF AUTHORITY**

24 NEW SECTION. **Sec. 101.** A new section is added to chapter 43.12
25 RCW to read as follows:

26 For rules adopted after the effective date of this section, the
27 commissioner of public lands may not rely solely on a statute's
28 statement of intent or purpose, on the enabling provisions of the
29 statute establishing the agency, or on any combination of such
30 provisions, for statutory authority to adopt any rule, except rules
31 defining or clarifying terms in, or procedures necessary to the
32 implementation of, a statute.

33 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.20A

1 RCW to read as follows:

2 For rules adopted after the effective date of this section, the
3 secretary may not rely solely on a statute's statement of intent or
4 purpose, on the enabling provisions of the statute establishing the
5 agency, or on any combination of such provisions, for statutory
6 authority to adopt any rule, except rules defining or clarifying terms
7 in, or procedures necessary to the implementation of, a statute.

8 **Sec. 103.** RCW 43.21A.080 and 1970 ex.s. c 62 s 8 are each amended
9 to read as follows:

10 The director of the department of ecology is authorized to adopt
11 such rules and regulations as are necessary and appropriate to carry
12 out the provisions of this chapter: PROVIDED, That the director may
13 not adopt rules after the effective date of this section that are based
14 solely on a statute's statement of intent or purpose, on the enabling
15 provisions of the statute establishing the agency, or on any
16 combination of such provisions, for statutory authority to adopt the
17 rule, except rules defining or clarifying terms in, or procedures
18 necessary to the implementation of, a statute.

19 NEW SECTION. **Sec. 104.** A new section is added to chapter 43.23
20 RCW to read as follows:

21 For rules adopted after the effective date of this section, the
22 director of agriculture may not rely solely on a statute's statement of
23 intent or purpose, on the enabling provisions of the statute
24 establishing the agency, or on any combination of such provisions, for
25 statutory authority to adopt any rule, except rules defining or
26 clarifying terms in, or procedures necessary to the implementation of,
27 a statute.

28 **Sec. 105.** RCW 43.70.040 and 1989 1st ex.s. c 9 s 106 are each
29 amended to read as follows:

30 In addition to any other powers granted the secretary, the
31 secretary may:

32 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary
33 to carry out the provisions of ~~((this act))~~ chapter 9, Laws of 1989 1st
34 ex. sess.: PROVIDED, That for rules adopted after the effective date
35 of this section, the secretary may not rely solely on a statute's
36 statement of intent or purpose, on the enabling provisions of the

1 statute establishing the agency, or on any combination of such
2 provisions, for statutory authority to adopt any rule, except rules
3 defining or clarifying terms in, or procedures necessary to the
4 implementation of, a statute;

5 (2) Appoint such advisory committees as may be necessary to carry
6 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
7 sess. Members of such advisory committees are authorized to receive
8 travel expenses in accordance with RCW 43.03.050 and 43.03.060. The
9 secretary and the board of health shall review each advisory committee
10 within their jurisdiction and each statutory advisory committee on a
11 biennial basis to determine if such advisory committee is needed. The
12 criteria specified in RCW 43.131.070 shall be used to determine whether
13 or not each advisory committee shall be continued;

14 (3) Undertake studies, research, and analysis necessary to carry
15 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
16 sess. in accordance with RCW 43.70.050;

17 (4) Delegate powers, duties, and functions of the department to
18 employees of the department as the secretary deems necessary to carry
19 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.
20 sess.;

21 (5) Enter into contracts on behalf of the department to carry out
22 the purposes of (~~this act~~) chapter 9, Laws of 1989 1st ex. sess.;

23 (6) Act for the state in the initiation of, or the participation
24 in, any intergovernmental program to the purposes of (~~this act~~)
25 chapter 9, Laws of 1989 1st ex. sess.; or

26 (7) Accept gifts, grants, or other funds.

27 **Sec. 106.** RCW 82.01.060 and 1977 c 75 s 92 are each amended to
28 read as follows:

29 The director of revenue, hereinafter in (~~this 1967 amendatory~~
30 ~~act~~) chapter 26, Laws of 1967 ex. sess. referred to as the director,
31 through the department of revenue, hereinafter in (~~this 1967~~
32 ~~amendatory act~~) chapter 26, Laws of 1967 ex. sess. referred to as the
33 department, shall:

34 (1) Assess and collect all taxes and administer all programs
35 relating to taxes which are the responsibility of the tax commission at
36 the time (~~this 1967 amendatory act~~) chapter 26, Laws of 1967 ex.
37 sess. takes effect or which the legislature may hereafter make the
38 responsibility of the director or of the department;

1 (2) Make, adopt and publish such rules (~~and regulations~~) as he or
2 she may deem necessary or desirable to carry out the powers and duties
3 imposed upon him or her or the department by the legislature:
4 PROVIDED, That the director may not adopt rules after the effective
5 date of this section that are based solely on a statute's statement of
6 intent or purpose, on the enabling provisions of the statute
7 establishing the agency, or on any combination of such provisions, for
8 statutory authority to adopt any rule, except rules defining or
9 clarifying terms in, or procedures necessary to the implementation of,
10 a statute;

11 (3) Rules (~~and regulations~~) adopted by the tax commission (~~prior~~
12 ~~to~~) before the effective date of this (~~1967 amendatory act~~) section
13 shall remain in force until such time as they may be revised or
14 rescinded by the director;

15 (~~(3)~~) (4) Provide by general regulations for an adequate system
16 of departmental review of the actions of the department or of its
17 officers and employees in the assessment or collection of taxes;

18 (~~(4)~~) (5) Maintain a tax research section with sufficient
19 technical, clerical and other employees to conduct constant observation
20 and investigation of the effectiveness and adequacy of the revenue laws
21 of this state and of the sister states in order to assist the governor,
22 the legislature and the director in estimation of revenue, analysis of
23 tax measures, and determination of the administrative feasibility of
24 proposed tax legislation and allied problems;

25 (~~(5)~~) (6) Recommend to the governor such amendments, changes in,
26 and modifications of the revenue laws as seem proper and requisite to
27 remedy injustice and irregularities in taxation, and to facilitate the
28 assessment and collection of taxes in the most economical manner.

29 NEW SECTION. Sec. 107. A new section is added to chapter 43.22
30 RCW to read as follows:

31 For rules adopted after the effective date of this section, the
32 director of the department of labor and industries may not rely solely
33 on a statute's statement of intent or purpose, on the enabling
34 provisions of the statute establishing the agency, or on any
35 combination of such provisions, for statutory authority to adopt any
36 rule, except rules defining or clarifying terms in, or procedures
37 necessary to the implementation of, a statute.

1 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.24
2 RCW to read as follows:

3 For rules adopted after the effective date of this section, the
4 director of the department of licensing may not rely solely on a
5 statute's statement of intent or purpose, on the enabling provisions of
6 the statute establishing the agency, or on any combination of such
7 provisions, for statutory authority to adopt any rule, except rules
8 defining or clarifying terms in, or procedures necessary to the
9 implementation of, a statute.

10 **Sec. 109.** RCW 46.01.110 and 1979 c 158 s 120 are each amended to
11 read as follows:

12 The director of licensing is hereby authorized to adopt and enforce
13 such reasonable rules (~~(and regulations)~~) as may be consistent with and
14 necessary to carry out the provisions relating to vehicle licenses,
15 certificates of ownership and license registration and drivers'
16 licenses not in conflict with the provisions of Title 46 RCW:
17 PROVIDED, That the director of licensing may not adopt rules after the
18 effective date of this section that are based solely on a statute's
19 statement of intent or purpose, on the enabling provisions of the
20 statute establishing the agency, or on any combination of such
21 provisions, for statutory authority to adopt any rule, except rules
22 defining or clarifying terms in, or procedures necessary to the
23 implementation of, a statute.

24 **Sec. 110.** RCW 50.12.040 and 1973 1st ex.s. c 158 s 3 are each
25 amended to read as follows:

26 Regular and emergency rules (~~(and regulations)~~) shall be adopted,
27 amended, or repealed by the commissioner in accordance with the
28 provisions of Title 34 RCW and the rules (~~(or regulations)~~) adopted
29 pursuant thereto: PROVIDED, That the commissioner may not adopt rules
30 after the effective date of this section that are based solely on a
31 statute's statement of intent or purpose, on the enabling provisions of
32 the statute establishing the agency, or on any combination of such
33 provisions, for statutory authority to adopt any rule, except rules
34 defining or clarifying terms in, or procedures necessary to the
35 implementation of, a statute.

36 **Sec. 111.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to

1 read as follows:

2 (1) Where necessary to accomplish the purposes and policies stated
3 in RCW 76.09.010, and to implement the provisions of this chapter, the
4 board shall ~~((promulgate))~~ adopt forest practices ~~((regulations))~~ rules
5 pursuant to chapter 34.05 RCW and in accordance with the procedures
6 enumerated in this section: PROVIDED, That the board may not adopt
7 rules after the effective date of this section that are based solely on
8 a statute's statement of intent or purpose, on the enabling provisions
9 of the statute establishing the agency, or on any combination of such
10 provisions, for statutory authority to adopt any rule, except rules
11 defining or clarifying terms in, or procedures necessary to the
12 implementation of, a statute.

13 (2) The board shall adopt rules that:

14 (a) Establish minimum standards for forest practices;

15 (b) Provide procedures for the voluntary development of resource
16 management plans which may be adopted as an alternative to the minimum
17 standards in (a) of this subsection if the plan is consistent with the
18 purposes and policies stated in RCW 76.09.010 and the plan meets or
19 exceeds the objectives of the minimum standards;

20 (c) Set forth necessary administrative provisions; and

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

23 Forest practices ~~((regulations))~~ rules pertaining to water quality
24 protection shall be ~~((promulgated))~~ adopted individually by the board
25 and by the department of ecology after they have reached agreement with
26 respect thereto. All other forest practices ~~((regulations))~~ rules
27 shall be ~~((promulgated))~~ adopted by the board.

28 Forest practices ~~((regulations))~~ rules shall be administered and
29 enforced by the department except as otherwise provided in this
30 chapter. Such ~~((regulations))~~ rules shall be ~~((promulgated))~~ adopted
31 and administered so as to give consideration to all purposes and
32 policies set forth in RCW 76.09.010.

33 ~~((+2))~~ (3) The board shall prepare proposed forest practices
34 ~~((regulations))~~ rules. In addition to any forest practices
35 ~~((regulations))~~ rules relating to water quality protection proposed by
36 the board, the department of ecology shall prepare proposed forest
37 practices ~~((regulations))~~ rules relating to water quality protection.

38 Prior to initiating the rule making process, the proposed
39 ~~((regulations))~~ rules shall be submitted for review and comments to the

1 department of fish and wildlife and to the counties of the state.
2 After receipt of the proposed forest practices (~~((regulations))~~) rules,
3 the department of fish and wildlife and the counties of the state shall
4 have thirty days in which to review and submit comments to the board,
5 and to the department of ecology with respect to its proposed
6 (~~((regulations))~~) rules relating to water quality protection. After the
7 expiration of such thirty day period the board and the department of
8 ecology shall jointly hold one or more hearings on the proposed
9 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such
10 hearing(s) any county may propose specific forest practices
11 (~~((regulations))~~) rules relating to problems existing within such county.
12 The board and the department of ecology may adopt such proposals if
13 they find the proposals are consistent with the purposes and policies
14 of this chapter.

15 **Sec. 112.** RCW 77.04.090 and 1984 c 240 s 1 are each amended to
16 read as follows:

17 The commission shall adopt permanent rules and amendments to or
18 repeals of existing rules by approval of four members by resolution,
19 entered and recorded in the minutes of the commission: PROVIDED, That
20 the commission may not adopt rules after the effective date of this
21 section that are based solely on a statute's statement of intent or
22 purpose, on the enabling provisions of the statute establishing the
23 agency, or on any combination of such provisions, for statutory
24 authority to adopt any rule, except rules defining or clarifying terms
25 in, or procedures necessary to the implementation of, a statute. The
26 commission shall adopt emergency rules by approval of four members.
27 The commission or the director, when adopting emergency rules under RCW
28 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.
29 Judicial notice shall be taken of the rules filed and published as
30 provided in RCW 34.05.380 and 34.05.210.

31 A copy of an emergency rule, certified as a true copy by a member
32 of the commission, the director, or by a person authorized in writing
33 by the director to make the certification, is admissible in court as
34 prima facie evidence of the adoption and validity of the rule.

35 **Sec. 113.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
36 read as follows:

37 (1) The commissioner shall have the authority expressly conferred

1 upon him or her by or reasonably implied from the provisions of this
2 code.

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

5 (3) The commissioner may:

6 (a) (~~Make reasonable rules and regulations for effectuating any~~
7 ~~provision of this code, except those relating to his election,~~
8 ~~qualifications, or compensation. No such rules and regulations shall~~
9 ~~be effective prior to their being filed for public inspection in the~~
10 ~~commissioner's office.)) Adopt, in accordance with chapter 34.05 RCW,
11 rules or policy statements, only as specifically authorized, and only
12 to the extent specifically authorized, by the legislature.~~

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

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

18 (4) Any permanent rule that was adopted by the commissioner under
19 the authority of this section as it existed before the effective date
20 of this section, and that was in effect as of the effective date of
21 this section, shall, if otherwise valid, remain in effect until and
22 unless it is repealed by the commissioner, who shall retain the
23 authority to repeal any such rule, or is effectively repealed by an act
24 of the legislature.

25 **Sec. 114.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
26 read as follows:

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

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

37 ~~(3) No such regulation shall be made effective prior to the~~
38 ~~expiration of thirty days after the date of the order by which it is~~

1 promulgated)).

2 ~~((4))~~ (2) If the commissioner has cause to believe that any
3 person is violating any such ~~((regulation))~~ prohibition of this code,
4 the commissioner may order such person to cease and desist therefrom.
5 The commissioner shall deliver such order to such person direct or mail
6 it to the person by registered mail with return receipt requested. If
7 the person violates the order after expiration of ten days after the
8 cease and desist order has been received by him or her, he or she may
9 be fined by the commissioner a sum not to exceed two hundred and fifty
10 dollars for each violation committed thereafter.

11 ~~((5))~~ (3) If any such ~~((regulation))~~ prohibition of this code is
12 violated, the commissioner may take such other or additional action as
13 is permitted under the insurance code for violation of ~~((a regulation))~~
14 that prohibition.

15 (4) Any permanent rule that was adopted by the commissioner under
16 the authority of this section as it existed before the effective date
17 of this section, and that was in effect as of the effective date of
18 this section, shall, if otherwise valid, remain in effect until and
19 unless it is repealed by the commissioner, who shall retain the
20 authority to repeal any such rule, or is effectively repealed by an act
21 of the legislature.

22 **Sec. 115.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to
23 read as follows:

24 The insurance commissioner shall make reasonable regulations in aid
25 of the administration of this chapter ~~((which may include, but shall~~
26 ~~not be limited to regulations))~~ as specifically authorized, and only to
27 the extent specifically authorized, by the legislature and may make
28 reasonable rules concerning the maintenance of adequate insurance,
29 bonds, or cash deposits, information required of registrants, and
30 methods of expediting speedy and fair payments to claimants.

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

1 **Sec. 116.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
2 amended to read as follows:

3 The commissioner may adopt, in accordance with the provisions of
4 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
5 rules (~~and regulations as necessary or proper to carry out the~~
6 ~~provisions of this chapter~~) or policy statements, only as specifically
7 authorized, and only to the extent specifically authorized, by the
8 legislature. Nothing in this chapter shall be construed to prohibit
9 the commissioner from requiring changes in procedures previously
10 approved by (~~him~~) the commissioner.

11 Any permanent rule that was adopted by the commissioner under the
12 authority of this section as it existed before the effective date of
13 this section, and that was in effect as of the effective date of this
14 section, shall, if otherwise valid, remain in effect until and unless
15 it is repealed by the commissioner, who shall retain the authority to
16 repeal any such rule, or is effectively repealed by an act of the
17 legislature.

18 **Sec. 117.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
19 read as follows:

20 (1) The department shall have all the powers as provided in RCW
21 70.94.141.

22 (2) The department, in addition to any other powers vested in it by
23 law after consideration at a public hearing held in accordance with
24 chapters 42.30 and 34.05 RCW shall:

25 (a) Adopt rules establishing air quality objectives and air quality
26 standards;

27 (b) Adopt emission standards which shall constitute minimum
28 emission standards throughout the state. An authority may enact more
29 stringent emission standards, except for emission performance standards
30 for new wood stoves and opacity levels for residential solid fuel
31 burning devices which shall be state-wide, but in no event may less
32 stringent standards be enacted by an authority without the prior
33 approval of the department after public hearing and due notice to
34 interested parties;

35 (c) Adopt by rule air quality standards and emission standards for
36 the control or prohibition of emissions to the outdoor atmosphere of
37 radionuclides, dust, fumes, mist, smoke, other particulate matter,
38 vapor, gas, odorous substances, or any combination thereof. Such

1 requirements may be based upon a system of classification by types of
2 emissions or types of sources of emissions, or combinations thereof,
3 which it determines most feasible for the purposes of this chapter.
4 However, an industry, or the air pollution control authority having
5 jurisdiction, can choose, subject to the submittal of appropriate data
6 that the industry has quantified, to have any limit on the opacity of
7 emissions from a source whose emission standard is stated in terms of
8 a weight of particulate per unit volume of air (e.g., grains per dry
9 standard cubic foot) be based on the applicable particulate emission
10 standard for that source, such that any violation of the opacity limit
11 accurately indicates a violation of the applicable particulate emission
12 standard. Any alternative opacity limit provided by this section that
13 would result in increasing air contaminants emissions in any
14 nonattainment area shall only be granted if equal or greater emission
15 reductions are provided for by the same source obtaining the revised
16 opacity limit. A reasonable fee may be assessed to the industry to
17 which the alternate opacity standard would apply. The fee shall cover
18 only those costs to the air pollution control authority which are
19 directly related to the determination on the acceptability of the
20 alternate opacity standard, including testing, oversight and review of
21 data.

22 (3) The air quality standards and emission standards may be for the
23 state as a whole or may vary from area to area or source to source,
24 except that emission performance standards for new wood stoves and
25 opacity levels for residential solid fuel burning devices shall be
26 state-wide, as may be appropriate to facilitate the accomplishment of
27 the objectives of this chapter and to take necessary or desirable
28 account of varying local conditions of population concentration, the
29 existence of actual or reasonably foreseeable air pollution,
30 topographic and meteorologic conditions and other pertinent variables.

31 (4) The department is directed to cooperate with the appropriate
32 agencies of the United States or other states or any interstate
33 agencies or international agencies with respect to the control of air
34 pollution and air contamination, or for the formulation for the
35 submission to the legislature of interstate air pollution control
36 compacts or agreements.

37 (5) The department is directed to conduct or cause to be conducted
38 a continuous surveillance program to monitor the quality of the ambient
39 atmosphere as to concentrations and movements of air contaminants and

1 conduct or cause to be conducted a program to determine the quantity of
2 emissions to the atmosphere.

3 (6) The department shall enforce the air quality standards and
4 emission standards throughout the state except where a local authority
5 is enforcing the state regulations or its own regulations which are
6 more stringent than those of the state.

7 (7) The department shall encourage local units of government to
8 handle air pollution problems within their respective jurisdictions;
9 and, on a cooperative basis provide technical and consultative
10 assistance therefor.

11 (8) The department shall have the power to require the addition to
12 or deletion of a county or counties from an existing authority in order
13 to carry out the purposes of this chapter. No such addition or
14 deletion shall be made without the concurrence of any existing
15 authority involved. Such action shall only be taken after a public
16 hearing held pursuant to the provisions of chapter 34.05 RCW.

17 (9) The department shall establish rules requiring sources or
18 source categories to apply reasonable and available control methods.
19 Such rules shall apply to those sources or source categories that
20 individually or collectively contribute the majority of state-wide air
21 emissions of each regulated pollutant. The department shall review,
22 and if necessary, update its rules every five years to ensure
23 consistency with current reasonable and available control methods. The
24 department shall have adopted rules required under this subsection for
25 all sources by July 1, 1996.

26 For the purposes of this section, "reasonable and available control
27 methods" shall include but not be limited to, changes in technology,
28 processes, or other control strategies.

29 (10) After July 1, 1995, the department may adopt or amend a rule
30 under the authority of this chapter that imposes burdens or obligations
31 on any person that exceed the requirements of the federal clean air
32 act, or that imposes burdens or obligations sooner than otherwise
33 required by the federal clean air act, only after compliance with the
34 procedures established in subsections (11) through (13) of this
35 section.

36 (11) Before adopting a rule or amendment described in subsection
37 (10) of this section, the department shall find in writing that those
38 features of the proposed rule or amendment that exceed the requirements
39 of the federal clean air act are necessary to:

1 (a) Satisfy an express and specific requirement of Washington or
2 federal law, which requirement shall be identified in the department's
3 written finding; or

4 (b) Protect human health and the environment from air quality
5 problems which are specific to the state or an area of the state, and
6 which are not addressed or not adequately addressed by the federal
7 clean air act.

8 (12) The findings required by subsection (11)(b) of this section
9 shall be supported by a written analysis of (a) the differences between
10 the proposed rule or amendment and the corresponding provisions of the
11 federal clean air act; (b) the air quality problem that the rule would
12 address, including the sources of the problem and any factors that make
13 the problem more severe in the state or in an area of the state than in
14 other parts of the United States; (c) the quantitative effect of the
15 proposed rule or amendment in eliminating the problem or reducing its
16 severity; and (d) the projected cost that Washington sources would bear
17 to comply with the proposed rule or amendment.

18 (13) The findings required by subsection (11) of this section and
19 the analysis required by subsection (12) of this section shall be
20 signed by the director and made available to the public, at least
21 thirty days prior to the public hearing on any regulation described in
22 subsection (10) of this section.

23 NEW SECTION. Sec. 118. A new section is added to chapter 90.48
24 RCW to read as follows:

25 The director shall approve short-term water quality modifications
26 allowing licensed applicators to apply federally approved herbicides
27 for elodea and algae control on lake Steilacoom subject only to
28 compliance with federal labeling requirements, the federal insecticide,
29 fungicide, and rodenticide act, the noxious weed control board act, the
30 Washington pesticide control act, and the Washington pesticide
31 application act. The director shall not use this permit authority to
32 otherwise condition or burden weed control efforts. The director's
33 authority to issue water quality permits for activities other than the
34 application of approved herbicides to control aquatic noxious weeds is
35 unaffected by this section.

36 NEW SECTION. Sec. 119. A new section is added to chapter 34.05
37 RCW under the subchapter heading Part III to read as follows:

1 (1) For rules implementing statutes enacted after the effective
2 date of this section, except emergency rules adopted under RCW
3 34.05.350, an agency may not rely solely on the statute's statement of
4 intent or purpose, or on the enabling provisions of the statute
5 establishing the agency, or on any combination of such provisions, for
6 its statutory authority to adopt the rule. An agency may use the
7 statement of intent or purpose or the agency enabling provisions to
8 interpret ambiguities in a statute's other provisions.

9 (2) This section does not apply to: The commissioner of public
10 lands, the department of social and health services, the department of
11 ecology, the department of agriculture, the department of health, the
12 department of revenue, the department of labor and industries, the
13 department of licensing, the employment security department, the forest
14 practices board, the fish and wildlife commission, and the office of
15 the insurance commissioner.

16 **PART II**

17 **RULE-MAKING CRITERIA**

18 NEW SECTION. **Sec. 201.** A new section is added to chapter 34.05
19 RCW under the subchapter heading Part III to read as follows:

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

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

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

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

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

37 (e) Determine that the rule does not require those to whom it

1 applies to take an action that violates requirements of another federal
2 or state law;

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

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

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

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

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

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

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

24 (k) Describe which resources the agency intends to use to implement
25 the rule; and

26 (1) Document compliance with the requirements of this section in
27 the rule-making file.

28 (2) Before adopting a rule, the agency shall place evidence in the
29 rule-making file documenting agency compliance with the requirement of
30 subsection (1) of this section. Agency determinations under subsection
31 (1)(b) through (g) of this section shall each be supported by
32 substantial evidence. For purposes of this section, "substantial
33 evidence" is evidence in sufficient quantity to persuade a fair-minded
34 person of the truth of the declared premises.

35 (3) Before adopting a rule described in subsection (4) of this
36 section, an agency shall include in the rule-making file a written plan
37 that describes:

38 (a) The methods the agency will use in making a reasonable attempt
39 to notify those to whom the rule applies of the adoption of the rule

1 and how they may get more information on how to comply with the rule;
2 and

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

6 (4)(a) This section shall apply only to:

7 (i) Legislative rules of the departments of ecology, labor and
8 industries, and revenue, and the employment security department, the
9 department of natural resources, the forest practices board, the office
10 of the insurance commissioner, the department of health, and to
11 legislative rules of the department of fish and wildlife implementing
12 chapter 75.20 RCW; and

13 (ii) Legislative rules of any agency, if such rules are designated
14 to be reviewed under this section by the joint administrative rules
15 review committee pursuant to (d) of this subsection.

16 (b) Notwithstanding (a) of this subsection, subsections (1) and (3)
17 of this section shall not apply to:

18 (i) Emergency rules adopted under RCW 34.05.350;

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

21 (iii) Rules adopting or incorporating by reference without material
22 change federal statutes or rules, rules of other Washington state
23 agencies, shoreline master programs other than those programs governing
24 shorelines of state-wide significance, as referenced by Washington
25 state law, national consensus codes that generally establish industry
26 standards, as long as the material adopted or incorporated regulates
27 the same subject matter and conduct as the adopting or incorporating
28 rule;

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

32 (v) Rules that set or adjust fees or rates pursuant to legislative
33 standards.

34 (c) For purposes of this subsection:

35 (i) A "procedural rule" is a rule that establishes, alters, or
36 revokes (A) any procedure, practice, or requirement relating to any
37 agency hearings, (B) any filing or related process requirement for
38 making application to an agency for a license, or (C) any policy
39 statement pertaining to the consistent internal operations of an

1 agency.

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

5 (iii) A "legislative rule" includes a rule other than a procedural
6 or interpretive rule that (A) adopts substantive provisions of law
7 pursuant to delegated legislative authority, the violation of which
8 subjects a violator of such rule to a penalty or sanction, (B)
9 establishes, alters, or revokes any qualification or standard for the
10 issuance, suspension, or revocation of a license, (C) makes significant
11 amendments to an existing policy or regulatory program, (D) is
12 designated as such by the agency, or (E) is designated as such by the
13 joint administrative rules review committee pursuant to (d) of this
14 subsection.

15 (d) At the time of filing a notice of proposed rule making pursuant
16 to RCW 34.05.320, an agency shall designate whether it considers the
17 rule contemplated to be developed a legislative rule and shall so
18 inform the joint administrative rules review committee of that
19 designation by providing to that committee a copy of that notice. The
20 joint administrative rules review committee by a vote of fifty percent
21 of the members within ninety days of receipt of the notice may
22 designate the contemplated rule as legislative and so inform the
23 agency.

24 (e) Any agency may voluntarily adopt a rule under the factors
25 listed in subsection (1) of this section. Such a decision by the
26 agency shall be included in the filing of the notice of proposed rule
27 making made pursuant to RCW 34.05.320.

28 (5) By January 31, 1996, and by January 31st of each even-numbered
29 year thereafter, the office of financial management, after consulting
30 with state agencies, counties, and cities, and business, labor, and
31 environmental organizations, shall report to the governor and the
32 legislature regarding the effects of this section on the regulatory
33 system in this state. The report shall document:

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

37 (b) The costs incurred by state agencies in complying with this
38 section;

39 (c) Any legal action maintained based upon the alleged failure of

1 any agency to comply with this section, the costs to the state of such
2 action, and the result;

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

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

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

9 **PART III**

10 **PUBLIC PARTICIPATION**

11 **Sec. 301.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to
12 read as follows:

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

19 ~~((States the specific statutory authority for the new rule;~~

20 ~~(b) Identifies the reasons the new rule is needed;~~

21 ~~(c) Identifies the goals of the new rule;~~

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

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

26 (c) Identifies other federal and state agencies that regulate this
27 subject, and describes the process whereby the agency would coordinate
28 the contemplated rule with these agencies;

29 (d) Discusses the process by which the rule ((will)) might be
30 developed, including, but not limited to, negotiated rule making, pilot
31 rule making, or agency study; ((and))

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

35 The statement of ~~((intent))~~ inquiry shall be filed with the code
36 reviser for publication in the state register and shall be sent to any
37 party that has requested receipt of the agency's statements of

1 ((intent)) inquiry.

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

6 (a) Negotiated rule making (~~(which includes:~~

7 ~~(i) Identifying individuals and organizations that have a~~
8 ~~recognized interest in or will be significantly affected by the~~
9 ~~adoption of the proposed rule;~~

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

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

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

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

21 ~~(vi) Providing a mechanism by which one or more parties may~~
22 ~~withdraw from the process or the negotiations may be terminated if it~~
23 ~~appears that consensus cannot be reached on a draft rule that~~
24 ~~accommodates the needs of the agency, interested parties, and the~~
25 ~~general public and conforms to the legislative intent of the statute~~
26 ~~that the rule is intended to implement)) that means a process by which~~
27 representatives of an agency and of the interests that are affected by
28 a subject of rule making, including where appropriate county and city
29 representatives, seek to reach consensus on the terms of the proposed
30 rule and on the process by which it is negotiated; and

31 (b) Pilot rule making which includes testing the (~~(draft of a~~
32 ~~proposed rule)) feasibility of complying with or administering new~~
33 draft rules or draft revisions to adopted rules through the use of
34 volunteer pilot ((study)) groups in various areas and circumstances, as
35 provided in RCW 34.05.313.

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

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

5 (4) This section does not apply to:

6 (a) Emergency rules adopted under RCW 34.05.350;

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

9 (c) Rules adopting or incorporating by reference without material
10 change federal statutes or rules, rules of other Washington state
11 agencies, shoreline master programs other than those governing
12 shorelines of state-wide significance, or, as referenced by Washington
13 state law, national consensus codes that generally establish industry
14 standards, if the material adopted or incorporated regulates the same
15 subject matter and conduct as the adopting or incorporating rule;

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

19 (e) Rules whose content is explicitly and specifically dictated by
20 statute;

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

24 **Sec. 302.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to
25 read as follows:

26 (1) No sooner than thirty days after publication of the statement
27 of inquiry under RCW 34.05.310, and at least twenty days before the
28 rule-making hearing at which the agency receives public comment
29 regarding adoption of a rule, the agency shall cause notice of the
30 hearing to be published in the state register. The publication
31 constitutes the proposal of a rule. The notice shall include all of
32 the following:

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

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

38 (c) A summary of the rule and a statement of the reasons supporting

1 the proposed action;

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

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

7 (f) Agency comments or recommendations, if any, regarding statutory
8 language, implementation, enforcement, and fiscal matters pertaining to
9 the rule;

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

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

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

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

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

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

27 (3) No later than three days after its publication in the state
28 register, the agency shall cause a copy of the notice of proposed rule
29 adoption to be mailed to each person (~~who~~), city, and county that has
30 made a request to the agency for a mailed copy of such notices. An
31 agency may charge for the (~~actual~~) postage cost of providing
32 (~~individual~~) a requesting party mailed copies of these notices.

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

37 **Sec. 303.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to
38 read as follows:

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

24 (2) An agency conducting a pilot rule project authorized under
25 subsection (1) of this section may waive one or more provisions of
26 agency rules otherwise applicable to participants in such a pilot
27 project if the agency first determines that such a waiver is in the
28 public interest and necessary to conduct the project. Such a waiver
29 may be only for a stated period of time, not to exceed the duration of
30 the project.

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

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

36 (a) If over ten small businesses are affected, there shall be at
37 least ten small businesses in the test group and at least one-half of
38 the volunteers participating in the pilot test group shall be small
39 businesses.

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

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

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

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

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

15 (c) The agency may not terminate the pilot project before
16 completion.

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

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

22 (ii) A list of the recommended revisions to the rule to make
23 compliance with the rule easier or to reduce the cost of compliance
24 with the rule by the small businesses participating in the pilot rule
25 project;

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

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

34 **Sec. 304.** RCW 34.05.325 and 1994 c 249 s 7 are each amended to
35 read as follows:

36 (1) The agency shall make a good faith effort to insure that the
37 information on the proposed rule published pursuant to RCW 34.05.320
38 accurately reflects the rule to be presented and considered at the oral

1 hearing on the rule. Written comment about a proposed rule, including
2 supporting data, shall be accepted by an agency if received no later
3 than the time and date specified in the notice, or such later time and
4 date established at the rule-making hearing.

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

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

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

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

35 (6) ~~((Before the adoption of a final rule))~~ (a) Except as otherwise
36 provided in (c) of this subsection, before it files an adopted rule
37 with the code reviser, an agency shall prepare a ((written summary of))
38 concise explanatory statement of the rule:

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

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

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

8 (b) The agency shall provide the ((written summary and response))
9 concise explanatory statement to any person upon request or from whom
10 the agency received comment.

11 (c) This subsection does not apply to rules described in RCW
12 34.05.310(4).

13 NEW SECTION. Sec. 305. RCW 34.05.355 and 1994 c 249 s 8 & 1988 c
14 288 s 310 are each repealed.

15 **PART IV**
16 **REGULATORY FAIRNESS ACT**

17 NEW SECTION. Sec. 401. A new section is added to chapter 19.85
18 RCW to read as follows:

19 (1) Unless an agency receives a written objection to the expedited
20 repeal of a rule, this chapter does not apply to a rule proposed for
21 expedited repeal pursuant to section 701 of this act. If an agency
22 receives a written objection to expedited repeal of the rule, this
23 chapter applies to the rule-making proceeding.

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

26 (3) An agency is not required to prepare a separate statement under
27 this chapter if it prepared an analysis under section 201 of this act
28 that makes the findings required and includes the mitigation required
29 by this chapter and designates that part of the analysis that meets the
30 requirements of this chapter.

31 **Sec. 402.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to
32 read as follows:

33 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will
34 impose more than minor costs on more than twenty percent of all
35 industries, or more than ten percent of any one industry, the adopting

1 agency:

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

6 (i) Establish differing compliance or reporting requirements or
7 timetables for small businesses;

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

10 (iii) Establish performance rather than design standards;

11 (iv) Exempt small businesses from any or all requirements of the
12 rule;

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

14 (vi) Other mitigation techniques;

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

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

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

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

29 (3) An agency may request assistance from the business assistance
30 center in the preparation of the small business economic impact
31 statement.

32 (4) The business assistance center shall develop guidelines to
33 assist agencies in determining whether a proposed rule will impose more
34 than minor costs on businesses in an industry and therefore require
35 preparation of a small business economic impact statement. The
36 business assistance center may review an agency determination that a
37 proposed rule will not impose such costs, and shall advise the joint
38 administrative rules review committee on disputes involving agency
39 determinations under this section.

1 **PART V**

2 **STRENGTHENED LEGISLATIVE OVERSIGHT**

3 NEW SECTION. **Sec. 501.** A new section is added to chapter 34.05
4 RCW to read as follows:

5 The joint administrative rules review committee shall not render a
6 decision on a rule unless a quorum is present. A quorum shall consist
7 of at least five members of the committee. Once a quorum is
8 established, a majority of the quorum may render any decision except a
9 suspension recommendation. A recommendation to suspend a rule under
10 RCW 34.05.640 shall require a majority vote of the entire membership of
11 the rules review committee.

12 NEW SECTION. **Sec. 502.** A new section is added to chapter 34.05
13 RCW to read as follows:

14 (1) Any person potentially impacted by a proposed rule or currently
15 impacted by an existing rule may petition the rules review committee
16 for a review of that rule. Within thirty days of the receipt of the
17 petition, the rules review committee shall acknowledge receipt of the
18 petition and describe the initial action taken. If the rules review
19 committee rejects the petition, a written statement of the reasons for
20 rejection shall be included.

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

23 NEW SECTION. **Sec. 503.** A new section is added to chapter 34.05
24 RCW to read as follows:

25 Any individual employed or holding office in any department or
26 agency of state government may submit rules warranting review to the
27 rules review committee. Any such state employee is protected under
28 chapter 42.40 RCW.

29 **Sec. 504.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
30 read as follows:

31 (1) It is the express policy of the legislature that establishment
32 of procedures for review of administrative rules by the legislature and
33 the notice of objection required by RCW 34.05.630(2) and 34.05.640(2)
34 in no way serves to establish a presumption as to the legality or
35 constitutionality of a rule in any subsequent judicial proceedings

1 interpreting such rules.

2 (2) Notwithstanding subsection (1) of this section, if the joint
3 administrative rules review committee recommends to the governor that
4 an existing rule be suspended because it does not conform with the
5 intent of the legislature, the recommendation shall establish a
6 rebuttable presumption in any proceeding challenging the validity of
7 the rule that the rule is invalid. The burden of demonstrating the
8 rule's validity is then on the adopting agency.

9 NEW SECTION. Sec. 505. A new section is added to chapter 34.05
10 RCW to read as follows:

11 (1) The rules review committee may make reports from time to time
12 to the members of the legislature and to the public with respect to any
13 of its findings or recommendations. The committee shall keep complete
14 minutes of its meetings.

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

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

20 NEW SECTION. Sec. 506. A new section is added to chapter 34.05
21 RCW to read as follows:

22 In the discharge of any duty imposed under this chapter, the rules
23 review committee may examine and inspect all properties, equipment,
24 facilities, files, records, and accounts of any state office,
25 department, institution, board, committee, commission, or agency, and
26 administer oaths, issue subpoenas, compel the attendance of witnesses
27 and the production of any papers, books, accounts, documents, and
28 testimony, and cause the deposition of witnesses, either residing
29 within or without the state, to be taken in the manner prescribed by
30 law for taking depositions in civil actions in the superior courts.

31 NEW SECTION. Sec. 507. A new section is added to chapter 34.05
32 RCW to read as follows:

33 In case of the failure on the part of any person to comply with any
34 subpoena issued in behalf of the rules review committee, or on the
35 refusal of any witness to testify to any matters regarding which he or
36 she may be lawfully interrogated, it is the duty of the superior court

1 of any county, or of the judge thereof, on application of the
2 committee, to compel obedience by proceedings for contempt, as in the
3 case of disobedience of the requirements of a subpoena issued from the
4 court or a refusal to testify in the court.

5 **Sec. 508.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to
6 read as follows:

7 It is the policy of the legislature that employees should be
8 encouraged to disclose, to the extent not expressly prohibited by law,
9 improper governmental actions, and it is the intent of the legislature
10 to protect the rights of state employees making these disclosures. It
11 is also the policy of the legislature that employees should be
12 encouraged to identify rules warranting review or provide information
13 to the rules review committee, and it is the intent of the legislature
14 to protect the rights of these employees.

15 **Sec. 509.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to
16 read as follows:

17 As used in this chapter, the terms defined in this section shall
18 have the meanings indicated unless the context clearly requires
19 otherwise.

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

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

23 (3)(a) "Improper governmental action" means any action by an
24 employee:

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

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

31 (b) "Improper governmental action" does not include personnel
32 actions including but not limited to employee grievances, complaints,
33 appointments, promotions, transfers, assignments, reassignments,
34 reinstatements, restorations, reemployments, performance evaluations,
35 reductions in pay, dismissals, suspensions, demotions, violations of
36 the state civil service law, alleged labor agreement violations,
37 reprimands, or any action which may be taken under chapter 41.06 ((or

1 ~~28B.16~~) RCW, or other disciplinary action except as provided in RCW
2 42.40.030.

3 (4) "Use of official authority or influence" includes taking,
4 directing others to take, recommending, processing, or approving any
5 personnel action such as an appointment, promotion, transfer,
6 assignment, reassignment, reinstatement, restoration, reemployment,
7 performance evaluation, or any adverse action under chapter 41.06 (~~or~~
8 ~~28B.16~~) RCW, or other disciplinary action.

9 (5) "Whistleblower" means an employee who in good faith reports
10 alleged improper governmental action to the auditor, initiating an
11 investigation under RCW 42.40.040. For purposes of the provisions of
12 this chapter and chapter 49.60 RCW relating to reprisals and
13 retaliatory action, the term "whistleblower" also means: (a) An
14 employee who in good faith provides information to the auditor in
15 connection with an investigation under RCW 42.40.040 and an employee
16 who is believed to have reported alleged improper governmental action
17 to the auditor or to have provided information to the auditor in
18 connection with an investigation under RCW 42.40.040 but who, in fact,
19 has not reported such action or provided such information; or (b) an
20 employee who in good faith identifies rules warranting review or
21 provides information to the rules review committee, and an employee who
22 is believed to have identified rules warranting review or provided
23 information to the rules review committee but who, in fact, has not
24 done so.

25 **Sec. 510.** RCW 42.40.030 and 1989 c 284 s 2 are each amended to
26 read as follows:

27 (1) An employee shall not directly or indirectly use or attempt to
28 use the employee's official authority or influence for the purpose of
29 intimidating, threatening, coercing, commanding, influencing, or
30 attempting to intimidate, threaten, coerce, command, or influence any
31 individual for the purpose of interfering with the right of the
32 individual to: (a) Disclose to the auditor (or representative thereof)
33 information concerning improper governmental action; or (b) identify
34 rules warranting review or provide information to the rules review
35 committee.

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

1 NEW SECTION. **Sec. 602.** 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. 603.** All regulatory agencies shall develop
21 programs to encourage voluntary compliance by providing technical
22 assistance consistent with statutory requirements. The programs shall
23 include but are not limited to technical assistance visits, printed
24 information, information and assistance by telephone, training
25 meetings, and other appropriate methods to provide technical
26 assistance. In addition, all regulatory agencies shall provide upon
27 request a list of organizations, including private companies, that
28 provide technical assistance. This list shall be compiled by the
29 agencies from information submitted by the organizations and shall not
30 constitute an endorsement by an agency of any organization.

31 NEW SECTION. **Sec. 604.** (1) For the purposes of this chapter, a
32 technical assistance visit is a visit by a regulatory agency to a
33 facility, business, or other location that:

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

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

37 (2) A technical assistance visit also includes a consultative visit

1 pursuant to RCW 49.17.250.

2 (3) During a technical assistance visit, or within a reasonable
3 time thereafter, a regulatory agency shall inform the owner or operator
4 of the facility of any violations of law or agency rules identified by
5 the agency as follows:

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

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

9 (c) The date by which the agency requires compliance to be
10 achieved;

11 (d) Notice of the means to contact any technical assistance
12 services provided by the agency or others; and

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

15 NEW SECTION. **Sec. 605.** The owner and operator shall be given a
16 reasonable period of time to correct violations identified during a
17 technical assistance visit before any civil penalty provided for by law
18 is imposed for those violations. A regulatory agency may revisit a
19 facility, business, or other location after a technical assistance
20 visit and a reasonable period of time has passed to correct violations
21 identified by the agency in writing and issue civil penalties as
22 provided for by law for any uncorrected violations.

23 NEW SECTION. **Sec. 606.** A regulatory agency that observes a
24 violation during a technical assistance visit may issue a civil penalty
25 as provided for by law if: (1) The individual or business has
26 previously been subject to an enforcement action for the same or
27 similar type of violation of the same statute or rule or has been given
28 previous notice of the same or similar type of violation of the same
29 statute or rule; or (2) the issue involves sales taxes due to the state
30 and the individual or business is not remitting previously collected
31 sales taxes to the state; or (3) the violation has a probability of
32 placing a person in danger of death or bodily harm, has a probability
33 of causing more than minor environmental harm, or has a probability of
34 causing physical damage to the property of another in an amount
35 exceeding one thousand dollars.

36 NEW SECTION. **Sec. 607.** (1) If in the course of any site

1 inspection or visit that is not a technical assistance visit, the
2 department of ecology becomes aware of conditions that are not in
3 compliance with applicable laws and rules enforced by the department
4 and are not subject to civil penalties as provided for in section 608
5 of this act, the department may issue a notice of correction to the
6 responsible party that shall include:

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

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

10 (c) The date by which the department requires compliance to be
11 achieved;

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

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

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

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

22 NEW SECTION. **Sec. 608.** The department of ecology may issue a
23 civil penalty provided for by law without first issuing a notice of
24 correction if: (1) The person has previously been subject to an
25 enforcement action for the same or similar type of violation of the
26 same statute or rule or has been given previous notice of the same or
27 similar type of violation of the same statute or rule; or (2)
28 compliance is not achieved by the date established by the department in
29 a previously issued notice of correction, if the department has
30 responded to any request for review of such date by reaffirming the
31 original date or establishing a new date; or (3) the violation has a
32 probability of placing a person in danger of death or bodily harm, has
33 a probability of causing more than minor environmental harm, or has a
34 probability of causing physical damage to the property of another in an
35 amount exceeding one thousand dollars.

36 NEW SECTION. **Sec. 609.** The provisions of sections 607 and 608 of
37 this act affecting civil penalties issued by the department of ecology

1 shall not apply to civil penalties for negligent discharge of oil as
2 authorized under RCW 90.56.330 or to civil penalties as authorized
3 under RCW 90.03.600 for unlawful use of water in violation of RCW
4 90.03.250 or 90.44.050.

5 NEW SECTION. **Sec. 610.** (1) Following a consultative visit
6 pursuant to RCW 49.17.250, the department of labor and industries shall
7 issue a report to the employer that the employer shall make available
8 to its employees. The report shall contain:

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

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

12 (c) The date by which the department requires compliance to be
13 achieved;

14 (d) Notice of means to contact technical assistance services
15 provided by the department; and

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

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

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

23 (b) Have not been previously cited;

24 (c) Are not willful; and

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

26 NEW SECTION. **Sec. 611.** The date for compliance established by the
27 department of ecology or the department of labor and industries
28 pursuant to section 607 or 610 of this act respectively shall provide
29 for a reasonable time to achieve compliance. Any person receiving a
30 notice of correction pursuant to section 607 of this act or a report or
31 citation pursuant to section 610 of this act may request an extension
32 of time to achieve compliance for good cause from the issuing
33 department. Requests shall be submitted to the issuing department and
34 responded to by the issuing department in writing in accordance with
35 procedures specified by the issuing department in the notice, report,
36 or citation.

1 NEW SECTION. **Sec. 612.** (1) If in the course of any inspection or
2 visit that is not a technical assistance visit, the department of
3 agriculture, fish and wildlife, health, licensing, or natural resources
4 becomes aware of conditions that are not in compliance with applicable
5 laws and rules enforced by the department and are not subject to civil
6 penalties as provided for in section 613 of this act, the department
7 may issue a notice of correction to the responsible party that shall
8 include:

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

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

12 (c) The date by which the department requires compliance to be
13 achieved;

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

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

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

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

24 NEW SECTION. **Sec. 613.** The department of agriculture, fish and
25 wildlife, health, licensing, or natural resources may issue a civil
26 penalty provided for by law without first issuing a notice of
27 correction if: (1) The person has previously been subject to an
28 enforcement action for the same or similar type of violation of the
29 same statute or rule or has been given previous notice of the same or
30 similar type of violation of the same statute or rule; or (2)
31 compliance is not achieved by the date established by the department in
32 a previously issued notice of correction, if the department has
33 responded to any request for review of such date by reaffirming the
34 original date or establishing a new date; (3) the violation has a
35 probability of placing a person in danger of death or bodily harm, has
36 a probability of causing more than minor environmental harm, or has a
37 probability of causing physical damage to the property of another in an
38 amount exceeding one thousand dollars; or (4) the violation was

1 committed by a business that employed fifty or more employees on at
2 least one day in each of the preceding twelve months. In addition, the
3 department of fish and wildlife may issue a civil penalty provided for
4 by law without first issuing a notice of correction for a violation of
5 any rule dealing with seasons, catch or bag limits, gear types, or
6 geographical areas for fish or wildlife removal, reporting, or
7 disposal.

8 NEW SECTION. **Sec. 614.** The date for compliance established by the
9 department of ecology, labor and industries, agriculture, fish and
10 wildlife, health, licensing, or natural resources pursuant to section
11 607, 610, or 612 of this act respectively shall provide for a
12 reasonable time to achieve compliance. Any person receiving a notice
13 of correction pursuant to section 607 or 612 of this act or a report or
14 citation pursuant to section 610 of this act may request an extension
15 of time to achieve compliance for good cause from the issuing
16 department. Requests shall be submitted to the issuing department and
17 responded to by the issuing department in writing in accordance with
18 procedures specified by the issuing department in the notice, report,
19 or citation.

20 NEW SECTION. **Sec. 615.** The departments of revenue and labor and
21 industries and the employment security department shall undertake an
22 educational program directed at those who have the most difficulty in
23 determining their tax or premium liability. The departments may rely
24 on information from internal data, trade associations, and businesses
25 to determine which entities should be selected. The educational
26 programs may include, but not be limited to, targeted informational
27 fact sheets, self-audits, or workshops, and may be presented
28 individually by the agency or in conjunction with other agencies.

29 NEW SECTION. **Sec. 616.** The department of revenue, the department
30 of labor and industries in respect to its duties in Title 51 RCW, and
31 the employment security department shall develop and administer a pilot
32 voluntary audit program. Voluntary audits can be requested by
33 businesses from any of these agencies according to guidelines
34 established by each agency. No penalty assessments may be made against
35 participants in such a program except when the agency determines that
36 either a good faith effort has not been made by the taxpayer or premium

1 payer to comply with the law or that the taxpayer has failed to remit
2 previously collected sales taxes to the state. The persons conducting
3 the voluntary audit shall provide the business undergoing the voluntary
4 audit an audit report that describes errors or omissions found and
5 future reporting instructions. This program does not relieve a
6 business from past or future tax or premium obligations.

7 NEW SECTION. **Sec. 617.** The departments of revenue and labor and
8 industries and the employment security department shall each review the
9 penalties it issues related to taxes or premiums to determine if they
10 are consistent and provide for waivers in appropriate circumstances.
11 Each department shall report the results of its review to the
12 legislature no later than December 1, 1995.

13 NEW SECTION. **Sec. 618.** Nothing in this chapter obligates a
14 regulatory agency to conduct a technical assistance visit. The state
15 and officers or employees of the state shall not be liable for damages
16 to a person to the extent that liability is asserted to arise from
17 providing technical assistance, or if liability is asserted to arise
18 from the failure of the state or officers or employees of the state to
19 provide technical assistance. This chapter does not limit the
20 authority of any regulatory agency to take any enforcement action,
21 other than a civil penalty, authorized by law. This chapter shall not
22 limit a regulatory agency's authority to issue a civil penalty as
23 authorized by law based upon a person's failure to comply with specific
24 terms and conditions of any permit or license issued by the agency to
25 that person.

26 NEW SECTION. **Sec. 619.** Agency rules, guidelines, and procedures
27 necessary to implement this act shall be established and implemented
28 expeditiously and not later than July 1, 1996.

29 NEW SECTION. **Sec. 620.** If a regulatory agency determines any part
30 of this chapter to be in conflict with federal law or program
31 requirements, in conflict with federal requirements that are a
32 prescribed condition to the allocation of federal funds to the state,
33 or in conflict with the requirements for eligibility of employers in
34 this state for federal unemployment tax credits, the conflicting part
35 of this chapter shall be inoperative solely to the extent of the

1 conflict. Any rules under this chapter shall meet federal requirements
2 that are a necessary condition to the receipt of federal funds by the
3 state or the granting of federal unemployment tax credits to employers
4 in this state.

5 NEW SECTION. **Sec. 621.** If notified by responsible federal
6 officials of any conflict of this chapter with federal law or program
7 requirements or with federal requirements that are a prescribed
8 condition to the allocation of federal funds to the state, the
9 regulatory agency notified of the conflict shall actively seek to
10 resolve the conflict. If the agency determines that the conflict
11 cannot be resolved without loss of benefits or authority to the state,
12 the agency shall notify the governor, the president of the senate, and
13 the speaker of the house of representatives in writing within thirty
14 days of making that determination.

15 NEW SECTION. **Sec. 622.** (1) By January 31, 1996, and by January
16 31st of each even-numbered year thereafter, the office of financial
17 management, after consulting with state regulatory agencies, counties,
18 and cities, and business, labor, and environmental organizations, shall
19 report to the governor and the legislature regarding the effects of
20 this chapter on the regulatory system in this state. The report shall
21 document:

22 (a) Technical assistance, including but not limited to technical
23 assistance visits, provided by state regulatory agencies consistent
24 with this chapter;

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

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

29 (d) Any legal action against state regulatory agencies for any
30 alleged failure to comply with this chapter, the costs to the state of
31 the action, and the result;

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

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

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

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

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

4 NEW SECTION. **Sec. 623.** A new section is added to chapter 43.12
5 RCW to read as follows:

6 Enforcement action taken after the effective date of this section
7 by the commissioner of public lands shall be in accordance with
8 sections 614 and 615 of this act.

9 NEW SECTION. **Sec. 624.** A new section is added to chapter 43.23
10 RCW to read as follows:

11 Enforcement action taken after the effective date of this section
12 by the director or the department of agriculture shall be in accordance
13 with sections 614 and 615 of this act.

14 NEW SECTION. **Sec. 625.** A new section is added to chapter 43.24
15 RCW to read as follows:

16 Enforcement action taken after the effective date of this section
17 by the director or the department of licensing shall be in accordance
18 with sections 614 and 615 of this act.

19 NEW SECTION. **Sec. 626.** A new section is added to chapter 43.30
20 RCW to read as follows:

21 Enforcement action taken after the effective date of this section
22 by the commissioner or supervisor of public lands shall be in
23 accordance with sections 614 and 615 of this act.

24 NEW SECTION. **Sec. 627.** A new section is added to chapter 43.70
25 RCW to read as follows:

26 Enforcement action taken after the effective date of this section
27 by the director or the department shall be in accordance with sections
28 614 and 615 of this act.

29 NEW SECTION. **Sec. 628.** A new section is added to chapter 43.300
30 RCW to read as follows:

31 Enforcement action taken after the effective date of this section
32 by the director or the department shall be in accordance with sections
33 614 and 615 of this act.

1 **Sec. 629.** RCW 18.104.155 and 1993 c 387 s 21 are each amended to
2 read as follows:

3 (1) Except as provided in sections 607 through 609 of this act, the
4 department of ecology may assess a civil penalty for a violation of
5 this chapter or rules or orders of the department adopted or issued
6 pursuant to it.

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

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

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

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

15 (iii) Failure to submit well construction fees;

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

17 (v) Minor or reparable construction problems.

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

21 (i) Improper well construction;

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

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

24 (iv) Violation of decommissioning requirements;

25 (v) Repeated minor violations; or

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

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

29 (i) Without a license; or

30 (ii) After the person's license has been suspended for more than
31 ninety days or revoked.

32 (3)(a) The penalty for a minor violation shall be not less than one
33 hundred dollars and not more than five hundred dollars. Before the
34 imposition of a penalty for a minor violation, the department may issue
35 an order of noncompliance to provide an opportunity for mitigation or
36 compliance.

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

39 (c) The penalty for a major violation shall be not less than five

1 thousand dollars and not more than ten thousand dollars.

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

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

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

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

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

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

17 (7) Penalties collected by the department pursuant to this section
18 shall be deposited in the reclamation account established by chapter
19 89.16 RCW. Subject to legislative appropriation, the penalties may be
20 spent only for purposes related to the restoration and enhancement of
21 ground water resources in the state.

22 **Sec. 630.** RCW 49.17.180 and 1991 c 108 s 1 are each amended to
23 read as follows:

24 (1) Except as provided in section 610 of this act, any employer who
25 willfully or repeatedly violates the requirements of RCW 49.17.060, of
26 any safety or health standard promulgated under the authority of this
27 chapter, of any existing rule or regulation governing the conditions of
28 employment promulgated by the department, or of any order issued
29 granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a
30 civil penalty not to exceed seventy thousand dollars for each
31 violation. A minimum penalty of five thousand dollars shall be
32 assessed for a willful violation.

33 (2) Any employer who has received a citation for a serious
34 violation of the requirements of RCW 49.17.060, of any safety or health
35 standard promulgated under the authority of this chapter, of any
36 existing rule or regulation governing the conditions of employment
37 promulgated by the department, or of any order issued granting a
38 variance under RCW 49.17.080 or 49.17.090 as determined in accordance

1 with subsection (6) of this section, shall be assessed a civil penalty
2 not to exceed seven thousand dollars for each such violation.

3 (3) Any employer who has received a citation for a violation of the
4 requirements of RCW 49.17.060, of any safety or health standard
5 promulgated under this chapter, of any existing rule or regulation
6 governing the conditions of employment promulgated by the department,
7 or of any order issued granting a variance under RCW 49.17.080 or
8 49.17.090, where such violation is specifically determined not to be of
9 a serious nature as provided in subsection (6) of this section, may be
10 assessed a civil penalty not to exceed seven thousand dollars for each
11 such violation, unless such violation is determined to be de minimis.

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

21 (5) Any employer who violates any of the posting requirements of
22 this chapter, or any of the posting requirements of rules promulgated
23 by the department pursuant to this chapter related to employee or
24 employee representative's rights to notice, including but not limited
25 to those employee rights to notice set forth in RCW 49.17.080,
26 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
27 be assessed a penalty not to exceed seven thousand dollars for each
28 such violation. Any employer who violates any of the posting
29 requirements for the posting of informational, educational, or training
30 materials under the authority of RCW 49.17.050(7), may be assessed a
31 penalty not to exceed seven thousand dollars for each such violation.

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

39 (7) The director, or his authorized representatives, shall have

1 authority to assess all civil penalties provided in this section,
2 giving due consideration to the appropriateness of the penalty with
3 respect to the number of affected employees of the employer being
4 charged, the gravity of the violation, the size of the employer's
5 business, the good faith of the employer, and the history of previous
6 violations.

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

14 **Sec. 631.** RCW 70.94.431 and 1991 c 199 s 311 are each amended to
15 read as follows:

16 (1) Except as provided in sections 607 through 609 of this act, and
17 in addition to or as an alternate to any other penalty provided by law,
18 any person who violates any of the provisions of chapter 70.94 RCW,
19 chapter 70.120 RCW, or any of the rules in force under such chapters
20 may incur a civil penalty in an amount not to exceed ten thousand
21 dollars per day for each violation. Each such violation shall be a
22 separate and distinct offense, and in case of a continuing violation,
23 each day's continuance shall be a separate and distinct violation.

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

27 (2) Penalties incurred but not paid shall accrue interest,
28 beginning on the ninety-first day following the date that the penalty
29 becomes due and payable, at the highest rate allowed by RCW 19.52.020
30 on the date that the penalty becomes due and payable. If violations or
31 penalties are appealed, interest shall not begin to accrue until the
32 thirty-first day following final resolution of the appeal.

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

36 (3) Each act of commission or omission which procures, aids or
37 abets in the violation shall be considered a violation under the
38 provisions of this section and subject to the same penalty. The

1 penalties provided in this section shall be imposed pursuant to RCW
2 43.21B.300.

3 (4) All penalties recovered under this section by the department
4 shall be paid into the state treasury and credited to the air pollution
5 control account established in RCW 70.94.015 or, if recovered by the
6 authority, shall be paid into the treasury of the authority and
7 credited to its funds. If a prior penalty for the same violation has
8 been paid to a local authority, the penalty imposed by the department
9 under subsection (1) of this section shall be reduced by the amount of
10 the payment.

11 (5) To secure the penalty incurred under this section, the state or
12 the authority shall have a lien on any vessel used or operated in
13 violation of this chapter which shall be enforced as provided in RCW
14 60.36.050.

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

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

24 (8) By January 1, 1992, the department shall develop rules for
25 excusing excess emissions from enforcement action if such excess
26 emissions are unavoidable. The rules shall specify the criteria and
27 procedures for the department and local air authorities to determine
28 whether a period of excess emissions is excusable in accordance with
29 the state implementation plan.

30 **Sec. 632.** RCW 70.105.080 and 1987 c 109 s 12 are each amended to
31 read as follows:

32 (1) Except as provided in sections 607 through 609 of this act,
33 every person who fails to comply with any provision of this chapter or
34 of the rules adopted thereunder shall be subjected to a penalty in an
35 amount of not more than ten thousand dollars per day for every such
36 violation. Each and every such violation shall be a separate and
37 distinct offense. In case of continuing violation, every day's
38 continuance shall be a separate and distinct violation. Every person

1 who, through an act of commission or omission, procures, aids, or abets
2 in the violation shall be considered to have violated the provisions of
3 this section and shall be subject to the penalty herein provided.

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

6 **Sec. 633.** RCW 70.132.050 and 1982 c 113 s 5 are each amended to
7 read as follows:

8 Except as provided in sections 607 through 609 of this act, any
9 person who violates any provision of this chapter or any rule adopted
10 under this chapter is subject to a civil penalty not exceeding five
11 hundred dollars for each violation. Each day of a continuing violation
12 is a separate violation.

13 **Sec. 634.** RCW 70.138.040 and 1987 c 528 s 4 are each amended to
14 read as follows:

15 (1) Except as provided in sections 607 through 609 of this act, any
16 person who violates any provision of a department regulation or
17 regulatory order relating to the management of special incinerator ash
18 shall incur in addition to any other penalty provided by law, a penalty
19 in an amount up to ten thousand dollars a day for every such violation.
20 Each and every such violation shall be a separate and distinct offense.
21 (~~If~~~~[In]~~) In case of continuing violation, every day's continuance
22 shall be a separate and distinct violation. Every person who, through
23 an act of commission or omission, procures, aids, or abets in the
24 violation shall be considered to have violated the provisions of this
25 section and shall be subject to the penalty herein provided.

26 (2) The penalty provided for in this section shall be imposed by a
27 notice in writing, either by certified mail with return receipt
28 requested or by personal service, to the person incurring the same from
29 the department, describing the violation with reasonable particularity.
30 Within fifteen days after the notice is received, the person incurring
31 the penalty may apply in writing to the department for the remission or
32 mitigation of such penalty. Upon receipt of the application, the
33 department may remit or mitigate the penalty upon whatever terms the
34 department in its discretion deems proper, giving consideration to the
35 degree of hazard associated with the violation, provided the department
36 deems such remission or mitigation to be in the best interests of
37 carrying out the purposes of this chapter. The department shall have

1 authority to ascertain the facts regarding all such applications in
2 such reasonable manner and under such rules as it may deem proper.

3 (3) Any penalty imposed by this section shall become due and
4 payable thirty days after receipt of a notice imposing the same unless
5 application for remission or mitigation is made or petition for review
6 by the hearings board is filed. When such an application for remission
7 or mitigation is made, any penalty incurred pursuant to this section
8 shall become due and payable thirty days after receipt of notice
9 setting forth the disposition of such application.

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

18 **Sec. 635.** RCW 86.16.081 and 1987 c 523 s 8 are each amended to
19 read as follows:

20 (1) Except as provided in sections 607 through 609 of this act, the
21 attorney general or the attorney for the local government shall bring
22 such injunctive, declaratory, or other actions as are necessary to
23 ensure compliance with this chapter.

24 (2) Any person who fails to comply with this chapter shall also be
25 subject to a civil penalty not to exceed one thousand dollars for each
26 violation. Each violation or each day of noncompliance 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) Any penalty imposed pursuant to this section by the department
37 shall be subject to review by the pollution control hearings board.
38 Any penalty imposed pursuant to this section by local government shall

1 be subject to review by the local government legislative authority.
2 Any penalty jointly imposed by the department and local government
3 shall be appealed to the pollution control hearings board.

4 **Sec. 636.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
5 read as follows:

6 Except as provided in sections 607 through 609 of this act, the
7 power is granted to the department of ecology to levy civil penalties
8 of up to one hundred dollars per day for violation of any of the
9 provisions of this chapter and chapters 43.83B, 90.22, and 90.44 RCW,
10 and rules, permits, and similar documents and regulatory orders of the
11 department of ecology adopted or issued pursuant to such chapters. The
12 procedures of RCW 90.48.144 shall be applicable to all phases of the
13 levying of a penalty as well as review and appeal of the same.

14 **Sec. 637.** RCW 90.48.144 and 1992 c 73 s 27 are each amended to
15 read as follows:

16 Except as provided in sections 607 through 609 of this act, every
17 person who:

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

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

23 (3) Violates the provisions of RCW 90.48.080, or other sections of
24 this chapter or chapter 90.56 RCW or rules or orders adopted or issued
25 pursuant to either of those chapters, shall incur, in addition to any
26 other penalty as provided by law, a penalty in an amount of up to ten
27 thousand dollars a day for every such violation. Each and every such
28 violation shall be a separate and distinct offense, and in case of a
29 continuing violation, every day's continuance shall be and be deemed to
30 be a separate and distinct violation. Every act of commission or
31 omission which procures, aids or abets in the violation shall be
32 considered a violation under the provisions of this section and subject
33 to the penalty herein provided for. The penalty amount shall be set in
34 consideration of the previous history of the violator and the severity
35 of the violation's impact on public health and/or the environment in
36 addition to other relevant factors. The penalty herein provided for
37 shall be imposed pursuant to the procedures set forth in RCW

1 43.21B.300.

2 **Sec. 638.** RCW 90.58.210 and 1986 c 292 s 4 are each amended to
3 read as follows:

4 (1) Except as provided in sections 607 through 609 of this act, the
5 attorney general or the attorney for the local government shall bring
6 such injunctive, declaratory, or other actions as are necessary to
7 insure that no uses are made of the shorelines of the state in conflict
8 with the provisions and programs of this chapter, and to otherwise
9 enforce the provisions of this chapter.

10 (2) Any person who shall fail to conform to the terms of a permit
11 issued under this chapter or who shall undertake development on the
12 shorelines of the state without first obtaining any permit required
13 under this chapter shall also be subject to a civil penalty not to
14 exceed one thousand dollars for each violation. Each permit violation
15 or each day of continued development without a required permit shall
16 constitute a separate violation.

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

25 (4) Within thirty days after the notice is received, the person
26 incurring the penalty may apply in writing to the department for
27 remission or mitigation of such penalty. Upon receipt of the
28 application, the department or local government may remit or mitigate
29 the penalty upon whatever terms the department or local government in
30 its discretion deems proper. Any penalty imposed pursuant to this
31 section by the department shall be subject to review by the shorelines
32 hearings board. Any penalty imposed pursuant to this section by local
33 government shall be subject to review by the local government
34 legislative authority. Any penalty jointly imposed by the department
35 and local government shall be appealed to the shorelines hearings
36 board.

37 **Sec. 639.** RCW 90.58.560 and 1983 c 138 s 2 are each amended to

1 read as follows:

2 (1) Except as provided in sections 607 through 609 of this act, a
3 person who violates RCW 90.58.550, or any rule adopted thereunder, is
4 subject to a penalty in an amount of up to five thousand dollars a day
5 for every such violation. Each and every such violation shall be a
6 separate and distinct offense, and in case of a continuing violation,
7 every day's continuance shall be and be deemed to be a separate and
8 distinct violation. Every act of commission or omission which
9 procures, aids or abets in the violation shall be considered a
10 violation under the provisions of this section and subject to the
11 penalty provided for in this section.

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

24 (3) Any person incurring any penalty under this section may appeal
25 the penalty to the hearings board as provided for in chapter 43.21B
26 RCW. Such appeals shall be filed within thirty days of receipt of
27 notice imposing any penalty unless an application for remission or
28 mitigation is made to the department. When an application for
29 remission or mitigation is made, such appeals shall be filed within
30 thirty days of receipt of notice from the director or the director's
31 representative setting forth the disposition of the application. Any
32 penalty imposed under this section shall become due and payable thirty
33 days after receipt of a notice imposing the same unless application for
34 remission or mitigation is made or an appeal is filed. When an
35 application for remission or mitigation is made, any penalty incurred
36 hereunder shall become due and payable thirty days after receipt of
37 notice setting forth the disposition of the application unless an
38 appeal is filed from such disposition. Whenever an appeal of any
39 penalty incurred under this section is filed, the penalty shall become

1 due and payable only upon completion of all review proceedings and the
2 issuance of a final order confirming the penalty in whole or in part.

3 (4) If the amount of any penalty is not paid to the department
4 within thirty days after it becomes due and payable, the attorney
5 general, upon the request of the director, shall bring an action in the
6 name of the state of Washington in the superior court of Thurston
7 county or of any county in which such violator may do business, to
8 recover such penalty. In all such actions the procedure and rules of
9 evidence shall be the same as an ordinary civil action except as
10 otherwise in this chapter provided. All penalties recovered under this
11 section shall be paid into the state treasury and credited to the
12 general fund.

13 **Sec. 640.** RCW 90.76.080 and 1989 c 346 s 9 are each amended to
14 read as follows:

15 (1) Except as provided in sections 607 through 609 of this act, a
16 person who fails to notify the department pursuant to tank notification
17 requirements or who submits false information is subject to a civil
18 penalty not to exceed five thousand dollars per violation.

19 (2) Except as provided in sections 607 through 609 of this act, a
20 person who violates this chapter is subject to a civil penalty not to
21 exceed five thousand dollars for each tank per day of violation.

22 **PART VII**
23 **RULES REVIEW**

24 NEW SECTION. **Sec. 701.** A new section is added to chapter 34.05
25 RCW under the subchapter heading Part III to read as follows:

26 (1) Not later than June 30th of each year, each agency shall submit
27 to the code reviser, according to procedures and time lines established
28 by the code reviser, rules that it determines should be repealed by the
29 expedited repeal procedures provided for in this section. An agency
30 shall file a copy of a preproposal notice of intent, as provided in RCW
31 34.05.310(1), that identifies the rule as one that is proposed for
32 expedited repeal.

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

35 (a) The statute on which the rule is based has been repealed and
36 has not been replaced by another statute providing statutory authority

1 for the rule;

2 (b) The statute on which the rule is based has been declared
3 unconstitutional by a court with jurisdiction, there is a final
4 judgment, and no statute has been enacted to replace the
5 unconstitutional statute;

6 (c) The rule is no longer necessary because of changed
7 circumstances; or

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

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

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

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

29 (6) If no written objections to the expedited repeal of a rule are
30 filed with the agency within thirty days after the preproposal notice
31 of intent is published, the agency may enter an order repealing the
32 rule without further notice or an opportunity for a public hearing.
33 The order shall be published in the manner required by this chapter for
34 any other order of the agency adopting, amending, or repealing a rule.
35 If a written objection to the expedited repeal of the rule is filed
36 with the agency within thirty days after the notice of intent has been
37 published, the preproposal notice of intent published pursuant to this
38 section shall be considered a preproposal notice of intent for the
39 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption

1 proceedings in accordance with the provisions of this chapter.

2 **Sec. 702.** RCW 34.05.230 and 1988 c 288 s 203 are each amended to
3 read as follows:

4 (1) If the adoption of rules is not feasible and practicable, an
5 agency is encouraged to advise the public of its current opinions,
6 approaches, and likely courses of action by means of interpretive or
7 policy statements. Current interpretive and policy statements are
8 advisory only. An agency is encouraged to convert long-standing
9 interpretive and policy statements into rules.

10 (2) A person may petition an agency requesting the adoption of a
11 rule to supersede one or more specified principles of law or policy
12 used by the agency as part of the basis for its decisions in particular
13 cases.

14 (3) The agency shall:

15 (a) Notify the joint administrative rules review committee of the
16 request; and

17 (b) Adopt such a rule as soon as feasible and to the extent
18 practicable, and in accordance with the requirements of this chapter.

19 (4) Each agency shall maintain a roster of interested persons,
20 consisting of persons who have requested in writing to be notified of
21 all interpretive and policy statements issued by that agency. Each
22 agency shall update the roster once each year and eliminate persons who
23 do not indicate a desire to continue on the roster. Whenever an agency
24 issues an interpretive or policy statement, it shall send a copy of the
25 statement to each person listed on the roster. The agency may charge
26 a nominal fee to the interested person for this service.

27 **Sec. 703.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
28 read as follows:

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

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

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

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

23 (a) Whether the rule is authorized;

24 (b) Whether the rule is needed;

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

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

29 (e) Whether the rule applies differently to public and private
30 entities;

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

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

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

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

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

PART VIII
JUDICIAL REVIEW

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Sec. 801. RCW 34.05.370 and 1994 c 249 s 2 are each amended to read as follows:

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

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

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

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

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

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

(e) ~~((The concise explanatory statement required by RCW 34.05.355; (f))~~) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

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

~~((h))~~ (g) The ~~((written summary and response))~~ concise explanatory statement required by RCW 34.05.325(6); and

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

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent

1 they constitute preliminary drafts, notes, recommendations, and intra-
2 agency memoranda in which opinions are expressed or policies formulated
3 or recommended, except that a specific document is not exempt from
4 inclusion when it is publicly cited by an agency in connection with its
5 decision.

6 (4) Upon judicial review, the file required by this section
7 constitutes the official agency rule-making file with respect to that
8 rule. Unless otherwise required by another provision of law, the
9 official agency rule-making file need not be the exclusive basis for
10 agency action on that rule. However, any basis for agency action on a
11 rule not included in the rule-making file must have existed before the
12 adoption of the rule.

13 **Sec. 802.** 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~~((τ))~~; the rule exceeds the statutory
5 authority of the agency~~((τ))~~; the rule was adopted without compliance
6 with statutory rule-making procedures~~((τ or could not conceivably have~~
7 ~~been the product of a rational decision maker))~~; the determinations of
8 the agency are not supported by substantial evidence as required under
9 section 201 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 **PART IX**

19 **EQUAL ACCESS TO JUSTICE**

20 NEW SECTION. **Sec. 901.** The legislature finds that certain
21 individuals, smaller partnerships, smaller corporations, and other
22 organizations may be deterred from seeking review of or defending
23 against an unreasonable agency action because of the expense involved
24 in securing the vindication of their rights in administrative
25 proceedings. The legislature further finds that because of the greater
26 resources and expertise of the state of Washington, individuals,
27 smaller partnerships, smaller corporations, and other organizations are
28 often deterred from seeking review of or defending against state agency
29 actions because of the costs for attorneys, expert witnesses, and other
30 costs. The legislature therefore adopts this equal access to justice
31 act to ensure that these parties have a greater opportunity to defend
32 themselves from inappropriate state agency actions and to protect their
33 rights.

34 NEW SECTION. **Sec. 902.** A new section is added to chapter 4.84 RCW
35 to read as follows:

36 Unless the context clearly requires otherwise, the definitions in

1 this section apply throughout sections 902 through 904 of this act.

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

3 (2) "Agency action" means agency action as defined by chapter 34.05
4 RCW.

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

18 (4) "Judicial review" means a judicial review as defined by chapter
19 34.05 RCW.

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

32 NEW SECTION. Sec. 903. A new section is added to chapter 4.84 RCW
33 to read as follows:

34 (1) Except as otherwise specifically provided by statute, a court
35 shall award a qualified party that prevails in a judicial review of an
36 agency action fees and other expenses, including reasonable attorneys'
37 fees, unless the court finds that the agency action was substantially
38 justified or that circumstances make an award unjust. A qualified

1 party shall be considered to have prevailed if the qualified party
2 obtained relief on a significant issue that achieves some benefit that
3 the qualified party sought.

4 (2) The amount awarded a qualified party under subsection (1) of
5 this section shall not exceed thirty-five thousand dollars. Subsection
6 (1) of this section shall not apply unless all parties challenging the
7 agency action are qualified parties. If two or more qualified parties
8 join in an action, the award in total shall not exceed thirty-five
9 thousand dollars. The court, in its discretion, may reduce the amount
10 to be awarded pursuant to subsection (1) of this section, or deny any
11 award, to the extent that a qualified party during the course of the
12 proceedings engaged in conduct that unduly or unreasonably protracted
13 the final resolution of the matter in controversy.

14 NEW SECTION. Sec. 904. A new section is added to chapter 4.84 RCW
15 to read as follows:

16 Fees and other expenses awarded under sections 902 and 903 of this
17 act shall be paid by the agency over which the party prevails from
18 operating funds appropriated to the agency within sixty days. Agencies
19 paying fees and other expenses pursuant to sections 902 and 903 of this
20 act shall report all payments to the office of financial management
21 within five days of paying the fees and other expenses. Fees and other
22 expenses awarded by the court shall be subject to the provisions of
23 chapter 39.76 RCW and shall be deemed payable on the date the court
24 announces the award.

25 NEW SECTION. Sec. 905. A new section is added to chapter 43.88
26 RCW to read as follows:

27 The office of financial management shall report annually to the
28 legislature on the amount of fees and other expenses awarded during the
29 preceding fiscal year pursuant to sections 902 through 904 of this act.
30 The report shall describe the number, nature, and amount of the awards,
31 the claims involved in the controversy, and other relevant information
32 that may aid the legislature in evaluating the scope and impact of the
33 awards.

34 **PART X**
35 **BUSINESS LICENSE INFORMATION**

1 NEW SECTION. **Sec. 1001.** The master license system of the
2 department of licensing is a proven, progressive program for one-stop
3 state licensing. This flexible system should be expanded into a state-
4 wide shared data base to facilitate combined licensing processes at
5 local, state, and federal levels as a benefit to the business community
6 through improved customer service.

7 In order to achieve this goal the department of licensing should
8 expand the license information management system, offered by the master
9 license system, to include local and federal licensing requirements,
10 making this information readily accessible at appropriate locations
11 throughout the state. In addition, the department should develop a
12 pilot program expanding the capabilities of the master licensing system
13 to local and federal levels in an efficient manner; and provide access
14 to the expanded master licensing system for all jurisdictions within
15 the state of Washington.

16 NEW SECTION. **Sec. 1002.** (1) The department shall solicit advice
17 and recommendations for planning and establishing policy for a combined
18 licensing pilot project and license information management system.
19 Advice and assistance shall be solicited from:

- 20 (a) The business assistance center;
- 21 (b) The office of the secretary of state;
- 22 (c) The department of revenue;
- 23 (d) The department of labor and industries;
- 24 (e) The employment security department;
- 25 (f) The Washington state association of counties;
- 26 (g) The association of Washington cities;
- 27 (h) The department of information services;
- 28 (i) The small business improvement council; and
- 29 (j) The cities chosen under section 1005 of this act.

30 (2) The department may create ad hoc advisory committees for
31 purposes of subsection (1) of this section.

32 (3) This section shall expire July 1, 1997.

33 NEW SECTION. **Sec. 1003.** By December 31, 1995, the department of
34 licensing, with advice and recommendations provided in section 1002 of
35 this act, shall develop a plan for the state-wide license information
36 management system. This plan shall include:

- 37 (1) The scope and phases of the project, listing areas of

1 responsibility for each phase;

2 (2) Analysis of the costs and benefits, as well as funding sources,
3 staffing levels, and technological issues involved in completing the
4 project; and

5 (3) A computer prototype for demonstration of the new license
6 information system to interested jurisdictions.

7 NEW SECTION. **Sec. 1004.** By December 31, 1995, the department of
8 licensing, with advice and recommendations provided in section 1002 of
9 this act, shall develop a plan for a pilot combined licensing program.
10 The plan shall include:

11 (1) The scope and phases of the project, listing areas of
12 responsibility for each phase;

13 (2) Analysis of the costs and benefits, as well as funding sources,
14 staffing levels, and technological issues involved in completing the
15 project;

16 (3) The use of the state unified business identifier as the key
17 number for identifying persons and businesses, for licensing purposes,
18 throughout local, state and, if appropriate, federal levels of
19 government;

20 (4) Steps leading to the expansion of the department's master
21 license automated system, to be used for combined licensing processes
22 at selected local service jurisdictions;

23 (5) Development of common technology for information dissemination,
24 access, and delivery at appropriate service locations through the
25 master license system, including remote field input of master business
26 application information;

27 (6) Adoption of the state's master business application to become
28 the standard for all registration or licensing applications used at
29 local and state levels, and federal levels where appropriate; and

30 (7) Necessary training for staff at service locations.

31 NEW SECTION. **Sec. 1005.** By December 31, 1996, the department of
32 licensing shall:

33 (1) Expand the license information management system, in order to
34 provide on-line local, state, and federal business registration and
35 licensing requirements;

36 (2) Include specific licensing requirements for local jurisdictions
37 in the license information packet;

1 (3) Provide the capability to distribute the information packets at
2 the appropriate service locations;

3 (4) Provide the ability for local jurisdictions to access, store,
4 and update the license requirements data of their own jurisdiction; and

5 (5) Provide training to all organizations providing services using
6 the master license information management system.

7 NEW SECTION. **Sec. 1006.** A new section is added to chapter 19.02
8 RCW to read as follows:

9 (1) By June 30, 1997, the department shall have a pilot combined
10 licensing project fully operational in at least two cities within the
11 state of Washington, with at least one city west of the Cascade
12 mountains and at least one city east of the Cascade mountains.

13 (2) By January 31, 1997, the department shall make an interim
14 report to the legislature on the progress of the pilot combined
15 licensing project.

16 (3) By January 31, 1998, the department shall have evaluated the
17 pilot combined licensing project and reported to the legislature with
18 a plan for transition of the pilot project into an ongoing program.
19 The transition plan shall include cost, funding sources, and staffing
20 needs for the ongoing program.

21 (4) Upon approval and continued funding of the transition plan by
22 the legislature under this section, the master license system shall
23 implement a transition from the pilot program to the ongoing program.

24 **Sec. 1007.** RCW 19.02.075 and 1992 c 107 s 2 are each amended to
25 read as follows:

26 (1) ~~((Beginning June 1, 1992,))~~ The department shall collect a fee
27 of fifteen dollars on each master application ~~((and five dollars on~~
28 ~~each license information packet. From June 1, 1992, to June 30, 1992,~~
29 ~~twelve dollars of the master application fee shall be deposited in the~~
30 ~~general fund and three dollars deposited in the master license fund.~~
31 ~~Thereafter,)).~~ The entire master application fee shall be deposited in
32 the master license fund. ~~((License information packet fees shall be~~
33 ~~deposited in the general fund.))~~

34 (2) ~~((Beginning July 1, 1992,))~~ The department shall collect a fee
35 of nine dollars on each renewal application. Renewal application fees
36 shall be deposited in the master license fund.

PART XI
MISCELLANEOUS

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NEW SECTION. **Sec. 1101.** Part headings as used in this act do not constitute any part of the law.

NEW SECTION. **Sec. 1102.** Sections 601 through 616, 618, and 620 through 622 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 1103.** If specific funding for the purposes of sections 1001 through 1007 of this act, referencing this act by bill and section numbers, is not provided by June 30, 1995, in the omnibus appropriations act, sections 1001 through 1007 of this act shall be null and void.

NEW SECTION. **Sec. 1104.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

ESHB 1010 - S COMM AMD
By Committee on Government Operations

On page 1, line 1 of the title, after "reform;" strike the remainder of the title and insert "amending RCW 43.21A.080, 43.70.040, 82.01.060, 46.01.110, 50.12.040, 76.09.040, 77.04.090, 48.02.060, 48.30.010, 48.44.050, 48.46.200, 70.94.331, 34.05.310, 34.05.320, 34.05.313, 34.05.325, 19.85.030, 34.05.660, 42.40.010, 42.40.020, 42.40.030, 18.104.155, 49.17.180, 70.94.431, 70.105.080, 70.132.050, 70.138.040, 86.16.081, 90.03.600, 90.48.144, 90.58.210, 90.58.560, 90.76.080, 34.05.230, 34.05.330, 34.05.370, 34.05.570, and 19.02.075; adding new sections to chapter 43.12 RCW; adding a new section to chapter 43.20A RCW; adding new sections to chapter 43.23 RCW; adding a new section to chapter 43.22 RCW; adding new sections to chapter 43.24 RCW; adding a new section to chapter 90.48 RCW; adding new sections to chapter 34.05 RCW; adding a new section to chapter 19.85 RCW; adding a new section to chapter 43.30 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 43.300 RCW; adding new sections to

1 chapter 4.84 RCW; adding a new section to chapter 43.88 RCW; adding a
2 new section to chapter 19.02 RCW; adding a new chapter to Title 43 RCW;
3 creating new sections; repealing RCW 34.05.355, 34.05.610, 34.05.620,
4 34.05.630, 34.05.640, and 34.05.650; and prescribing penalties."

--- **END** ---