
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Reams, Mulliken, Thompson, McMorris, Koster, DeBolt, D. Sommers, Boldt, Hickel, Sheahan, Buck, Schoesler, Honeyford, Mitchell, D. Schmidt, Sherstad, L. Thomas, Dunn, Dyer, Mielke, Cairnes, Robertson and Backlund)

Read first time 01/30/97. Referred to Committee on .

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 82.32.300, 48.30.010,
3 34.05.350, 34.05.328, 34.05.010, 34.05.230, 82.32.410, 34.05.325,
4 34.05.354, 19.85.025, 34.05.570, 34.05.534, 48.04.010, 34.12.040,
5 34.05.630, 34.05.640, 34.05.655, 34.05.660, 4.84.350, 4.84.360,
6 4.84.340, and 43.41.110; adding a new section to chapter 43.22 RCW;
7 adding new sections to chapter 34.05 RCW; adding a new section to
8 chapter 43.17 RCW; adding a new section to chapter 43.05 RCW; adding a
9 new chapter to Title 43 RCW; creating a new section; and providing an
10 expiration date.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

12

PART I

13

GRANTS OF RULE-MAKING AUTHORITY

14 **Sec. 101.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to
15 read as follows:

16 (1) The legislature hereby finds and declares that the forest land
17 resources are among the most valuable of all resources in the state;
18 that a viable forest products industry is of prime importance to the

1 state's economy; that it is in the public interest for public and
2 private commercial forest lands to be managed consistent with sound
3 policies of natural resource protection; that coincident with
4 maintenance of a viable forest products industry, it is important to
5 afford protection to forest soils, fisheries, wildlife, water quantity
6 and quality, air quality, recreation, and scenic beauty.

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

12 (a) Afford protection to, promote, foster and encourage timber
13 growth, and require such minimum reforestation of commercial tree
14 species on forest lands as will reasonably utilize the timber growing
15 capacity of the soil following current timber harvest;

16 (b) Afford protection to forest soils and public resources by
17 utilizing all reasonable methods of technology in conducting forest
18 practices;

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

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

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

25 (f) Provide for interagency input and intergovernmental and tribal
26 coordination and cooperation;

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

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

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

34 The authority of the board to adopt forest practices rules is
35 prescribed by this subsection (2) and RCW 76.09.040. After the
36 effective date of this section, the board may not adopt forest
37 practices rules based solely on any other section of law stating a
38 statute's intent or purpose, on the enabling provisions of the statute
39 establishing the agency, or on any combination of such provisions.

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

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

9 **Sec. 102.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
10 read as follows:

11 (1) Where necessary to accomplish the purposes and policies
12 specifically stated in RCW 76.09.010(2), and to implement the
13 provisions of this chapter, the board shall (~~promulgate~~) adopt forest
14 practices (~~regulations~~) rules pursuant to chapter 34.05 RCW and in
15 accordance with the procedures enumerated in this section that:

16 (a) Establish minimum standards for forest practices;

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

22 (c) Set forth necessary administrative provisions; and

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

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

30 Forest practices (~~regulations~~) rules shall be administered and
31 enforced by the department except as otherwise provided in this
32 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted
33 and administered so as to give consideration to all purposes and
34 policies specifically set forth in RCW 76.09.010(2).

35 (2) The board shall prepare proposed forest practices
36 (~~regulations~~) rules. In addition to any forest practices
37 (~~regulations~~) rules relating to water quality protection proposed by

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

19 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.22
20 RCW to read as follows:

21 For rules adopted after the effective date of this section, the
22 director of the department of labor and industries may not rely solely
23 on a statute's statement of intent or purpose, on the enabling
24 provisions of the statute establishing the agency, or on any
25 combination of such provisions, for statutory authority to adopt any
26 rule: PROVIDED, That this section shall not apply to rules adopted
27 pursuant to chapter 39.12 RCW.

28 **Sec. 104.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
29 read as follows:

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

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

35 (3) The commissioner may:

36 (a) Make reasonable rules and regulations for effectuating any
37 provision of this code, except those relating to his or her election,

1 qualifications, or compensation: PROVIDED, That the commissioner may
2 not adopt rules after the effective date of this section that are based
3 solely on this statute, or on a statute's statement of intent or
4 purpose, or on the enabling provisions of the statute establishing the
5 agency, or any combination of such provisions, for statutory authority
6 to adopt any rule, except rules defining or clarifying terms in, or
7 procedures necessary to the implementation of a statute. No such rules
8 and regulations shall be effective prior to their being filed for
9 public inspection in the commissioner's office.

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

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

15 **Sec. 105.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to
16 read as follows:

17 The insurance commissioner shall make reasonable regulations in aid
18 of the administration of this chapter which may include, but shall not
19 be limited to regulations concerning the maintenance of adequate
20 insurance, bonds, or cash deposits, information required of
21 registrants, and methods of expediting speedy and fair payments to
22 claimants: PROVIDED, That the commissioner may not adopt rules after
23 the effective date of this section that are based solely on this
24 section, a statute's statement of intent or purpose, or on the enabling
25 provisions of the statute establishing the agency, or any combination
26 of such provisions, for statutory authority to adopt any rule, except
27 rules defining or clarifying terms in, or procedures necessary to the
28 implementation of a statute.

29 **Sec. 106.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
30 amended to read as follows:

31 The commissioner may adopt, in accordance with the provisions of
32 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)
33 rules and regulations as necessary or proper to carry out the
34 provisions of this chapter: PROVIDED, That the commissioner may not
35 adopt rules after the effective date of this section that are based
36 solely on this section, a statute's statement of intent or purpose, or
37 on the enabling provisions of the statute establishing the agency, or

1 any combination of such provisions, for statutory authority to adopt
2 any rule, except rules defining or clarifying terms in, or procedures
3 necessary to the implementation of a statute. Nothing in this chapter
4 shall be construed to prohibit the commissioner from requiring changes
5 in procedures previously approved by ((him)) the commissioner.

6 **Sec. 107.** RCW 82.32.300 and 1983 c 3 s 222 are each amended to
7 read as follows:

8 The administration of this and chapters 82.04 through 82.27 RCW of
9 this title is vested in the department of revenue which shall prescribe
10 forms and rules of procedure for the determination of the taxable
11 status of any person, for the making of returns and for the
12 ascertainment, assessment and collection of taxes and penalties imposed
13 thereunder.

14 The department of revenue shall make and publish procedural rules
15 and regulations, not inconsistent therewith, necessary to enforce their
16 provisions, which shall have the same force and effect as if
17 specifically included therein, unless declared invalid by the judgment
18 of a court of record not appealed from.

19 The department may employ such clerks, specialists, and other
20 assistants as are necessary. Salaries and compensation of such
21 employees shall be fixed by the department and shall be charged to the
22 proper appropriation for the department.

23 The department shall exercise general supervision of the collection
24 of taxes and, in the discharge of such duty, may institute and
25 prosecute such suits or proceedings in the courts as may be necessary
26 and proper.

27 **Sec. 108.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
28 read as follows:

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

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

1 by the commissioner to be unfair or deceptive by a preponderance of the
2 facts submitted.

3 (3) In defining other methods of competition and other acts and
4 practices in the conduct of such business to be unfair and deceptive,
5 the commissioner shall set forth in detail all facts upon which he or
6 she relies in making the definition. After the hearing the
7 commissioner shall review all the material submitted and affirm or deny
8 the definition based upon a preponderance of facts submitted. Upon
9 appeal the superior court shall review the findings of fact upon which
10 the regulation is based de novo on the record.

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

14 ((+4)) (5) If the commissioner has cause to believe that any
15 person is violating any such regulation, the commissioner may order
16 such person to cease and desist therefrom. The commissioner shall
17 deliver such order to such person direct or mail it to the person by
18 registered mail with return receipt requested. If the person violates
19 the order after expiration of ten days after the cease and desist order
20 has been received by him or her, he or she may be fined by the
21 commissioner a sum not to exceed two hundred and fifty dollars for each
22 violation committed thereafter.

23 ((+5)) (6) If any such regulation is violated, the commissioner
24 may take such other or additional action as is permitted under the
25 insurance code for violation of a regulation.

26 **PART II**

27 **RULE-MAKING REQUIREMENTS**

28 **Sec. 201.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
29 read as follows:

30 (1) If an agency for good cause finds:
31 (a) That immediate adoption, amendment, or repeal of a rule is
32 necessary for the preservation of ((the)) public health((7)) or safety,
33 ((or general welfare,)) and that observing the time requirements of
34 notice and opportunity to comment upon adoption of a permanent rule
35 would be contrary to the public interest: PROVIDED, That the
36 department of agriculture may adopt an emergency rule if the failure to
37 adopt the rule on an emergency basis would result in substantial

1 reduction of commodity value or substantial economic detriment and the
2 department of fish and wildlife may adopt emergency rules governing
3 seasons and harvest limits for recreational and commercial fishing and
4 recreational hunting; or

5 (b) That state or federal law or federal rule or a federal deadline
6 for state receipt of federal funds requires immediate adoption of a
7 rule,

8 the agency may dispense with those requirements and adopt, amend, or
9 repeal the rule on an emergency basis. The agency's finding and a
10 concise statement of the reasons for its finding shall be incorporated
11 in the order for adoption of the emergency rule or amendment filed with
12 the office of the code reviser under RCW 34.05.380 and with the rules
13 review committee.

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

25 (3) Within seven days after the rule is adopted, any person may
26 petition the governor requesting the immediate repeal of a rule adopted
27 on an emergency basis by any department listed in RCW 43.17.010.
28 Within seven days after submission of the petition, the governor shall
29 either deny the petition in writing, stating his or her reasons for the
30 denial, or order the immediate repeal of the rule. In ruling on the
31 petition, the governor shall consider only whether the conditions in
32 subsection (1) of this section were met such that adoption of the rule
33 on an emergency basis was necessary. If the governor orders the repeal
34 of the emergency rule, any sanction imposed based on that rule is void.
35 This subsection shall not be construed to prohibit adoption of any rule
36 as a permanent rule.

37 (4) In adopting an emergency rule, the agency shall comply with
38 section 4 of this act or provide a written explanation for its failure
39 to do so.

1 **Sec. 202.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
2 read as follows:

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

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

7 (b) Determine that the rule is needed to achieve the general goals
8 and specific objectives stated under (a) of this subsection, and
9 analyze alternatives to rule making and the consequences of not
10 adopting the rule;

11 (c) Determine that the probable benefits of the rule are greater
12 than its probable costs, taking into account both the qualitative and
13 quantitative benefits and costs and the specific directives of the
14 statute being implemented;

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

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

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

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

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

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

34 (h) Coordinate the rule, to the maximum extent practicable, with
35 other federal, state, and local laws applicable to the same activity or
36 subject matter.

37 (2) In making its determinations pursuant to subsection (1)(b)
38 through (g) of this section, the agency shall place in the rule-making

1 file documentation of sufficient quantity and quality so as to persuade
2 a reasonable person that the determinations are justified.

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

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

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

10 (c) Promote and assist voluntary compliance; and

11 (d) Evaluate whether the rule achieves the purpose for which it was
12 adopted, including, to the maximum extent practicable, the use of
13 interim milestones to assess progress and the use of objectively
14 measurable outcomes.

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

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

22 (b) Coordinate implementation and enforcement of the rule with the
23 other federal and state entities regulating the same activity or
24 subject matter by making every effort to do one or more of the
25 following:

26 (i) Deferring to the other entity;

27 (ii) Designating a lead agency; or

28 (iii) Entering into an agreement with the other entities specifying
29 how the agency and entities will coordinate implementation and
30 enforcement.

31 If the agency is unable to comply with this subsection (4)(b), the
32 agency shall report to the legislature pursuant to (c) of this
33 subsection;

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

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

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

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

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

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

17 (b) This section does 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 regulations, Washington state statutes,
23 rules of other Washington state agencies, shoreline master programs
24 other than those programs governing shorelines of state-wide
25 significance, or, as referenced by Washington state law, national
26 consensus codes that generally establish industry standards, if the
27 material adopted or incorporated regulates the same subject matter and
28 conduct as the adopting or incorporating rule;

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

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

34 (vi) Rules that set or adjust fees or rates pursuant to legislative
35 standards.

36 (c) For purposes of this subsection:

37 (i) A "procedural rule" is a rule that adopts, amends, or repeals
38 (A) any procedure, practice, or requirement relating to any agency
39 hearings; (B) any filing or related process requirement for making

1 application to an agency for a license or permit; or (C) any policy
2 statement pertaining to the consistent internal operations of an
3 agency.

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

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

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

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

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

28 (b) The costs incurred by state agencies in complying with this
29 section;

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

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

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

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

1 NEW SECTION. **Sec. 203.** A new section is added to chapter 34.05
2 RCW under the subchapter heading "Part III" to read as follows:

3 (1) No rule, adopted by an agency before the effective date of this
4 section, is effective for more than seven years after the effective
5 date of this section, unless it has been reviewed under the procedures
6 established in this chapter.

7 (2) Each agency shall review its rules existing on the effective
8 date of this section as follows:

9 (a) Fifty percent of the rules shall be reviewed within three years
10 of the effective date of this section;

11 (b) Eighty percent of the rules shall be reviewed within five years
12 of the effective date of this section;

13 (c) One hundred percent of the rules shall be reviewed within seven
14 years of the effective date of this section.

15 (3) In reviewing a rule, the agency shall determine whether the
16 rule is:

17 (a) Unclear or difficult to understand;

18 (b) Written or being implemented in a way that does not conform
19 with the intent of the legislature as expressed by the statute which
20 the rule implements;

21 (c) Duplicative of, inconsistent with, or in conflict with other
22 state, federal, or local rules or statutes;

23 (d) Excessively costly or outdated in the methods prescribed;

24 (e) Unauthorized because the authorizing statute has since been
25 repealed or amended; and

26 (f) No longer necessary to meet the purposes of the statute which
27 it implements.

28 (4) The agency shall place in a rules review file documentation
29 sufficient to show that the agency considered the criteria in
30 subsection (3) of this section in reviewing a rule. If the
31 documentation shows that the rule meets the criteria, the agency may
32 retain the rule. If the rule does not meet the criteria, the agency
33 shall amend the rule to meet the criteria or repeal the rule. The
34 agency may use the expedited procedures under this chapter to amend or
35 repeal the rule. If the criteria are not met and the agency has not
36 amended the rule to meet the criteria, the agency may not rely on the
37 rule for any agency action beginning seven years after the effective
38 date of this section.

1 (5) No rule, adopted by an agency after the effective date of this
2 section, is effective for more than seven years after the rule is
3 adopted, unless the rule has been reviewed under the procedure in this
4 subsection. An agency shall review a rule to evaluate:

5 (a) Achievement of the goals and objectives of the rule;

6 (b) Technological changes that impact the implementation of or
7 compliance with the rule;

8 (c) Controversy surrounding the implementation or enforcement of
9 the rule, stating the nature of the controversy;

10 (d) The outcome of any court challenges to the validity of the rule
11 or its authority to draft the rule;

12 (e) Actual costs or changes undergone by the regulated community;
13 and

14 (f) Laws or other rules passed since the rule was adopted that are
15 in conflict, impact its implementation, or render the rule obsolete.

16 The agency shall place in a rules review file documentation
17 sufficient to show that the agency conducted the review under this
18 section.

19 (6) For purposes of this section, "agency" means the department of
20 ecology, employment security department, department of labor and
21 industries, department of revenue, department of licensing, department
22 of health, department of social and health services, department of fish
23 and wildlife, and the office of the insurance commissioner.

24 NEW SECTION. **Sec. 204.** A new section is added to chapter 34.05
25 RCW under the subchapter heading "Part III" to read as follows:

26 Each state agency shall prepare a semiannual agenda for rules under
27 development. The agency shall file the agenda with the code reviser
28 for publication in the state register not later than January 31st and
29 July 31st of each year. Not later than three days after its
30 publication in the state register, the agency shall send a copy of the
31 agenda to each person who has requested receipt of a copy of the
32 agenda. The agency shall also submit the agenda to the director of
33 financial management, the rules review committee, and any other state
34 agency that may reasonably be expected to have an interest in the
35 subject of rules that will be developed.

36 NEW SECTION. **Sec. 205.** A new section is added to chapter 34.05
37 RCW under the subchapter heading "Part III" to read as follows:

1 Any agency having rules that postpone full compliance with their
2 requirements beyond ninety days after the effective date of this
3 section shall prepare a small business economic impact statement, as
4 defined in RCW 19.85.020(2), on such rules before requiring full
5 compliance with the rules.

6 NEW SECTION. **Sec. 206.** A new section is added to chapter 34.05
7 RCW under the subchapter heading "Part III" to read as follows:

8 (1) An agency may file notice for the expedited adoption of rules
9 in accordance with the procedures set forth in this section for rules
10 meeting any one of the following criteria:

11 (a) The proposed rules previously existed in the form of
12 interpretive statements or policy statements by the agency;

13 (b) The proposed rules relate only to internal governmental
14 operations that are not subject to violation by a person;

15 (c) The proposed rules adopt or incorporate by reference without
16 material change federal statutes or regulations, Washington state
17 statutes, rules of other Washington state agencies, shoreline master
18 programs other than those programs governing shorelines of state-wide
19 significance, or, as referenced by Washington state law, national
20 consensus codes that generally establish industry standards, if the
21 material adopted or incorporated regulates the same subject matter and
22 conduct as the adopting or incorporating rule;

23 (d) The proposed rules only correct typographical errors, make
24 address or name changes, or clarify language of a rule without changing
25 its effect;

26 (e) The content of the proposed rules is explicitly and
27 specifically dictated by statute;

28 (f) The proposed rules have been the subject of negotiated rule
29 making, pilot rule making, or some other process that involved
30 substantial participation by interested parties before the development
31 of the proposed rule; or

32 (g) The proposed rule is being amended following a review under
33 section 203 of this act.

34 (2) The expedited rule-making process must follow the requirements
35 for rule making set forth in RCW 34.05.320, except that the agency is
36 not required to prepare a small business economic impact statement, a
37 statement indicating whether the rule constitutes a significant
38 legislative rule under RCW 34.05.328(5)(c)(iii), or a significant

1 legislative rule analysis under RCW 34.05.328. An agency is not
2 required to prepare statements of inquiry under RCW 34.05.310 or
3 conduct a hearing for the expedited adoption of rules. The notice for
4 the expedited adoption of rules must contain a statement which is
5 substantially in the following form:

6 **NOTICE**

7 THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN
8 EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR
9 THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS
10 ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA
11 FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE
12 BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST
13 EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE RECEIVED BY
14 (INSERT DATE) AND SENT TO (INSERT NAME AND ADDRESS).

15 (3) The agency shall send a copy of the notice of the proposed
16 expedited rule making to any person who has requested notification of
17 proposals for the expedited adoption of rules or of agency rule making,
18 as well as the joint administrative rules review committee, within
19 three days after its publication in the Washington State Register. An
20 agency may charge for the actual cost of providing a requesting party
21 mailed copies of these notices. The notice of the proposed expedited
22 rule making shall include a statement that any person who objects to
23 the adoption of the rule must file a written objection to the adoption
24 of the rule within forty-five days after the notice has been published.
25 The notice shall also include an explanation of the reasons the agency
26 believes the expedited adoption of the rule is appropriate.

27 (4) The code reviser shall publish the text of all rules proposed
28 for expedited adoption along with the notice required in this section
29 in a separate section of the Washington State Register. Once the text
30 of the proposed rules has been published in the Washington State
31 Register, the only changes that an agency may make in the text of these
32 proposed rules before their final adoption are to correct typographical
33 errors.

34 (5) Any person may file a written objection to the expedited
35 adoption of a rule. The objection shall be filed with the agency rules
36 coordinator within forty-five days after the notice of the proposed
37 expedited rule making has been published in the Washington State

1 Register. A person who has filed a written objection to the expedited
2 adoption of a rule may withdraw the objection.

3 (6) If no written objections to the expedited adoption of a rule
4 are filed with the agency within forty-five days after the notice of
5 proposed expedited rule making is published, or if all objections that
6 have been filed are withdrawn by the persons filing the objections, the
7 agency may enter an order adopting the rule without further notice or
8 a public hearing. The order shall be published in the manner required
9 by this chapter for any other agency order adopting, amending, or
10 repealing a rule.

11 (7) If a written notice of objection to the expedited adoption of
12 the rule is timely filed with the agency and is not withdrawn, the
13 notice of proposed expedited rule making published under this section
14 shall be considered a statement of inquiry for the purposes of RCW
15 34.05.310 and the agency may initiate further rule adoption proceedings
16 in accordance with this chapter except that RCW 34.05.328 does not
17 apply.

18 **Sec. 207.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to
19 read as follows:

20 The definitions set forth in this section shall apply throughout
21 this chapter, unless the context clearly requires otherwise.

22 (1) "Adjudicative proceeding" means a proceeding before an agency
23 in which an opportunity for hearing before that agency is required by
24 statute or constitutional right before or after the entry of an order
25 by the agency. Adjudicative proceedings also include all cases of
26 licensing and rate making in which an application for a license or rate
27 change is denied except as limited by RCW 66.08.150, or a license is
28 revoked, suspended, or modified, or in which the granting of an
29 application is contested by a person having standing to contest under
30 the law.

31 (2) "Agency" means any state board, commission, department,
32 institution of higher education, or officer, authorized by law to make
33 rules or to conduct adjudicative proceedings, except those in the
34 legislative or judicial branches, the governor, or the attorney general
35 except to the extent otherwise required by law and any local
36 governmental entity that may request the appointment of an
37 administrative law judge under chapter 42.41 RCW.

1 (3) "Agency action" means licensing, the implementation or
2 enforcement of a statute, the adoption or application of an agency rule
3 or order, the imposition of sanctions, or the granting or withholding
4 of benefits.

5 Agency action does not include an agency decision regarding (a)
6 contracting or procurement of goods, services, public works, and the
7 purchase, lease, or acquisition by any other means, including eminent
8 domain, of real estate, as well as all activities necessarily related
9 to those functions, or (b) determinations as to the sufficiency of a
10 showing of interest filed in support of a representation petition, or
11 mediation or conciliation of labor disputes or arbitration of labor
12 disputes under a collective bargaining law or similar statute, or (c)
13 any sale, lease, contract, or other proprietary decision in the
14 management of public lands or real property interests, or (d) the
15 granting of a license, franchise, or permission for the use of
16 trademarks, symbols, and similar property owned or controlled by the
17 agency.

18 (4) "Agency head" means the individual or body of individuals in
19 whom the ultimate legal authority of the agency is vested by any
20 provision of law. If the agency head is a body of individuals, a
21 majority of those individuals constitutes the agency head.

22 (5) "Entry" of an order means the signing of the order by all
23 persons who are to sign the order, as an official act indicating that
24 the order is to be effective.

25 (6) "Filing" of a document that is required to be filed with an
26 agency means delivery of the document to a place designated by the
27 agency by rule for receipt of official documents, or in the absence of
28 such designation, at the office of the agency head.

29 (7) "Institutions of higher education" are the University of
30 Washington, Washington State University, Central Washington University,
31 Eastern Washington University, Western Washington University, The
32 Evergreen State College, the various community colleges, and the
33 governing boards of each of the above, and the various colleges,
34 divisions, departments, or offices authorized by the governing board of
35 the institution involved to act for the institution, all of which are
36 sometimes referred to in this chapter as "institutions."

37 (8) "Interpretive statement" means a written expression of the
38 opinion of an agency(~~(, entitled an interpretive statement))~~ by the
39 agency head or its designee, as to the meaning of a statute or other

1 provision of law, of a court decision, or of an agency order, for
2 general application by the agency and not directed to one specific
3 event or person for the purpose of providing guidance to persons as to
4 their obligations under the law. Consumer-related guides and brochures
5 produced by an agency that generally explain an agency program or a
6 person's rights under the law do not constitute interpretive statements
7 for purposes of this chapter. A document entitled "technical
8 assistance document" does not constitute an interpretive statement for
9 purposes of this chapter. Tax determinations issued by the department
10 of revenue that have precedential value do not constitute interpretive
11 statements for purposes of this chapter.

12 (9)(a) "License" means a franchise, permit, certification,
13 approval, registration, charter, or similar form of authorization
14 required by law, but does not include (i) a license required solely for
15 revenue purposes, or (ii) a certification of an exclusive bargaining
16 representative, or similar status, under a collective bargaining law or
17 similar statute, or (iii) a license, franchise, or permission for use
18 of trademarks, symbols, and similar property owned or controlled by the
19 agency.

20 (b) "Licensing" includes the agency process respecting the
21 issuance, denial, revocation, suspension, or modification of a license.

22 (10)(a) "Order," without further qualification, means a written
23 statement of particular applicability that finally determines the legal
24 rights, duties, privileges, immunities, or other legal interests of a
25 specific person or persons.

26 (b) "Order of adoption" means the official written statement by
27 which an agency adopts, amends, or repeals a rule.

28 (11) "Party to agency proceedings," or "party" in a context so
29 indicating, means:

30 (a) A person to whom the agency action is specifically directed; or

31 (b) A person named as a party to the agency proceeding or allowed
32 to intervene or participate as a party in the agency proceeding.

33 (12) "Party to judicial review or civil enforcement proceedings,"
34 or "party" in a context so indicating, means:

35 (a) A person who files a petition for a judicial review or civil
36 enforcement proceeding; or

37 (b) A person named as a party in a judicial review or civil
38 enforcement proceeding, or allowed to participate as a party in a
39 judicial review or civil enforcement proceeding.

1 (13) "Person" means any individual, partnership, corporation,
2 association, governmental subdivision or unit thereof, or public or
3 private organization or entity of any character, and includes another
4 agency.

5 (14) "Policy statement" means a written description of the current
6 approach of an agency(~~(, entitled a policy statement)~~) by the agency
7 head or its designee, to implementation of a statute or other provision
8 of law, of a court decision, or of an agency order, including where
9 appropriate the agency's current practice, procedure, or method of
10 action based upon that approach. A policy statement may also include
11 factors the agency will consider in implementing a law, court decision,
12 or agency order. A policy statement must be used for general
13 application by the agency and not directed to one specific event or
14 person for the purpose of providing guidance to persons as to their
15 obligations under the law. Consumer-related guides and brochures
16 produced by an agency that generally explain an agency program or a
17 person's rights under the law do not constitute policy statements for
18 purposes of this chapter. A document entitled "technical assistance
19 document" does not constitute a policy statement for purposes of this
20 chapter. Tax determinations issued by the department of revenue that
21 have precedential value do not constitute policy statements for the
22 purpose of this chapter.

23 (15) "Rule" means any agency order, directive, (~~(or)~~) regulation,
24 or statement of general applicability (a) the violation of which
25 subjects a person to a penalty or administrative sanction; (b) which
26 establishes, alters, or revokes any procedure, practice, or requirement
27 relating to agency hearings; (c) which establishes, alters, or revokes
28 any qualification or requirement relating to the enjoyment of benefits
29 or privileges conferred by law; (d) which establishes, alters, or
30 revokes any qualifications or standards for the issuance, suspension,
31 or revocation of licenses to pursue any commercial activity, trade, or
32 profession; or (e) which establishes, alters, or revokes any mandatory
33 standards for any product or material which must be met before
34 distribution or sale. The term includes the amendment or repeal of a
35 prior rule, but does not include (i) statements concerning only the
36 internal management of an agency and not affecting private rights or
37 procedures available to the public, (ii) declaratory rulings issued
38 pursuant to RCW 34.05.240, (iii) traffic restrictions for motor
39 vehicles, bicyclists, and pedestrians established by the secretary of

1 transportation or his designee where notice of such restrictions is
2 given by official traffic control devices, or (iv) rules of
3 institutions of higher education involving standards of admission,
4 academic advancement, academic credit, graduation and the granting of
5 degrees, employment relationships, or fiscal processes.

6 (16) "Rules review committee" or "committee" means the joint
7 administrative rules review committee created pursuant to RCW 34.05.610
8 for the purpose of selectively reviewing existing and proposed rules of
9 state agencies.

10 (17) "Rule making" means the process for formulation and adoption
11 of a rule.

12 (18) "Service," except as otherwise provided in this chapter, means
13 posting in the United States mail, properly addressed, postage prepaid,
14 or personal service. Service by mail is complete upon deposit in the
15 United States mail. Agencies may, by rule, authorize service by
16 electronic telefacsimile transmission, where copies are mailed
17 simultaneously, or by commercial parcel delivery company.

18 **Sec. 208.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to
19 read as follows:

20 (1) ~~((If the adoption of rules is not feasible and practicable,))~~
21 An agency is encouraged to advise the public of its current opinions,
22 approaches, and likely courses of action by means of interpretive or
23 policy statements. ((Current interpretive and policy statements are
24 advisory only.)) To better inform and involve the public, an agency is
25 encouraged to convert long-standing interpretive and policy statements
26 into rules through the expedited rule adoption process in section 206
27 of this act.

28 (2) Interpretive and policy statements are advisory only and do not
29 foreclose alternative courses of action by persons in agency actions.
30 Interpretive or policy statements cannot be used to substantially
31 modify existing rules.

32 (3) A person may petition an agency requesting the conversion of
33 interpretive and policy statements into rules. A person may also
34 petition an agency requesting the repeal or withdrawal of interpretive
35 or policy statements. Upon submission, the agency shall notify the
36 joint administrative rules review committee of the petition. Within
37 sixty days after submission of a petition, the agency shall either deny
38 the petition in writing, stating its reasons for the denial, or

1 initiate rule-making proceedings in accordance with this chapter, or
2 repeal or withdraw the interpretive or policy statement.

3 ~~((3))~~ (4) Each agency shall maintain a roster of interested
4 persons, consisting of persons who have requested in writing to be
5 notified of all interpretive and policy statements issued by that
6 agency. Each agency shall update the roster once each year and
7 eliminate persons from the roster who do not indicate a desire to
8 continue on the roster. Whenever an agency issues an interpretive or
9 policy statement, it shall send a copy of the statement to each person
10 listed on the roster. The agency may charge a nominal fee to the
11 interested person for this service. Agencies are not required to
12 notify or send people copies of interpretive or policy statements that
13 concern only internal agency procedures that do not affect private
14 rights or procedures available to the public.

15 ~~((4))~~ (5) Whenever an agency issues an interpretive or policy
16 statement, except for an interpretive or policy statement that concerns
17 only internal agency procedures that do no affect private rights or
18 procedures available to the public, it shall submit to the code reviser
19 for publication in the Washington State Register a statement describing
20 the subject matter of the interpretive or policy statement, and listing
21 the person at the agency from whom a copy of the interpretive or policy
22 statement may be obtained.

23 **Sec. 209.** RCW 82.32.410 and 1991 c 330 s 2 are each amended to
24 read as follows:

25 (1) The director may designate certain written determinations as
26 precedents.

27 (a) By rule adopted pursuant to chapter 34.05 RCW, the director
28 shall adopt criteria which he or she shall use to decide whether a
29 determination is precedential. These criteria shall include, but not
30 be limited to, whether the determination clarifies an unsettled
31 interpretation of Title 82 RCW or where the determination modifies or
32 clarifies an earlier interpretation.

33 (b) Written determinations designated as precedents by the director
34 shall be indexed by subject matter. The determinations and indexes
35 shall be made available for public inspection and shall be published by
36 the department.

37 (c) The department shall disclose any written determination upon
38 which it relies to support any assessment of tax, interest, or penalty

1 against such taxpayer, after making the deletions provided by
2 subsection (2) of this section.

3 (2) Before making a written determination available for public
4 inspection under subsection (1) of this section, the department shall
5 delete:

6 (a) The names, addresses, and other identifying details of the
7 person to whom the written determination pertains and of another person
8 identified in the written determination; and

9 (b) Information the disclosure of which is specifically prohibited
10 by any statute applicable to the department of revenue, and the
11 department may also delete other information exempted from disclosure
12 by chapter 42.17 RCW or any other statute applicable to the department
13 of revenue.

14 NEW SECTION. **Sec. 210.** A new section is added to chapter 34.05
15 RCW under the subchapter heading "Part III" to read as follows:

16 (1)(a) Except for the circumstances in (b) of this subsection, no
17 state agency may enforce or attempt to enforce in an agency action an
18 interpretive statement, policy statement, guideline, bulletin, staff
19 instruction, or other such issuance against any person in such a manner
20 that the procedures or standards contained in the agency issuance are
21 considered binding. The information contained in such an issuance may
22 illustrate acceptable and unacceptable procedures or standards, but the
23 agency must consider individual facts in cases that arise to allow for
24 individualized determinations in agency actions. If a court or
25 presiding officer finds that an agency is applying the information
26 contained in an agency issuance in a binding manner, then the
27 procedures or standards contained in the agency issuance shall be
28 considered invalid because the agency failed to adopt these procedures
29 or standards as rules.

30 (b) Nothing in (a) of this subsection prohibits an agency from
31 enforcing any guidelines, policies, or other such issuances applicable
32 to the personnel of the agency.

33 (2) Any person may rely upon a technical assistance document,
34 issued to that person by the agency, in the course of meeting the
35 requirements of a rule or statute.

36 NEW SECTION. **Sec. 211.** A new section is added to chapter 34.05
37 RCW under the subchapter heading "Part III" to read as follows:

1 In lieu of regular mail, an agency may send the contents of any
2 notice pertaining to rule making required under this chapter by
3 electronic mail or facsimile mail if requested in writing by the person
4 entitled to receive the notice.

5 **Sec. 212.** RCW 34.05.325 and 1995 c 403 s 304 are each amended to
6 read as follows:

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

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

16 (3) If the agency possesses equipment capable of receiving
17 electronic mail, telefacsimile transmissions, or recorded telephonic
18 communications, the agency (~~may~~) shall provide in its notice of
19 hearing filed under RCW 34.05.320 that interested parties may comment
20 on proposed rules by these means. If the agency (~~chooses~~) is able to
21 receive comments by these means, the notice of hearing shall provide
22 instructions for making such comments, including, but not limited to,
23 appropriate telephone numbers to be used; the date and time by which
24 comments must be received; required methods to verify the receipt and
25 authenticity of the comments; and any limitations on the number of
26 pages for telefacsimile transmission or electronic mail comments and on
27 the minutes of tape recorded comments. The agency shall accept
28 comments received by these means for inclusion in the (~~official~~
29 ~~record~~) rule-making file established under RCW 34.05.370 if the
30 comments are made in accordance with the agency's instructions.

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

1 summarizing memorandum is a public document and shall be made available
2 to any person in accordance with chapter 42.17 RCW.

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

8 (6)(a) Before it files an adopted rule with the code reviser, an
9 agency shall prepare a concise explanatory statement of the rule:

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

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

14 (iii) Summarizing all comments received regarding the proposed
15 rule, and responding to the comments by category or subject matter,
16 indicating how the final rule reflects agency consideration of the
17 comments, or why it fails to do so.

18 (b) The agency shall provide the concise explanatory statement to
19 any person upon request or from whom the agency received comment.

20 **Sec. 213.** RCW 34.05.354 and 1995 c 403 s 701 are each amended to
21 read as follows:

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

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

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

34 (b) The statute on which the rule is based has been declared
35 unconstitutional by a court with jurisdiction, there is a final
36 judgment, and no statute has been enacted to replace the
37 unconstitutional statute;

1 (c) The rule is no longer necessary because of changed
2 circumstances; or

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

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

14 (4) The code reviser shall publish all rules proposed for expedited
15 repeal in a separate section of a regular edition of the Washington
16 state register or in a special edition of the Washington state
17 register. The publication shall be not later than (~~July~~) May 31st or
18 November 30th of each year, or in the first register published after
19 that date.

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

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

37 **Sec. 214.** RCW 19.85.025 and 1995 c 403 s 401 are each amended to
38 read as follows:

1 (1) Unless an agency receives a written objection to the expedited
2 repeal of a rule, this chapter does not apply to a rule proposed for
3 expedited repeal pursuant to RCW 34.05.354. If an agency receives a
4 written objection to expedited repeal of the rule, this chapter applies
5 to the rule-making proceeding.

6 (2) This chapter does not apply to a rule proposed for expedited
7 adoption pursuant to section 206 of this act, unless a written
8 objection is timely filed with the agency and the objection is not
9 withdrawn.

10 (3) This chapter does not apply to the adoption of a rule described
11 in RCW 34.05.310(4).

12 ((+3+)) (4) An agency is not required to prepare a separate small
13 business economic impact statement under RCW 19.85.040 if it prepared
14 an analysis under RCW 34.05.328 that meets the requirements of a small
15 business economic impact statement, and if the agency reduced the costs
16 imposed by the rule on small business to the extent required by RCW
17 19.85.030(3). The portion of the analysis that meets the requirements
18 of RCW 19.85.040 shall be filed with the code reviser and provided to
19 any person requesting it in lieu of a separate small business economic
20 impact statement.

21 **PART III**
22 **JUDICIAL REVIEW**

23 **Sec. 301.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
24 read as follows:

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

27 (a) Except as provided in subsection (2) of this section, the
28 burden of demonstrating the invalidity of agency action is on the party
29 asserting invalidity;

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

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

35 (d) The court shall grant relief only if it determines that a
36 person seeking judicial relief has been substantially prejudiced by the
37 action complained of; and

1 (e) In a proceeding otherwise authorized where the court is asked
2 to defer to an agency's interpretation of a statute as expressed by a
3 policy or interpretive statement, the court may only defer to the
4 agency's interpretation if the statute is ambiguous. The court shall
5 review the interpretive or policy statement under the error of law
6 standard, but the amount of deference that a court may give to the
7 agency's interpretation shall depend on the following factors: (i)
8 Whether the interpretive or policy statement was issued
9 contemporaneously with the passage of the statute to which it relates;
10 (ii) the consistency with earlier and later agency pronouncements,
11 including whether the agency had historically ever interpreted the
12 statute to require the standards or procedures announced in the
13 interpretive or policy statement; (iii) the validity of the agency's
14 reasoning; and (iv) the substantive impact of the interpretive or
15 policy statement. Interpretive or policy statements that were issued
16 contemporaneously with the applicable statute and that have been
17 consistently interpreted by the agency shall be given more deference by
18 the court. Because interpretive or policy statements have not been
19 subject to the notice and comment procedures of the rule-making
20 process, the court shall give less deference to an agency's
21 interpretation of the law when there is a large substantive impact.
22 This subsection does not apply to an interpretive or policy statement
23 that the court finds is invalid because it constitutes a rule that was
24 not adopted in accordance with all applicable provisions of law.

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

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

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

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

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

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

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

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

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

20 (f) The agency has not decided all issues requiring resolution by
21 the agency;

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

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

30 (i) The order is arbitrary or capricious.

31 (4) Review of other agency action.

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

34 (b) A person whose rights are violated by an agency's failure to
35 perform a duty that is required by law to be performed may file a
36 petition for review pursuant to RCW 34.05.514, seeking an order
37 pursuant to this subsection requiring performance. Within twenty days
38 after service of the petition for review, the agency shall file and
39 serve an answer to the petition, made in the same manner as an answer

1 to a complaint in a civil action. The court may hear evidence,
2 pursuant to RCW 34.05.562, on material issues of fact raised by the
3 petition and answer.

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

8 (i) Unconstitutional;

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

11 (iii) Arbitrary or capricious; or

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

14 **Sec. 302.** RCW 34.05.534 and 1995 c 403 s 803 are each amended to
15 read as follows:

16 A person may file a petition for judicial review under this chapter
17 only after exhausting all administrative remedies available within the
18 agency whose action is being challenged, or available within any other
19 agency authorized to exercise administrative review, except:

20 (1) A petitioner for judicial review of a rule need not have
21 participated in the rule-making proceeding upon which that rule is
22 based, have petitioned for its amendment or repeal, have petitioned the
23 joint administrative rules review committee for its review, or have
24 appealed a petition for amendment or repeal to the governor;

25 (2) A petitioner for judicial review need not exhaust
26 administrative remedies to the extent that this chapter or any other
27 statute states that exhaustion is not required; or

28 (3) The court may relieve a petitioner of the requirement to
29 exhaust any or all administrative remedies upon a showing that:

30 (a) The remedies would be patently inadequate;

31 (b) The exhaustion of remedies would be futile; or

32 (c) The grave irreparable harm that would result from having to
33 exhaust administrative remedies would clearly outweigh the public
34 policy requiring exhaustion of administrative remedies.

35 NEW SECTION. **Sec. 303.** A new section is added to chapter 34.05
36 RCW under the subchapter heading "Part IV" to read as follows:

1 The presiding officer shall apply the applicable statute and rules
2 governing an issue in any adjudicative proceeding. An agency rule is
3 invalid if it does not allow a presiding officer to consider both the
4 statute and the rules in an adjudicatory proceeding.

5 **Sec. 304.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each
6 amended to read as follows:

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

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

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

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

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

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

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

1 finding with the code reviser and mail notice to all persons who have
2 made timely request of the agency for advance notice of its rule-making
3 proceedings as provided in RCW 34.05.320. The agency's notice shall
4 include the rules review committee's findings and reasons therefor, and
5 shall be published in the Washington state register in accordance with
6 the provisions of chapter 34.08 RCW.

7 (4) The agency shall consider fully all written and oral
8 submissions regarding (a) whether the rule in question is within the
9 intent of the legislature as expressed by the statute which the rule
10 implements(~~(7)~~) or (b) whether the rule was adopted in accordance with
11 all applicable provisions of law(~~(7 or (c) whether the agency is using~~
12 ~~a policy or interpretive statement in place of a rule)~~)).

13 **Sec. 402.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to
14 read as follows:

15 (1) Within seven days of an agency hearing held after notification
16 of the agency by the rules review committee pursuant to RCW 34.05.620
17 or 34.05.630, the affected agency shall notify the committee of its
18 intended action on a proposed or existing rule to which the committee
19 objected or on a committee finding of the agency's failure to adopt
20 rules.

21 (2) If the rules review committee finds by a majority vote of its
22 members: (a) That the proposed or existing rule in question will not
23 be modified, amended, withdrawn, or repealed by the agency so as to
24 conform with the intent of the legislature(~~(7)~~) or (b) that (~~(an~~
25 ~~existing)~~) a rule was not adopted in accordance with all applicable
26 provisions of law(~~(7 or (c) that the agency will not replace the policy~~
27 ~~or interpretive statement with a rule)~~), the rules review committee
28 may, within thirty days from notification by the agency of its intended
29 action, file with the code reviser notice of its objections together
30 with a concise statement of the reasons therefor. Such notice and
31 statement shall also be provided to the agency by the rules review
32 committee.

33 (3) If the rules review committee makes an adverse finding
34 regarding an existing rule under subsection (2) (a) or (b) of this
35 section, the committee may, by a majority vote of its members,
36 recommend suspension of the rule. Within seven days of such vote the
37 committee shall transmit to the appropriate standing committees of the
38 legislature, the governor, the code reviser, and the agency written

1 notice of its objection and recommended suspension and the concise
2 reasons therefor. Within thirty days of receipt of the notice, the
3 governor shall transmit to the committee, the code reviser, and the
4 agency written approval or disapproval of the recommended suspension.
5 If the suspension is approved by the governor, it is effective from the
6 date of that approval and continues until ninety days after the
7 expiration of the next regular legislative session.

8 (4) The code reviser shall publish transmittals from the rules
9 review committee or the governor issued pursuant to subsection (2) or
10 (3) of this section in the Washington state register and shall publish
11 in the next supplement and compilation of the Washington Administrative
12 Code a reference to the committee's objection or recommended suspension
13 and the governor's action on it and to the issue of the Washington
14 state register in which the full text thereof appears. If the
15 transmittal relates to a policy or interpretive statement, guideline,
16 or other such issuance of general applicability, the code reviser shall
17 publish the reference in the chapter of the Washington State Register
18 and Washington Administrative Code that addresses the most relevant
19 subject matter to the issuance.

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

25 **Sec. 403.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to
26 read as follows:

27 (1) Any person may petition the rules review committee for a review
28 of a proposed or existing rule, or a policy or interpretive statement,
29 guideline, or other such issuance of general applicability. A petition
30 to review a policy or interpretive statement, guideline, or other such
31 issuance of general applicability may only be filed for the purpose of
32 requesting the rules review committee to determine whether the issuance
33 constitutes a rule that has not been adopted in accordance with all
34 provisions of law. If the rules review committee determines that the
35 issuance constitutes a rule, the committee may also examine whether the
36 rule is within the intent of the legislature as expressed by the
37 statute that the rule implements. Within thirty days of the receipt of
38 the petition, the rules review committee shall acknowledge receipt of

1 the petition and describe any initial action taken. If the rules
2 review committee rejects the petition, a written statement of the
3 reasons for rejection shall be included.

4 (2) A person may petition the rules review committee under
5 subsection (1) of this section requesting review of an existing rule
6 only if the person has petitioned the agency to amend or repeal the
7 rule under RCW 34.05.330(1) and such petition was denied. In the case
8 of a policy or interpretive statement, guideline, or other such
9 issuance of general applicability, a person may only petition the rules
10 review committee under subsection (1) of this section if the person has
11 petitioned the agency in accordance with RCW 34.05.230(3) to repeal or
12 withdraw the issuance, or convert the issuance into rules.

13 (3) A petition for review of a rule under subsection (1) of this
14 section shall:

15 (a) Identify with specificity the proposed or existing rule to be
16 reviewed;

17 (b) Identify the specific statute identified by the agency as
18 authorizing the rule, the specific statute which the rule interprets or
19 implements, and, if applicable, the specific statute the department is
20 alleged not to have followed in adopting the rule;

21 (c) State the reasons why the petitioner believes that the rule is
22 not within the intent of the legislature, or that its adoption was not
23 or is not in accordance with law, and provide documentation to support
24 these statements;

25 (d) Identify any known judicial action regarding the rule or
26 statutes identified in the petition.

27 A petition to review an existing rule shall also include a copy of
28 the agency's denial of a petition to amend or repeal the rule issued
29 under RCW 34.05.330(1) and, if available, a copy of the governor's
30 denial issued under RCW 34.05.330(3).

31 (4) A petition for review of a policy or interpretive statement,
32 guideline, or other such issuance of general applicability under
33 subsection (1) of this section shall:

34 (a) Identify the specific ((statement)) issuance to be reviewed;

35 (b) Identify the specific statute which the ((rule)) issuance
36 interprets or implements;

37 (c) State the reasons why the petitioner believes that the
38 ((statement)) issuance meets the definition of a rule under RCW

1 34.05.010 and should have been adopted according to the procedures of
2 this chapter;

3 (d) Identify any known judicial action regarding the ((statement))
4 issuance or statutes identified in the petition.

5 (5) Within ninety days of receipt of the petition, the rules review
6 committee shall make a final decision on the rule for which the
7 petition for review was not previously rejected.

8 **Sec. 404.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
9 read as follows:

10 (1) Except as provided in subsection (2) of this section, it is the
11 express policy of the legislature that establishment of procedures for
12 review of administrative rules by the legislature and the notice of
13 objection required by RCW 34.05.630((+2)) (3) and 34.05.640(2) in no
14 way serves to establish a presumption as to the legality or
15 constitutionality of a rule in any subsequent judicial proceedings
16 interpreting such rules.

17 (2) If the joint administrative rules review committee recommends
18 to the governor that an existing rule be suspended because it does not
19 conform with the intent of the legislature or was not adopted in
20 accordance with all applicable provisions of law, the recommendation
21 shall establish a rebuttable presumption in any proceeding challenging
22 the validity of the rule that the rule is invalid. The burden of
23 demonstrating the validity of the rule is then on the adopting agency.

24
25

PART V
FEES AND EXPENSES

26 **Sec. 501.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to
27 read as follows:

28 (1) Except as otherwise specifically provided by statute, a court
29 shall award a qualified party that prevails in a judicial review of an
30 agency action fees and other expenses, including reasonable attorneys'
31 fees, unless the court finds that the agency action was substantially
32 justified or that circumstances make an award unjust. A qualified
33 party shall be considered to have prevailed if the qualified party
34 obtained relief on a significant issue that achieves some benefit that
35 the qualified party sought.

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

16 (3) A party who is awarded fees and other expenses by the superior
17 court or by any court of appeal shall be entitled to those fees and
18 expenses, regardless of whether the party ultimately prevails in a
19 final resolution of the matter.

20 **Sec. 502.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to
21 read as follows:

22 Fees and other expenses awarded under RCW 4.84.340 and 4.84.350
23 shall be paid by the agency over which the party prevails from
24 operating funds appropriated to the agency within ~~((sixty days))~~ thirty
25 days of the decision of a superior court or court of appeal. The fees
26 and other expenses shall be paid from moneys appropriated to the agency
27 for administration and support services and not out of moneys for
28 program activities or service delivery if the operating budget or
29 budget notes separately designate administration and support services.
30 Agencies paying fees and other expenses pursuant to RCW 4.84.340 and
31 4.84.350 shall report all payments to the office of financial
32 management within five days of paying the fees and other expenses.
33 Fees and other expenses awarded by the court shall be subject to the
34 provisions of chapter 39.76 RCW and shall be deemed payable on the date
35 the court announces the award.

36 **Sec. 503.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to
37 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout RCW 4.84.340 through 4.84.360.

3 (1) "Agency" means any state board, commission, department,
4 institution of higher education, or officer, authorized by law to make
5 rules or to conduct adjudicative proceedings, except those in the
6 legislative or judicial branches, the governor, or the attorney general
7 except to the extent otherwise required by law.

8 (2) "Agency action" means agency action as defined by chapter 34.05
9 RCW.

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

23 (4) "Judicial review" means ~~((a judicial review as defined by~~
24 ~~chapter 34.05 RCW))~~ review of an agency action in the superior court
25 and courts of appeal.

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

PART VI

REGULATORY IMPACT NOTES

1
2
3 **Sec. 601.** RCW 43.41.110 and 1981 2nd ex.s. c 4 s 13 are each
4 amended to read as follows:

5 The office of financial management shall:

6 (1) Provide technical assistance to the governor and the
7 legislature in identifying needs and in planning to meet those needs
8 through state programs and a plan for expenditures.

9 (2) Perform the comprehensive planning functions and processes
10 necessary or advisable for state program planning and development,
11 preparation of the budget, inter-departmental and inter-governmental
12 coordination and cooperation, and determination of state capital
13 improvement requirements.

14 (3) Provide assistance and coordination to state agencies and
15 departments in their preparation of plans and programs.

16 (4) Provide general coordination and review of plans in functional
17 areas of state government as may be necessary for receipt of federal or
18 state funds.

19 (5) Participate with other states or subdivisions thereof in
20 interstate planning.

21 (6) Encourage educational and research programs that further
22 planning and provide administrative and technical services therefor.

23 (7) Carry out the provisions of RCW 43.62.010 through 43.62.050
24 relating to the state census.

25 (8) Be the official state participant in the federal-state
26 cooperative program for local population estimates and as such certify
27 all city and county special censuses to be considered in the allocation
28 of state and federal revenues.

29 (9) Be the official state center for processing and dissemination
30 of federal decennial or quinquennial census data in cooperation with
31 other state agencies.

32 (10) Be the official state agency certifying annexations,
33 incorporations, or disincorporations to the United States bureau of the
34 census.

35 (11) Review all United States bureau of the census population
36 estimates used for federal revenue sharing purposes and provide a
37 liaison for local governments with the United States bureau of the
38 census in adjusting or correcting revenue sharing population estimates.

1 (12) Provide fiscal notes depicting the expected fiscal impact of
2 proposed legislation in accordance with chapter 43.88A RCW.

3 (13) Provide regulatory impact notes depicting the expected
4 regulatory impact of proposed legislation on businesses in accordance
5 with sections 602 through 606 of this act.

6 (14) Be the official state agency to estimate and manage the cash
7 flow of all public funds as provided in chapter 43.88 RCW. To this
8 end, the office shall adopt such rules as are necessary to manage the
9 cash flow of public funds.

10 NEW SECTION. Sec. 602. The legislature hereby recognizes the
11 necessity of developing a uniform and coordinated procedure for
12 determining the expected regulatory impact of bills and resolutions on
13 businesses. The legislature also recognizes that developing the
14 statements of regulatory impact, which shall be known as regulatory
15 impact notes, requires the designation of a state agency to be
16 principally responsible for the notes.

17 NEW SECTION. Sec. 603. (1) The office of financial management
18 shall, in cooperation with appropriate legislative committees and
19 legislative staff, establish a procedure to provide regulatory impact
20 notes on the expected impact of bills and resolutions that increase or
21 decrease regulations on the operation of businesses subject to the
22 state's business and occupation taxes levied in chapter 82.04 RCW.

23 (2) A regulatory impact note shall be prepared on the basis of a
24 sample of businesses that are regulated by the bill or resolution. The
25 regulatory impact note shall contain an estimate of the fiscal impact
26 to the affected businesses for the biennium in which the bill or
27 resolution will take effect as well as a cumulative forecast of the
28 fiscal impact for the succeeding two fiscal years. If it is determined
29 that no dollar estimate is possible, the regulatory impact note shall
30 contain a statement to that effect.

31 (3) In establishing the regulatory impact procedure called for
32 under this chapter, the office of financial management shall coordinate
33 the development of regulatory impact notes with all state agencies
34 affected.

35 NEW SECTION. Sec. 604. (1) After a regulatory impact note that
36 depicts the expected regulatory impact of a bill or resolution is

1 prepared and approved as to form, accuracy, and completeness by the
2 office of financial management, copies shall be filed immediately with:

3 (a) The chair of the committee to which the bill or resolution was
4 referred upon introduction in the house of origin;

5 (b) The senate committee on ways and means, or its successor; and

6 (c) The house of representatives committees on revenue and
7 appropriations, or their successors.

8 (2) Whenever possible, the regulatory impact note shall be provided
9 before or at the time the bill or resolution is first heard by the
10 committee of reference in the house of origin.

11 (3) If a regulatory impact note has been prepared for a bill or
12 resolution, a copy of the regulatory impact note shall be placed in the
13 bill books or otherwise attached to the bill or resolution and shall
14 remain with the bill or resolution throughout the legislative process
15 insofar as possible.

16 NEW SECTION. **Sec. 605.** If requested by a legislator, the office
17 of financial management shall also provide a regulatory impact note on
18 a legislative proposal. The regulatory impact note shall be returned
19 to the requesting legislator, and copies shall be filed with the
20 appropriate legislative committees under section 604 of this act at the
21 time the proposed legislation is introduced in either house.

22 NEW SECTION. **Sec. 606.** Nothing in this chapter prevents either
23 house of the legislature from acting on a bill or resolution before it
24 as otherwise provided by the state Constitution, by law, and by the
25 rules and joint rules of the senate and house of representatives, nor
26 shall the lack of a regulatory impact note as provided in this chapter
27 or an error in the accuracy of the note affect the validity of a
28 measure otherwise duly passed by the legislature.

29 **PART VII**

30 **MISCELLANEOUS**

31 NEW SECTION. **Sec. 701.** A new section is added to chapter 43.17
32 RCW to read as follows:

33 (1) An agency, prior to releasing a final report or study regarding
34 management by a county, city, town, special purpose district, or other
35 unit of local government of a program delegated to the local government

1 by the agency or for which the agency has regulatory responsibility,
2 shall provide copies of a draft of the report or study at least two
3 weeks in advance of the release of the final report or study to the
4 legislative body of the local government. The agency shall, at the
5 request of a local government legislative body, meet with the
6 legislative body prior to the release of a final report or study
7 regarding the management of such a program.

8 (2) For purposes of this section, "agency" means an office,
9 department, board, commission, or other unit of state government, other
10 than a unit of state government headed by a separately elected
11 official.

12 NEW SECTION. **Sec. 702.** A new section is added to chapter 43.05
13 RCW to read as follows:

14 When issuing a citation or other written finding that a person has
15 violated a statute, rule, or order, the agency shall include with the
16 citation or other written finding the text of the specific statute or
17 statutes granting the agency the authority to regulate the subject
18 matter of the citation or other written finding.

19 NEW SECTION. **Sec. 703.** A new section is added to chapter 34.05
20 RCW under the subchapter heading "Part III" to read as follows:

21 (1) The statute law committee shall convene a working group that
22 includes representatives of the office of financial management, state
23 agencies, and the general public for the purpose of (a) developing
24 proposed rules relating to the acceptance of electronic filings of
25 proposed rules and interpretive or policy statements from state
26 agencies; (b) developing proposed rules pertaining to the filing and
27 publication of executive orders, information submitted by agencies in
28 the preparation of statements of inquiry, and other information deemed
29 important for publication in the Washington State Register; and (c)
30 developing a method for noting in the published volumes of the Revised
31 Code of Washington or the Washington Administrative Code, or both, if
32 interpretive or policy statements have been issued that pertain to the
33 statutes or rules. The working group shall be convened no later than
34 October 1, 1997, and develop the proposed rules no later than July 1,
35 1998. The code reviser shall adopt the proposed rules developed by the
36 statute law committee working group created in this section.

37 (2) This section expires January 1, 1999.

1 NEW SECTION. **Sec. 704.** Part headings used in this act do not
2 constitute any part of the law.

3 NEW SECTION. **Sec. 705.** Sections 602 through 606 of this act
4 constitute a new chapter in Title 43 RCW.

5 NEW SECTION. **Sec. 706.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

--- END ---