
SUBSTITUTE HOUSE BILL 2345

State of Washington

55th Legislature

1998 Regular Session

By House Committee on House Government Reform & Land Use (originally sponsored by Representative Reams)

Read first time 01/22/98. Referred to Committee on .

1 AN ACT Relating to administrative law; amending RCW 34.05.230,
2 34.05.328, 34.05.330, 34.05.354, 34.05.370, 34.05.610, 34.05.630,
3 34.05.640, 34.05.655, 34.05.660, 34.12.040, and 48.04.010; adding new
4 sections to chapter 34.05 RCW; adding a new section to chapter 43.132
5 RCW; and providing an expiration date.

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

7 **Sec. 1.** RCW 34.05.230 and 1997 c 409 s 202 are each amended to
8 read as follows:

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

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

14 ~~(b) The proposed rules adopt or incorporate by reference without~~
15 ~~material change federal statutes or regulations, Washington state~~
16 ~~statutes, rules of other Washington state agencies, shoreline master~~
17 ~~programs other than those programs governing shorelines of state-wide~~
18 ~~significance, or, as referenced by Washington state law, national~~
19 ~~consensus codes that generally establish industry standards, if the~~

1 ~~material adopted or incorporated regulates the same subject matter and~~
2 ~~conduct as the adopting or incorporating rule;~~

3 ~~(c) The proposed rules only correct typographical errors, make~~
4 ~~address or name changes, or clarify language of a rule without changing~~
5 ~~its effect;~~

6 ~~(d) The content of the proposed rules is explicitly and~~
7 ~~specifically dictated by statute;~~

8 ~~(e) The proposed rules have been the subject of negotiated rule~~
9 ~~making, pilot rule making, or some other process that involved~~
10 ~~substantial participation by interested parties before the development~~
11 ~~of the proposed rule; or~~

12 ~~(f) The proposed rule is being amended after a review under RCW~~
13 ~~34.05.328 or section 210 of this act.~~

14 ~~(2) The expedited rule making process must follow the requirements~~
15 ~~for rule making set forth in RCW 34.05.320, except that the agency is~~
16 ~~not required to prepare a small business economic impact statement~~
17 ~~under RCW 19.85.025, a statement indicating whether the rule~~
18 ~~constitutes a significant legislative rule under RCW~~
19 ~~34.05.328(5)(c)(iii), or a significant legislative rule analysis under~~
20 ~~RCW 34.05.328. An agency is not required to prepare statements of~~
21 ~~inquiry under RCW 34.05.310 or conduct a hearing for the expedited~~
22 ~~adoption of rules. The notice for the expedited adoption of rules must~~
23 ~~contain a statement in at least ten point type, that is substantially~~
24 ~~in the following form:~~

25 **NOTICE**

26 ~~THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN~~
27 ~~EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR~~
28 ~~THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS~~
29 ~~ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA~~
30 ~~FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE~~
31 ~~BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST~~
32 ~~EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO~~
33 ~~(INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).~~

34 ~~(3) The agency shall send a copy of the notice of the proposed~~
35 ~~expedited rule making to any person who has requested notification of~~
36 ~~proposals for the expedited adoption of rules or of agency rule making,~~
37 ~~as well as the joint administrative rules review committee, within~~
38 ~~three days after its publication in the Washington State Register. An~~

1 agency may charge for the actual cost of providing a requesting party
2 mailed copies of these notices. The notice of the proposed expedited
3 rule making must be preceded by a statement substantially in the form
4 provided in subsection (2) of this section. The notice must also
5 include an explanation of the reasons the agency believes the expedited
6 adoption of the rule is appropriate.

7 (4) The code reviser shall publish the text of all rules proposed
8 for expedited adoption along with the notice required in this section
9 in a separate section of the Washington State Register. Once the text
10 of the proposed rules has been published in the Washington State
11 Register, the only changes that an agency may make in the text of these
12 proposed rules before their final adoption are to correct typographical
13 errors.

14 (5) Any person may file a written objection to the expedited
15 adoption of a rule. The objection must be filed with the agency rules
16 coordinator within forty five days after the notice of the proposed
17 expedited rule making has been published in the Washington State
18 Register. A person who has filed a written objection to the expedited
19 adoption of a rule may withdraw the objection.

20 (6) If no written objections to the expedited adoption of a rule
21 are filed with the agency within forty five days after the notice of
22 proposed expedited rule making is published, or if all objections that
23 have been filed are withdrawn by the persons filing the objections, the
24 agency may enter an order adopting the rule without further notice or
25 a public hearing. The order must be published in the manner required
26 by this chapter for any other agency order adopting, amending, or
27 repealing a rule.

28 (7) If a written notice of objection to the expedited adoption of
29 the rule is timely filed with the agency and is not withdrawn, the
30 notice of proposed expedited rule making published under this section
31 is considered a statement of inquiry for the purposes of RCW 34.05.310,
32 and the agency may initiate further rule adoption proceedings in
33 accordance with this chapter.

34 (8) Subsections (1) through (8) of this section expire on December
35 31, 2000.

36 an [An] agency is encouraged to advise the public of its current
37 opinions, approaches, and likely courses of action by means of
38 interpretive or policy statements. Current)) Interpretive and policy
39 statements, guidelines, and documents that are of general

1 applicability, or their equivalents, other than rules adopted under
2 this chapter, are advisory only. To better inform and involve the
3 public, ~~((an))~~ each agency is encouraged to convert long-standing
4 interpretive and policy statements into rules.

5 (2) A person may petition an agency requesting the conversion of
6 interpretive and policy statements into rules. Upon submission, the
7 agency shall notify the joint administrative rules review committee of
8 the petition. Within sixty days after submission of a petition, the
9 agency shall either deny the petition in writing, stating its reasons
10 for the denial, or initiate rule-making proceedings in accordance with
11 this chapter.

12 ~~((+11))~~ (3) Each agency shall maintain a roster of interested
13 persons, consisting of persons who have requested in writing to be
14 notified of all interpretive and policy statements issued by that
15 agency. Each agency shall update the roster once each year and
16 eliminate persons who do not indicate a desire to continue on the
17 roster. Whenever an agency issues an interpretive or policy statement,
18 it shall send a copy of the statement to each person listed on the
19 roster. The agency may charge a nominal fee to the interested person
20 for this service.

21 ~~((+12))~~ (4) Whenever an agency issues an interpretive or policy
22 statement, it shall submit to the code reviser for publication in the
23 Washington State Register a statement describing the subject matter of
24 the interpretive or policy statement, and listing the person at the
25 agency from whom a copy of the interpretive or policy statement may be
26 obtained.

27 (5) When a person contacts an agency regarding a rule, the agency
28 shall identify any associated interpretive and policy statements,
29 guidelines, and other documents that are of general applicability, or
30 their equivalents, and provide copies of the statements upon request.

31 (6) An agency shall not issue a citation or civil penalty related
32 to a rule on which the agency has issued a policy or interpretive
33 statement, guideline, or other document that is of general
34 applicability, or its equivalent, unless the agency has provided copies
35 of the documents to the person being issued the citation or civil
36 penalty at least ninety days before the issuance of the citation or
37 civil penalty. This subsection does not apply to a person who has
38 failed to meet the obligation to have obtained a license or

1 registration to engage in the regulated activity for which a civil
2 penalty or citation is being issued.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW
4 to read as follows:

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

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

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

18 (c) The proposed rules only correct typographical errors, make
19 address or name changes, or clarify language of a rule without changing
20 its effect;

21 (d) The content of the proposed rules is explicitly and
22 specifically dictated by statute;

23 (e) The proposed rules have been the subject of negotiated rule
24 making, pilot rule making, or some other process that involved
25 substantial participation by interested parties before the development
26 of the proposed rule; or

27 (f) The proposed rule is being amended after a review under RCW
28 34.05.328.

29 (2) The expedited rule-making process must follow the requirements
30 for rule making set forth in RCW 34.05.320, except that the agency is
31 not required to prepare a small business economic impact statement
32 under RCW 19.85.025, a statement indicating whether the rule
33 constitutes a significant legislative rule under RCW
34 34.05.328(6)(c)(iii), or a significant legislative rule analysis under
35 RCW 34.05.328. An agency is not required to prepare statements of
36 inquiry under RCW 34.05.310 or conduct a hearing for the expedited
37 adoption of rules. The notice for the expedited adoption of rules must

1 contain a statement in at least ten-point type, that is substantially
2 in the following form:

3

NOTICE

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

12 (3) The agency shall send a copy of the notice of the proposed
13 expedited rule making to any person who has requested notification of
14 proposals for the expedited adoption of rules or of agency rule making,
15 as well as the joint administrative rules review committee, within
16 three days after its publication in the Washington State Register. An
17 agency may charge for the actual cost of providing a requesting party
18 mailed copies of these notices. The notice of the proposed expedited
19 rule making must be preceded by a statement substantially in the form
20 provided in subsection (2) of this section. The notice must also
21 include an explanation of the reasons the agency believes the expedited
22 adoption of the rule is appropriate.

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

30 (5) Any person may file a written objection to the expedited
31 adoption of a rule. The objection must be filed with the agency rules
32 coordinator within forty-five days after the notice of the proposed
33 expedited rule making has been published in the Washington State
34 Register. A person who has filed a written objection to the expedited
35 adoption of a rule may withdraw the objection.

36 (6) If no written objections to the expedited adoption of a rule
37 are filed with the agency within forty-five days after the notice of
38 proposed expedited rule making is published, or if all objections that

1 have been filed are withdrawn by the persons filing the objections, the
2 agency may enter an order adopting the rule without further notice or
3 a public hearing. The order must be published in the manner required
4 by this chapter for any other agency order adopting, amending, or
5 repealing a rule.

6 (7) If a written notice of objection to the expedited adoption of
7 the rule is timely filed with the agency and is not withdrawn, the
8 notice of proposed expedited rule making published under this section
9 is considered a statement of inquiry for the purposes of RCW 34.05.310,
10 and the agency may initiate further rule adoption proceedings in
11 accordance with this chapter.

12 (8) This section expires December 31, 2000.

13 **Sec. 3.** RCW 34.05.328 and 1997 c 430 s 1 are each amended to read
14 as follows:

15 (1) Before adopting a rule described in subsection (~~(+5+)~~) (6) of
16 this section, an agency shall:

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

19 (b) Determine that the rule is needed to achieve the general goals
20 and specific objectives stated under (a) of this subsection, and
21 analyze alternatives to rule making and the consequences of not
22 adopting the rule;

23 (c) Determine that the probable benefits of the rule are greater
24 than its probable costs, taking into account both the qualitative and
25 quantitative benefits and costs and the specific directives of the
26 statute being implemented;

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

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

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

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

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

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

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

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

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

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

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

23 (c) Promote and assist voluntary compliance; and

24 (d) Evaluate whether the rule achieves the purpose for which it was
25 adopted, including, to the maximum extent practicable, the use of
26 interim milestones to assess progress and the use of objectively
27 measurable outcomes.

28 (4) At least twenty days before the effective date of a rule
29 described in subsection (6) of this section, an agency shall convene a
30 meeting of persons affected by the rule to:

31 (a) Identify ambiguities and problem areas in the rule;

32 (b) Determine what changes to the rule are necessary to resolve the
33 ambiguities and problem areas;

34 (c) Coordinate education regarding compliance with the rule by
35 persons affected by the rule;

36 (d) Determine appropriate agency training;

37 (e) Determine appropriate evaluation mechanisms to review the
38 effectiveness of the new rule.

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

5 (a) Provide to the ~~((business assistance center))~~ department of
6 community, trade, and economic development a list citing by reference
7 the other federal and state laws that regulate the same activity or
8 subject matter;

9 (b) Coordinate implementation and enforcement of the rule with the
10 other federal and state entities regulating the same activity or
11 subject matter by making every effort to do one or more of the
12 following:

13 (i) Deferring to the other entity;

14 (ii) Designating a lead agency; or

15 (iii) Entering into an agreement with the other entities specifying
16 how the agency and entities will coordinate implementation and
17 enforcement.

18 If the agency is unable to comply with this subsection ~~((+4+))~~
19 (5)(b), the agency shall report to the legislature pursuant to (c) of
20 this subsection;

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

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

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

28 ~~((+5+))~~ (6)(a) Except as provided in (b) of this subsection, this
29 section applies to:

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

36 (ii) Any rule of any agency, if this section is voluntarily made
37 applicable to the rule by the agency, or is made applicable to the rule
38 by a majority vote of the joint administrative rules review committee

1 within (~~forty-five~~) seventy-five days of receiving the notice of
2 proposed rule making under RCW 34.05.320.

3 (b) This section does not apply to:

4 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

18 (v) Rules the content of which is explicitly and specifically
19 dictated by statute;

20 (vi) Rules that set or adjust fees or rates pursuant to legislative
21 standards; or

22 (vii) Rules of the department of social and health services
23 relating only to client medical or financial eligibility and rules
24 concerning liability for care of dependents.

25 (c) For purposes of this subsection:

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

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

35 (iii) A "significant legislative rule" is a rule other than a
36 procedural or interpretive rule that (A) adopts substantive provisions
37 of law pursuant to delegated legislative authority, the violation of
38 which subjects a violator of such rule to a penalty or sanction; (B)
39 establishes, alters, or revokes any qualification or standard for the

1 issuance, suspension, or revocation of a license or permit; or (C)
2 adopts a new, or makes significant amendments to, a policy or
3 regulatory program.

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

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

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

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

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

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

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

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

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

30 Within ninety days of the effective date of a rule that imposes
31 additional requirements on businesses the violation of which subjects
32 a person to a penalty or administrative sanction, an agency shall make
33 a good faith effort to notify businesses affected by the rule of the
34 requirements of the rule and how to obtain technical assistance to
35 comply. For purposes of this section, "good faith" means the agency at
36 least notifies businesses in the standard industrial classifications
37 identified in the rule-making file as businesses affected by the rule
38 that are registered with the department of revenue. Inadvertent

1 failure to notify a business under this section does not invalidate a
2 rule.

3 **Sec. 5.** RCW 34.05.330 and 1996 c 318 s 1 are each amended to read
4 as follows:

5 (1) Any person may petition an agency requesting the adoption,
6 amendment, or repeal of any rule. The office of financial management
7 shall prescribe by rule the format for such petitions and the procedure
8 for their submission, consideration, and disposition and provide a
9 standard form that may be used to petition any agency. Within sixty
10 days after submission of a petition, the agency shall either (a) deny
11 the petition in writing, stating (i) its reasons for the denial,
12 specifically addressing the concerns raised by the petitioner, and,
13 where appropriate, (ii) the alternative means by which it will address
14 the concerns raised by the petitioner, or (b) initiate rule-making
15 proceedings in accordance with (~~this chapter~~) RCW 34.05.310, if
16 applicable, and RCW 34.05.320.

17 (2) If an agency denies a petition to repeal or amend a rule
18 submitted under subsection (1) of this section, and the petition
19 alleges that the rule is not within the intent of the legislature or
20 was not adopted in accordance with all applicable provisions of law,
21 the person may petition for review of the rule by the joint
22 administrative rules review committee under RCW 34.05.655.

23 (3) If an agency denies a petition to repeal or amend a rule
24 submitted under subsection (1) of this section, the petitioner, within
25 thirty days of the denial, may appeal the denial to the governor. The
26 governor shall immediately file notice of the appeal with the code
27 reviser for publication in the Washington state register. Within
28 forty-five days after receiving the appeal, the governor shall either
29 (a) deny the petition in writing, stating (i) his or her reasons for
30 the denial, specifically addressing the concerns raised by the
31 petitioner, and, (ii) where appropriate, the alternative means by which
32 he or she will address the concerns raised by the petitioner; (b) for
33 agencies listed in RCW 43.17.010, direct the agency to initiate rule-
34 making proceedings in accordance with this chapter; or (c) for agencies
35 not listed in RCW 43.17.010, recommend that the agency initiate rule-
36 making proceedings in accordance with this chapter. The governor's
37 response to the appeal shall be published in the Washington state

1 register and copies shall be submitted to the chief clerk of the house
2 of representatives and the secretary of the senate.

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

5 (a) Whether the rule is authorized;

6 (b) Whether the rule is needed;

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

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

11 (e) Whether the rule applies differently to public and private
12 entities;

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

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

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

16 (i) Whether the rule is different than a federal law applicable to
17 the same activity or subject matter without adequate justification; and

18 (j) Whether the rule was adopted according to all applicable
19 provisions of law.

20 (5) The (~~business assistance center~~) department of community,
21 trade, and economic development and the office of financial management
22 shall coordinate efforts among agencies to inform the public about the
23 existence of this rules review process.

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

26 NEW SECTION. Sec. 6. A new section is added to chapter 43.132 RCW
27 to read as follows:

28 (1) To determine the fiscal impact of proposed rules on units of
29 local government, an agency shall prepare a local government economic
30 impact statement if the proposed rule will impose costs on units of
31 local government.

32 (2) The economic impact statement shall describe the reporting,
33 recordkeeping, and other compliance requirements of the proposed rule
34 and analyze the costs of compliance for local governments. An agency
35 shall file the statement with the code reviser along with the notice
36 required under RCW 34.05.320.

37 (3) The department of community, trade, and economic development
38 shall develop a guide to assist agencies in preparing the economic

1 impact statement. The guide shall be developed through a collaborative
2 process with agencies and local governments and other interested
3 persons.

4 (4) An agency shall maintain a list of proposed rules for which it
5 prepares an economic impact statement and a summary of the costs. By
6 December 1st of each year, an agency shall submit the list and summary
7 to the joint administrative rules review committee.

8 (5) This section does not apply to:

9 (a) A rule proposed for expedited repeal or expedited adoption,
10 unless the agency receives written objection;

11 (b) Rules described in RCW 34.05.310(4); and

12 (c) Rules adopted solely for the purpose of conformity or
13 compliance, or both, with federal statutes or regulations.

14 **Sec. 7.** RCW 34.05.354 and 1997 c 409 s 208 are each amended to
15 read as follows:

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

23 ~~(2))~~ An agency may ~~((propose))~~ file notice for the expedited
24 repeal of rules under the procedures set forth in this section for
25 rules meeting any one ~~((or more))~~ of the following criteria:

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

29 (b) The statute on which the rule is based has been declared
30 unconstitutional by a court with jurisdiction, there is a final
31 judgment, and no statute has been enacted to replace the
32 unconstitutional statute;

33 (c) The rule is no longer necessary because of changed
34 circumstances; or

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

37 ~~((3))~~ (2) An agency shall file a copy of a preproposal notice of
38 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as

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

10 ~~((+4))~~ (3) The code reviser shall publish all rules proposed for
11 expedited repeal in a separate section of ~~((a regular edition of))~~ the
12 Washington state register ~~((or in a special edition of the Washington
13 state register. The publication shall be not later than May 31st or
14 November 30th of each year, or in the first register published after
15 that date))~~.

16 ~~((+5))~~ (4) Any person may file a written objection to the
17 expedited repeal of a rule. The notice shall be filed with the agency
18 rules coordinator within thirty days after the notice of inquiry has
19 been published in the Washington state register. The written objection
20 need not state any reason for objecting to the expedited repeal of the
21 rule.

22 ~~((+6))~~ (5) If no written objections to the expedited repeal of a
23 rule are filed with the agency within thirty days after the preproposal
24 notice of inquiry is published, the agency may enter an order repealing
25 the rule without further notice or an opportunity for a public hearing.
26 The order shall be published in the manner required by this chapter for
27 any other order of the agency adopting, amending, or repealing a rule.
28 If a written objection to the expedited repeal of the rule is filed
29 with the agency within thirty days after the notice of inquiry has been
30 published, the preproposal notice of inquiry published pursuant to this
31 section shall be considered a preproposal notice of inquiry for the
32 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
33 proceedings in accordance with the provisions of this chapter.

34 **Sec. 8.** RCW 34.05.370 and 1996 c 102 s 2 are each amended to read
35 as follows:

36 (1) Each agency shall maintain an official rule-making file for
37 each rule that it (a) proposes by publication in the state register, or

1 (b) adopts. The file and materials incorporated by reference shall be
2 available for public inspection.

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

4 (a) (~~Copies of all publications~~) A list of citations to all
5 notices in the state register with respect to the rule or the
6 proceeding upon which the rule is based;

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

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

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

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

21 (f) Citations to data, factual information, studies, or reports on
22 which the agency relies in the adoption of the rule, indicating where
23 such data, factual information, studies, or reports are available for
24 review by the public, but this subsection (2)(f) does not require the
25 agency to include in the rule-making file any data, factual
26 information, studies, or reports gathered pursuant to chapter 19.85 RCW
27 or RCW 34.05.328 that can be identified to a particular business;

28 (g) The concise explanatory statement required by RCW 34.05.325(6);
29 and

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

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

38 (4) Upon judicial review, the file required by this section
39 constitutes the official agency rule-making file with respect to that

1 rule. Unless otherwise required by another provision of law, the
2 official agency rule-making file need not be the exclusive basis for
3 agency action on that rule.

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

6 (1) The legislature finds that under the governor's Executive Order
7 97-02, agencies have begun systematic reviews of existing rules and
8 have eliminated some unnecessary rules and improved clarity for other
9 rules.

10 (2) No rule adopted by any agency after the effective date of this
11 act, is valid for more than four years after the rule is adopted,
12 unless the rule has been reviewed under the procedure in this
13 subsection. An agency shall review a rule to evaluate whether the rule
14 is:

15 (a) Necessary to comply with the authorizing statute;

16 (b) Providing the results that it was originally designed to
17 achieve in a reasonable manner;

18 (c) Written and organized in a clear and concise manner;

19 (d) Consistent with the legislative intent of the authorizing
20 statute;

21 (e) Coordinated with other agencies and governmental jurisdictions
22 to eliminate or reduce duplication and inconsistency;

23 (f) Resulting in equitable treatment of those required to comply
24 with it; and

25 (g) Achieving its goals in a cost-effective manner.

26 (3) An agency shall place in a rules review file, documentation
27 sufficient to show that the agency conducted the review under this
28 section.

29 (4) Those rules certified to the legislature by the governor to
30 have undergone executive rules review by July 31, 2001, are subject to
31 review under subsection (2) of this section beginning July 31, 2001,
32 and are valid for no more than four years after that date unless so
33 reviewed.

34 (5) This section does not apply to:

35 (a) Emergency rules adopted under RCW 34.05.350;

36 (b) Rules relating only to internal governmental operations that
37 are not subject to violation by a nongovernmental party;

1 (c) Rules adopting or incorporating by reference without material
2 change federal statutes or regulations or Washington state statutes;
3 and

4 (d) Rules that only correct typographical errors, make address or
5 name changes, or clarify language of a rule without changing its
6 effect.

7 **Sec. 10.** RCW 34.05.610 and 1996 c 318 s 2 are each amended to read
8 as follows:

9 (1) There is hereby created a joint administrative rules review
10 committee which shall be a bipartisan committee consisting of four
11 senators and four representatives from the state legislature. The
12 senate members of the committee shall be appointed by the president of
13 the senate, and the house members of the committee shall be appointed
14 by the speaker of the house. Not more than two members from each house
15 may be from the same political party. The appointing authorities shall
16 also appoint one alternate member from each caucus of each house. All
17 appointments to the committee are subject to approval by the caucuses
18 to which the appointed members belong.

19 (2) Members and alternates shall be appointed as soon as possible
20 after the legislature convenes in regular session in an odd-numbered
21 year, and their terms shall extend until their successors are appointed
22 and qualified at the next regular session of the legislature in an odd-
23 numbered year or until such persons no longer serve in the legislature,
24 whichever occurs first. Members and alternates may be reappointed to
25 the committee.

26 (3) By majority vote, the committee shall appoint a chairperson
27 other than a person appointed under subsection (1) of this section.
28 The chair must be appointed as soon as possible after the legislature
29 convenes in regular session in odd-numbered years, and the chair's
30 term extends until his or her successor is appointed at the next
31 regular session of the legislature in an odd-numbered year or until a
32 vacancy occurs. The chair may be reappointed. A vacancy in the chair
33 position must be filled by majority vote of the committee. The chair
34 has no vote on the committee except in cases of a tie.

35 (4) The president of the senate shall appoint (~~the chairperson in~~
36 ~~even-numbered years and~~) the vice chairperson in odd-numbered years
37 from among committee membership. The speaker of the house shall
38 appoint (~~the chairperson in odd-numbered years and~~) the vice

1 chairperson in even-numbered years from among committee membership.
2 Such appointments shall be made in January of each year as soon as
3 possible after a legislative session convenes.

4 ~~((4))~~ (5) The chairperson of the committee shall cause all
5 meeting notices and committee documents to be sent to the members and
6 alternates. A vacancy shall be filled by appointment of a legislator
7 from the same political party as the original appointment. The
8 appropriate appointing authority shall make the appointment within
9 thirty days of the vacancy occurring.

10 **Sec. 11.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to read
11 as follows:

12 (1) All rules required to be filed pursuant to RCW 34.05.380, and
13 emergency rules adopted pursuant to RCW 34.05.350, are subject to
14 selective review by the ~~((legislature))~~ committee.

15 (2) All agency policy and interpretive statements, guidelines, and
16 documents that are of general applicability, or their equivalents, are
17 subject to selective review by the ~~((legislature))~~ committee to
18 determine whether or not a statement, guideline, or document that is of
19 general applicability, or its equivalent, constitutes a rule that has
20 not been adopted in accordance with all applicable provisions of law.
21 If the committee finds that the statement, guideline, or document that
22 is of general applicability, or its equivalent, constitutes a rule, the
23 committee may also examine whether the rule is within the intent of the
24 legislature as expressed by the statute that the rule implements.

25 (3) If the rules review committee finds by a majority vote of its
26 members: (a) That an existing rule is not within the intent of the
27 legislature as expressed by the statute which the rule implements, or
28 (b) that the rule has not been adopted in accordance with all
29 applicable provisions of law, ~~((or (c) that an agency is using a policy~~
30 ~~or interpretive statement in place of a rule,))~~ the agency affected
31 shall be notified of such finding and the reasons therefor. Within
32 thirty days of the receipt of the rules review committee's notice, the
33 agency shall file notice of a hearing on the rules review committee's
34 finding with the code reviser and mail notice to all persons who have
35 made timely request of the agency for advance notice of its rule-making
36 proceedings as provided in RCW 34.05.320. The agency's notice shall
37 include the rules review committee's findings and reasons therefor, and

1 shall be published in the Washington state register in accordance with
2 the provisions of chapter 34.08 RCW.

3 (4) The agency shall consider fully all written and oral
4 submissions regarding (a) whether the rule in question is within the
5 intent of the legislature as expressed by the statute which the rule
6 implements, (b) whether the rule was adopted in accordance with all
7 applicable provisions of law, ~~((or))~~ and (c) whether the agency is
8 using a policy or interpretive statement, guideline, or document that
9 is of general applicability, or its equivalent, in place of a rule.

10 **Sec. 12.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to read
11 as follows:

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

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

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

1 agency written approval or disapproval of the recommended suspension.
2 If the suspension is approved by the governor, it is effective from the
3 date of that approval and continues until ninety days after the
4 expiration of the next regular legislative session.

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

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

17 **Sec. 13.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to read
18 as follows:

19 (1) Any person may petition the rules review committee for a review
20 of a proposed or existing rule or a proposed or existing policy or
21 interpretive statement, guideline, or document that is of general
22 applicability, or its equivalent. A petition to review a statement,
23 guideline, or document that is of general applicability, or its
24 equivalent, may only be filed for the purpose of requesting the
25 committee to determine whether the statement, guideline, or document
26 that is of general applicability, or its equivalent, constitutes a rule
27 that has not been adopted in accordance with all provisions of law. If
28 the committee determines that the statement, guideline, or document
29 that is of general applicability, or its equivalent, constitutes a
30 rule, the committee may also examine whether the rule is within the
31 intent of the legislature as expressed by the statute that the rule
32 implements. Within thirty days of the receipt of the petition, the
33 rules review committee shall acknowledge receipt of the petition and
34 describe any initial action taken. If the rules review committee
35 rejects the petition, a written statement of the reasons for rejection
36 shall be included.

37 (2) A person may petition the rules review committee under
38 subsection (1) of this section requesting review of an existing rule

1 only if the person has petitioned the agency to amend or repeal the
2 rule under RCW 34.05.330(1) and such petition was denied.

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

5 (a) Identify with specificity the proposed or existing rule to be
6 reviewed;

7 (b) Identify the specific statute identified by the agency as
8 authorizing the rule, the specific statute which the rule interprets or
9 implements, and, if applicable, the specific statute the department is
10 alleged not to have followed in adopting the rule;

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

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

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

21 (4) A petition for review of a policy or interpretive statement,
22 guideline, or document that is of general applicability, or its
23 equivalent, under subsection (1) of this section shall:

24 (a) Identify the specific policy or interpretative statement,
25 guideline, or document that is of general applicability, or its
26 equivalent, to be reviewed;

27 (b) Identify the specific statute which the rule interprets or
28 implements;

29 (c) State the reasons why the petitioner believes that the policy
30 or interpretive statement, guideline, or document that is of general
31 applicability, or its equivalent, meets the definition of a rule under
32 RCW 34.05.010 and should have been adopted according to the procedures
33 of this chapter;

34 (d) State the reasons why the petitioner believes that the policy
35 or interpretive statement, guideline, or document that is of general
36 applicability, or its equivalent, is not within the intent of the
37 legislature;

38 (e) Identify any known judicial action regarding the policy or
39 interpretive statement, guideline, or document that is of general

1 applicability, or its equivalent, or statutes identified in the
2 petition.

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

6 **Sec. 14.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
7 read as follows:

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

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

22 **Sec. 15.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
23 as follows:

24 (1) Except as provided in subsection (2) of this section, whenever
25 a state agency conducts a hearing which is not presided over by
26 officials of the agency who are to render the final decision, the
27 hearing shall be conducted by an administrative law judge assigned
28 under this chapter. In assigning administrative law judges, the chief
29 administrative law judge shall wherever practical (~~(+1)~~) (a) use
30 personnel having expertise in the field or subject matter of the
31 hearing, and (~~(+2)~~) (b) assign administrative law judges primarily to
32 the hearings of particular agencies on a long-term basis.

33 (2) An employee of the office of the insurance commissioner may
34 conduct a hearing as provided in RCW 48.04.010(5).

35 **Sec. 16.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended
36 to read as follows:

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

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

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

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

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

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

28 (5) A hearing held under this section must be conducted by an
29 administrative law judge unless the person demanding the hearing agrees
30 in writing to have an employee of the commissioner conduct the hearing.

31 **NEW SECTION. Sec. 17.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

--- END ---