

---

SECOND SUBSTITUTE HOUSE BILL 2345

---

State of Washington                      55th Legislature                      1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representative Reams)

Read first time 02/07/98. 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 or their equivalents, regardless of title, are advisory

1 only. To better inform and involve the public, ~~((an))~~ each agency is  
2 encouraged to convert long-standing interpretive and policy statements  
3 into rules.

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

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

20 ~~((12))~~ (4) Whenever an agency issues an interpretive or policy  
21 statement, it shall submit to the code reviser for publication in the  
22 Washington State Register a statement describing the subject matter of  
23 the interpretive or policy statement, and listing the person at the  
24 agency from whom a copy of the interpretive or policy statement may be  
25 obtained.

26 (5) When a person requests a copy of a rule from an agency, the  
27 agency shall identify any associated interpretive and policy statements  
28 or their equivalents, regardless of title, and provide copies of the  
29 statements upon request.

30 (6) An agency shall not issue a citation, civil penalty,  
31 assessment, or other sanction for the violation of a rule by a business  
32 if the subject of the violation involves the same subject as a policy  
33 or interpretive statement, whether or not entitled as such, issued for  
34 the rule, if the agency had not made a good faith effort to notify  
35 businesses likely to be affected by the statement at least ninety days  
36 prior. For the purposes of this section, "good faith" means the agency  
37 has at least notified businesses in the standard industrial  
38 classifications likely to be affected by the statement that are  
39 registered with the department of revenue at the time the notice was

1 sent. Inadvertent failure to notify a specific business under this  
2 section does not prohibit the issuance of a citation, civil penalty,  
3 assessment, or other sanction.

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

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

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

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

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

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

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

28 (f) The proposed rule is being amended after a review under RCW  
29 34.05.328.

30 (2) The expedited rule-making process must follow the requirements  
31 for rule making set forth in RCW 34.05.320, except that the agency is  
32 not required to prepare a small business economic impact statement  
33 under RCW 19.85.025, a statement indicating whether the rule  
34 constitutes a significant legislative rule under RCW  
35 34.05.328(5)(c)(iii), or a significant legislative rule analysis under  
36 RCW 34.05.328. An agency is not required to prepare statements of  
37 inquiry under RCW 34.05.310 or conduct a hearing for the expedited  
38 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) of this  
16 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) of this  
17 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))~~) will:

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 (e) At least twenty days before the effective date of a rule  
29 described in subsection (5) of this section, convene a meeting of  
30 interested persons affected by the rule to identify ambiguities and  
31 problem areas in the rule and determine how to resolve the ambiguities  
32 and problem areas; and

33 (f) Provide appropriate agency training.

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

38 (a) Provide to the (~~((business assistance center))~~) department of  
39 community, trade, and economic development a list citing by reference



1 the other federal and state laws that regulate the same activity or  
2 subject matter;

3 (b) Coordinate implementation and enforcement of the rule with the  
4 other federal and state entities regulating the same activity or  
5 subject matter by making every effort to do one or more of the  
6 following:

7 (i) Deferring to the other entity;

8 (ii) Designating a lead agency; or

9 (iii) Entering into an agreement with the other entities specifying  
10 how the agency and entities will coordinate implementation and  
11 enforcement.

12 If the agency is unable to comply with this subsection (4)(b), the  
13 agency shall report to the legislature pursuant to (c) of this  
14 subsection;

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

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

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

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

24 (i) Significant legislative rules of the departments of ecology,  
25 labor and industries, health, revenue, social and health services, and  
26 natural resources, the employment security department, the forest  
27 practices board, the office of the insurance commissioner, and to the  
28 legislative rules of the department of fish and wildlife implementing  
29 chapter 75.20 RCW; and

30 (ii) Any rule of any agency, if this section is voluntarily made  
31 applicable to the rule by the agency, or is made applicable to the rule  
32 by a majority vote of the joint administrative rules review committee  
33 within (~~forty-five~~) seventy-five days of receiving the notice of  
34 proposed rule making under RCW 34.05.320.

35 (b) This section does not apply to:

36 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

14 (vi) Rules that set or adjust fees or rates pursuant to legislative  
15 standards; or

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

19 (c) For purposes of this subsection:

20 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
21 (A) any procedure, practice, or requirement relating to any agency  
22 hearings; (B) any filing or related process requirement for making  
23 application to an agency for a license or permit; or (C) any policy  
24 statement pertaining to the consistent internal operations of an  
25 agency.

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

29 (iii) A "significant legislative rule" is a rule other than a  
30 procedural or interpretive rule that (A) adopts substantive provisions  
31 of law pursuant to delegated legislative authority, the violation of  
32 which subjects a violator of such rule to a penalty or sanction; (B)  
33 establishes, alters, or revokes any qualification or standard for the  
34 issuance, suspension, or revocation of a license or permit; or (C)  
35 adopts a new, or makes significant amendments to, a policy or  
36 regulatory program.

37 (d) In the notice of proposed rule making under RCW 34.05.320, an  
38 agency shall state whether this section applies to the proposed rule

1 pursuant to (a)(i) of this subsection, or if the agency will apply this  
2 section voluntarily.

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

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

12 (b) The costs incurred by state agencies in complying with this  
13 section;

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

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

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

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

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

25 Within two hundred days of the effective date of a rule that  
26 imposes additional requirements on businesses the violation of which  
27 subjects a person to a penalty, assessment, or administrative sanction,  
28 an agency shall make a good faith effort to notify businesses affected  
29 by the rule of the requirements of the rule and how to obtain technical  
30 assistance to comply. For purposes of this section, "good faith" means  
31 the agency at least notifies businesses in the standard industrial  
32 classifications identified in the rule-making file as businesses  
33 affected by the rule that are registered with the department of  
34 revenue. Inadvertent failure to notify a specific business under this  
35 section does not invalidate a rule.

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

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

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

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

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

38 (a) Whether the rule is authorized;

39 (b) Whether the rule is needed;

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

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

5 (e) Whether the rule applies differently to public and private  
6 entities;

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

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

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

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

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

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

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

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

22 (1) To determine the fiscal impact of proposed rules on units of  
23 local government, an agency shall prepare a local government economic  
24 impact statement if the proposed rule will impose costs on units of  
25 local government.

26 (2) The economic impact statement shall describe the reporting,  
27 recordkeeping, and other compliance requirements of the proposed rule  
28 and analyze the costs of compliance for local governments. An agency  
29 shall file the statement with the code reviser along with the notice  
30 required under RCW 34.05.320.

31 (3) The department of community, trade, and economic development  
32 shall develop a guide to assist agencies in preparing the economic  
33 impact statement. The guide shall be developed through a collaborative  
34 process with agencies and local governments and other interested  
35 persons.

36 (4) An agency shall maintain a list of proposed rules for which it  
37 prepares an economic impact statement and a summary of the costs. By

1 December 1st of each year, an agency shall submit the list and summary  
2 to the joint administrative rules review committee.

3 (5) This section does not apply to:

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

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

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

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

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

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

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

24 (b) The statute on which the rule is based has been declared  
25 unconstitutional by a court with jurisdiction, there is a final  
26 judgment, and no statute has been enacted to replace the  
27 unconstitutional statute;

28 (c) The rule is no longer necessary because of changed  
29 circumstances; or

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

32 ~~((3))~~ (2) An agency shall file a copy of a preproposal notice of  
33 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as  
34 one that is proposed for expedited repeal. The agency shall also send  
35 a copy of the preproposal notice of inquiry to any person who has  
36 requested notification of copies of proposals for the expedited repeal  
37 of rules or of agency rule making. The preproposal notice of inquiry  
38 shall include a statement that any person who objects to the repeal of

1 the rule must file a written objection to the repeal within thirty days  
2 after the preproposal notice of inquiry is published. The notice of  
3 inquiry shall also include an explanation of the reasons the agency  
4 believes the expedited repeal of the rule is appropriate.

5 ~~((+4))~~ (3) The code reviser shall publish all rules proposed for  
6 expedited repeal in a separate section of ~~((a regular edition of))~~ the  
7 Washington state register ~~((or in a special edition of the Washington  
8 state register. The publication shall be not later than May 31st or  
9 November 30th of each year, or in the first register published after  
10 that date))~~.

11 ~~((+5))~~ (4) Any person may file a written objection to the  
12 expedited repeal of a rule. The notice shall be filed with the agency  
13 rules coordinator within thirty days after the notice of inquiry has  
14 been published in the Washington state register. The written objection  
15 need not state any reason for objecting to the expedited repeal of the  
16 rule.

17 ~~((+6))~~ (5) If no written objections to the expedited repeal of a  
18 rule are filed with the agency within thirty days after the preproposal  
19 notice of inquiry is published, the agency may enter an order repealing  
20 the rule without further notice or an opportunity for a public hearing.  
21 The order shall be published in the manner required by this chapter for  
22 any other order of the agency adopting, amending, or repealing a rule.  
23 If a written objection to the expedited repeal of the rule is filed  
24 with the agency within thirty days after the notice of inquiry has been  
25 published, the preproposal notice of inquiry published pursuant to this  
26 section shall be considered a preproposal notice of inquiry for the  
27 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption  
28 proceedings in accordance with the provisions of this chapter.

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

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

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

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

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

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

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

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

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

22 (g) The concise explanatory statement required by RCW 34.05.325(6);  
23 and

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

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

32 (4) Upon judicial review, the file required by this section  
33 constitutes the official agency rule-making file with respect to that  
34 rule. Unless otherwise required by another provision of law, the  
35 official agency rule-making file need not be the exclusive basis for  
36 agency action on that rule.

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



1 (1) The legislature finds that under the governor's Executive Order  
2 97-02, agencies have begun systematic reviews of existing rules and  
3 have eliminated some unnecessary rules and improved clarity for other  
4 rules.

5 (2) Effective July 1, 2001, each state agency shall review its  
6 rules that have significant effects on businesses, labor, consumers,  
7 and the environment. Agencies shall determine if their rules should be  
8 (a) retained in their current form, or (b) amended or repealed, if they  
9 do not meet the review criteria specified in this section. Agencies  
10 shall concentrate their regulatory review on rules or portions of a  
11 rule that have been the subject of petitions filed under RCW 34.05.330  
12 or have been the source of complaints, concerns, or other difficulties  
13 that relate to matters other than the specific mandates of the statute  
14 on which the rule is based. Agencies that have already established  
15 regulatory review processes shall make them consistent with the  
16 requirements of this section. Each agency head shall designate a  
17 person responsible for regulatory review who shall serve as the  
18 agency's contact for regulatory review with the office of the governor  
19 and the office of financial management.

20 (3) The following criteria will be used for the review of each rule  
21 identified for review:

22 (a) Need. Is the rule necessary to comply with the statutes that  
23 authorize it? Is the rule obsolete, duplicative, or ambiguous to a  
24 degree that warrants repeal or revision? Have laws or other  
25 circumstances changed so that the rule should be amended or repealed?  
26 Is the rule necessary to protect or safeguard the health, welfare, or  
27 safety of Washington's citizens?

28 (b) Effectiveness and efficiency. Is the rule providing the  
29 results that it was originally designed to achieve in a reasonable  
30 manner? Are there regulatory alternatives or new technologies that  
31 could more effectively or efficiently achieve the same objectives?

32 (c) Clarity. Is the rule written and organized in a clear and  
33 concise manner so that it can be readily understood by those to whom it  
34 applies?

35 (d) Intent and statutory authority. Is the rule consistent with  
36 legislative intent of the statutes that authorize it? Is the rule  
37 based upon sufficient statutory authority? Is there a need to develop  
38 a more specific legislative authorization in order to protect the  
39 health, safety, and welfare of Washington's citizens?

1 (e) Coordination. Could additional consultation and coordination  
2 with other governmental jurisdictions and state agencies with similar  
3 regulatory authority eliminate or reduce duplication and inconsistency?  
4 Agencies should consult with and coordinate with other jurisdictions  
5 that have similar regulatory requirements when it is likely that  
6 coordination can reduce duplication and inconsistency.

7 (f) Cost. Have qualitative and quantitative benefits of the rule  
8 been considered in relation to its cost?

9 (g) Fairness. Does the rule result in equitable treatment of those  
10 required to comply with it? Should it be modified to eliminate or  
11 minimize any disproportionate impacts on the regulated community?  
12 Should it be strengthened to provide additional protection?

13 (4)(a) By October 15th of each year, each agency shall report to  
14 the rules review committee on the progress made toward completing its  
15 regulatory review and other measures taken to improve its regulatory  
16 program. The reports must include, but not be limited to: (i) A  
17 summary of the number of rule sections amended or repealed and the  
18 number of pages eliminated in the Washington Administrative Code; (ii)  
19 a summary of rules amended or repealed based on the review criteria in  
20 this executive order; (iii) a summary of agency actions in response to  
21 petitions under RCW 34.05.330; (iv) a summary of the results of the  
22 agency's review of policy and interpretive statements and similar  
23 documents; (v) a summary of the agency's review of reporting  
24 requirements imposed on businesses; and (vi) recommendations for  
25 statutory or administrative changes resulting from the regulatory  
26 reviews. More frequent reports may be requested, as necessary.  
27 Agencies shall make the reports available to persons who have requested  
28 notification of agency rule making and shall submit a summary of the  
29 report for publication in the Washington State Register.

30 (b) As part of its regulatory review, each agency shall review its  
31 existing policy and interpretive statements or similar documents to  
32 determine whether or not they must, by law, be adopted as rules. The  
33 review must include consultation with the attorney general. Agencies  
34 shall concentrate their review on those statements and documents that  
35 have been the source of complaints, concerns, or other difficulties.

36 (c) Each agency shall also review its reporting requirements that  
37 are applied generally to all businesses or classes of businesses to  
38 ensure that they are necessary and consistent with the principles and  
39 objectives of the executive order. The goals of the review must be to

1 achieve reporting requirements that, to the extent possible, are  
2 coordinated with other state agencies with similar requirements, are  
3 economical and easy to understand, and rely on electronic transfer of  
4 information.

5 (5)(a) An agency is deemed to have met the requirements of this  
6 section ninety days after publication in the Washington State Register  
7 unless the rules review committee receives a written objection of the  
8 agency's compliance with the requirements of this section.

9 (b) If a written objection is received within the ninety-day  
10 period, the rules review committee will make a determination as to  
11 whether the agency did indeed comply with this section.

12 (c) If the committee finds the agency has failed to meet the  
13 requirements of this section, the agency will have one hundred twenty  
14 days to meet the requirements of this section and receive approval by  
15 the committee. If the agency fails to receive approval by the  
16 committee, the rules not receiving approval are deemed invalid.

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

19 (1) There is hereby created a joint administrative rules review  
20 committee which shall be a bipartisan committee consisting of four  
21 senators and four representatives from the state legislature. The  
22 senate members of the committee shall be appointed by the president of  
23 the senate, and the house members of the committee shall be appointed  
24 by the speaker of the house. Not more than two members from each house  
25 may be from the same political party. The appointing authorities shall  
26 also appoint one alternate member from each caucus of each house. All  
27 appointments to the committee are subject to approval by the caucuses  
28 to which the appointed members belong.

29 (2) Members and alternates shall be appointed as soon as possible  
30 after the legislature convenes in regular session in an odd-numbered  
31 year, and their terms shall extend until their successors are appointed  
32 and qualified at the next regular session of the legislature in an odd-  
33 numbered year or until such persons no longer serve in the legislature,  
34 whichever occurs first. Members and alternates may be reappointed to  
35 the committee.

36 (3) By majority vote, the committee shall appoint a ninth person  
37 other than a person appointed under subsection (1) of this section.  
38 The ninth person must be appointed as soon as possible after the

1 legislature convenes in regular session in odd-numbered years, and the  
2 ninth person's term extends until his or her successor is appointed at  
3 the next regular session of the legislature in an odd-numbered year or  
4 until a vacancy occurs. The ninth person may be reappointed. A  
5 vacancy in the ninth person's position must be filled by majority vote  
6 of the committee. The ninth person has no vote on the committee except  
7 in cases of a tie.

8 (4) The president of the senate shall appoint the chairperson in  
9 even-numbered years and the vice chairperson in odd-numbered years from  
10 among committee membership. The speaker of the house shall appoint the  
11 chairperson in odd-numbered years and the vice chairperson in even-  
12 numbered years from among committee membership. Such appointments  
13 shall be made in January of each year as soon as possible after a  
14 legislative session convenes.

15 ~~((4))~~ (5) The chairperson of the committee shall cause all  
16 meeting notices and committee documents to be sent to the members and  
17 alternates. A vacancy shall be filled by appointment of a legislator  
18 from the same political party as the original appointment. The  
19 appropriate appointing authority shall make the appointment within  
20 thirty days of the vacancy occurring.

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

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

26 (2) All agency policy and interpretive statements or their  
27 equivalents, regardless of title, are subject to selective review by  
28 the ~~((legislature))~~ committee to determine whether or not a statement  
29 constitutes a rule that has not been adopted in accordance with all  
30 applicable provisions of law. If the committee finds that the  
31 statement constitutes a rule, the committee may also examine whether  
32 the statement is within the intent of the legislature as expressed by  
33 the statute that the rule implements.

34 (3) If the rules review committee finds by a majority vote of its  
35 members: (a) That an existing rule is not within the intent of the  
36 legislature as expressed by the statute which the rule implements, or  
37 (b) that the rule has not been adopted in accordance with all  
38 applicable provisions of law, ~~((or (c) that an agency is using a policy~~

1 ~~or interpretive statement in place of a rule,~~) the agency affected  
2 shall be notified of such finding and the reasons therefor. Within  
3 thirty days of the receipt of the rules review committee's notice, the  
4 agency shall file notice of a hearing on the rules review committee's  
5 finding with the code reviser and mail notice to all persons who have  
6 made timely request of the agency for advance notice of its rule-making  
7 proceedings as provided in RCW 34.05.320. The agency's notice shall  
8 include the rules review committee's findings and reasons therefor, and  
9 shall be published in the Washington state register in accordance with  
10 the provisions of chapter 34.08 RCW.

11 (4) The agency shall consider fully all written and oral  
12 submissions regarding (a) whether the rule in question is within the  
13 intent of the legislature as expressed by the statute which the rule  
14 implements, (b) whether the rule was adopted in accordance with all  
15 applicable provisions of law, ~~((or))~~ and (c) whether the agency is  
16 using a policy or interpretive statement or its equivalent, regardless  
17 of title, in place of a rule.

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

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

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

1 (3) If the rules review committee makes an adverse finding  
2 regarding an existing rule under subsection (2)(a) or (b) of this  
3 section, the committee may, by a majority vote of its members,  
4 recommend suspension of the rule. Within seven days of such vote the  
5 committee shall transmit to the appropriate standing committees of the  
6 legislature, the governor, the code reviser, and the agency written  
7 notice of its objection and recommended suspension and the concise  
8 reasons therefor. Within thirty days of receipt of the notice, the  
9 governor shall transmit to the committee, the code reviser, and the  
10 agency written approval or disapproval of the recommended suspension.  
11 If the suspension is approved by the governor, it is effective from the  
12 date of that approval and continues until ninety days after the  
13 expiration of the next regular legislative session.

14 (4) The code reviser shall publish transmittals from the rules  
15 review committee or the governor issued pursuant to subsection (2) or  
16 (3) of this section in the Washington state register and shall publish  
17 in the next supplement and compilation of the Washington Administrative  
18 Code a reference to the committee's objection or recommended suspension  
19 and the governor's action on it and to the issue of the Washington  
20 state register in which the full text thereof appears.

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

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

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

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

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

10 (a) Identify with specificity the proposed or existing rule to be  
11 reviewed;

12 (b) Identify the specific statute identified by the agency as  
13 authorizing the rule, the specific statute which the rule interprets or  
14 implements, and, if applicable, the specific statute the department is  
15 alleged not to have followed in adopting the rule;

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

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

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

26 (4) A petition for review of a policy or interpretive statement or  
27 its equivalent, regardless of title, under subsection (1) of this  
28 section shall:

29 (a) Identify the specific statement to be reviewed;

30 (b) Identify the specific statute which the rule interprets or  
31 implements;

32 (c) State the reasons why the petitioner believes that the  
33 statement meets the definition of a rule under RCW 34.05.010 and should  
34 have been adopted according to the procedures of this chapter;

35 (d) State the reasons why the petitioner believes that the  
36 statement is not within the intent of the legislature;

37 (e) Identify any known judicial action regarding the statement or  
38 statutes identified in the petition.

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

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

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

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

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

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

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

33 **Sec. 16.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended  
34 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 ---