

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032

55th Legislature
1997 Regular Session

Passed by the House April 21, 1997
Yeas 68 Nays 29

**Speaker of the
House of Representatives**

Passed by the Senate April 17, 1997
Yeas 30 Nays 19

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1032

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

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

Read first time 01/30/97.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 48.30.010, 34.05.010,
3 34.05.230, 34.05.325, 34.05.328, 34.05.350, 34.05.354, 82.32.410,
4 19.85.025, 34.05.570, 34.05.534, 48.04.010, 34.12.040, 34.05.630,
5 34.05.640, 34.05.655, 34.05.660, 4.84.340, 4.84.350, 4.84.360,
6 51.04.030, and 50.13.060; reenacting and amending RCW 42.17.260; adding
7 a new section to chapter 43.22 RCW; adding new sections to chapter
8 34.05 RCW; adding a new section to chapter 43.17 RCW; adding a new
9 section to chapter 43.05 RCW; creating new sections; and declaring an
10 emergency.

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

12 **PART I**

13 **GRANTS OF RULE-MAKING AUTHORITY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) Establish minimum standards for forest practices;

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

22 (c) Set forth necessary administrative provisions; and

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

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

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

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

1 the board, the department of ecology shall prepare proposed forest
2 practices (~~((regulations))~~) rules relating to water quality protection.

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

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

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

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

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

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

35 (3) The commissioner may:

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

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

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

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

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

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

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

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

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

6 **Sec. 107.** RCW 48.30.010 and 1985 c 264 s 13 are each amended to
7 read as follows:

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

12 (2) In addition to such unfair methods and unfair or deceptive acts
13 or practices as are expressly defined and prohibited by this code, the
14 commissioner may from time to time by regulation promulgated pursuant
15 to chapter 34.05 RCW, define other methods of competition and other
16 acts and practices in the conduct of such business reasonably found by
17 the commissioner to be unfair or deceptive after a review of all
18 comments received during the notice and comment rule-making period.

19 (3)(a) In defining other methods of competition and other acts and
20 practices in the conduct of such business to be unfair or deceptive,
21 and after reviewing all comments and documents received during the
22 notice and comment rule-making period, the commissioner shall identify
23 his or her reasons for defining the method of competition or other act
24 or practice in the conduct of insurance to be unfair or deceptive and
25 shall include a statement outlining these reasons as part of the
26 adopted rule.

27 (b) The commissioner shall include a detailed description of facts
28 upon which he or she relied and of facts upon which he or she failed to
29 rely, in defining the method of competition or other act or practice in
30 the conduct of insurance to be unfair or deceptive, in the concise
31 explanatory statement prepared under RCW 34.05.325(6).

32 (c) Upon appeal the superior court shall review the findings of
33 fact upon which the regulation is based de novo on the record.

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

37 ~~((4))~~ (5) If the commissioner has cause to believe that any
38 person is violating any such regulation, the commissioner may order

1 such person to cease and desist therefrom. The commissioner shall
2 deliver such order to such person direct or mail it to the person by
3 registered mail with return receipt requested. If the person violates
4 the order after expiration of ten days after the cease and desist order
5 has been received by him or her, he or she may be fined by the
6 commissioner a sum not to exceed two hundred and fifty dollars for each
7 violation committed thereafter.

8 ~~((+5+))~~ (6) If any such regulation is violated, the commissioner
9 may take such other or additional action as is permitted under the
10 insurance code for violation of a regulation.

11 PART II

12 RULE-MAKING REQUIREMENTS

13 **Sec. 201.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to
14 read as follows:

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

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

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

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

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

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

18 (5) "De facto rule" means an issuance not adopted under Part III of
19 this chapter that the agency uses to (a) subject a person to a penalty
20 or administrative sanction; (b) establish, alter, or revoke a
21 procedure, practice, or requirement relating to agency hearings; (c)
22 establish, alter, or revoke a qualification or requirement relating to
23 the enjoyment of a benefit or privilege conferred by law; (d)
24 establish, alter, or revoke a qualification or standard for the
25 issuance, suspension, or revocation of a license to pursue a commercial
26 activity, trade, or profession; or (e) establish, alter, or revoke
27 mandatory standards for a product or material that must be met before
28 distribution or sale. The term does not include (i) statements
29 concerning only the internal management of an agency and not affecting
30 private rights or procedures available to the public, (ii) declaratory
31 rulings issued under RCW 34.05.240, (iii) traffic restrictions for
32 motor vehicles, bicyclists, and pedestrians established by the
33 secretary of transportation or his or her designee where notice of the
34 restrictions is given by official traffic control devices, or (iv)
35 rules of institutions of higher education involving standards of
36 admission, academic advancement, academic credit, graduation and the
37 granting of degrees, employment relationships, or fiscal processes.

1 (6) "Entry" of an order means the signing of the order by all
2 persons who are to sign the order, as an official act indicating that
3 the order is to be effective.

4 (~~(6)~~) (7) "Filing" of a document that is required to be filed
5 with an agency means delivery of the document to a place designated by
6 the agency by rule for receipt of official documents, or in the absence
7 of such designation, at the office of the agency head.

8 (~~(7)~~) (8) "Institutions of higher education" are the University
9 of Washington, Washington State University, Central Washington
10 University, Eastern Washington University, Western Washington
11 University, The Evergreen State College, the various community
12 colleges, and the governing boards of each of the above, and the
13 various colleges, divisions, departments, or offices authorized by the
14 governing board of the institution involved to act for the institution,
15 all of which are sometimes referred to in this chapter as
16 "institutions."

17 (~~(8)~~) (9) "Interpretive statement" means a written expression of
18 the opinion of an agency, entitled an interpretive statement by the
19 agency head or its designee, as to the meaning of a statute or other
20 provision of law, of a court decision, or of an agency order.

21 (~~(9)~~) (10) "Issuance" means a written document of general
22 applicability issued by an agency that is available to the public. It
23 includes, but is not limited to, an agency order of adoption, bulletin,
24 directive, policy statement, interpretive statement, guideline, letter,
25 memorandum, rule, or de facto rule. "Issuance" does not include final
26 agency orders issued after an adjudicative proceeding under Part IV of
27 this chapter, tax determinations of precedential value issued by the
28 department of revenue, documents entitled "technical assistance
29 document," medical coverage decisions, tariffs, or permits.

30 (11)(a) "License" means a franchise, permit, certification,
31 approval, registration, charter, or similar form of authorization
32 required by law, but does not include (i) a license required solely for
33 revenue purposes, or (ii) a certification of an exclusive bargaining
34 representative, or similar status, under a collective bargaining law or
35 similar statute, or (iii) a license, franchise, or permission for use
36 of trademarks, symbols, and similar property owned or controlled by the
37 agency.

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

1 (~~(10)~~) (12)(a) "Order," without further qualification, means a
2 written statement of particular applicability that finally determines
3 the legal rights, duties, privileges, immunities, or other legal
4 interests of a specific person or persons.

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

7 (~~(11)~~) (13) "Party to agency proceedings," or "party" in a
8 context so indicating, means:

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

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

12 (~~(12)~~) (14) "Party to judicial review or civil enforcement
13 proceedings," or "party" in a context so indicating, means:

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

16 (b) A person named as a party in a judicial review or civil
17 enforcement proceeding, or allowed to participate as a party in a
18 judicial review or civil enforcement proceeding.

19 (~~(13)~~) (15) "Person" means any individual, partnership,
20 corporation, association, governmental subdivision or unit thereof, or
21 public or private organization or entity of any character, and includes
22 another agency.

23 (~~(14)~~) (16) "Policy statement" means a written description of the
24 current approach of an agency, entitled a policy statement by the
25 agency head or its designee, to implementation of a statute or other
26 provision of law, of a court decision, or of an agency order, including
27 where appropriate the agency's current practice, procedure, or method
28 of action based upon that approach.

29 (~~(15)~~) (17) "Rule" means any ~~((agency order, directive, or~~
30 ~~regulation of general applicability (a) the violation of which subjects~~
31 ~~a person to a penalty or administrative sanction; (b) which~~
32 ~~establishes, alters, or revokes any procedure, practice, or requirement~~
33 ~~relating to agency hearings; (c) which establishes, alters, or revokes~~
34 ~~any qualification or requirement relating to the enjoyment of benefits~~
35 ~~or privileges conferred by law; (d) which establishes, alters, or~~
36 ~~revokes any qualifications or standards for the issuance, suspension,~~
37 ~~or revocation of licenses to pursue any commercial activity, trade, or~~
38 ~~profession; or (e) which establishes, alters, or revokes any mandatory~~
39 ~~standards for any product or material which must be met before~~

1 ~~distribution or sale))~~ issuance adopted under Part III of this chapter.
2 The term includes the amendment or repeal of a prior rule(~~(, but does~~
3 ~~not include (i) statements concerning only the internal management of~~
4 ~~an agency and not affecting private rights or procedures available to~~
5 ~~the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,~~
6 ~~(iii) traffic restrictions for motor vehicles, bicyclists, and~~
7 ~~pedestrians established by the secretary of transportation or his~~
8 ~~designee where notice of such restrictions is given by official traffic~~
9 ~~control devices, or (iv) rules of institutions of higher education~~
10 ~~involving standards of admission, academic advancement, academic~~
11 ~~credit, graduation and the granting of degrees, employment~~
12 ~~relationships, or fiscal processes)).~~

13 ~~((16))~~ (18) "Rules review committee" or "committee" means the
14 joint administrative rules review committee created pursuant to RCW
15 34.05.610 ~~((for the purpose of selectively reviewing existing and~~
16 ~~proposed rules of state agencies)).~~

17 ~~((17))~~ (19) "Rule making" means the process for formulation and
18 adoption of a rule.

19 ~~((18))~~ (20) "Service," except as otherwise provided in this
20 chapter, means posting in the United States mail, properly addressed,
21 postage prepaid, or personal service. Service by mail is complete upon
22 deposit in the United States mail. Agencies may, by rule, authorize
23 service by electronic telefacsimile transmission, where copies are
24 mailed simultaneously, or by commercial parcel delivery company.

25 **Sec. 202.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to
26 read as follows:

27 (1) ~~((If the adoption of rules is not feasible and practicable,))~~
28 An agency may file notice for the expedited adoption of rules in
29 accordance with the procedures set forth in this section for rules
30 meeting any one of the following criteria:

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

33 (b) The proposed rules adopt or incorporate by reference without
34 material change federal statutes or regulations, Washington state
35 statutes, rules of other Washington state agencies, shoreline master
36 programs other than those programs governing shorelines of state-wide
37 significance, or, as referenced by Washington state law, national
38 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 (9) 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)) issuances. Unless adopted under Part III of this chapter

1 or exempted under the definition of de facto rule as defined in RCW
2 34.05.010, these issuances are advisory only. ~~((To better inform and~~
3 ~~involve the public, an agency is encouraged to convert long-standing~~
4 ~~interpretive and policy statements into rules.~~

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

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

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

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

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

35 Sec. 204. RCW 34.05.325 and 1995 c 403 s 304 are each amended to
36 read as follows:

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

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

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

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

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

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

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

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

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

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

13 **Sec. 205.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
14 read 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:

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

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

36 (b) Coordinate implementation and enforcement of the rule with the
37 other federal and state entities regulating the same activity or
38 subject matter by making every effort to do one or more of the
39 following:

1 (i) Deferring to the other entity;
2 (ii) Designating a lead agency; or
3 (iii) Entering into an agreement with the other entities specifying
4 how the agency and entities will coordinate implementation and
5 enforcement.

6 If the agency is unable to comply with this subsection (4)(b), the
7 agency shall report to the legislature pursuant to (c) of this
8 subsection;

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

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

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

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

18 (i) Significant legislative rules of the departments of ecology,
19 labor and industries, health, revenue, social and health services, and
20 natural resources, the employment security department, the forest
21 practices board, the office of the insurance commissioner, and to the
22 legislative rules of the department of fish and wildlife implementing
23 chapter 75.20 RCW; and

24 (ii) Any rule of any agency, if this section is voluntarily made
25 applicable to the rule by the agency, or is made applicable to the rule
26 by a majority vote of the joint administrative rules review committee
27 within (~~forty-five~~) ninety days of receiving the notice of proposed
28 rule making under RCW 34.05.320.

29 (b) This section does not apply to:

30 (i) Emergency rules adopted under RCW 34.05.350;

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

33 (iii) Rules adopting or incorporating by reference without material
34 change federal statutes or regulations, Washington state statutes,
35 rules of other Washington state agencies, shoreline master programs
36 other than those programs governing shorelines of state-wide
37 significance, or, as referenced by Washington state law, national
38 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 (iv) Rules that only correct typographical errors, make address or
4 name changes, or clarify language of a rule without changing its
5 effect;

6 (v) Rules the content of which is explicitly and specifically
7 dictated by statute; ((~~or~~))

8 (vi) Rules that set or adjust fees or rates pursuant to legislative
9 standards; or

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

13 (c) For purposes of this subsection:

14 (i) A "procedural rule" is a rule that adopts, amends, or repeals
15 (A) any procedure, practice, or requirement relating to any agency
16 hearings; (B) any filing or related process requirement for making
17 application to an agency for a license or permit; or (C) any policy
18 statement pertaining to the consistent internal operations of an
19 agency.

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

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

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

35 (6) By January 31, 1996, and by January 31st of each even-numbered
36 year thereafter, the office of financial management, after consulting
37 with state agencies, counties, and cities, and business, labor, and
38 environmental organizations, shall report to the governor and the

1 legislature regarding the effects of this section on the regulatory
2 system in this state. The report shall document:

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

6 (b) The costs incurred by state agencies in complying with this
7 section;

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

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

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

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

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

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

29 **Sec. 207.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
30 read as follows:

31 (1) If an agency for good cause finds:

32 (a) That immediate adoption, amendment, or repeal of a rule is
33 necessary for the preservation of the public health, safety, or general
34 welfare, and that observing the time requirements of notice and
35 opportunity to comment upon adoption of a permanent rule would be
36 contrary to the public interest; or

1 (b) That state or federal law or federal rule or a federal deadline
2 for state receipt of federal funds requires immediate adoption of a
3 rule,
4 the agency may dispense with those requirements and adopt, amend, or
5 repeal the rule on an emergency basis. (~~The agency's finding and a~~
6 ~~concise statement of the reasons for its finding shall be incorporated~~
7 ~~in~~) The order for adoption of the emergency rule or amendment filed
8 with the office of the code reviser under RCW 34.05.380 and with the
9 rules review committee must contain the governor's signature approving
10 the adoption of the emergency rule or amendment if immediate adoption
11 is found necessary for the preservation of the general welfare. In
12 that case, the governor shall also include a statement explaining why
13 the rule is necessary for that reason. For all other emergency rules,
14 the order of adoption must contain the agency's finding and a concise
15 statement of the reasons for its finding.

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

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

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

4 **Sec. 208.** RCW 34.05.354 and 1995 c 403 s 701 are each amended to
5 read as follows:

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

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

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

18 (b) The statute on which the rule is based has been declared
19 unconstitutional by a court with jurisdiction, there is a final
20 judgment, and no statute has been enacted to replace the
21 unconstitutional statute;

22 (c) The rule is no longer necessary because of changed
23 circumstances; or

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

26 (3) The agency shall also send a copy of the preproposal notice of
27 inquiry to any person who has requested notification of copies of
28 proposals for the expedited repeal of rules or of agency rule making.
29 The preproposal notice of inquiry shall include a statement that any
30 person who objects to the repeal of the rule must file a written
31 objection to the repeal within thirty days after the preproposal notice
32 of inquiry is published. The notice of inquiry shall also include an
33 explanation of the reasons the agency believes the expedited repeal of
34 the rule is appropriate.

35 (4) The code reviser shall publish all rules proposed for expedited
36 repeal in a separate section of a regular edition of the Washington
37 state register or in a special edition of the Washington state
38 register. The publication shall be not later than (~~July~~) May 31st or

1 November 30th of each year, or in the first register published after
2 that date.

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

8 (6) If no written objections to the expedited repeal of a rule are
9 filed with the agency within thirty days after the preproposal notice
10 of inquiry is published, the agency may enter an order repealing the
11 rule without further notice or an opportunity for a public hearing.
12 The order shall be published in the manner required by this chapter for
13 any other order of the agency adopting, amending, or repealing a rule.
14 If a written objection to the expedited repeal of the rule is filed
15 with the agency within thirty days after the notice of inquiry has been
16 published, the preproposal notice of inquiry published pursuant to this
17 section shall be considered a preproposal notice of inquiry for the
18 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption
19 proceedings in accordance with the provisions of this chapter.

20 NEW SECTION. Sec. 209. The legislature finds that rules existing
21 as of the effective date of this act may be unclear or difficult to
22 understand; written or being implemented in a way that does not conform
23 with the intent of the legislature as expressed by the statute that the
24 rule implements; duplicative of, inconsistent with, or in conflict with
25 other state, federal, or local rules or statutes; excessively costly or
26 outdated in the methods prescribed; unauthorized because the
27 authorizing statute has since been repealed or amended; or no longer
28 necessary to meet the purposes of the statute that it implements. The
29 legislature further finds that the review of existing rules is a
30 critical undertaking that is necessary to address these and other
31 deficiencies.

32 The legislature acknowledges the special nature of the relationship
33 between the legislative and executive branches of government, the
34 cooperation between both of which is essential to the just and
35 efficient administration of the laws of this state.

36 The legislature further acknowledges the governor's Executive Order
37 97-02, which provides for executive review of existing rules of
38 agencies the heads of which are appointed by and serve at the pleasure

1 of the governor. The legislature encourages not only these but all
2 agencies to establish a formal and expeditious process for the review
3 of existing rules in consideration of the aforementioned deficiencies
4 in the rules of all state agencies and their interactions with each
5 other.

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

8 (1) No rule, adopted by any agency after the effective date of this
9 act, is effective for more than seven years after the rule is adopted,
10 unless the rule has been reviewed under the procedure in this
11 subsection. An agency shall review a rule to evaluate:

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

13 (b) Technological changes that impact the implementation of or
14 compliance with the rule;

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

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

19 (e) Actual costs or changes undergone by the regulated community;
20 and

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

23 The agency shall place in a rules review file documentation
24 sufficient to show that the agency conducted the review under this
25 section.

26 (2) Those rules certified to the legislature by the governor to
27 have undergone executive rules review by July 31, 2001, are subject to
28 review under subsection (1) of this section beginning July 31, 2001,
29 and may be effective for no more than seven years after that date
30 unless so reviewed.

31 **Sec. 211.** RCW 82.32.410 and 1991 c 330 s 2 are each amended to
32 read as follows:

33 (1) The director may designate certain written determinations as
34 precedents.

35 (a) By rule adopted pursuant to chapter 34.05 RCW, the director
36 shall adopt criteria which he or she shall use to decide whether a
37 determination is precedential. These criteria shall include, but not

1 be limited to, whether the determination clarifies an unsettled
2 interpretation of Title 82 RCW or where the determination modifies or
3 clarifies an earlier interpretation.

4 (b) Written determinations designated as precedents by the director
5 shall be indexed by subject matter. The determinations and indexes
6 shall be made available for public inspection and shall be published by
7 the department.

8 (c) The department shall disclose any written determination upon
9 which it relies to support any assessment of tax, interest, or penalty
10 against such taxpayer, after making the deletions provided by
11 subsection (2) of this section.

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

15 (a) The names, addresses, and other identifying details of the
16 person to whom the written determination pertains and of another person
17 identified in the written determination; and

18 (b) Information the disclosure of which is specifically prohibited
19 by any statute applicable to the department of revenue, and the
20 department may also delete other information exempted from disclosure
21 by chapter 42.17 RCW or any other statute applicable to the department
22 of revenue.

23 **Sec. 212.** RCW 19.85.025 and 1995 c 403 s 401 are each amended to
24 read as follows:

25 (1) Unless an agency receives a written objection to the expedited
26 repeal of a rule, this chapter does not apply to a rule proposed for
27 expedited repeal pursuant to RCW 34.05.354. If an agency receives a
28 written objection to expedited repeal of the rule, this chapter applies
29 to the rule-making proceeding.

30 (2) This chapter does not apply to a rule proposed for expedited
31 adoption under RCW 34.05.230 (1) through (8), unless a written
32 objection is timely filed with the agency and the objection is not
33 withdrawn.

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

36 ~~((+3+))~~ (4) An agency is not required to prepare a separate small
37 business economic impact statement under RCW 19.85.040 if it prepared
38 an analysis under RCW 34.05.328 that meets the requirements of a small

1 business economic impact statement, and if the agency reduced the costs
2 imposed by the rule on small business to the extent required by RCW
3 19.85.030(3). The portion of the analysis that meets the requirements
4 of RCW 19.85.040 shall be filed with the code reviser and provided to
5 any person requesting it in lieu of a separate small business economic
6 impact statement.

7 NEW SECTION. **Sec. 213.** (1) The legislature finds that there are
8 state rules on the same subject adopted by more than one state agency.
9 The legislature further finds that this situation places an undue
10 hardship on those regulated by rules issued by more than one state
11 agency on the same subject since the regulated individuals must
12 determine what the combined requirements of the rules from the multiple
13 agencies are and how to comply with the requirements of one agency
14 without violating the requirements of another agency.

15 (2) The governor or his or her designee shall present to the
16 legislature a plan for the design and implementation of a pilot project
17 on a single subject for the consolidation of all rules adopted by any
18 state agency that regulate that same activity or subject matter. The
19 goal of the pilot project is to consolidate these rules into one rule
20 or set of rules that will be the sole and conclusive source of all
21 regulation affecting that activity or subject matter.

22 The governor or his or her designee shall present the plan for the
23 pilot project to the legislature no later than November 30, 1997.

24 **PART III**
25 **JUDICIAL REVIEW**

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

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

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

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

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

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

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

11 (b) The validity of any rule may be determined upon petition for a
12 declaratory judgment addressed to the superior court of Thurston
13 county, when it appears that the rule, or its threatened application,
14 interferes with or impairs or immediately threatens to interfere with
15 or impair the legal rights or privileges of the petitioner. When the
16 validity of a rule is challenged, after the petitioner has identified
17 the defects in the rule, the burden of going forward with the evidence
18 is on the agency. The declaratory judgment order may be entered
19 whether or not the petitioner has first requested the agency to pass
20 upon the validity of the rule in question.

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

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

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

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

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

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

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

1 (f) The agency has not decided all issues requiring resolution by
2 the agency;

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

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

11 (i) The order is arbitrary or capricious; or

12 (j) The order is based on a de facto rule.

13 (4) Review of other agency action.

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

16 (b) A person whose rights are violated by an agency's failure to
17 perform a duty that is required by law to be performed may file a
18 petition for review pursuant to RCW 34.05.514, seeking an order
19 pursuant to this subsection requiring performance. Within twenty days
20 after service of the petition for review, the agency shall file and
21 serve an answer to the petition, made in the same manner as an answer
22 to a complaint in a civil action. The court may hear evidence,
23 pursuant to RCW 34.05.562, on material issues of fact raised by the
24 petition and answer.

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

29 (i) Unconstitutional;

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

32 (iii) Arbitrary or capricious; ~~((or))~~

33 (iv) Taken by persons who were not properly constituted as agency
34 officials lawfully entitled to take such action; or

35 (v) Based on a de facto rule.

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

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

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

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

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

15 (a) The remedies would be patently inadequate;

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

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

20 **Sec. 303.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each
21 amended to read as follows:

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

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

26 (b) Upon written demand for a hearing made by any person aggrieved
27 by any act, threatened act, or failure of the commissioner to act, if
28 such failure is deemed an act under any provision of this code, or by
29 any report, promulgation, or order of the commissioner other than an
30 order on a hearing of which such person was given actual notice or at
31 which such person appeared as a party, or order pursuant to the order
32 on such hearing.

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

36 (3) Unless a person aggrieved by a written order of the
37 commissioner demands a hearing thereon within ninety days after
38 receiving notice of such order, or in the case of a licensee under

1 Title 48 RCW within ninety days after the commissioner has mailed the
2 order to the licensee at the most recent address shown in the
3 commissioner's licensing records for the licensee, the right to such
4 hearing shall conclusively be deemed to have been waived.

5 (4) If a hearing is demanded by a licensee whose license has been
6 temporarily suspended pursuant to RCW 48.17.540, the commissioner shall
7 hold such hearing demanded within thirty days after receipt of the
8 demand or within thirty days of the effective date of a temporary
9 license suspension issued after such demand, unless postponed by mutual
10 consent.

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

14 **Sec. 304.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read
15 as follows:

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

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

27 **PART IV**
28 **LEGISLATIVE REVIEW**

29 **Sec. 401.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to
30 read as follows:

31 (1) All ~~((rules required to be filed pursuant to RCW 34.05.380, and~~
32 ~~emergency rules adopted pursuant to RCW 34.05.350,))~~ issuances are
33 subject to selective review by the legislature.

34 (2) ~~((All agency policy and interpretive statements are subject to~~
35 ~~selective review by the legislature.~~

1 ~~(3))~~ If the rules review committee finds by a majority vote of its
2 members: (a) That an existing rule is not within the intent of the
3 legislature as expressed by the statute (~~(which)~~) that the rule
4 implements, (b) that the rule has not been adopted in accordance with
5 all applicable provisions of law, or (c) that an agency issuance is
6 (~~(using a policy or interpretive statement in place of)~~) a de facto
7 rule, the agency affected shall be notified of such finding and the
8 reasons therefor. Within thirty days of the receipt of the rules
9 review committee's notice, the agency shall file notice of a hearing on
10 the rules review committee's finding with the code reviser and mail
11 notice to all persons who have made timely request of the agency for
12 advance notice of its rule-making proceedings as provided in RCW
13 34.05.320. The agency's notice shall include the rules review
14 committee's findings and reasons therefor, and shall be published in
15 the Washington state register in accordance with the provisions of
16 chapter 34.08 RCW.

17 ~~((4))~~ (3) The agency shall consider fully all written and oral
18 submissions regarding (a) whether the rule in question is within the
19 intent of the legislature as expressed by the statute (~~(which)~~) that
20 the rule implements, (b) whether the rule was adopted in accordance
21 with all applicable provisions of law, or (c) whether (~~(the agency is~~
22 ~~using a policy or interpretive statement in place of a)~~) an agency
23 issuance is a de facto rule.

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

26 (1) Within seven days of an agency hearing held after notification
27 of the agency by the rules review committee pursuant to RCW 34.05.620
28 or 34.05.630, the affected agency shall notify the committee of its
29 intended action on a proposed or existing rule or issuance to which the
30 committee objected (~~(or on a committee finding of the agency's failure~~
31 ~~to adopt rules))~~).

32 (2) If the rules review committee finds by a majority vote of its
33 members: (a) That the proposed or existing rule in question will not
34 be modified, amended, withdrawn, or repealed by the agency so as to
35 conform with the intent of the legislature, (b) that an existing rule
36 was not adopted in accordance with all applicable provisions of law, or
37 (c) that the agency will not modify or withdraw a de facto rule, or
38 replace (~~(the policy or interpretive statement)~~) it with a rule, the

1 rules review committee may, within thirty days from notification by the
2 agency of its intended action, file with the code reviser notice of its
3 objections together with a concise statement of the reasons therefor.
4 Such notice and statement shall also be provided to the agency by the
5 rules review committee.

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

20 (4) The code reviser shall publish transmittals from the rules
21 review committee or the governor issued pursuant to subsection (2) or
22 (3) of this section in the Washington state register and shall publish
23 in the next supplement and compilation of the Washington Administrative
24 Code a reference to the committee's objection or recommended suspension
25 and the governor's action on it and to the issue of the Washington
26 state register in which the full text thereof appears. If the
27 transmittal relates to a de facto rule, the code reviser shall publish
28 the reference within the Washington State Register and the Washington
29 Administrative Code in a location that addresses the most relevant
30 subject matter.

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

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

1 (1) Any person may petition the rules review committee for a review
2 of a proposed or existing rule or ~~((a policy or interpretive
3 statement))~~ other issuance. Within thirty days of the receipt of the
4 petition, the rules review committee shall acknowledge receipt of the
5 petition and describe any initial action taken. If the rules review
6 committee rejects the petition, a written statement of the reasons for
7 rejection shall be included.

8 (2) A person may petition the rules review committee under
9 subsection (1) of this section requesting review of an existing rule
10 only if the person has petitioned the agency to amend or repeal the
11 rule under RCW 34.05.330(1) and such petition was denied.

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

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

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

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

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

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

30 (4) A petition for review of ~~((a policy or interpretive statement))~~
31 an issuance other than a proposed or existing rule under subsection (1)
32 of this section shall:

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

34 (b) ~~((Identify the specific statute which the rule interprets or
35 implements;~~

36 ~~(c))~~ State the reasons why the petitioner believes that the
37 ~~((statement))~~ issuance meets the definition of a de facto rule under
38 RCW 34.05.010 ~~((and should have been adopted according to the
39 procedures of this chapter));~~

1 (~~(d)~~) (c) Identify any known judicial action regarding the
2 (~~statement~~) issuance or statutes identified in the petition.

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

6 **Sec. 404.** 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) and 34.05.640(2) in no way
12 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 **PART V**
23 **FEES AND EXPENSES**

24 **Sec. 501.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to
25 read as follows:

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

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

33 (2) "Agency action" means agency action as defined by chapter 34.05
34 RCW.

35 (3) "Fees and other expenses" includes the reasonable expenses of
36 expert witnesses, the reasonable cost of a study, analysis, engineering

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

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

15 (5) "Qualified party" means (a) an individual whose net worth did
16 not exceed (~~(one)~~) two million dollars at the time the initial petition
17 for judicial review was filed or (b) a sole owner of an unincorporated
18 business, or a partnership, corporation, association, or organization
19 whose net worth did not exceed (~~(five)~~) seven million dollars at the
20 time the initial petition for judicial review was filed, except that an
21 organization described in section 501(c)(3) of the federal Internal
22 Revenue Code of 1954 as exempt from taxation under section 501(a) of
23 the code and a cooperative association as defined in section 15(a) of
24 the Agricultural Marketing Act (12 U.S.C. 1141J(a)), may be a party
25 regardless of the net worth of such organization or cooperative
26 association.

27 **Sec. 502.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to
28 read as follows:

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

37 (2) The amount awarded a qualified party under subsection (1) of
38 this section shall not exceed (~~(twenty-five)~~) fifty thousand dollars

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

14 **Sec. 503.** RCW 4.84.360 and 1995 c 403 s 904 are each amended to
15 read as follows:

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

30 **PART VI**
31 **MISCELLANEOUS**

32 **Sec. 601.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
33 each reenacted and amended to read as follows:

34 (1) Each agency, in accordance with published rules, shall make
35 available for public inspection and copying all public records, unless
36 the record falls within the specific exemptions of subsection (6) of

1 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
2 or prohibits disclosure of specific information or records. To the
3 extent required to prevent an unreasonable invasion of personal privacy
4 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
5 delete identifying details in a manner consistent with RCW 42.17.310
6 and 42.17.315 when it makes available or publishes any public record;
7 however, in each case, the justification for the deletion shall be
8 explained fully in writing.

9 (2) For informational purposes, each agency shall publish and
10 maintain a current list containing every law, other than those listed
11 in this chapter, that the agency believes exempts or prohibits
12 disclosure of specific information or records of the agency. An
13 agency's failure to list an exemption shall not affect the efficacy of
14 any exemption.

15 (3) Each local agency shall maintain and make available for public
16 inspection and copying a current index providing identifying
17 information as to the following records issued, adopted, or promulgated
18 after January 1, 1973:

19 (a) Final opinions, including concurring and dissenting opinions,
20 as well as orders, made in the adjudication of cases;

21 (b) Those statements of policy and interpretations of policy,
22 statute, and the Constitution which have been adopted by the agency;

23 (c) Administrative staff manuals and instructions to staff that
24 affect a member of the public;

25 (d) Planning policies and goals, and interim and final planning
26 decisions;

27 (e) Factual staff reports and studies, factual consultant's reports
28 and studies, scientific reports and studies, and any other factual
29 information derived from tests, studies, reports, or surveys, whether
30 conducted by public employees or others; and

31 (f) Correspondence, and materials referred to therein, by and with
32 the agency relating to any regulatory, supervisory, or enforcement
33 responsibilities of the agency, whereby the agency determines, or
34 opines upon, or is asked to determine or opine upon, the rights of the
35 state, the public, a subdivision of state government, or of any private
36 party.

37 (4) A local agency need not maintain such an index, if to do so
38 would be unduly burdensome, but it shall in that event:

1 (a) Issue and publish a formal order specifying the reasons why and
2 the extent to which compliance would unduly burden or interfere with
3 agency operations; and

4 (b) Make available for public inspection and copying all indexes
5 maintained for agency use.

6 (5) Each state agency shall, by rule, establish and implement a
7 system of indexing for the identification and location of the following
8 records:

9 (a) All records issued before July 1, 1990, for which the agency
10 has maintained an index;

11 (b) Final orders entered after June 30, 1990, that are issued in
12 adjudicative proceedings as defined in RCW 34.05.010(~~(+1)~~) and that
13 contain an analysis or decision of substantial importance to the agency
14 in carrying out its duties;

15 (c) Declaratory orders entered after June 30, 1990, that are issued
16 pursuant to RCW 34.05.240 and that contain an analysis or decision of
17 substantial importance to the agency in carrying out its duties;

18 (d) Interpretive statements as defined in RCW 34.05.010(~~(+8)~~) that
19 were entered after June 30, 1990; and

20 (e) Policy statements as defined in RCW 34.05.010(~~(+14)~~) that were
21 entered after June 30, 1990.

22 Rules establishing systems of indexing shall include, but not be
23 limited to, requirements for the form and content of the index, its
24 location and availability to the public, and the schedule for revising
25 or updating the index. State agencies that have maintained indexes for
26 records issued before July 1, 1990, shall continue to make such indexes
27 available for public inspection and copying. Information in such
28 indexes may be incorporated into indexes prepared pursuant to this
29 subsection. State agencies may satisfy the requirements of this
30 subsection by making available to the public indexes prepared by other
31 parties but actually used by the agency in its operations. State
32 agencies shall make indexes available for public inspection and
33 copying. State agencies may charge a fee to cover the actual costs of
34 providing individual mailed copies of indexes.

35 (6) A public record may be relied on, used, or cited as precedent
36 by an agency against a party other than an agency and it may be invoked
37 by the agency for any other purpose only if«

38 (a) It has been indexed in an index available to the public; or

1 (b) Parties affected have timely notice (actual or constructive) of
2 the terms thereof.

3 (7) Each agency shall establish, maintain, and make available for
4 public inspection and copying a statement of the actual per page cost
5 or other costs, if any, that it charges for providing photocopies of
6 public records and a statement of the factors and manner used to
7 determine the actual per page cost or other costs, if any.

8 (a) In determining the actual per page cost for providing
9 photocopies of public records, an agency may include all costs directly
10 incident to copying such public records including the actual cost of
11 the paper and the per page cost for use of agency copying equipment.
12 In determining other actual costs for providing photocopies of public
13 records, an agency may include all costs directly incident to shipping
14 such public records, including the cost of postage or delivery charges
15 and the cost of any container or envelope used.

16 (b) In determining the actual per page cost or other costs for
17 providing copies of public records, an agency may not include staff
18 salaries, benefits, or other general administrative or overhead
19 charges, unless those costs are directly related to the actual cost of
20 copying the public records. Staff time to copy and mail the requested
21 public records may be included in an agency's costs.

22 (8) An agency need not calculate the actual per page cost or other
23 costs it charges for providing photocopies of public records if to do
24 so would be unduly burdensome, but in that event: The agency may not
25 charge in excess of fifteen cents per page for photocopies of public
26 records or for the use of agency equipment to photocopy public records
27 and the actual postage or delivery charge and the cost of any container
28 or envelope used to mail the public records to the requestor.

29 (9) This chapter shall not be construed as giving authority to any
30 agency, the office of the secretary of the senate, or the office of the
31 chief clerk of the house of representatives to give, sell or provide
32 access to lists of individuals requested for commercial purposes, and
33 agencies, the office of the secretary of the senate, and the office of
34 the chief clerk of the house of representatives shall not do so unless
35 specifically authorized or directed by law: PROVIDED, HOWEVER, That
36 lists of applicants for professional licenses and of professional
37 licensees shall be made available to those professional associations or
38 educational organizations recognized by their professional licensing or
39 examination board, upon payment of a reasonable charge therefor:

1 PROVIDED FURTHER, That such recognition may be refused only for a good
2 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
3 the Administrative Procedure Act.

4 **Sec. 602.** RCW 51.04.030 and 1994 c 164 s 25 are each amended to
5 read as follows:

6 The director shall supervise the providing of prompt and efficient
7 care and treatment, including care provided by physician assistants
8 governed by the provisions of chapters 18.57A and 18.71A RCW, acting
9 under a supervising physician, and including chiropractic care, to
10 workers injured during the course of their employment at the least cost
11 consistent with promptness and efficiency, without discrimination or
12 favoritism, and with as great uniformity as the various and diverse
13 surrounding circumstances and locations of industries will permit and
14 to that end shall, from time to time, establish and adopt and supervise
15 the administration of printed forms, rules, regulations, and practices
16 for the furnishing of such care and treatment: PROVIDED, That, the
17 department may recommend to an injured worker particular health care
18 services and providers where specialized treatment is indicated or
19 where cost effective payment levels or rates are obtained by the
20 department: AND PROVIDED FURTHER, That the department may enter into
21 contracts for goods and services including, but not limited to, durable
22 medical equipment so long as state-wide access to quality service is
23 maintained for injured workers.

24 The director shall, in consultation with interested persons,
25 establish and, in his or her discretion, periodically change as may be
26 necessary, and make available a fee schedule of the maximum charges to
27 be made by any physician, surgeon, chiropractor, hospital, druggist,
28 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,
29 acting under a supervising physician or other agency or person
30 rendering services to injured workers. The department shall coordinate
31 with other state purchasers of health care services to establish as
32 much consistency and uniformity in billing and coding practices as
33 possible, taking into account the unique requirements and differences
34 between programs. No service covered under this title shall be charged
35 or paid at a rate or rates exceeding those specified in such fee
36 schedule, and no contract providing for greater fees shall be valid as
37 to the excess. The establishment of such a schedule, exclusive of
38 conversion factors, does not constitute "agency action" as used in RCW

1 34.05.010(~~(+3)~~), nor does such a fee schedule constitute a "de facto
2 rule" as used in RCW 34.05.010(~~(+15)~~).

3 The director or self-insurer, as the case may be, shall make a
4 record of the commencement of every disability and the termination
5 thereof and, when bills are rendered for the care and treatment of
6 injured workers, shall approve and pay those which conform to the
7 adopted rules, regulations, established fee schedules, and practices of
8 the director and may reject any bill or item thereof incurred in
9 violation of the principles laid down in this section or the rules,
10 regulations, or the established fee schedules and rules and regulations
11 adopted under it.

12 NEW SECTION. **Sec. 603.** A new section is added to chapter 43.17
13 RCW to read as follows:

14 (1) An agency, prior to releasing a final report or study regarding
15 management by a county, city, town, special purpose district, or other
16 unit of local government of a program delegated to the local government
17 by the agency or for which the agency has regulatory responsibility,
18 shall provide copies of a draft of the report or study at least two
19 weeks in advance of the release of the final report or study to the
20 legislative body of the local government. The agency shall, at the
21 request of a local government legislative body, meet with the
22 legislative body before the release of a final report or study
23 regarding the management of such a program.

24 (2) For purposes of this section, "agency" means an office,
25 department, board, commission, or other unit of state government, other
26 than a unit of state government headed by a separately elected
27 official.

28 NEW SECTION. **Sec. 604.** A new section is added to chapter 43.05
29 RCW to read as follows:

30 When issuing a citation or other written finding that a person has
31 violated a statute, rule, or order, the agency shall include with the
32 citation or other written finding the text of the specific statute or
33 statutes granting the agency the authority to regulate the subject
34 matter of the citation or other written finding.

35 **Sec. 605.** RCW 50.13.060 and 1996 c 79 s 1 are each amended to read
36 as follows:

1 (1) Governmental agencies, including law enforcement agencies,
2 prosecuting agencies, and the executive branch, whether state, local,
3 or federal shall have access to information or records deemed private
4 and confidential under this chapter if the information or records are
5 needed by the agency for official purposes and:

6 (a) The agency submits an application in writing to the employment
7 security department for the records or information containing a
8 statement of the official purposes for which the information or records
9 are needed and specific identification of the records or information
10 sought from the department; and

11 (b) The director, commissioner, chief executive, or other official
12 of the agency has verified the need for the specific information in
13 writing either on the application or on a separate document; and

14 (c) The agency requesting access has served a copy of the
15 application for records or information on the individual or employing
16 unit whose records or information are sought and has provided the
17 department with proof of service. Service shall be made in a manner
18 which conforms to the civil rules for superior court. The requesting
19 agency shall include with the copy of the application a statement to
20 the effect that the individual or employing unit may contact the public
21 records officer of the employment security department to state any
22 objections to the release of the records or information. The
23 employment security department shall not act upon the application of
24 the requesting agency until at least five days after service on the
25 concerned individual or employing unit. The employment security
26 department shall consider any objections raised by the concerned
27 individual or employing unit in deciding whether the requesting agency
28 needs the information or records for official purposes.

29 (2) The requirements of subsections (1) and (8) of this section
30 shall not apply to the state legislative branch. The state legislature
31 shall have access to information or records deemed private and
32 confidential under this chapter, if the legislature or a legislative
33 committee finds that the information or records are necessary and for
34 official purposes. If the employment security department does not make
35 information or records available as provided in this subsection, the
36 legislature may exercise its authority granted by chapter 44.16 RCW.

37 (3) In cases of emergency the governmental agency requesting access
38 shall not be required to formally comply with the provisions of
39 subsection (1) of this section at the time of the request if the

1 procedures required by subsection (1) of this section are complied with
2 by the requesting agency following the receipt of any records or
3 information deemed private and confidential under this chapter. An
4 emergency is defined as a situation in which irreparable harm or damage
5 could occur if records or information are not released immediately.

6 (4) The requirements of subsection (1)(c) of this section shall not
7 apply to governmental agencies where the procedures would frustrate the
8 investigation of possible violations of criminal laws or to the release
9 of employing unit names, addresses, number of employees, and aggregate
10 employer wage data for the purpose of state governmental agencies
11 preparing small business economic impact statements under chapter 19.85
12 RCW or preparing cost-benefit analyses under RCW 34.05.328(1)(c).
13 Information provided by the department and held to be private and
14 confidential under state or federal laws must not be misused or
15 released to unauthorized parties. A person who misuses such
16 information or releases such information to unauthorized parties is
17 subject to the sanctions in RCW 50.13.080.

18 (5) Governmental agencies shall have access to certain records or
19 information, limited to such items as names, addresses, social security
20 numbers, and general information about benefit entitlement or employer
21 information possessed by the department, for comparison purposes with
22 records or information possessed by the requesting agency to detect
23 improper or fraudulent claims, or to determine potential tax liability
24 or employer compliance with registration and licensing requirements.
25 In those cases the governmental agency shall not be required to comply
26 with subsection (1)(c) of this section, but the requirements of the
27 remainder of subsection (1) must be satisfied.

28 (6) Governmental agencies may have access to certain records and
29 information, limited to employer information possessed by the
30 department for purposes authorized in chapter 50.38 RCW. Access to
31 these records and information is limited to only those individuals
32 conducting authorized statistical analysis, research, and evaluation
33 studies. Only in cases consistent with the purposes of chapter 50.38
34 RCW are government agencies not required to comply with subsection
35 (1)(c) of this section, but the requirements of the remainder of
36 subsection (1) of this section must be satisfied. Information provided
37 by the department and held to be private and confidential under state
38 or federal laws shall not be misused or released to unauthorized
39 parties subject to the sanctions in RCW 50.13.080.

1 (7) Disclosure to governmental agencies of information or records
2 obtained by the employment security department from the federal
3 government shall be governed by any applicable federal law or any
4 agreement between the federal government and the employment security
5 department where so required by federal law. When federal law does not
6 apply to the records or information state law shall control.

7 (8) The disclosure of any records or information by a governmental
8 agency which has obtained the records or information under this section
9 is prohibited unless the disclosure is directly connected to the
10 official purpose for which the records or information were obtained.

11 (9) In conducting periodic salary or fringe benefit studies
12 pursuant to law, the department of personnel shall have access to
13 records of the employment security department as may be required for
14 such studies. For such purposes, the requirements of subsection (1)(c)
15 of this section need not apply.

16 NEW SECTION. **Sec. 606.** The code reviser shall study the
17 feasibility of accepting agency rule filings in an electronic format.
18 The study must include consideration of the benefits to be achieved by
19 electronic filing compared to the costs that electronic filing would
20 entail. The code reviser may consult with the office of financial
21 management, state agencies, and the general public in conducting the
22 study. The code reviser shall report to the legislature and the
23 governor by July 1, 1998, on the results of this study.

24 NEW SECTION. **Sec. 607.** Part headings used in this act do not
25 constitute any part of the law.

26 NEW SECTION. **Sec. 608.** Section 605 of this act is necessary for
27 the immediate preservation of the public peace, health, or safety, or
28 support of the state government and its existing public institutions,
29 and takes effect immediately.

30 NEW SECTION. **Sec. 609.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

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