

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2345**

55th Legislature  
1998 Regular Session

Passed by the House March 10, 1998  
Yeas 83 Nays 15

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Passed by the Senate March 6, 1998  
Yeas 31 Nays 17

\_\_\_\_\_  
**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 2345** 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**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2345

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AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington                      55th Legislature                      1998 Regular Session

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

Read first time 02/07/98. Referred to Committee on .

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

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

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

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

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

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

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

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

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

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

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

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

25 **NOTICE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (6) Within two hundred days after an agency issues a policy or  
31 interpretative statement, guideline, document of general applicability,  
32 or its equivalent involving an issue, the violation of which can result  
33 in a citation, civil penalty, assessment, or other sanction to a  
34 business, the agency shall make a good faith effort to notify  
35 businesses affected by the statement, guideline, or document and how to  
36 obtain technical assistance to comply. For purposes of this section,  
37 "good faith" means: (a) The agency at least notifies businesses in the  
38 standard industrial classifications or their successor affected by the  
39 statement, guideline, or document that are registered with the

1 department of revenue; or (b) for a statement, guideline, or document  
2 that applies only to persons or firms that are licensed, registered, or  
3 operate under a permit, the agency notifies those persons or firms  
4 holding the license, registration, or permit. Inadvertent failure to  
5 notify a specific business under this section does not invalidate a  
6 rule.

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

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

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

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

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

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

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

31 (f) The proposed rule is being amended after a review under RCW  
32 34.05.328.

33 (2) The expedited rule-making process must follow the requirements  
34 for rule making set forth in RCW 34.05.320, except that the agency is  
35 not required to prepare a small business economic impact statement  
36 under RCW 19.85.025, a statement indicating whether the rule  
37 constitutes a significant legislative rule under RCW  
38 34.05.328(6)(c)(iii), or a significant legislative rule analysis under

1 RCW 34.05.328. An agency is not required to prepare statements of  
2 inquiry under RCW 34.05.310 or conduct a hearing for the expedited  
3 adoption of rules. The notice for the expedited adoption of rules must  
4 contain a statement in at least ten-point type, that is substantially  
5 in the following form:

6 **NOTICE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) Promote and assist voluntary compliance; ~~((and))~~

27 (d) Evaluate whether the rule achieves the purpose for which it was  
28 adopted, including, to the maximum extent practicable, the use of  
29 interim milestones to assess progress and the use of objectively  
30 measurable outcomes; and

31 (e) Provide appropriate training to agency personnel.

32 (4) At least twenty days before the effective date of a rule  
33 described in subsection (6) of this section, the agency is encouraged  
34 to convene a meeting of interested persons affected by the rule to  
35 identify ambiguities and problem areas in the rule and determine how to  
36 resolve the ambiguities and problem areas. If the agency convenes such  
37 a meeting, the agency shall include the meeting in the plan described  
38 under subsection (3) of this section.

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

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

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

13        (i) Deferring to the other entity;

14        (ii) Designating a lead agency; or

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

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

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

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

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

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

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

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

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

3 (b) This section does not apply to:

4 (i) Emergency rules adopted under RCW 34.05.350;

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

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

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

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

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

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

25 (c) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 Within two hundred days after the effective date of a rule that  
31 imposes additional requirements on businesses the violation of which  
32 subjects a person to a penalty, assessment, or administrative sanction,  
33 an agency shall make a good faith effort to notify businesses affected  
34 by the rule of the requirements of the rule and how to obtain technical  
35 assistance to comply. For purposes of this section, "good faith"  
36 means: (1) The agency at least notifies businesses in the standard  
37 industrial classifications or their successor identified in the rule-  
38 making file as businesses affected by the rule that are registered with

1 the department of revenue; or (2) for rules imposing additional  
2 requirements only on persons or firms licensed, registered, or  
3 operating under a permit, the agency notifies those persons or firms  
4 holding the license, registration, or permit. Inadvertent failure to  
5 notify a specific business under this section does not invalidate a  
6 rule.

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

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

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

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

1 making proceedings in accordance with this chapter. The governor's  
2 response to the appeal shall be published in the Washington state  
3 register and copies shall be submitted to the chief clerk of the house  
4 of representatives and the secretary of the senate.

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

7 (a) Whether the rule is authorized;

8 (b) Whether the rule is needed;

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

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

13 (e) Whether the rule applies differently to public and private  
14 entities;

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

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

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

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

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

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

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

28 **Sec. 6.** RCW 34.05.354 and 1997 c 409 s 208 are each amended to  
29 read as follows:

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

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

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

7       (b) The statute on which the rule is based has been declared  
8 unconstitutional by a court with jurisdiction, there is a final  
9 judgment, and no statute has been enacted to replace the  
10 unconstitutional statute;

11       (c) The rule is no longer necessary because of changed  
12 circumstances; or

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

15       ~~((3))~~ (2) An agency shall file a copy of a preproposal notice of  
16 inquiry, as provided in RCW 34.05.310(1), that identifies the rule as  
17 one that is proposed for expedited repeal. The agency shall also send  
18 a copy of the preproposal notice of inquiry to any person who has  
19 requested notification of copies of proposals for the expedited repeal  
20 of rules or of agency rule making. The preproposal notice of inquiry  
21 shall include a statement that any person who objects to the repeal of  
22 the rule must file a written objection to the repeal within thirty days  
23 after the preproposal notice of inquiry is published. The notice of  
24 inquiry shall also include an explanation of the reasons the agency  
25 believes the expedited repeal of the rule is appropriate.

26       ~~((4))~~ (3) The code reviser shall publish all rules proposed for  
27 expedited repeal in a separate section of ((a regular edition of)) the  
28 Washington state register ((or in a special edition of the Washington  
29 state register. The publication shall be not later than May 31st or  
30 November 30th of each year, or in the first register published after  
31 that date)).

32       ~~((5))~~ (4) Any person may file a written objection to the  
33 expedited repeal of a rule. The notice shall be filed with the agency  
34 rules coordinator within thirty days after the notice of inquiry has  
35 been published in the Washington state register. The written objection  
36 need not state any reason for objecting to the expedited repeal of the  
37 rule.

38       ~~((6))~~ (5) If no written objections to the expedited repeal of a  
39 rule are filed with the agency within thirty days after the preproposal

1 notice of inquiry is published, the agency may enter an order repealing  
2 the rule without further notice or an opportunity for a public hearing.  
3 The order shall be published in the manner required by this chapter for  
4 any other order of the agency adopting, amending, or repealing a rule.  
5 If a written objection to the expedited repeal of the rule is filed  
6 with the agency within thirty days after the notice of inquiry has been  
7 published, the preproposal notice of inquiry published pursuant to this  
8 section shall be considered a preproposal notice of inquiry for the  
9 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption  
10 proceedings in accordance with the provisions of this chapter.

11 **Sec. 7.** RCW 34.05.370 and 1996 c 102 s 2 are each amended to read  
12 as follows:

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

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

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

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

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

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

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

35 (f) Citations to data, factual information, studies, or reports on  
36 which the agency relies in the adoption of the rule, indicating where  
37 such data, factual information, studies, or reports are available for  
38 review by the public, but this subsection (2)(f) does not require the

1 agency to include in the rule-making file any data, factual  
2 information, studies, or reports gathered pursuant to chapter 19.85 RCW  
3 or RCW 34.05.328 that can be identified to a particular business;

4 (g) The concise explanatory statement required by RCW 34.05.325(6);  
5 and

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

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

14 (4) Upon judicial review, the file required by this section  
15 constitutes the official agency rule-making file with respect to that  
16 rule. Unless otherwise required by another provision of law, the  
17 official agency rule-making file need not be the exclusive basis for  
18 agency action on that rule.

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 34.05 RCW  
20 to read as follows:

21 (1) The legislature finds that under the governor's Executive Order  
22 97-02, agencies have begun systematic reviews of existing rules and  
23 have eliminated some unnecessary rules and improved clarity for other  
24 rules.

25 (2) Effective July 1, 2001, each state agency shall review its  
26 rules that have significant effects on businesses, labor, consumers,  
27 and the environment. Agencies shall establish a rules review schedule  
28 that allows each rule filing under the criteria of this section to be  
29 reviewed every seven years. Agencies shall determine if their rules  
30 should be (a) retained in their current form, or (b) amended or  
31 repealed, if they do not meet the review criteria specified in this  
32 section. Agencies shall concentrate their regulatory review on rules  
33 or portions of a rule that have been the subject of petitions filed  
34 under RCW 34.05.330 or have been the source of complaints, concerns, or  
35 other difficulties that relate to matters other than the specific  
36 mandates of the statute on which the rule is based. Agencies that have  
37 already established regulatory review processes shall make them  
38 consistent with the requirements of this section. Each agency head

1 shall designate a person responsible for regulatory review who shall  
2 serve as the agency's contact for regulatory review.

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

5 (a) Need. Is the rule necessary to comply with the statutes that  
6 authorize it? Is the rule obsolete, duplicative, or ambiguous to a  
7 degree that warrants repeal or revision? Have laws or other  
8 circumstances changed so that the rule should be amended or repealed?  
9 Is the rule necessary to protect or safeguard the health, welfare, or  
10 safety of Washington's citizens?

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

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

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

23 (e) Coordination. Could additional consultation and coordination  
24 with other governmental jurisdictions and state agencies with similar  
25 regulatory authority eliminate or reduce duplication and inconsistency?  
26 Agencies should consult with and coordinate with other jurisdictions  
27 that have similar regulatory requirements when it is likely that  
28 coordination can reduce duplication and inconsistency.

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

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

35 (4)(a) By July 1, 2002, and July 1st of each year thereafter, each  
36 agency shall report to the rules review committee on the rules reviewed  
37 during the previous fiscal year and other measures taken to improve its  
38 regulatory program. The reports must include, but not be limited to:

39 (i) The number of rule sections amended or repealed and the number of

1 pages eliminated in the Washington Administrative Code; (ii) a summary  
2 of rules amended or repealed based on the review criteria in this  
3 section; (iii) a summary of agency actions in response to petitions  
4 under RCW 34.05.330; (iv) a summary of the results of the agency's  
5 review of policy and interpretive statements and similar documents; (v)  
6 a summary of the agency's review of reporting requirements imposed on  
7 businesses; and (vi) recommendations for statutory or administrative  
8 changes resulting from the regulatory reviews. More frequent reports  
9 may be requested, as necessary. Agencies shall make the reports  
10 available to persons who have requested notification of agency rule  
11 making and shall submit a summary of the report for publication in the  
12 Washington State Register.

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

19 (c) Each agency shall also review its reporting requirements that  
20 are applied generally to all businesses or classes of businesses to  
21 ensure that they are necessary and consistent with the principles and  
22 objectives of this section. The goals of the review must be to achieve  
23 reporting requirements that, to the extent possible, are coordinated  
24 with other state agencies with similar requirements, are economical and  
25 easy to understand, and rely on electronic transfer of information.

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

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

33 (c) If the committee finds the agency has failed to meet the  
34 requirements of this section, the agency will have one hundred twenty  
35 days to meet the requirements and receive approval by a majority vote  
36 of the committee. If the agency fails to comply with the requirements  
37 of this section after the one hundred twenty days, the committee may,  
38 by a majority vote of its members, recommend suspension of a rule or  
39 rules included in the report. Within seven days of that vote the

1 committee shall transmit to the appropriate standing committees of the  
2 legislature, the governor, the code reviser, and the agency written  
3 notice of its objection and any recommended suspension based on failure  
4 to meet the rules review requirements. Within thirty days of receipt  
5 of the notice, the governor shall transmit to the committee, the code  
6 reviser, and the agency written approval or disapproval of the  
7 recommended suspension. If the suspension is approved by the governor,  
8 it is effective from the date of that approval and continues until  
9 ninety days after the expiration of the next regular legislative  
10 session.

11 (d) If the governor disapproves the recommendation of the rules  
12 review committee to suspend a rule or rules in the report, the agency  
13 shall treat the transmittal of that decision, along with the findings  
14 of the rules review committee, as a petition by the committee to repeal  
15 the rule or rules under RCW 34.05.330.

16 (e) The code reviser shall publish these transmittals according to  
17 RCW 34.05.640(5).

18 **Sec. 9.** RCW 34.05.610 and 1996 c 318 s 2 are each amended to read  
19 as follows:

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

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

37 (3) On or about January 1, 1999, the president of the senate shall  
38 appoint the chairperson (~~((in even-numbered years))~~) and the vice

1 chairperson (~~((in odd-numbered years))~~) from among the committee  
2 membership. The speaker of the house shall appoint the chairperson  
3 (~~((in odd-numbered years))~~) and the vice chairperson in alternating even-  
4 numbered years beginning in the year 2000 from among the committee  
5 membership. The secretary of the senate shall appoint the chairperson  
6 and the vice chairperson in the alternating even-numbered years  
7 beginning in the year 2002 from among the committee membership. Such  
8 appointments shall be made in January of each even-numbered year as  
9 soon as possible after a legislative session convenes.

10 (4) The chairperson of the committee shall cause all meeting  
11 notices and committee documents to be sent to the members and  
12 alternates. A vacancy shall be filled by appointment of a legislator  
13 from the same political party as the original appointment. The  
14 appropriate appointing authority shall make the appointment within  
15 thirty days of the vacancy occurring.

16 **Sec. 10.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read  
17 as follows:

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

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

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.132  
30 RCW to read as follows:

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

35 (2) The economic impact statement shall describe the reporting,  
36 recordkeeping, and other compliance requirements of the proposed rule  
37 and analyze the costs of compliance for local governments. An agency

1 shall file the statement with the code reviser along with the notice  
2 required under RCW 34.05.320.

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

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

12 (5) This section does not apply to:

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

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

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

18 **Sec. 12.** RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended  
19 to read as follows:

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

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

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

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

34 (3) Unless a person aggrieved by a written order of the  
35 commissioner demands a hearing thereon within ninety days after  
36 receiving notice of such order, or in the case of a licensee under  
37 Title 48 RCW within ninety days after the commissioner has mailed the  
38 order to the licensee at the most recent address shown in the

1 commissioner's licensing records for the licensee, the right to such  
2 hearing shall conclusively be deemed to have been waived.

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

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

12 NEW SECTION. **Sec. 13.** If specific funding for the purposes of  
13 this act, referencing this act by bill or chapter number, is not  
14 provided by June 30, 1998, in the omnibus appropriations act, this act  
15 is null and void.

16 NEW SECTION. **Sec. 14.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

--- END ---