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**SUBSTITUTE SENATE BILL 5671**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senator McCaslin)

Read first time 03/05/97.

1 AN ACT Relating to issuances by administrative agencies; amending  
2 RCW 34.05.010, 34.05.230, 34.05.570, 34.05.630, 34.05.640, 34.05.655,  
3 and 51.04.030; and reenacting and amending RCW 42.17.260.

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

5 **Sec. 1.** RCW 34.05.010 and 1992 c 44 s 10 are each amended to read  
6 as follows:

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

9 (1) "Adjudicative proceeding" means a proceeding before an agency  
10 in which an opportunity for hearing before that agency is required by  
11 statute or constitutional right before or after the entry of an order  
12 by the agency. Adjudicative proceedings also include all cases of  
13 licensing and rate making in which an application for a license or rate  
14 change is denied except as limited by RCW 66.08.150, or a license is  
15 revoked, suspended, or modified, or in which the granting of an  
16 application is contested by a person having standing to contest under  
17 the law.

18 (2) "Agency" means any state board, commission, department,  
19 institution of higher education, or officer, authorized by law to make

1 rules or to conduct adjudicative proceedings, except those in the  
2 legislative or judicial branches, the governor, or the attorney general  
3 except to the extent otherwise required by law and any local  
4 governmental entity that may request the appointment of an  
5 administrative law judge under chapter 42.41 RCW.

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

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

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

27 (5) "De facto rule" means an issuance not adopted under Part III of  
28 this chapter that the agency uses to (a) subject a person to a penalty  
29 or administrative sanction; (b) establish, alter, or revoke a  
30 procedure, practice, or requirement relating to agency hearings; (c)  
31 establish, alter, or revoke a qualification or requirement relating to  
32 the enjoyment of a benefit or privilege conferred by law; (d)  
33 establish, alter, or revoke a qualification or standard for the  
34 issuance, suspension, or revocation of a license to pursue a commercial  
35 activity, trade, or profession; or (e) establish, alter, or revoke  
36 mandatory standards for a product or material that must be met before  
37 distribution or sale. The term does not include (i) statements  
38 concerning only the internal management of an agency and not affecting  
39 private rights or procedures available to the public, (ii) declaratory

1 rulings issued under RCW 34.05.240, (iii) traffic restrictions for  
2 motor vehicles, bicyclists, and pedestrians established by the  
3 secretary of transportation or his or her designee where notice of the  
4 restrictions is given by official traffic control devices, or (iv)  
5 rules of institutions of higher education involving standards of  
6 admission, academic advancement, academic credit, graduation and the  
7 granting of degrees, employment relationships, or fiscal processes.

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

11 (~~(6)~~) (7) "Filing" of a document that is required to be filed  
12 with an agency means delivery of the document to a place designated by  
13 the agency by rule for receipt of official documents, or in the absence  
14 of such designation, at the office of the agency head.

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

24 (~~(8)~~) (9) "Interpretive statement" means a written expression of  
25 the opinion of an agency, entitled an interpretive statement by the  
26 agency head or its designee, as to the meaning of a statute or other  
27 provision of law, of a court decision, or of an agency order.

28 (~~(9)~~) (10) "Issuance" means a written document of general  
29 applicability issued by an agency that is available to the public. It  
30 includes, but is not limited to, an agency order, directive, policy  
31 statement, interpretive statement, guideline, letter, memorandum, rule,  
32 or de facto rule.

33 (11)(a) "License" means a franchise, permit, certification,  
34 approval, registration, charter, or similar form of authorization  
35 required by law, but does not include (i) a license required solely for  
36 revenue purposes, or (ii) a certification of an exclusive bargaining  
37 representative, or similar status, under a collective bargaining law or  
38 similar statute, or (iii) a license, franchise, or permission for use

1 of trademarks, symbols, and similar property owned or controlled by the  
2 agency.

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

5 ~~((10))~~ (12)(a) "Order," without further qualification, means a  
6 written statement of particular applicability that finally determines  
7 the legal rights, duties, privileges, immunities, or other legal  
8 interests of a specific person or persons.

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

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

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

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

16 ~~((12))~~ (14) "Party to judicial review or civil enforcement  
17 proceedings," or "party" in a context so indicating, means:

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

20 (b) A person named as a party in a judicial review or civil  
21 enforcement proceeding, or allowed to participate as a party in a  
22 judicial review or civil enforcement proceeding.

23 ~~((13))~~ (15) "Person" means any individual, partnership,  
24 corporation, association, governmental subdivision or unit thereof, or  
25 public or private organization or entity of any character, and includes  
26 another agency.

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

33 ~~((15))~~ (17) "Rule" means any ~~((agency order, directive, or~~  
34 ~~regulation of general applicability (a) the violation of which subjects~~  
35 ~~a person to a penalty or administrative sanction; (b) which~~  
36 ~~establishes, alters, or revokes any procedure, practice, or requirement~~  
37 ~~relating to agency hearings; (c) which establishes, alters, or revokes~~  
38 ~~any qualification or requirement relating to the enjoyment of benefits~~  
39 ~~or privileges conferred by law; (d) which establishes, alters, or~~

1 ~~revokes any qualifications or standards for the issuance, suspension,~~  
2 ~~or revocation of licenses to pursue any commercial activity, trade, or~~  
3 ~~profession; or (e) which establishes, alters, or revokes any mandatory~~  
4 ~~standards for any product or material which must be met before~~  
5 ~~distribution or sale)) issuance adopted under Part III of this chapter.~~  
6 The term includes the amendment or repeal of a prior rule(~~, but does~~  
7 ~~not include (i) statements concerning only the internal management of~~  
8 ~~an agency and not affecting private rights or procedures available to~~  
9 ~~the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,~~  
10 ~~(iii) traffic restrictions for motor vehicles, bicyclists, and~~  
11 ~~pedestrians established by the secretary of transportation or his~~  
12 ~~designee where notice of such restrictions is given by official traffic~~  
13 ~~control devices, or (iv) rules of institutions of higher education~~  
14 ~~involving standards of admission, academic advancement, academic~~  
15 ~~credit, graduation and the granting of degrees, employment~~  
16 ~~relationships, or fiscal processes)).~~

17 ~~((16))~~ (18) "Rules review committee" or "committee" means the  
18 joint administrative rules review committee created pursuant to RCW  
19 34.05.610 ~~((for the purpose of selectively reviewing existing and~~  
20 ~~proposed rules of state agencies)).~~

21 ~~((17))~~ (19) "Rule making" means the process for formulation and  
22 adoption of a rule.

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

29 **Sec. 2.** RCW 34.05.230 and 1996 c 206 s 12 are each amended to read  
30 as follows:

31 (1) ~~((If the adoption of rules is not feasible and practicable,))~~  
32 An agency is encouraged to advise the public of its current opinions,  
33 approaches, and likely courses of action by means of ((interpretive or  
34 policy statements.—Current interpretive and policy statements))  
35 issuances. Unless adopted under Part III of this chapter, these  
36 issuances are advisory only. ((To better inform and involve the  
37 public, an agency is encouraged to convert long-standing interpretive  
38 and policy statements into rules.))

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

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

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

22 **Sec. 3.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
23 read as follows:

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

26 (a) The burden of demonstrating the invalidity of agency action is  
27 on the party asserting invalidity;

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

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

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

36 (2) Review of rules. (a) A rule may be reviewed by petition for  
37 declaratory judgment filed pursuant to this subsection or in the  
38 context of any other review proceeding under this section. In an

1 action challenging the validity of a rule, the agency shall be made a  
2 party to the proceeding.

3 (b) The validity of any rule may be determined upon petition for a  
4 declaratory judgment addressed to the superior court of Thurston  
5 county, when it appears that the rule, or its threatened application,  
6 interferes with or impairs or immediately threatens to interfere with  
7 or impair the legal rights or privileges of the petitioner. The  
8 declaratory judgment order may be entered whether or not the petitioner  
9 has first requested the agency to pass upon the validity of the rule in  
10 question.

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

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

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

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

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

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

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

30 (f) The agency has not decided all issues requiring resolution by  
31 the agency;

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

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

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

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

3 (4) Review of other agency action.

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

6 (b) A person whose rights are violated by an agency's failure to  
7 perform a duty that is required by law to be performed may file a  
8 petition for review pursuant to RCW 34.05.514, seeking an order  
9 pursuant to this subsection requiring performance. Within twenty days  
10 after service of the petition for review, the agency shall file and  
11 serve an answer to the petition, made in the same manner as an answer  
12 to a complaint in a civil action. The court may hear evidence,  
13 pursuant to RCW 34.05.562, on material issues of fact raised by the  
14 petition and answer.

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

19 (i) Unconstitutional;

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

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

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

25 (v) Based on a de facto rule.

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

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

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

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



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

11 ~~((4))~~ (3) The agency shall consider fully all written and oral  
12 submissions regarding (a) whether the rule in question is within the  
13 intent of the legislature as expressed by the statute ~~((which))~~ that  
14 the rule implements, (b) whether the rule was adopted in accordance  
15 with all applicable provisions of law, or (c) whether ~~((the agency is~~  
16 ~~using a policy or interpretive statement in place of a))~~ an agency  
17 issuance is a de facto rule.

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

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

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

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

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

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

26 **Sec. 6.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to read  
27 as follows:

28 (1) Any person may petition the rules review committee for a review  
29 of a proposed or existing rule or (~~a policy or interpretive~~  
30 ~~statement~~) other issuance. Within thirty days of the receipt of the  
31 petition, the rules review committee shall acknowledge receipt of the  
32 petition and describe any initial action taken. If the rules review  
33 committee rejects the petition, a written statement of the reasons for  
34 rejection shall be included.

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

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

3 (a) Identify with specificity the proposed or existing rule to be  
4 reviewed;

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

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

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

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

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

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

23 ~~((Identify the specific statute which the rule interprets or  
24 implements;~~

25 ~~((e)))~~ State the reasons why the petitioner believes that the  
26 ~~((statement))~~ issuance meets the definition of a de facto rule under  
27 RCW 34.05.010 ~~((and should have been adopted according to the  
28 procedures of this chapter));~~

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

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

34 **Sec. 7.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are  
35 each reenacted and amended to read as follows:

36 (1) Each agency, in accordance with published rules, shall make  
37 available for public inspection and copying all public records, unless  
38 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. 8.** RCW 51.04.030 and 1994 c 164 s 25 are each amended to read  
5 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.

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