
SENATE BILL 5671

State of Washington

55th Legislature

1997 Regular Session

By Senator McCaslin

Read first time 02/06/97. Referred to Committee on Government Operations.

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

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

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

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

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

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

29 (~~(9)~~) (10) "Issuance" means a written document issued by an
30 agency that is available to the public. It includes, but is not
31 limited to, an agency order, directive, policy statement, interpretive
32 statement, guideline, letter, memorandum, rule, 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) Agencies are encouraged to incorporate selected adjudicative
9 decisions into rules. In doing so, the agency shall consider, among
10 other factors, the general applicability and the precedential value of
11 the adjudicative decisions.

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

20 (~~(4)~~) (5) 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 **Sec. 3.** 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) The burden of demonstrating the invalidity of agency action is
31 on the party asserting invalidity;

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

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

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

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

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

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

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

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

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

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

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

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

36 (f) The agency has not decided all issues requiring resolution by
37 the agency;

38 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
39 was made and was improperly denied or, if no motion was made, facts are

1 shown to support the grant of such a motion that were not known and
2 were not reasonably discoverable by the challenging party at the
3 appropriate time for making such a motion;

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

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

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

9 (4) Review of other agency action.

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

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

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

25 (i) Unconstitutional;

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

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

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

31 (v) Based on a de facto rule.

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

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

37 (2) ~~((All agency policy and interpretive statements are subject to
38 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. 5.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to read
25 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 the issuance, 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, the committee may, by a majority vote of its members,
9 recommend suspension of the rule. Within seven days of such vote the
10 committee shall transmit to the appropriate standing committees of the
11 legislature, the governor, the code reviser, and the agency written
12 notice of its objection and recommended suspension and the concise
13 reasons therefor. Within thirty days of receipt of the notice, the
14 governor shall transmit to the committee, the code reviser, and the
15 agency written approval or disapproval of the recommended suspension.
16 If the suspension is approved by the governor, it is effective from the
17 date of that approval and continues until ninety days after the
18 expiration of the next regular legislative session.

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

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

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

33 (1) Any person may petition the rules review committee for a review
34 of a proposed or existing rule or (~~a policy or interpretive~~
35 ~~statement~~) other issuance. Within thirty days of the receipt of the
36 petition, the rules review committee shall acknowledge receipt of the
37 petition and describe any initial action taken. If the rules review

1 committee rejects the petition, a written statement of the reasons for
2 rejection shall be included.

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

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

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

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

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

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

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

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

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

29 ~~((Identify the specific statute which the rule interprets or
30 implements;~~

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

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

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

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

3 (1) Each agency, in accordance with published rules, shall make
4 available for public inspection and copying all public records, unless
5 the record falls within the specific exemptions of subsection (6) of
6 this section, RCW 42.17.310, 42.17.315, or other statute which exempts
7 or prohibits disclosure of specific information or records. To the
8 extent required to prevent an unreasonable invasion of personal privacy
9 interests protected by RCW 42.17.310 and 42.17.315, an agency shall
10 delete identifying details in a manner consistent with RCW 42.17.310
11 and 42.17.315 when it makes available or publishes any public record;
12 however, in each case, the justification for the deletion shall be
13 explained fully in writing.

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

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

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

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

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

30 (d) Planning policies and goals, and interim and final planning
31 decisions;

32 (e) Factual staff reports and studies, factual consultant's reports
33 and studies, scientific reports and studies, and any other factual
34 information derived from tests, studies, reports, or surveys, whether
35 conducted by public employees or others; and

36 (f) Correspondence, and materials referred to therein, by and with
37 the agency relating to any regulatory, supervisory, or enforcement
38 responsibilities of the agency, whereby the agency determines, or
39 opines upon, or is asked to determine or opine upon, the rights of the

1 state, the public, a subdivision of state government, or of any private
2 party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (9) This chapter shall not be construed as giving authority to any
34 agency, the office of the secretary of the senate, or the office of the
35 chief clerk of the house of representatives to give, sell or provide
36 access to lists of individuals requested for commercial purposes, and
37 agencies, the office of the secretary of the senate, and the office of
38 the chief clerk of the house of representatives shall not do so unless
39 specifically authorized or directed by law: PROVIDED, HOWEVER, That

1 lists of applicants for professional licenses and of professional
2 licensees shall be made available to those professional associations or
3 educational organizations recognized by their professional licensing or
4 examination board, upon payment of a reasonable charge therefor:
5 PROVIDED FURTHER, That such recognition may be refused only for a good
6 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
7 the Administrative Procedure Act.

8 **Sec. 8.** RCW 51.04.030 and 1994 c 164 s 25 are each amended to read
9 as follows:

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

28 The director shall, in consultation with interested persons,
29 establish and, in his or her discretion, periodically change as may be
30 necessary, and make available a fee schedule of the maximum charges to
31 be made by any physician, surgeon, chiropractor, hospital, druggist,
32 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,
33 acting under a supervising physician or other agency or person
34 rendering services to injured workers. The department shall coordinate
35 with other state purchasers of health care services to establish as
36 much consistency and uniformity in billing and coding practices as
37 possible, taking into account the unique requirements and differences
38 between programs. No service covered under this title shall be charged

1 or paid at a rate or rates exceeding those specified in such fee
2 schedule, and no contract providing for greater fees shall be valid as
3 to the excess. The establishment of such a schedule, exclusive of
4 conversion factors, does not constitute "agency action" as used in RCW
5 34.05.010(~~(+3)~~), nor does such a fee schedule constitute a "de facto
6 rule" as used in RCW 34.05.010(~~(+15)~~).

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

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