

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5671

55th Legislature
1997 Regular Session

Passed by the Senate April 23, 1997
YEAS 35 NAYS 11

President of the Senate

Passed by the House April 14, 1997
YEAS 57 NAYS 37

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5671** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5671

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

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, 34.05.310, 34.05.570, 34.05.630, 34.05.640,
3 34.05.655, 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 of adoption,
31 directive, policy statement, interpretive statement, guideline, letter,
32 memorandum, rule, or de facto rule. "Issuance" does not include final
33 agency orders issued following an adjudicative proceeding under Part IV
34 of this chapter.

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

1 similar statute, or (iii) a license, franchise, or permission for use
2 of trademarks, symbols, and similar property owned or controlled by the
3 agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 encouraged to convert long standing interpretive and policy statements
2 into rules.))

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

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

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

24 **Sec. 3.** RCW 34.05.310 and 1995 c 403 s 301 are each amended to
25 read as follows:

26 (1) To meet the intent of providing greater public access to
27 administrative rule making and to promote consensus among interested
28 parties, agencies shall solicit comments from the public on a subject
29 of possible rule making before filing with the code reviser a notice of
30 proposed rule making under RCW 34.05.320. The agency shall prepare a
31 statement of inquiry that:

32 (a) Identifies the specific statute or statutes authorizing the
33 agency to adopt rules on this subject;

34 (b) Discusses why rules on this subject may be needed and what they
35 might accomplish;

36 (c) Identifies other federal and state agencies that regulate this
37 subject, and describes the process whereby the agency would coordinate
38 the contemplated rule with these agencies;

1 (d) Discusses the process by which the rule might be developed,
2 including, but not limited to, negotiated rule making, pilot rule
3 making, or agency study;

4 (e) Specifies the process by which interested parties can
5 effectively participate in the decision to adopt a new rule and
6 formulation of a proposed rule before its publication.

7 (2)(a) The statement of inquiry shall be filed with the code
8 reviser for publication in the state register at least thirty days
9 before the date the agency files notice of proposed rule making under
10 RCW 34.05.320 and shall be sent to any party that has requested receipt
11 of the agency's statements of inquiry.

12 (b) The statement of inquiry shall also be sent to the chair of the
13 appropriate standing committees and the majority and minority leaders
14 of the house and senate for comment on the legislative intent of the
15 statute that the rule implements. Any comments submitted by the chairs
16 or leaders shall become part of the record of any subsequent rule
17 making hearing.

18 ~~((+2))~~ (3) Agencies are encouraged to develop and use new
19 procedures for reaching agreement among interested parties before
20 publication of notice and the adoption hearing on a proposed rule.
21 Examples of new procedures include, but are not limited to:

22 (a) Negotiated rule making by which representatives of an agency
23 and of the interests that are affected by a subject of rule making,
24 including, where appropriate, county and city representatives, seek to
25 reach consensus on the terms of the proposed rule and on the process by
26 which it is negotiated; and

27 (b) Pilot rule making which includes testing the feasibility of
28 complying with or administering draft new rules or draft amendments to
29 existing rules through the use of volunteer pilot groups in various
30 areas and circumstances, as provided in RCW 34.05.313 or as otherwise
31 provided by the agency.

32 ~~((+3))~~ (4)(a) An agency must make a determination whether
33 negotiated rule making, pilot rule making, or another process for
34 generating participation from interested parties prior to development
35 of the rule is appropriate.

36 (b) An agency must include a written justification in the rule-
37 making file if an opportunity for interested parties to participate in
38 the rule-making process prior to publication of the proposed rule has
39 not been provided.

- 1 (~~(4)~~) (5) This section does not apply to:
- 2 (a) Emergency rules adopted under RCW 34.05.350;
- 3 (b) Rules relating only to internal governmental operations that
- 4 are not subject to violation by a nongovernment party;
- 5 (c) Rules adopting or incorporating by reference without material
- 6 change federal statutes or regulations, Washington state statutes,
- 7 rules of other Washington state agencies, shoreline master programs
- 8 other than those programs governing shorelines of state-wide
- 9 significance, or, as referenced by Washington state law, national
- 10 consensus codes that generally establish industry standards, if the
- 11 material adopted or incorporated regulates the same subject matter and
- 12 conduct as the adopting or incorporating rule;
- 13 (d) Rules that only correct typographical errors, make address or
- 14 name changes, or clarify language of a rule without changing its
- 15 effect;
- 16 (e) Rules the content of which is explicitly and specifically
- 17 dictated by statute;
- 18 (f) Rules that set or adjust fees or rates pursuant to legislative
- 19 standards; or
- 20 (g) Rules that adopt, amend, or repeal:
- 21 (i) A procedure, practice, or requirement relating to agency
- 22 hearings; or
- 23 (ii) A filing or related process requirement for applying to an
- 24 agency for a license or permit.

25 **Sec. 4.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to

26 read as follows:

- 27 (1) Generally. Except to the extent that this chapter or another
- 28 statute provides otherwise:
- 29 (a) The burden of demonstrating the invalidity of agency action is
- 30 on the party asserting invalidity;
- 31 (b) The validity of agency action shall be determined in accordance
- 32 with the standards of review provided in this section, as applied to
- 33 the agency action at the time it was taken;
- 34 (c) The court shall make a separate and distinct ruling on each
- 35 material issue on which the court's decision is based; and
- 36 (d) The court shall grant relief only if it determines that a
- 37 person seeking judicial relief has been substantially prejudiced by the
- 38 action complained of.

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

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

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

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

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

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

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

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

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

33 (f) The agency has not decided all issues requiring resolution by
34 the agency;

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

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

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

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

6 (4) Review of other agency action.

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

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

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

22 (i) Unconstitutional;

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

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

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

28 (v) Based on a de facto rule.

29 **Sec. 5.** RCW 34.05.630 and 1996 c 318 s 4 are each amended to read
30 as follows:

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

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

36 ~~(3))~~ If the rules review committee finds by a majority vote of its
37 members: (a) That an existing rule is not within the intent of the
38 legislature as expressed by the statute ~~((which))~~ that the rule

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

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

21 **Sec. 6.** RCW 34.05.640 and 1996 c 318 s 5 are each amended to read
22 as follows:

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

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

1 Such notice and statement shall also be provided to the agency by the
2 rules review committee.

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

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

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

28 **Sec. 7.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to read
29 as follows:

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

37 (2) A person may petition the rules review committee under
38 subsection (1) of this section requesting review of an existing rule

1 only if the person has petitioned the agency to amend or repeal the
2 rule under RCW 34.05.330(1) and such petition was denied.

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

5 (a) Identify with specificity the proposed or existing rule to be
6 reviewed;

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

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

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

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

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

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

25 (b) ~~((Identify the specific statute which the rule interprets or
26 implements;~~

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

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

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

36 **Sec. 8.** RCW 42.17.260 and 1995 c 397 s 11 and 1995 c 341 s 1 are
37 each reenacted and amended to read as follows:

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

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

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

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

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

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

28 (d) Planning policies and goals, and interim and final planning
29 decisions;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) It has been indexed in an index available to the public; or
2 (b) Parties affected have timely notice (actual or constructive) of
3 the terms thereof.

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

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

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

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

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

1 examination board, upon payment of a reasonable charge therefor:
2 PROVIDED FURTHER, That such recognition may be refused only for a good
3 cause pursuant to a hearing under the provisions of chapter 34.05 RCW,
4 the Administrative Procedure Act.

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

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

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

1 conversion factors, does not constitute "agency action" as used in RCW
2 34.05.010(~~(+3)~~), nor does such a fee schedule constitute a "de facto
3 rule" as used in RCW 34.05.010(~~(+15)~~).

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

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