

---

**ENGROSSED SUBSTITUTE HOUSE BILL 1010**

---

**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Government Operations (originally sponsored by Representatives Reams, Horn, Lisk, Cairnes, Dyer, Van Luven, Ballasiotes, Buck, Casada, D. Schmidt, B. Thomas, Chandler, L. Thomas, Brumsickle, Sehlin, Sherstad, Carlson, Benton, Skinner, Kremen, Hargrove, Cooke, Delvin, Schoesler, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Hickel, Backlund, Crouse, Elliot, Pennington, Mastin, Carrell, Mitchell, K. Schmidt, Chappell, Basich, Grant, Smith, Robertson, Foreman, Honeyford, Pelesky, Blanton, Koster, Lambert, Mulliken, Boldt, McMorris, Clements, Fuhrman, Campbell, Sheldon, Huff, Mielke, Talcott, Silver, McMahan, Stevens, Morris and Hymes)

Read first time 01/20/95.

1       AN ACT Relating to regulatory reform; amending RCW 43.70.040,  
2 82.01.060, 46.01.110, 50.12.010, 76.09.040, 77.04.090, 48.02.060,  
3 34.05.570, 34.05.310, 34.05.313, 34.05.370, 34.05.380, 34.05.330,  
4 19.85.030, 34.05.010, 34.05.320, 34.05.350, 34.05.610, 34.05.620,  
5 34.05.630, 34.05.640, 34.05.650, 34.05.660, 42.40.010, 42.40.020,  
6 42.40.030, 43.31.086, and 43.180.110; adding a new section to chapter  
7 43.12 RCW; adding new sections to chapter 43.20A RCW; adding a new  
8 section to chapter 43.23 RCW; adding new sections to chapter 43.21A  
9 RCW; adding new sections to chapter 43.22 RCW; adding new sections to  
10 chapter 43.24 RCW; adding a new section to chapter 50.12 RCW; adding  
11 new sections to chapter 34.05 RCW; adding a new section to chapter  
12 19.85 RCW; adding a new section to chapter 43.30 RCW; adding a new  
13 section to chapter 43.70 RCW; adding a new section to chapter 43.300  
14 RCW; adding a new section to chapter 48.02 RCW; adding a new section to  
15 chapter 50.08 RCW; adding a new section to chapter 76.09 RCW; adding a  
16 new section to chapter 82.01 RCW; adding new sections to chapter 4.84  
17 RCW; adding a new section to chapter 43.88 RCW; adding a new chapter to  
18 Title 44 RCW; creating new sections; recodifying RCW 34.05.610,  
19 34.05.620, 34.05.630, 34.05.640, 34.05.650, and 34.05.660; repealing  
20 RCW 43.21A.080, 50.12.040, and 19.85.060; prescribing penalties; and  
21 providing for submission of this act to a vote of the people.

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

2 **PART 1**

3 **GRANTS OF RULE-MAKING AUTHORITY**

4 NEW SECTION. **Sec. 101.** (1) The legislature recognizes that clear  
5 and specific grants of rule-making authority are necessary for  
6 accountability in decision making by governmental agencies, and that an  
7 agency should exercise jurisdiction and adopt rules over a subject  
8 matter only if it has obvious and explicit rule-making authority to do  
9 so. It is therefore the legislature's purpose to ensure that future  
10 rules exist only pursuant to clear and appropriate rule-making  
11 authority.

12 (2) The legislature further finds that state agencies have adopted  
13 administrative rules without clear authority to do so from the  
14 legislature, relying on general grants of authority rather than  
15 specific legislative policy direction. This has resulted in agency-  
16 initiated policy that has been adopted without the benefit of the  
17 public dialogue and accountability inherent to the legislative process.  
18 It is therefore the intent of the legislature to eliminate reliance on  
19 general grants of authority, limit certain agency rule making to those  
20 matters specifically authorized by the legislature, and that grants of  
21 rule-making authority be narrowly construed.

22 NEW SECTION. **Sec. 102.** A new section is added to chapter 43.12  
23 RCW to read as follows:

24 The commissioner of public lands may adopt, in accordance with  
25 chapter 34.05 RCW, rules or policy statements, other than emergency  
26 rules, only:

27 (1) As specifically required by federal law, and only to the extent  
28 specifically required; or

29 (2) As specifically authorized, and only to the extent specifically  
30 authorized, by the legislature.

31 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.20A  
32 RCW to read as follows:

33 The secretary may adopt, in accordance with chapter 34.05 RCW,  
34 rules or policy statements, other than emergency rules, only:

1 (1) As specifically required by federal law, and only to the extent  
2 specifically required; or

3 (2) As specifically authorized, and only to the extent specifically  
4 authorized, by the legislature.

5 NEW SECTION. **Sec. 104.** A new section is added to chapter 43.23  
6 RCW to read as follows:

7 The director of agriculture may adopt, in accordance with chapter  
8 34.05 RCW, rules or policy statements, other than emergency rules,  
9 only:

10 (1) As specifically required by federal law, and only to the extent  
11 specifically required; or

12 (2) As specifically authorized, and only to the extent specifically  
13 authorized, by the legislature.

14 **Sec. 105.** RCW 43.70.040 and 1989 1st ex.s. c 9 s 106 are each  
15 amended to read as follows:

16 In addition to any other powers granted the secretary, the  
17 secretary may:

18 (1) Adopt, in accordance with chapter 34.05 RCW, rules (~~((necessary~~  
19 ~~to carry out the provisions of this act))~~ or policy statements, other  
20 than emergency rules, only:

21 (a) As specifically required, and only to the extent specifically  
22 required, by federal law; or

23 (b) As specifically authorized, and only to the extent specifically  
24 authorized, by the legislature;

25 (2) Appoint such advisory committees as may be necessary to carry  
26 out the provisions of (~~(this act))~~ chapter 9, Laws of 1989 1st ex.  
27 sess. Members of such advisory committees are authorized to receive  
28 travel expenses in accordance with RCW 43.03.050 and 43.03.060. The  
29 secretary and the board of health shall review each advisory committee  
30 within their jurisdiction and each statutory advisory committee on a  
31 biennial basis to determine if such advisory committee is needed. The  
32 criteria specified in RCW 43.131.070 shall be used to determine whether  
33 or not each advisory committee shall be continued;

34 (3) Undertake studies, research, and analysis necessary to carry  
35 out the provisions of (~~(this act))~~ chapter 9, Laws of 1989 1st ex.  
36 sess. in accordance with RCW 43.70.050;

1 (4) Delegate powers, duties, and functions of the department to  
2 employees of the department as the secretary deems necessary to carry  
3 out the provisions of (~~this act~~) chapter 9, Laws of 1989 1st ex.  
4 sess.;

5 (5) Enter into contracts on behalf of the department to carry out  
6 the purposes of (~~this act~~) chapter 9, Laws of 1989 1st ex. sess.;

7 (6) Act for the state in the initiation of, or the participation  
8 in, any intergovernmental program to the purposes of (~~this act~~)  
9 chapter 9, Laws of 1989 1st ex. sess.; or

10 (7) Accept gifts, grants, or other funds.

11 **Sec. 106.** RCW 82.01.060 and 1977 c 75 s 92 are each amended to  
12 read as follows:

13 The director of revenue, hereinafter in (~~this 1967 amendatory~~  
14 ~~act~~) chapter 26, Laws of 1967 ex. sess. referred to as the director,  
15 through the department of revenue, hereinafter in (~~this 1967~~  
16 ~~amendatory act~~) chapter 26, Laws of 1967 ex. sess. referred to as the  
17 department, shall:

18 (1) Assess and collect all taxes and administer all programs  
19 relating to taxes which are the responsibility of the tax commission at  
20 the time (~~this 1967 amendatory act~~) chapter 26, Laws of 1967 ex.  
21 sess. takes effect or which the legislature may hereafter make the  
22 responsibility of the director or of the department;

23 (2) (~~Make, adopt and publish such rules and regulations as he may~~  
24 ~~deem necessary or desirable to carry out the powers and duties imposed~~  
25 ~~upon him or the department by the legislature:— PROVIDED, That~~) The  
26 director of revenue may adopt, in accordance with chapter 34.05 RCW,  
27 rules or policy statements, other than emergency rules, only:

28 (a) As specifically required by federal law, and only to the extent  
29 specifically required; or

30 (b) As specifically authorized, and only to the extent specifically  
31 authorized, by the legislature;

32 (3) Rules (~~and regulations~~) adopted by the tax commission prior  
33 to the effective date of this (~~1967 amendatory~~) 1995 act shall remain  
34 in force until such time as they may be revised or rescinded by the  
35 director;

36 (~~(3)~~) (4) Provide by general (~~regulations~~) rules for an  
37 adequate system of departmental review of the actions of the department

1 or of its officers and employees in the assessment or collection of  
2 taxes;

3 ~~((4))~~ (5) Maintain a tax research section with sufficient  
4 technical, clerical and other employees to conduct constant observation  
5 and investigation of the effectiveness and adequacy of the revenue laws  
6 of this state and of the sister states in order to assist the governor,  
7 the legislature and the director in estimation of revenue, analysis of  
8 tax measures, and determination of the administrative feasibility of  
9 proposed tax legislation and allied problems;

10 ~~((5))~~ (6) Recommend to the governor such amendments, changes in,  
11 and modifications of the revenue laws as seem proper and requisite to  
12 remedy injustice and irregularities in taxation, and to facilitate the  
13 assessment and collection of taxes in the most economical manner.

14 NEW SECTION. **Sec. 107.** A new section is added to chapter 43.21A  
15 RCW to read as follows:

16 The director of the department of ecology may adopt, in accordance  
17 with chapter 34.05 RCW, rules or policy statements, other than  
18 emergency rules, only:

19 (1) As specifically required by federal law, and only to the extent  
20 specifically required; or

21 (2) As specifically authorized, and only to the extent specifically  
22 authorized, by the legislature.

23 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.22  
24 RCW to read as follows:

25 The director of the department of labor and industries may adopt,  
26 in accordance with chapter 34.05 RCW, rules or policy statements, other  
27 than emergency rules, only:

28 (1) As specifically required by federal law, and only to the extent  
29 specifically required; or

30 (2) As specifically authorized, and only to the extent specifically  
31 authorized, by the legislature.

32 NEW SECTION. **Sec. 109.** A new section is added to chapter 43.24  
33 RCW to read as follows:

34 The director of the department of licensing may adopt, in  
35 accordance with chapter 34.05 RCW, rules or policy statements, other  
36 than emergency rules, only:

1 (1) As specifically required by federal law, and only to the extent  
2 specifically required; or

3 (2) As specifically authorized, and only to the extent specifically  
4 authorized, by the legislature.

5 **Sec. 110.** RCW 46.01.110 and 1979 c 158 s 120 are each amended to  
6 read as follows:

7 The director of licensing is hereby authorized to adopt ~~((and~~  
8 ~~enforce such reasonable rules and regulations as may be consistent with~~  
9 ~~and))~~, in accordance with chapter 34.05 RCW, rules or policy  
10 statements, other than emergency rules, only:

11 (1) As specifically required by federal law, and only to the extent  
12 specifically required; or

13 (2) As specifically authorized, and only to the extent specifically  
14 authorized, by the legislature.

15 The rules shall be necessary to carry out the provisions relating  
16 to vehicle licenses, certificates of ownership and license registration  
17 and drivers' licenses not in conflict with the provisions of Title 46  
18 RCW.

19 **Sec. 111.** RCW 50.12.010 and 1977 c 75 s 75 are each amended to  
20 read as follows:

21 The commissioner shall administer this title. He or she shall have  
22 the power and authority to ~~((adopt, amend, or rescind such rules and~~  
23 ~~regulations, to))~~ employ ~~((such))~~ persons, make ~~((such))~~ expenditures,  
24 require ~~((such))~~ reports, make ~~((such))~~ investigations, and take  
25 ~~((such))~~ other actions, not including the adoption, amendment, or  
26 rescission of rules or policy statements other than emergency rules, as  
27 he or she deems necessary or suitable to that end. ((Such rules and  
28 regulations shall be effective upon publication and in the manner, not  
29 inconsistent with the provisions of this title, which the commissioner  
30 shall prescribe.)) The commissioner, in accordance with the provisions  
31 of this title, shall determine the organization and methods of  
32 procedure of the divisions referred to in this title, and shall have an  
33 official seal which shall be judicially noticed. The commissioner  
34 shall submit to the governor a report covering the administration and  
35 operation of this title during the preceding fiscal year, July 1  
36 through June 30, and shall make ~~((such))~~ recommendations for amendments  
37 to this title as he or she deems proper. ~~((Such))~~ The report shall

1 include a balance sheet of the moneys in the fund in which there shall  
2 be provided, if possible, a reserve against the liability in future  
3 years to pay benefits in excess of the then current contributions,  
4 which reserve shall be set up by the commissioner in accordance with  
5 accepted actuarial principles on the basis of statistics of employment,  
6 business activity, and other relevant factors for the longest possible  
7 period. Whenever the commissioner believes that a change in  
8 contribution or benefit rates will become necessary to protect the  
9 solvency of the fund, he or she shall promptly ((se)) inform the  
10 governor and legislature and make recommendations with respect thereto.

11 NEW SECTION. **Sec. 112.** A new section is added to chapter 50.12  
12 RCW to read as follows:

13 The commissioner of the employment security department may adopt,  
14 in accordance with chapter 34.05 RCW, rules or policy statements, other  
15 than emergency rules, only:

16 (1) As specifically required by federal law, and only to the extent  
17 specifically required; or

18 (2) As specifically authorized, and only to the extent specifically  
19 authorized, by the legislature.

20 **Sec. 113.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to  
21 read as follows:

22 ((Where necessary to accomplish the purposes and policies  
23 stated in RCW 76.09.010, and to implement the provisions of this  
24 chapter,)) The board shall ((promulgate)) adopt forest practices  
25 ((regulations)) rules or policy statements, other than emergency rules,  
26 pursuant to chapter 34.05 RCW and in accordance with the procedures  
27 enumerated in this section:

28 (a) As specifically required by federal law, and only to the extent  
29 specifically required; or

30 (b) As specifically authorized, and only to the extent specifically  
31 authorized, by the legislature.

32 (2) The board shall adopt rules that:

33 (a) Establish minimum standards for forest practices;

34 (b) Provide procedures for the voluntary development of resource  
35 management plans which may be adopted as an alternative to the minimum  
36 standards in (a) of this subsection if the plan is consistent with the

1 purposes and policies stated in RCW 76.09.010 and the plan meets or  
2 exceeds the objectives of the minimum standards;

3 (c) Set forth necessary administrative provisions; and

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

6 Forest practices (~~((regulations))~~) rules pertaining to water quality  
7 protection shall be (~~((promulgated))~~) adopted individually by the board  
8 and by the department of ecology after they have reached agreement with  
9 respect thereto. All other forest practices (~~((regulations))~~) rules  
10 shall be (~~((promulgated))~~) adopted by the board.

11 Forest practices regulations shall be administered and enforced by  
12 the department except as otherwise provided in this chapter. Such  
13 regulations shall be promulgated and administered so as to give  
14 consideration to all purposes and policies set forth in RCW 76.09.010.

15 (~~((+2+))~~) (3) The board shall prepare proposed forest practices  
16 (~~((regulations))~~) rules. In addition to any forest practices  
17 (~~((regulations))~~) rules relating to water quality protection proposed by  
18 the board, the department of ecology shall prepare proposed forest  
19 practices (~~((regulations))~~) rules relating to water quality protection.

20 Prior to initiating the rule making process, the proposed  
21 (~~((regulations))~~) rules shall be submitted for review and comments to the  
22 department of fish and wildlife and to the counties of the state.  
23 After receipt of the proposed forest practices (~~((regulations))~~) rules,  
24 the department of fish and wildlife and the counties of the state shall  
25 have thirty days in which to review and submit comments to the board,  
26 and to the department of ecology with respect to its proposed  
27 (~~((regulations))~~) rules relating to water quality protection. After the  
28 expiration of such thirty day period the board and the department of  
29 ecology shall jointly hold one or more hearings on the proposed  
30 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such  
31 hearing(s) any county may propose specific forest practices  
32 (~~((regulations))~~) rules relating to problems existing within such county.  
33 The board and the department of ecology may adopt such proposals if  
34 they find the proposals are consistent with the purposes and policies  
35 of this chapter.

36 **Sec. 114.** RCW 77.04.090 and 1984 c 240 s 1 are each amended to  
37 read as follows:

1 The commission shall adopt (~~permanent rules and amendments to or~~  
2 ~~repeals of existing rules~~), in accordance with chapter 34.05 RCW,  
3 rules or policy statements, other than emergency rules, only:

4 (1) As specifically required by federal law, and only to the extent  
5 specifically required; or

6 (2) As specifically authorized, and only to the extent specifically  
7 authorized, by the legislature, by approval of four members by  
8 resolution, entered and recorded in the minutes of the commission. The  
9 commission shall adopt emergency rules by approval of four members.  
10 The commission or the director, when adopting emergency rules under RCW  
11 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.  
12 Judicial notice shall be taken of the rules filed and published as  
13 provided in RCW 34.05.380 and 34.05.210.

14 A copy of an emergency rule, certified as a true copy by a member  
15 of the commission, the director, or by a person authorized in writing  
16 by the director to make the certification, is admissible in court as  
17 prima facie evidence of the adoption and validity of the rule.

18 NEW SECTION. Sec. 115. The following acts or parts of acts are  
19 each repealed:

20 (1) RCW 43.21A.080 and 1970 ex.s. c 62 s 8; and

21 (2) RCW 50.12.040 and 1973 1st ex.s. c 158 s 3 & 1945 c 35 s 43.

22 **Sec. 116.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to  
23 read as follows:

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

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

29 (3) The commissioner may:

30 (a) (~~Make reasonable rules and regulations for effectuating any~~  
31 ~~provision of this code, except those relating to his election,~~  
32 ~~qualifications, or compensation. No such rules and regulations shall~~  
33 ~~be effective prior to their being filed for public inspection in the~~  
34 ~~commissioner's office~~)) Adopt, in accordance with chapter 34.05 RCW,  
35 rules or policy statements, other than emergency rules, only:

36 (i) As specifically required by federal law, and only to the extent  
37 specifically required; or

1       (ii) As specifically authorized, and only to the extent  
2 specifically authorized, by the legislature.

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

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

8       **Sec. 117.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to  
9 read as follows:

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

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

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

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

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

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

27       (b) The validity of any rule may be determined upon petition for a  
28 declaratory judgment addressed to the superior court of Thurston  
29 county, when it appears that the rule, or its threatened application,  
30 interferes with or impairs or immediately threatens to interfere with  
31 or impair the legal rights or privileges of the petitioner. The  
32 declaratory judgment order may be entered whether or not the petitioner  
33 has first requested the agency to pass upon the validity of the rule in  
34 question.

35       (c) In a proceeding involving review of a rule, the court shall  
36 declare the rule invalid only if it finds that: ~~((it))~~ The rule  
37 violates constitutional provisions~~((the rule))~~; the rule exceeds the statutory  
38 authority of the agency~~((the rule))~~; the rule was adopted without compliance

1 with statutory rule-making procedures(~~(, or could not conceivably have~~  
2 ~~been the product of a rational decision-maker)~~); the factual basis for  
3 the rule under RCW 34.05.370(2)(i) is not supported by substantial  
4 evidence; or the rule is arbitrary or capricious. Grants of rule-  
5 making authority to an agency by the legislature shall be narrowly  
6 construed.

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

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

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

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

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

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

21 (f) The agency has not decided all issues requiring resolution by  
22 the agency;

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

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

31 (i) The order is arbitrary or capricious.

32 (4) Review of other agency action.

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

35 (b) A person whose rights are violated by an agency's failure to  
36 perform a duty that is required by law to be performed may file a  
37 petition for review pursuant to RCW 34.05.514, seeking an order  
38 pursuant to this subsection requiring performance. Within twenty days  
39 after service of the petition for review, the agency shall file and

1 serve an answer to the petition, made in the same manner as an answer  
2 to a complaint in a civil action. The court may hear evidence,  
3 pursuant to RCW 34.05.562, on material issues of fact raised by the  
4 petition and answer.

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

9 (i) Unconstitutional;

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

12 (iii) Arbitrary or capricious; or

13 (iv) Taken by persons who were not properly constituted as agency  
14 officials lawfully entitled to take such action.

15 **PART 2**

16 **RULE-MAKING REQUIREMENTS**

17 **Sec. 201.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to  
18 read as follows:

19 (1) To meet the intent of providing greater public access to  
20 administrative rule making and to promote consensus among interested  
21 parties, agencies shall solicit comments from the public on a subject  
22 of possible rule making before publication of a notice of proposed rule  
23 adoption under RCW 34.05.320. The agency shall prepare a statement of  
24 intent that:

25 (a) States the specific statutory authority for the new rule;

26 (b) Identifies the reasons the new rule is needed;

27 (c) Identifies the goals of the new rule;

28 (d) Identifies other agencies that have rule-making authority over  
29 the activity or subject matter of the new rule, and describes the  
30 process for coordination with those agencies;

31 (e) Describes the process by which the rule will be developed,  
32 including, but not limited to, negotiated rule making, pilot rule  
33 making, or agency study; and

34 ~~((e))~~ (f) Specifies the process by which interested parties can  
35 effectively participate in the formulation of the new rule.

1 The statement of intent shall be filed with the code reviser for  
2 publication in the state register and shall be sent to any party that  
3 has requested receipt of the agency's statements of intent.

4 (2) Agencies are encouraged to develop and use new procedures for  
5 reaching agreement among interested parties before publication of  
6 notice and the adoption hearing on a proposed rule. Examples of new  
7 procedures include, but are not limited to:

8 (a) Negotiated rule making which includes:

9 (i) Identifying individuals and organizations that have a  
10 recognized interest in or will be significantly affected by the  
11 adoption of the proposed rule;

12 (ii) Soliciting participation by persons who are capable, willing,  
13 and appropriately authorized to enter into such negotiations;

14 (iii) Assuring that participants fully recognize the consequences  
15 of not participating in the process, are committed to negotiate in good  
16 faith, and recognize the alternatives available to other parties;

17 (iv) Establishing guidelines to encourage consideration of all  
18 pertinent issues, to set reasonable completion deadlines, and to  
19 provide fair and objective settlement of disputes that may arise;

20 (v) Agreeing on a reasonable time period during which the agency  
21 will be bound to the rule resulting from the negotiations without  
22 substantive amendment; and

23 (vi) Providing a mechanism by which one or more parties may  
24 withdraw from the process or the negotiations may be terminated if it  
25 appears that consensus cannot be reached on a draft rule that  
26 accommodates the needs of the agency, interested parties, and the  
27 general public and conforms to the legislative intent of the statute  
28 that the rule is intended to implement; and

29 (b) Pilot rule making which includes testing the draft of a  
30 proposed rule through the use of volunteer pilot study groups in  
31 various areas and circumstances.

32 (3)(a) An agency must make a determination whether negotiated rule  
33 making, pilot rule making, or another process for generating  
34 participation from interested parties prior to development of the rule  
35 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       **Sec. 202.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to  
2 read as follows:

3       ~~((If,))~~ (1) During the development of a rule or after its adoption,  
4 an agency ~~((determines that implementation may produce unreasonable~~  
5 economic, procedural, or technical burdens, agencies are encouraged  
6 to)) may develop methods for measuring or testing the feasibility of  
7 ((compliance)) complying with or administering the rule~~((, including~~  
8 the use of voluntary pilot study groups)) and for identifying simple,  
9 efficient, and economical alternatives for achieving the goal of the  
10 rule. ~~((Measuring and testing methods should emphasize))~~ A pilot  
11 project shall include public notice, participation by ~~((persons who~~  
12 have a recognized interest in or are significantly affected by the  
13 adoption of the proposed rule)) volunteers who are or will be subject  
14 to the rule, a high level of involvement from agency management,  
15 ~~((consensus on issues and procedures among participants in the pilot~~  
16 group, assurance of fairness, and)) reasonable completion dates, and a  
17 process by which one or more parties may withdraw from the process or  
18 the process may be terminated ~~((if consensus cannot be reached on the~~  
19 rule)). Volunteers who agree to test a rule and attempt to meet the  
20 requirements of the draft rule, to report periodically to the proposing  
21 agency on the extent of their ability to meet the requirements of the  
22 draft rule, and to make recommendations for improving the draft rule  
23 shall not be obligated to comply fully with the rule being tested nor  
24 be subject to any enforcement action or other sanction for failing to  
25 comply with the requirements of the draft rule.

26       (2) An agency conducting a pilot rule project authorized under  
27 subsection (1) of this section may waive one or more provisions of  
28 agency rules otherwise applicable to participants in such a pilot  
29 project if the agency first determines that such a waiver is in the  
30 public interest and necessary to conduct the project. Such a waiver  
31 may be only for a stated period of time, not to exceed the duration of  
32 the project.

33       (3) The findings of the pilot project should be widely shared and,  
34 where appropriate, adopted as amendments to the rule.

35       (4) If an agency conducts a pilot rule project in lieu of meeting  
36 the requirements of the regulatory fairness act, chapter 19.85 RCW, the  
37 agency shall ensure the following conditions are met:

38       (a) If over ten small businesses are affected, there shall be at  
39 least ten small businesses in the test group and at least one-half of

1 the volunteers participating in the pilot test group shall be small  
2 businesses.

3 (b)(i) If there are at least one hundred businesses affected, the  
4 participation by small businesses in the test group shall be as  
5 follows:

6 (A) Not less than twenty percent of the small businesses must  
7 employ twenty-six to fifty employees;

8 (B) Not less than twenty percent of the small businesses must  
9 employ eleven to twenty-six employees; and

10 (C) Not less than twenty percent of the small businesses must  
11 employ zero to ten employees.

12 (ii) If there do not exist a sufficient number of small businesses  
13 in each size category set forth in (b)(i) of this subsection willing to  
14 participate in the pilot project to meet the minimum requirements of  
15 that subsection, then the agency must comply with this section to the  
16 maximum extent practicable.

17 (c) The agency may not terminate the pilot project before  
18 completion.

19 (d) Before filing the notice of proposed rule making pursuant to  
20 RCW 34.05.320, the agency must prepare a report of the pilot rule  
21 project that includes:

22 (i) A description of the difficulties small businesses had in  
23 complying with the pilot rule;

24 (ii) A list of the recommended revisions to the rule to make  
25 compliance with the rule easier or to reduce the cost of compliance  
26 with the rule by the small businesses participating in the pilot rule  
27 project; and

28 (iii) A written statement explaining the options it considered to  
29 resolve each of the difficulties described and a statement explaining  
30 its reasons for not including a recommendation by the pilot test group  
31 to revise the rule.

32 **Sec. 203.** RCW 34.05.370 and 1994 c 249 s 2 are each amended to  
33 read as follows:

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

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

1 (a) Copies of all publications in the state register with respect  
2 to the rule or the proceeding upon which the rule is based;

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

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

10 (d) Any official transcript of oral presentations made in the  
11 proceeding on which the rule is based or, if not transcribed, any tape  
12 recording or stenographic record of them, and any memorandum prepared  
13 by a presiding official summarizing the contents of those  
14 presentations;

15 (e) The concise explanatory statement required by RCW 34.05.355;

16 (f) All petitions for exceptions to, amendment of, or repeal or  
17 suspension of, the rule;

18 (g) Citations to data, factual information, studies, or reports on  
19 which the agency relies in the adoption of the rule, indicating where  
20 such data, factual information, studies, or reports are available for  
21 review by the public;

22 (h) The written summary and response required by RCW 34.05.325(6);  
23 ((and))

24 (i) Evidence that the rule is: Authorized or required, citing  
25 statutory authority; necessary; cost-effective; consistent with, and  
26 not duplicated by, other federal, state, or local laws; enforceable;  
27 targeted; measurable, quantifying intended results; the least  
28 burdensome alternative; and not in excess of federal law as it existed  
29 on January 1, 1995, unless authorized by state statute; and

30 (j) Any other material placed in the file by the agency.

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

38 (4) Upon judicial review, the file required by this section  
39 constitutes the official agency rule-making file with respect to that

1 rule. (~~Unless otherwise required by another provision of law,~~) The  
2 official agency rule-making file (~~(need not be)~~) is the exclusive basis  
3 for agency action on that rule.

4 NEW SECTION. **Sec. 204.** A new section is added to chapter 34.05  
5 RCW to read as follows:

6 (1) Upon adoption of a rule, an agency shall: (a) Inform and  
7 educate affected persons about the rule; and (b) promote voluntary  
8 compliance.

9 (2) Upon the adoption of a rule regulating the same activity or  
10 subject matter as another provision of federal, state, or local law, an  
11 agency shall do all of the following:

12 (a) Provide to the business assistance center a list citing by  
13 reference the other federal, state, and local laws that regulate the  
14 same activity or subject matter;

15 (b) Coordinate implementation and enforcement of the rule with the  
16 other federal, state, and local entities regulating the same activity  
17 or subject matter by doing one or more of the following: (i) Deferring  
18 to the other entity; (ii) designating a lead agency; or (iii) entering  
19 into an agreement with the other entities specifying how the agency and  
20 entities will coordinate implementation and enforcement. If the agency  
21 is unable to meet this requirement, the agency shall report to the  
22 legislature pursuant to (c) of this subsection;

23 (c) Report to the chief clerk of the house of representatives and  
24 the secretary of the senate regarding legislation that may be necessary  
25 to eliminate or mitigate the adverse effects of any overlap or  
26 duplication or difference from federal law, and to facilitate  
27 coordination with appropriate governmental entities.

28 **Sec. 205.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to  
29 read as follows:

30 (1) Each agency shall file in the office of the code reviser a  
31 certified copy of all rules it adopts, except for rules contained in  
32 tariffs filed with or published by the Washington utilities and  
33 transportation commission. The code reviser shall place upon each rule  
34 a notation of the time and date of filing and shall keep a permanent  
35 register of filed rules open to public inspection. In filing a rule,  
36 each agency shall use the standard form prescribed for this purpose by  
37 the code reviser.

1 (2) Emergency rules adopted under RCW 34.05.350 become effective  
2 upon filing unless a later date is specified in the order of adoption.  
3 All other rules become effective upon the expiration of thirty days  
4 after the date of filing, unless a later date is required by statute or  
5 specified in the order of adoption.

6 (3) A rule may become effective immediately upon its filing with  
7 the code reviser or on any subsequent date earlier than that  
8 established by subsection (2) of this section, if the agency  
9 establishes that effective date in the adopting order and finds that:

10 (a) Such action is required by the state or federal Constitution,  
11 a statute, or court order;

12 (b) The rule only delays the effective date of another rule that is  
13 not yet effective; or

14 (c) The earlier effective date is necessary because of imminent  
15 peril to the public health, safety, or welfare.

16 The finding and a brief statement of the reasons therefor required  
17 by this subsection shall be made a part of the order adopting the rule.

18 (4) With respect to a rule made effective pursuant to subsection  
19 (3) of this section, each agency shall make reasonable efforts to make  
20 the effective date known to persons who may be affected by it.

21 (5) No rule, adopted by any of the following agencies, is effective  
22 for more than seven years after its adoption or seven years after the  
23 effective date of this section, whichever is later: Department of  
24 ecology, employment security department, department of labor and  
25 industries, department of revenue, department of licensing, department  
26 of health, department of fish and wildlife, forest practices board,  
27 commissioner of public lands, department of social and health services,  
28 or the office of the insurance commissioner. A rule made ineffective  
29 under this subsection may be readopted according to the procedures  
30 established in this chapter.

31 NEW SECTION. Sec. 206. A new section is added to chapter 34.05  
32 RCW to read as follows:

33 The department of ecology, employment security department,  
34 department of labor and industries, department of revenue, department  
35 of licensing, department of health, department of fish and wildlife,  
36 forest practices board, commissioner of public lands, department of  
37 social and health services, department of agriculture, and the office

1 of the insurance commissioner shall review their respective rules as  
2 follows:

3 (1) Fifty percent of their rules existing on the effective date of  
4 this section shall be reviewed within three years of the effective date  
5 of this section;

6 (2) Eighty percent of their rules existing on the effective date of  
7 this section shall be reviewed within five years of the effective date  
8 of this section; and

9 (3) One hundred percent of their rules existing on the effective  
10 date of this section shall be reviewed within seven years of the  
11 effective date of this section.

12 **Sec. 207.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to  
13 read as follows:

14 (1) Any person may petition an agency requesting the adoption,  
15 amendment, or repeal of any rule. Each agency may prescribe by rule  
16 the form for such petitions and the procedure for their submission,  
17 consideration, and disposition. Within sixty days after submission of  
18 a petition, the agency shall ~~((+1))~~ (a) either deny the petition in  
19 writing, stating its reasons for the denial, or ~~((+2))~~ (b) initiate  
20 rule-making proceedings in accordance with this chapter.

21 (2) If any agency named in RCW 43.17.010 denies a petition to  
22 repeal or amend a rule submitted under subsection (1) of this section,  
23 the petitioner may appeal the denial to the governor. The petitioner  
24 may file notice of the appeal with the code reviser for publication in  
25 the Washington State Register. Within sixty days after receiving the  
26 appeal, the governor shall either reject the appeal in writing, stating  
27 his or her reasons for the rejection, or order the agency to initiate  
28 rule-making proceedings in accordance with this chapter. In ruling on  
29 the appeal, the governor shall consider:

30 (a) Whether the rule was adopted in compliance with RCW  
31 34.05.370(2)(i);

32 (b) Whether the agency has established an adequate internal rules  
33 review process, allowing public participation, and has subjected the  
34 rule to that review;

35 (c) The nature of complaints and other comments received from the  
36 public concerning the rule;

37 (d) Whether the rule exceeds specific federal requirements or  
38 specific legislative authority, or conflicts with, overlaps, or

1 duplicates any other provision of federal, state, or local law and, if  
2 so, whether the agency has taken steps to mitigate any adverse effects  
3 of the excess, conflict, overlap, or duplication;

4 (e) The extent to which technology, social or economic conditions,  
5 or other relevant factors have changed since the rule was adopted, and  
6 whether, given those changes, the rule continues to be necessary and  
7 appropriate;

8 (f) Whether the statute that the rule implements has been amended  
9 or repealed by the legislature, or ruled invalid by a court.

10 (3) The governor shall file a copy of the rejection or order in  
11 subsection (2) of this section with the regulatory oversight committee  
12 and with the code reviser for publication in the Washington State  
13 Register.

14 **PART 3**

15 **REGULATORY FAIRNESS**

16 **Sec. 301.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to  
17 read as follows:

18 ~~(1) ((In the adoption of any rule pursuant to RCW 34.05.320 that~~  
19 ~~will impose more than minor costs on more than twenty percent of all~~  
20 ~~industries, or more than ten percent of any one industry, the adopting~~  
21 ~~agency:~~

22 ~~(a) Shall reduce the economic impact of the rule on small business~~  
23 ~~by doing one or more of the following when it is legal and feasible in~~  
24 ~~meeting the stated objective of the statutes which are the basis of the~~  
25 ~~proposed rule:~~

26 ~~(i) Establish differing compliance or reporting requirements or~~  
27 ~~timetables for small businesses;~~

28 ~~(ii) Clarify, consolidate, or simplify the compliance and reporting~~  
29 ~~requirements under the rule for small businesses;~~

30 ~~(iii) Establish performance rather than design standards;~~

31 ~~(iv) Exempt small businesses from any or all requirements of the~~  
32 ~~rule;~~

33 ~~(v) Reduce or modify fine schedules for noncompliance; and~~

34 ~~(vi) Other mitigation techniques;~~

35 ~~(b) Before filing notice of a proposed rule, shall prepare a small~~  
36 ~~business economic impact statement in accordance with RCW 19.85.040 and~~

1 file notice of how the person can obtain the statement with the code  
2 reviser as part of the notice required under RCW 34.05.320.

3 (2) If requested to do so by a majority vote of the joint  
4 administrative rules review committee within thirty days after notice  
5 of the proposed rule is published in the state register, an agency  
6 shall prepare a small business economic impact statement on the  
7 proposed rule before adoption of the rule. Upon completion, an agency  
8 shall provide a copy of the small business economic impact statement to  
9 any person requesting it.

10 (3)) In the adoption of a rule under RCW 34.05.320, an agency  
11 shall prepare a small business economic impact statement: (a) If the  
12 proposed rule will impose more than minor costs on businesses in an  
13 industry; or (b) if requested to do so by a majority vote of the  
14 legislative regulatory oversight committee within thirty days after  
15 notice of the proposed rule is published in the state register.  
16 However, if the agency has completed the pilot rule process as defined  
17 by RCW 34.05.313 before filing the notice of a proposed rule, the  
18 agency is not required to prepare a small business economic impact  
19 statement.

20 An agency shall prepare the small business economic impact  
21 statement in accordance with RCW 19.85.040, and file it with the code  
22 reviser along with the notice required under RCW 34.05.320. An agency  
23 shall file a statement prepared at the request of the legislative  
24 regulatory oversight committee with the code reviser upon its  
25 completion before the adoption of the rule. An agency shall provide a  
26 copy of the small business economic impact statement to any person  
27 requesting it.

28 An agency may request assistance from the business assistance  
29 center in the preparation of the small business economic impact  
30 statement.

31 ((4) ~~The business assistance center shall develop guidelines to~~  
32 ~~assist agencies in determining whether a proposed rule will impose more~~  
33 ~~than minor costs on businesses in an industry and therefore require~~  
34 ~~preparation of a small business economic impact statement. The~~  
35 ~~business assistance center may review an agency determination that a~~  
36 ~~proposed rule will not impose such costs, and shall advise the joint~~  
37 ~~administrative rules review committee on disputes involving agency~~  
38 ~~determinations under this section.))~~

1       (2) A proposed rule will impose more than minor costs on businesses  
2 in an industry when the costs imposed will equal or exceed 0.1 percent  
3 of the average yearly profit for businesses in that industry. The  
4 business assistance center shall develop guidelines to assist agencies  
5 in determining whether a proposed rule will impose such costs. The  
6 business assistance center may review an agency determination that a  
7 proposed rule will not impose such costs, and shall advise the  
8 legislative regulatory oversight committee on disputes involving agency  
9 determinations under this section.

10       (3) Based upon the extent of disproportionate impact on small  
11 business identified in the statement prepared under RCW 19.85.040, the  
12 agency shall, if legal and possible to do so, reduce the costs imposed  
13 by the rule on small businesses. Methods to reduce the costs on small  
14 businesses may include, but are not limited to:

15       (a) Reducing, modifying, or eliminating substantive regulatory  
16 requirements;

17       (b) Simplifying, reducing, or eliminating recordkeeping and  
18 reporting requirements;

19       (c) Reducing the frequency of inspections;

20       (d) Delaying compliance timetables;

21       (e) Reducing or modifying fine schedules for noncompliance; or

22       (f) Any other mitigation techniques.

23       NEW SECTION. Sec. 302. A new section is added to chapter 19.85  
24 RCW to read as follows:

25       Unless so requested by a majority vote of the legislative  
26 regulatory oversight committee under RCW 19.85.030, an agency is not  
27 required to comply with this chapter when adopting any rule solely for  
28 the purpose of conformity or compliance, or both, with federal law or  
29 regulations. In lieu of the statement required under RCW 19.85.030,  
30 the agency shall file a statement citing, with specificity, the federal  
31 law or regulation with which the rule is being adopted to conform or  
32 comply, and describing the consequences to the state if the rule is not  
33 adopted.

34       NEW SECTION. Sec. 303. RCW 19.85.060 and 1989 c 374 s 5 are each  
35 repealed.



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

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

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

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

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

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

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

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

36 (10)(a) "Order," without further qualification, means a written  
37 statement of particular applicability that finally determines the legal  
38 rights, duties, privileges, immunities, or other legal interests of a  
39 specific person or persons.

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

3 (11) "Party to agency proceedings," or "party" in a context so  
4 indicating, means:

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

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

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

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

12 (b) A person named as a party in a judicial review or civil  
13 enforcement proceeding, or allowed to participate as a party in a  
14 judicial review or civil enforcement proceeding.

15 (13) "Person" means any individual, partnership, corporation,  
16 association, governmental subdivision or unit thereof, or public or  
17 private organization or entity of any character, and includes another  
18 agency.

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

25 (15) "Regulatory oversight committee" or "committee" means the  
26 legislative regulatory oversight committee created in RCW 34.05.610 (as  
27 recodified by this act) for the purposes of selectively reviewing  
28 existing and proposed rules of state agencies.

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

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

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

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

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

24 **Sec. 402.** RCW 34.05.320 and 1994 c 249 s 14 are each amended to  
25 read as follows:

26 (1) At least twenty days before the rule-making hearing at which  
27 the agency receives public comment regarding adoption of a rule, the  
28 agency shall cause notice of the hearing to be published in the state  
29 register. The publication constitutes the proposal of a rule. The  
30 notice shall include all of the following:

31 (a) A title, a description of the rule's purpose, and any other  
32 information which may be of assistance in identifying the rule or its  
33 purpose;

34 (b) Citations of the statutory authority for adopting the rule and  
35 the specific statute the rule is intended to implement;

36 (c) A summary of the rule and a statement of the reasons supporting  
37 the proposed action;

1 (d) The agency personnel, with their office location and telephone  
2 number, who are responsible for the drafting, implementation, and  
3 enforcement of the rule;

4 (e) The name of the person or organization, whether private,  
5 public, or governmental, proposing the rule;

6 (f) Agency comments or recommendations, if any, regarding statutory  
7 language, implementation, enforcement, and fiscal matters pertaining to  
8 the rule;

9 (g) Whether the rule is necessary as the result of federal law or  
10 federal or state court action, and if so, a copy of such law or court  
11 decision shall be attached to the purpose statement;

12 (h) When, where, and how persons may present their views on the  
13 proposed rule;

14 (i) The date on which the agency intends to adopt the rule;

15 (j) A short explanation of the rule, its purpose, and anticipated  
16 effects, including in the case of a proposal that would modify existing  
17 rules, a short description of the changes the proposal would make; and

18 (k) A statement indicating how a person can obtain a copy of the  
19 small business economic impact statement prepared under chapter 19.85  
20 RCW, or an explanation for why the agency did not prepare the  
21 statement.

22 (2) Upon filing notice of the proposed rule with the code reviser,  
23 the adopting agency shall have copies of the notice on file and  
24 available for public inspection and shall forward three copies of the  
25 notice to the ~~((rules review))~~ regulatory oversight committee. The  
26 adopting agency shall also forward to the regulatory oversight  
27 committee three copies of the proposed rule and the evidence required  
28 under RCW 34.05.370(2)(i).

29 (3) No later than three days after its publication in the state  
30 register, the agency shall cause a copy of the notice of proposed rule  
31 adoption to be mailed to each person who has made a request to the  
32 agency for a mailed copy of such notices. An agency may charge for the  
33 actual cost of providing individual mailed copies of these notices.

34 (4) In addition to the notice required by subsections (1) and (2)  
35 of this section, an institution of higher education shall cause the  
36 notice to be published in the campus or standard newspaper of the  
37 institution at least seven days before the rule-making hearing.

1        NEW SECTION.    **Sec. 403.**    The regulatory oversight committee shall  
2 not render a decision on a rule unless a quorum is present.    A quorum  
3 shall consist of at least five members of the committee.    Once a quorum  
4 is established, a majority of the quorum may render any decision except  
5 a suspension recommendation.    A recommendation to suspend a rule under  
6 RCW 34.05.640 shall require a majority vote of the entire membership of  
7 the regulatory oversight committee.

8        NEW SECTION.    **Sec. 404.**    Upon receipt of a proposed rule under RCW  
9 34.05.320(2) and upon the review of an existing rule under RCW  
10 34.05.630 (as recodified by this act), the regulatory oversight  
11 committee shall forward the rule to the appropriate standing committee  
12 of the legislature for initial review.    The standing committee shall  
13 make a recommendation on the rule within sixty days of the referral by  
14 the regulatory oversight committee and forward that recommendation to  
15 the regulatory oversight committee.

16        NEW SECTION.    **Sec. 405.**    (1) Any person potentially impacted by a  
17 proposed rule or currently impacted by an existing rule may petition  
18 the regulatory oversight committee for a review of that rule.    Within  
19 thirty days of the receipt of the petition, the regulatory oversight  
20 committee shall acknowledge receipt of the petition and describe the  
21 initial action taken.    If the regulatory oversight committee rejects  
22 the petition, a written statement of the reasons for rejection shall be  
23 included.

24        (2) Within ninety days of receipt of the petition, the regulatory  
25 oversight committee shall make a final decision on the rule.

26        NEW SECTION.    **Sec. 406.**    Any individual employed or holding office  
27 in any department or agency of state government may submit rules  
28 warranting review to the regulatory oversight committee.    Any such  
29 state employee is protected under chapter 42.40 RCW.

30        **Sec. 407.**    RCW 34.05.350 and 1994 c 249 s 3 are each amended to  
31 read as follows:

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

33        (a) That immediate adoption, amendment, or repeal of a rule is  
34 necessary for the preservation of the public health, safety, or general  
35 welfare, and that observing the time requirements of notice and

1 opportunity to comment upon adoption of a permanent rule would be  
2 contrary to the public interest; or

3 (b) That state or federal law or federal rule or a federal deadline  
4 for state receipt of federal funds requires immediate adoption of a  
5 rule,  
6 the agency may dispense with those requirements and adopt, amend, or  
7 repeal the rule on an emergency basis. The agency's finding and a  
8 concise statement of the reasons for its finding shall be incorporated  
9 in the order for adoption of the emergency rule or amendment filed with  
10 the office of the code reviser under RCW 34.05.380 and with the (~~rules~~  
11 ~~review~~) regulatory oversight committee.

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

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

35 (4) (~~In adopting an emergency rule, the agency shall comply with~~  
36 ~~section 4 of this act or provide a written explanation for its failure~~  
37 ~~to do so.)) Prior to adopting an emergency rule, an agency shall  
38 comply with the requirements of RCW 34.05.370(2)(i) or provide in~~

1 writing a reasonable justification for failing to do so. The written  
2 justification shall be incorporated into the order of adoption.

3 NEW SECTION. **Sec. 408.** Unless the context clearly requires  
4 otherwise, the definitions in RCW 34.05.010 apply throughout this  
5 chapter.

6 **Sec. 409.** RCW 34.05.610 and 1988 c 288 s 601 are each amended to  
7 read as follows:

8 (1) There is hereby created a (~~joint administrative rules review~~)  
9 regulatory oversight committee which shall be a bipartisan committee  
10 consisting of four senators and four representatives from the state  
11 legislature. The senate members of the committee shall be appointed by  
12 the president of the senate, and the house members of the committee  
13 shall be appointed by the speaker of the house. Not more than two  
14 members from each house may be from the same political party. All  
15 appointments to the committee are subject to approval by the caucuses  
16 to which the appointed members belong.

17 (2) Members shall be appointed as soon as possible after the  
18 legislature convenes in regular session in an odd-numbered year, and  
19 their terms shall extend until their successors are appointed and  
20 qualified at the next regular session of the legislature in an odd-  
21 numbered year or until such members no longer serve in the legislature,  
22 whichever occurs first. Members may be reappointed to a committee.

23 (3) The president of the senate shall appoint the chairperson in  
24 even-numbered years and the vice chairperson in odd-numbered years from  
25 among committee membership. The speaker of the house shall appoint the  
26 chairperson in odd-numbered years and the vice chairperson in even-  
27 numbered years from among committee membership. Such appointments  
28 shall be made in January of each year as soon as possible after a  
29 legislative session convenes.

30 (4) A vacancy on the committee shall be filled by appointment of a  
31 legislator from the same political party as the original appointment.  
32 The appropriate appointing authority shall make the appointment within  
33 thirty days of the vacancy occurring.

34 **Sec. 410.** RCW 34.05.620 and 1994 c 249 s 17 are each amended to  
35 read as follows:

1 Whenever (~~a majority of the members of~~) the (~~rules review~~)  
2 regulatory oversight committee determines that a proposed rule is not  
3 within the intent of the legislature as expressed in the statute which  
4 the rule implements, or that an agency may not be adopting a proposed  
5 rule in accordance with all applicable provisions of law, including  
6 (~~section 4 of this act and~~) chapter 19.85 RCW, the committee shall  
7 give the affected agency written notice of its decision. The notice  
8 shall be given at least seven days prior to any hearing scheduled for  
9 consideration of or adoption of the proposed rule pursuant to RCW  
10 34.05.320. The notice shall include a statement of the (~~review~~)  
11 committee's findings and the reasons therefor. When the agency holds  
12 a hearing on the proposed rule, the agency shall consider the  
13 (~~review~~) committee's decision.

14 **Sec. 411.** RCW 34.05.630 and 1994 c 249 s 18 are each amended to  
15 read as follows:

16 (1) All rules required to be filed pursuant to RCW 34.05.380, and  
17 emergency rules adopted pursuant to RCW 34.05.350, are subject to  
18 selective review by the legislature.

19 (2) The (~~rules review~~) regulatory oversight committee may review  
20 an agency's use of policy statements, guidelines, and issuances that  
21 are of general applicability, or their equivalents to determine whether  
22 or not an agency has failed to adopt a rule or whether they are within  
23 the intent of the legislature as expressed by the governing statute.

24 (3) If the (~~rules review~~) regulatory oversight committee finds  
25 (~~by a majority vote of its members~~): (a) That an existing rule is  
26 not within the intent of the legislature as expressed by the statute  
27 which the rule implements, (b) that the rule has not been adopted in  
28 accordance with all applicable provisions of law, including (~~section~~  
29 ~~4 of this act if the rule was adopted after the effective date of~~  
30 ~~section 4 of this act and~~) chapter 19.85 RCW, (c) that an agency is  
31 using a policy statement, guideline, or issuance in place of a rule, or  
32 (d) that the policy statement, guideline, or issuance is outside of  
33 legislative intent, the agency affected shall be notified of such  
34 finding and the reasons therefor. Within thirty days of the receipt of  
35 the (~~rules review~~) regulatory oversight committee's notice, the  
36 agency shall file notice of a hearing on the (~~rules review~~)  
37 regulatory oversight committee's finding with the code reviser and mail  
38 notice to all persons who have made timely request of the agency for

1 advance notice of its rule-making proceedings as provided in RCW  
2 34.05.320. The agency's notice shall include the ~~((rules review))~~  
3 regulatory oversight committee's findings and reasons therefor, and  
4 shall be published in the Washington state register in accordance with  
5 the provisions of chapter 34.08 RCW.

6 (4) The agency shall consider fully all written and oral  
7 submissions regarding (a) whether the rule in question is within the  
8 intent of the legislature as expressed by the statute which the rule  
9 implements, (b) whether the rule was adopted in accordance with all  
10 applicable provisions of law, including ~~((section 4 of this act if the  
11 rule was adopted after the effective date of section 4 of this act  
12 and))~~ chapter 19.85 RCW, (c) whether the agency is using a policy  
13 statement, guideline, or issuance in place of a rule, or (d) whether  
14 the policy statement, guideline, or issuance is within the legislative  
15 intent.

16 **Sec. 412.** RCW 34.05.640 and 1994 c 249 s 19 are each amended to  
17 read as follows:

18 (1) Within seven days of an agency hearing held after notification  
19 of the agency by the ~~((rules review))~~ regulatory oversight committee  
20 pursuant to RCW 34.05.620 or 34.05.630 (each as recodified by this  
21 act), the affected agency shall notify the committee of its action on  
22 a proposed or existing rule to which the committee objected or on a  
23 committee finding of the agency's failure to adopt rules. If the  
24 ~~((rules review))~~ regulatory oversight committee determines~~((, by a~~  
25 ~~majority vote of its members,))~~ that the agency has failed to provide  
26 for the required hearings or notice of its action to the committee, the  
27 committee may file notice of its objections, together with a concise  
28 statement of the reasons therefor, with the code reviser within thirty  
29 days of such determination.

30 (2) If the ~~((rules review))~~ regulatory oversight committee finds~~((, by a~~  
31 ~~majority vote of its members))~~: (a) That the proposed or existing  
32 rule in question has not been modified, amended, withdrawn, or repealed  
33 by the agency so as to conform with the intent of the legislature, or  
34 (b) that an existing rule was not adopted in accordance with all  
35 applicable provisions of law, including ~~((section 4 of this act if the  
36 rule was adopted after the effective date of section 4 of this act  
37 and))~~ chapter 19.85 RCW, or (c) that the agency is using a policy  
38 statement, guideline, or issuance in place of a rule, or that the

1 policy statement, guideline, or issuance is outside of the legislative  
2 intent, the ((rules review)) regulatory oversight committee may, within  
3 thirty days from notification by the agency of its action, file with  
4 the code reviser notice of its objections together with a concise  
5 statement of the reasons therefor. Such notice and statement shall  
6 also be provided to the agency by the ((rules review)) regulatory  
7 oversight committee.

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

21 (4) If the governor disapproves the recommendation of the ((rules  
22 review)) regulatory oversight committee to suspend the rule, the  
23 transmittal of such decision, along with the findings of the ((rules  
24 review)) regulatory oversight committee, shall be treated by the agency  
25 as a petition by the ((rules review)) regulatory oversight committee to  
26 repeal the rule under RCW 34.05.330.

27 (5) The code reviser shall publish transmittals from the ((rules  
28 review)) regulatory oversight committee or the governor issued pursuant  
29 to subsection (1), (2), or (3) of this section in the Washington state  
30 register and shall publish in the next supplement and compilation of  
31 the Washington Administrative Code a reference to the committee's  
32 objection or recommended suspension and the governor's action on it and  
33 to the issue of the Washington state register in which the full text  
34 thereof appears.

35 (6) The reference shall be removed from a rule published in the  
36 Washington Administrative Code if a subsequent adjudicatory proceeding  
37 determines that the rule is within the intent of the legislature or was  
38 adopted in accordance with all applicable laws, whichever was the  
39 objection of the ((rules review)) regulatory oversight committee.

1       **Sec. 413.** RCW 34.05.650 and 1988 c 288 s 605 are each amended to  
2 read as follows:

3       The (~~rules review~~) regulatory oversight committee may recommend  
4 to the legislature that the original enabling legislation serving as  
5 authority for the adoption of any rule reviewed by the committee be  
6 amended or repealed in such manner as the committee deems advisable.  
7 The committee may submit its recommendation in the form of request  
8 legislation.

9       **Sec. 414.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
10 read as follows:

11       (1) Except as provided in subsection (2) of this section, it is the  
12 express policy of the legislature that establishment of procedures for  
13 review of administrative rules by the legislature and the notice of  
14 objection required by RCW 34.05.630(2) and 34.05.640(2) (each as  
15 recodified by this act) in no way serves to establish a presumption as  
16 to the legality or constitutionality of a rule in any subsequent  
17 judicial proceedings interpreting such rules.

18       (2) An election by the regulatory oversight committee to recommend  
19 suspension of a rule, whether or not the suspension is approved by the  
20 governor, establishes a presumption in any subsequent judicial review  
21 of the rule that the rule is invalid. The burden of demonstrating the  
22 rule's validity is then on the adopting agency.

23       NEW SECTION. Sec. 415. (1) The regulatory oversight committee may  
24 make reports from time to time to the members of the legislature and to  
25 the public with respect to any of its findings or recommendations. The  
26 committee shall keep complete minutes of its meetings.

27       (2) The committee may establish ad hoc advisory boards, including  
28 but not limited to, ad hoc economics or science advisory boards to  
29 assist the committee in its rules review functions.

30       (3) The committee may hire staff as needed to perform functions  
31 under this chapter.

32       NEW SECTION. Sec. 416. In the discharge of any duty imposed under  
33 this chapter, the regulatory oversight committee may examine and  
34 inspect all properties, equipment, facilities, files, records, and  
35 accounts of any state office, department, institution, board,  
36 committee, commission, or agency, and administer oaths, issue

1 subpoenas, compel the attendance of witnesses and the production of any  
2 papers, books, accounts, documents, and testimony, and cause the  
3 deposition of witnesses, either residing within or without the state,  
4 to be taken in the manner prescribed by law for taking depositions in  
5 civil actions in the superior courts.

6 NEW SECTION. **Sec. 417.** In case of the failure on the part of any  
7 person to comply with any subpoena issued in behalf of the regulatory  
8 oversight committee, or on the refusal of any witness to testify to any  
9 matters regarding which he or she may be lawfully interrogated, it is  
10 the duty of the superior court of any county, or of the judge thereof,  
11 on application of the committee, to compel obedience by proceedings for  
12 contempt, as in the case of disobedience of the requirements of a  
13 subpoena issued from the court or a refusal to testify in the court.

14 **Sec. 418.** RCW 42.40.010 and 1982 c 208 s 1 are each amended to  
15 read as follows:

16 It is the policy of the legislature that employees should be  
17 encouraged to disclose, to the extent not expressly prohibited by law,  
18 improper governmental actions, and it is the intent of the legislature  
19 to protect the rights of state employees making these disclosures. It  
20 is also the policy of the legislature that employees should be  
21 encouraged to identify rules warranting review or provide information  
22 to the legislative regulatory oversight committee, and it is the intent  
23 of the legislature to protect the rights of these employees.

24 **Sec. 419.** RCW 42.40.020 and 1992 c 118 s 1 are each amended to  
25 read as follows:

26 As used in this chapter, the terms defined in this section shall  
27 have the meanings indicated unless the context clearly requires  
28 otherwise.

29 (1) "Auditor" means the office of the state auditor.

30 (2) "Employee" means any individual employed or holding office in  
31 any department or agency of state government.

32 (3)(a) "Improper governmental action" means any action by an  
33 employee:

34 (i) Which is undertaken in the performance of the employee's  
35 official duties, whether or not the action is within the scope of the  
36 employee's employment; and

1 (ii) Which is in violation of any state law or rule, is an abuse of  
2 authority, is of substantial and specific danger to the public health  
3 or safety, or is a gross waste of public funds.

4 (b) "Improper governmental action" does not include personnel  
5 actions including but not limited to employee grievances, complaints,  
6 appointments, promotions, transfers, assignments, reassignments,  
7 reinstatements, restorations, reemployments, performance evaluations,  
8 reductions in pay, dismissals, suspensions, demotions, violations of  
9 the state civil service law, alleged labor agreement violations,  
10 reprimands, or any action which may be taken under chapter 41.06 ((~~er~~  
11 ~~28B.16~~)) RCW, or other disciplinary action except as provided in RCW  
12 42.40.030.

13 (4) "Use of official authority or influence" includes taking,  
14 directing others to take, recommending, processing, or approving any  
15 personnel action such as an appointment, promotion, transfer,  
16 assignment, reassignment, reinstatement, restoration, reemployment,  
17 performance evaluation, or any adverse action under chapter 41.06 ((~~er~~  
18 ~~28B.16~~)) RCW, or other disciplinary action.

19 (5) "Whistleblower" means an employee who in good faith reports  
20 alleged improper governmental action to the auditor, initiating an  
21 investigation under RCW 42.40.040. For purposes of the provisions of  
22 this chapter and chapter 49.60 RCW relating to reprisals and  
23 retaliatory action, the term "whistleblower" also means: (a) An  
24 employee who in good faith provides information to the auditor in  
25 connection with an investigation under RCW 42.40.040 and an employee  
26 who is believed to have reported alleged improper governmental action  
27 to the auditor or to have provided information to the auditor in  
28 connection with an investigation under RCW 42.40.040 but who, in fact,  
29 has not reported such action or provided such information; or (b) an  
30 employee who in good faith identifies rules warranting review or  
31 provides information to the legislative regulatory oversight committee,  
32 and an employee who is believed to have identified rules warranting  
33 review or provided information to the legislative regulatory oversight  
34 committee but who, in fact, has not done so.

35 **Sec. 420.** RCW 42.40.030 and 1989 c 284 s 2 are each amended to  
36 read as follows:

37 (1) An employee shall not directly or indirectly use or attempt to  
38 use the employee's official authority or influence for the purpose of

1 intimidating, threatening, coercing, commanding, influencing, or  
2 attempting to intimidate, threaten, coerce, command, or influence any  
3 individual for the purpose of interfering with the right of the  
4 individual to: (a) Disclose to the auditor (or representative thereof)  
5 information concerning improper governmental action; or (b) identify  
6 rules warranting review or provide information to the legislative  
7 regulatory oversight committee.

8 (2) Nothing in this section authorizes an individual to disclose  
9 information otherwise prohibited by law.

10 **Sec. 421.** RCW 43.31.086 and 1994 c 249 s 15 are each amended to  
11 read as follows:

12 To assist state agencies in reducing regulatory costs to small  
13 business and to promote greater public participation in the rule-making  
14 process, the business assistance center shall:

15 (1) Develop agency guidelines for the preparation of a small  
16 business economic impact statement and compliance with chapter 19.85  
17 RCW;

18 (2) Review and provide comments to agencies on draft or final small  
19 business economic impact statements;

20 (3) Advise the (~~joint administrative rules review~~) legislative  
21 regulatory oversight committee on whether an agency reasonably assessed  
22 the costs of a proposed rule and reduced the costs for small business  
23 as required by chapter 19.85 RCW; and

24 (4) Organize and chair a state rules coordinating committee,  
25 consisting of agency rules coordinators and interested members of the  
26 public, to develop an education and training program that includes,  
27 among other components, a component that addresses voluntary  
28 compliance, for agency personnel responsible for rule development and  
29 implementation. The business assistance center shall submit  
30 recommendations to the department of personnel for an administrative  
31 procedures training program that is based on the sharing of interagency  
32 resources.

33 **Sec. 422.** RCW 43.180.110 and 1983 c 161 s 11 are each amended to  
34 read as follows:

35 The commission shall submit the initial policies adopted under RCW  
36 43.180.090 and 43.180.100 to the chief clerk of the house and the  
37 secretary of the senate for transmittal to and review by the

1 appropriate standing committees and the (~~joint administrative rules~~  
2 ~~review~~) legislative regulatory oversight committee. By January 1,  
3 1984, the commission shall have adopted policies in the form of rules  
4 (~~and regulations~~) under chapter 34.05 RCW. Such rules (~~and~~  
5 ~~regulations~~) may only be changed or revised in accordance with chapter  
6 34.05 RCW.

7 **PART 5**

8 **TECHNICAL ASSISTANCE**

9 NEW SECTION. Sec. 501. A new section is added to chapter 34.05  
10 RCW to read as follows:

11 (1) An agency listed in subsection (6) of this section may  
12 immediately impose a penalty otherwise provided for by law for a  
13 violation of an administrative rule only if the entity on which the  
14 penalty will be imposed has willfully violated the rule. Where a  
15 penalty is otherwise provided, but may not be imposed under this  
16 subsection, the agency shall issue a statement of deficiency.

17 (2) A statement of deficiency shall specify: (a) The particular  
18 rule violated; (b) suggestions on actions the entity may take to comply  
19 with the rule; (c) agency personnel designated by the agency to provide  
20 technical assistance regarding compliance with the rule; and (d) a  
21 negotiated date when the entity will be revisited by technical  
22 assistance personnel. At the revisit, technical assistance personnel  
23 shall assess compliance, make further recommendations for action, and  
24 set a date for compliance. The date specified shall provide a  
25 reasonable period of time for the entity to comply with the rule,  
26 considering the size of the entity, its available resources, and the  
27 threat posed by the violation. If the entity fails to comply with the  
28 rule by the date specified, it shall be subject to the penalty  
29 otherwise provided in law.

30 (3) Subsection (1) of this section shall not apply to any violation  
31 that places a person in danger of death or substantial bodily harm, is  
32 causing or is likely to cause significant environmental harm, or has  
33 caused or is likely to cause physical damage to the property of others  
34 in an amount exceeding one thousand dollars.

35 (4) The state, the agency, and officers or employees of the state  
36 shall not be liable for damages to any person to the extent that  
37 liability is asserted to arise from the technical assistance provided

1 under this section, or if liability is asserted to arise from the  
2 failure of the agency to supply technical assistance.

3 (5) Where a state agency has been delegated authority to enforce  
4 federal laws and regulations, the agency shall submit a written  
5 petition to the appropriate federal agency for authorization to comply  
6 with this section for all inspections while retaining the state's  
7 federal delegation. If the federal agency fails to provide the  
8 authorization, the agency shall comply with this section in all  
9 inspections except the minimum number of inspections required by the  
10 federal government for the program delegated to the state of Washington  
11 for enforcement.

12 (6) This section shall apply to the departments of health,  
13 agriculture, labor and industries, ecology, revenue, licensing, social  
14 and health services, natural resources when enforcing chapter 76.09 RCW  
15 and rules of the commissioner of public lands, and fish and wildlife,  
16 the employment security department, and the office of insurance  
17 commissioner.

18 (7) Technical assistance personnel in the departments of health,  
19 agriculture, labor and industries, ecology, revenue, licensing, social  
20 and health services, natural resources enforcing chapter 76.09 RCW and  
21 rules of the commissioner of public lands, and fish and wildlife, the  
22 employment security department, and the office of insurance  
23 commissioner are authorized to impose a penalty for the violation of an  
24 administrative rule when: (a) A determination is made that the  
25 violation was willful or meets one of the criteria listed in subsection  
26 (3) of this section; or (b) on or after the compliance date provided  
27 for under subsection (2) of this section.

28 (8) As used in subsections (1) and (7) of this section, an entity  
29 acts "willfully" when the owner or operator: (a) Is aware of a fact,  
30 facts, or circumstances or result described by a rule defining a  
31 violation; or (b) has information which would lead a reasonable person  
32 to believe that facts exist which facts are described by a rule  
33 defining a violation.

34 NEW SECTION. **Sec. 502.** A new section is added to chapter 43.20A  
35 RCW to read as follows:

36 (1) All enforcement personnel positions in the department shall be  
37 abolished. These positions shall be converted to technical assistance  
38 positions.

1 (2) This section shall not apply where enforcement personnel are  
2 required to maintain state authority to administer a federally  
3 delegated program.

4 NEW SECTION. **Sec. 503.** A new section is added to chapter 43.21A  
5 RCW to read as follows:

6 (1) All enforcement personnel positions in the department shall be  
7 abolished. These positions shall be converted to technical assistance  
8 personnel positions.

9 (2) This section shall not apply where enforcement personnel are  
10 required to maintain state authority to administer a federally  
11 delegated program.

12 NEW SECTION. **Sec. 504.** A new section is added to chapter 43.22  
13 RCW to read as follows:

14 (1) All enforcement personnel positions in the department of labor  
15 and industries shall be abolished. These positions shall be converted  
16 to technical assistance personnel positions.

17 (2) This section shall not apply where enforcement personnel are  
18 required to maintain state authority to administer a federally  
19 delegated program.

20 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.24  
21 RCW to read as follows:

22 (1) All enforcement personnel positions in the department of  
23 licensing shall be abolished. These positions shall be converted to  
24 technical assistance personnel positions.

25 (2) This section shall not apply where enforcement personnel are  
26 required to maintain state authority to administer a federally  
27 delegated program.

28 NEW SECTION. **Sec. 506.** A new section is added to chapter 43.30  
29 RCW to read as follows:

30 (1) All enforcement personnel positions in the department that  
31 pertain to the enforcement of rules adopted by the commissioner of  
32 public lands shall be abolished. These positions shall be converted to  
33 technical assistance positions.

1 (2) This section shall not apply where enforcement personnel are  
2 required to maintain state authority to administer a federally  
3 delegated program.

4 NEW SECTION. **Sec. 507.** A new section is added to chapter 43.70  
5 RCW to read as follows:

6 (1) All enforcement personnel positions in the department shall be  
7 abolished. These positions shall be converted to technical assistance  
8 personnel positions.

9 (2) This section shall not apply where enforcement personnel are  
10 required to maintain state authority to administer a federally  
11 delegated program.

12 NEW SECTION. **Sec. 508.** A new section is added to chapter 43.300  
13 RCW to read as follows:

14 (1) All enforcement personnel positions in the department shall be  
15 abolished. These positions shall be converted to technical assistance  
16 personnel positions.

17 (2) This section shall not apply where enforcement personnel are  
18 required to maintain state authority to administer a federally  
19 delegated program.

20 NEW SECTION. **Sec. 509.** A new section is added to chapter 48.02  
21 RCW to read as follows:

22 (1) All enforcement personnel positions in the office of the  
23 insurance commissioner shall be abolished. These positions shall be  
24 converted to technical assistance personnel positions.

25 (2) This section shall not apply where enforcement personnel are  
26 required to maintain state authority to administer a federally  
27 delegated program.

28 NEW SECTION. **Sec. 510.** A new section is added to chapter 50.08  
29 RCW to read as follows:

30 (1) All enforcement personnel positions in the employment security  
31 department shall be abolished. These positions shall be converted to  
32 technical assistance personnel positions.

33 (2) This section shall not apply where enforcement personnel are  
34 required to maintain state authority to administer a federally  
35 delegated program.



1 availability of qualified attorneys for the proceedings involved,  
2 justifies a higher fee.

3 (3) "Judicial review" means a judicial review as defined by chapter  
4 34.05 RCW.

5 (4) "Qualified party" means (a) an individual whose net worth did  
6 not exceed one million dollars at the time the initial petition for  
7 judicial review was filed; (b) a sole owner of an unincorporated  
8 business, or a partnership, corporation, association, or organization  
9 whose net worth did not exceed five million dollars at the time the  
10 initial petition for judicial review was filed, except that an  
11 organization described in section 501(c)(3) of the federal internal  
12 revenue code of 1954 as exempt from taxation under section 501(a) of  
13 the code and a cooperative association as defined in section 15(a) of  
14 the agricultural marketing act (12 U.S.C. Sec. 1141j(a)), may be a  
15 party regardless of the net worth of such organization or cooperative  
16 association; or (c) a sole owner of an unincorporated business, or a  
17 partnership, corporation, association, or organization, having not more  
18 than one hundred employees at the time the initial petition for  
19 judicial review was filed.

20 (5) "Rule" means a rule as defined by chapter 34.05 RCW.

21 NEW SECTION. **Sec. 602.** A new section is added to chapter 4.84 RCW  
22 to read as follows:

23 If upon judicial review a rule is declared invalid and the party  
24 that challenged the rule is a qualified party, the party shall be  
25 awarded fees and other expenses not to exceed ten thousand dollars.

26 NEW SECTION. **Sec. 603.** A new section is added to chapter 4.84 RCW  
27 to read as follows:

28 Fees and other expenses awarded under section 602 of this act shall  
29 be paid by the agency that adopted the invalid rule from operating  
30 funds appropriated to the agency within sixty days. Agencies paying  
31 fees and other expenses pursuant to section 602 of this act shall  
32 report all payments to the office of financial management within five  
33 days of paying the fees and other expenses. Fees and other expenses  
34 awarded by the court shall be subject to chapter 39.76 RCW and shall be  
35 deemed payable on the date the court announces the award.



1 with Article II, section 1 of the state Constitution, as amended, and  
2 the laws adopted to facilitate the operation thereof.

--- END ---