

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510

53rd Legislature
1994 Regular Session

Passed by the House March 10, 1994
Yeas 62 Nays 34

Speaker of the
House of Representatives

Passed by the Senate March 10, 1994
Yeas 26 Nays 22

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2510

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Reams, Brough, Dorn, Dunshee, Johanson, Pruitt, Shin, Zellinsky, Carlson, R. Johnson, J. Kohl, Karahalios, Basich, Jones, Bray, R. Fisher, Holm, Moak, Sheldon, Valle, Chappell, Eide, Wolfe, B. Thomas, Dyer, King, G. Fisher, L. Johnson, Dellwo, Ogden, Roland, Grant, Jacobsen, Quall, Rayburn, Morris, Romero, Rust, Kremen, Conway, Linville, Patterson, Forner, Long, Mielke, Springer, Cothorn, Kessler, H. Myers, Tate, Backlund, Cooke, Wood and Mastin; by request of Governor Lowry)

Read first time 02/08/94.

1 AN ACT Relating to implementation of the recommendations of the
2 governor's task force on regulatory reform; amending RCW 34.05.310,
3 34.05.370, 34.05.350, 34.05.330, 34.05.325, 34.05.355, 19.85.020,
4 34.05.320, 34.05.620, 34.05.630, 34.05.640, 34.05.660, 34.05.220,
5 34.05.534, 36.70A.290, 36.70A.110, 36.70A.210, 36.70A.250, 36.70A.260,
6 36.70A.280, 36.70A.310, and 36.70A.345; reenacting and amending RCW
7 19.85.030 and 19.85.040; adding new sections to chapter 34.05 RCW;
8 adding new sections to chapter 19.85 RCW; adding a new section to
9 chapter 43.31 RCW; adding a new section to chapter 35.21 RCW; adding a
10 new section to chapter 36.01 RCW; creating new sections; repealing RCW
11 19.85.010, 19.85.060, 19.85.080, 34.05.670, and 34.05.680; prescribing
12 penalties; and providing an effective date.

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

14 **Sec. 1.** RCW 34.05.310 and 1993 c 202 s 2 are each amended to read
15 as follows:

16 (1) To meet the intent of providing greater public access to
17 administrative rule making and to promote consensus among interested
18 parties, agencies (~~are encouraged to:~~

1 ~~(1))~~ shall solicit comments from the public on a subject of
2 possible rule making before publication of a notice of proposed rule
3 adoption under RCW 34.05.320. ~~((This process can be accomplished by~~
4 ~~having a notice published in the state register of the subject under~~
5 ~~active consideration and indicating where, when, and how persons may~~
6 ~~comment; and))~~ The agency shall prepare a statement of intent that:

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

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

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

10 (d) Describes the process by which the rule will be developed,
11 including, but not limited to, negotiated rule making, pilot rule
12 making, or agency study; and

13 (e) Specifies the process by which interested parties can
14 effectively participate in the formulation of the new rule.

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

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

22 (a) Negotiated rule making which includes:

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

26 ~~((b))~~ (ii) Soliciting participation by persons who are capable,
27 willing, and appropriately authorized to enter into such negotiations;

28 ~~((c))~~ (iii) Assuring that participants fully recognize the
29 consequences of not participating in the process, are committed to
30 negotiate in good faith, and recognize the alternatives available to
31 other parties;

32 ~~((d))~~ (iv) Establishing guidelines to encourage consideration of
33 all pertinent issues, to set reasonable completion deadlines, and to
34 provide fair and objective settlement of disputes that may arise;

35 ~~((e))~~ (v) Agreeing on a reasonable time period during which the
36 agency will be bound to the rule resulting from the negotiations
37 without substantive amendment; and

38 ~~((f))~~ (vi) Providing a mechanism by which one or more parties may
39 withdraw from the process or the negotiations may be terminated if it

1 appears that consensus cannot be reached on a draft rule that
2 accommodates the needs of the agency, interested parties, and the
3 general public and conforms to the legislative intent of the statute
4 that the rule is intended to implement; and

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

8 (3)(a) An agency must make a determination whether negotiated rule
9 making, pilot rule making, or another process for generating
10 participation from interested parties prior to development of the rule
11 is appropriate.

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

16 **Sec. 2.** RCW 34.05.370 and 1988 c 288 s 313 are each amended to
17 read as follows:

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

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

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

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

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

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

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

1 (f) All petitions for exceptions to, amendment of, or repeal or
2 suspension of, the rule; (~~and~~)

3 (g) Citations to data, factual information, studies, or reports on
4 which the agency relies in the adoption of the rule, indicating where
5 such data, factual information, studies, or reports are available for
6 review by the public;

7 (h) The written summary and response required by RCW 34.05.325(6);
8 and

9 (i) Any other material placed in the file by the agency.

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

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

22 **Sec. 3.** RCW 34.05.350 and 1989 c 175 s 10 are each amended to read
23 as follows:

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

25 (a) That immediate adoption, amendment, or repeal of a rule is
26 necessary for the preservation of the public health, safety, or general
27 welfare, and that observing the time requirements of notice and
28 opportunity to comment upon adoption of a permanent rule would be
29 contrary to the public interest; or

30 (b) That state or federal law or federal rule or a federal deadline
31 for state receipt of federal funds requires immediate adoption of a
32 rule,

33 the agency may dispense with those requirements and adopt, amend, or
34 repeal the rule on an emergency basis. The agency's finding and a
35 concise statement of the reasons for its finding shall be incorporated
36 in the order for adoption of the emergency rule or amendment filed with
37 the office of the code reviser under RCW 34.05.380 and with the rules
38 review committee.

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

12 (3) Within seven days after the rule is adopted, any person may
13 petition the governor requesting the immediate repeal of a rule adopted
14 on an emergency basis by any department listed in RCW 43.17.010.
15 Within seven days after submission of the petition, the governor shall
16 either deny the petition in writing, stating his or her reasons for the
17 denial, or order the immediate repeal of the rule. In ruling on the
18 petition, the governor shall consider only whether the conditions in
19 subsection (1) of this section were met such that adoption of the rule
20 on an emergency basis was necessary. If the governor orders the repeal
21 of the emergency rule, any sanction imposed based on that rule is void.
22 This subsection shall not be construed to prohibit adoption of any rule
23 as a permanent rule.

24 (4) In adopting an emergency rule, the agency shall comply with
25 section 4 of this act or provide a written explanation for its failure
26 to do so.

27 NEW SECTION. Sec. 4. A new section is added to chapter 34.05 RCW
28 under the subchapter heading Part III to read as follows:

29 (1) In addition to other requirements imposed by law, an agency may
30 adopt a rule only if it determines that:

31 (a) The rule is needed;

32 (b) The likely benefits of the rule justify its likely costs;

33 (c) There are no reasonable alternatives to the rule that were
34 presented during the public comment period that would be as effective
35 but less burdensome on those required to comply;

36 (d) Any fee imposed will generate no more revenue than is necessary
37 to achieve the objectives of the statute authorizing the fee;

1 (e) The rule does not conflict with any other provision of federal
2 or state law;

3 (f) Any overlap or duplication of the rule with any other provision
4 of federal or state law is necessary to achieve the objectives of the
5 statute upon which the rule is based or expressly authorized by
6 statute;

7 (g) Any difference between the rule and any provision of federal
8 law regulating the same activity or subject matter is necessary to
9 achieve the objectives of the statute upon which the rule is based or
10 expressly authorized by statute; and

11 (h) Any difference between the rule's application to public and
12 private entities is necessary to achieve the objectives of the statute
13 upon which the rule is based or expressly authorized by statute.

14 (2) The agency shall prepare a written description of its
15 determinations under subsection (1) of this section. This description
16 shall be part of the official rule-making file for the rule.

17 (3) This section applies only to a rule the violation of which
18 subjects a person to a penalty or administrative sanction; that
19 establishes, alters, or revokes a qualification or standard for the
20 issuance, suspension, or revocation of a license to pursue a commercial
21 activity, trade, or profession; or that establishes, alters, or revokes
22 a mandatory standard for a product or material that must be met before
23 distribution or sale.

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

26 (1) Within a reasonable period of time after adopting rules covered
27 by section 4 of this act, an agency shall have a rule implementation
28 plan for rules filed under each adopting order. The plan shall
29 describe how the agency intends to: (a) Inform and educate affected
30 persons about the rule; (b) promote voluntary compliance; and (c)
31 evaluate whether the rule achieves the purpose for which it was
32 adopted.

33 (2) After the adoption of a rule covered by section 4 of this act
34 regulating the same activity or subject matter as another provision of
35 federal or state law, an agency shall do all of the following:

36 (a) Provide to the business assistance center a list citing by
37 reference the other federal and state laws that regulate the same
38 activity or subject matter;

1 (b) Coordinate implementation and enforcement of the rule with the
2 other federal and state entities regulating the same activity or
3 subject matter by making every effort to do one or more of the
4 following: (i) Defer to the other entity; (ii) designate a lead agency;
5 or (iii) enter into an agreement with the other entities specifying how
6 the agency and entities will coordinate implementation and enforcement.
7 If the agency is unable to do this, the agency shall report to the
8 legislature pursuant to (c) of this subsection;

9 (c) Report to the joint administrative rules review committee: (i)
10 The existence of any overlap or duplication of other federal or state
11 laws, any differences from federal law, and any known overlap,
12 duplication, or conflict with local laws; and (ii) legislation that may
13 be necessary to eliminate or mitigate any adverse effects of such
14 overlap, duplication, or difference.

15 **Sec. 6.** RCW 34.05.330 and 1988 c 288 s 305 are each amended to
16 read as follows:

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

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

33 (3) In petitioning or appealing under this section, the person
34 should address, among other factors:

35 (a) Whether the agency complied with sections 4 and 5 of this act;

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

1 (c) Whether the rule conflicts with, overlaps, or duplicates any
2 other provision of federal, state, or local law and, if so, whether the
3 agency has taken steps to mitigate any adverse effects of the conflict,
4 overlap, or duplication;

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

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

11 (4) The governor's office shall provide a copy of the governor's
12 ruling under subsection (2) of this section to anyone upon request.

13 **Sec. 7.** RCW 34.05.325 and 1992 c 57 s 1 are each amended to read
14 as follows:

15 (1) The agency shall make a good faith effort to insure that the
16 information on the proposed rule published pursuant to RCW 34.05.320
17 accurately reflects the rule to be presented and considered at the oral
18 hearing on the rule. Written comment about a proposed rule, including
19 supporting data, shall be accepted by an agency if received no later
20 than the time and date specified in the notice, or such later time and
21 date established at the rule-making hearing.

22 (2) The agency shall provide an opportunity for oral comment to be
23 received by the agency in a rule-making hearing.

24 (3) If the agency possesses equipment capable of receiving
25 telefacsimile transmissions or recorded telephonic communications, the
26 agency may provide in its notice of hearing filed under RCW 34.05.320
27 that interested parties may comment on proposed rules by these means.
28 If the agency chooses to receive comments by these means, the notice of
29 hearing shall provide instructions for making such comments, including,
30 but not limited to, appropriate telephone numbers to be used; the date
31 and time by which comments must be received; required methods to verify
32 the receipt and authenticity of the comments; and any limitations on
33 the number of pages for telefacsimile transmission comments and on the
34 minutes of tape recorded comments. The agency shall accept comments
35 received by these means for inclusion in the official record if the
36 comments are made in accordance with the agency's instructions.

37 (4) The agency head, a member of the agency head, or a presiding
38 officer designated by the agency head shall preside at the rule-making

1 hearing. Rule-making hearings shall be open to the public. The agency
2 shall cause a record to be made of the hearing by stenographic,
3 mechanical, or electronic means. Unless the agency head presides or is
4 present at substantially all the hearings, the presiding official shall
5 prepare a memorandum for consideration by the agency head, summarizing
6 the contents of the presentations made at the rule-making hearing. The
7 summarizing memorandum is a public document and shall be made available
8 to any person in accordance with chapter 42.17 RCW.

9 (5) Rule-making hearings are legislative in character and shall be
10 reasonably conducted by the presiding official to afford interested
11 persons the opportunity to present comment. Rule-making hearings may
12 be continued to a later time and place established on the record
13 without publication of further notice under RCW 34.05.320.

14 (6) Before the adoption of a final rule, an agency shall prepare a
15 written summary of all comments received regarding the proposed rule,
16 and a substantive response to the comments by category or subject
17 matter, indicating how the final rule reflects agency consideration of
18 the comments, or why it fails to do so. The agency shall provide the
19 written summary and response to any person upon request or from whom
20 the agency received comment.

21 **Sec. 8.** RCW 34.05.355 and 1988 c 288 s 310 are each amended to
22 read as follows:

23 ~~((1))~~ At the time it files an adopted rule with the code reviser
24 or within thirty days thereafter, an agency shall place into the rule-
25 making file maintained under RCW 34.05.370 a concise explanatory
26 statement about the rule, identifying ~~((a))~~ (1) the agency's reasons
27 for adopting the rule, and ~~((b))~~ (2) a description of any difference
28 between the text of the proposed rule as published in the register and
29 the text of the rule as adopted, other than editing changes, stating
30 the reasons for change.

31 ~~((2) Upon the request of any interested person within thirty days~~
32 ~~after adoption of a rule, the agency shall issue a concise statement of~~
33 ~~the principal reasons for overruling the considerations urged against~~
34 ~~its adoption.))~~

35 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.85 RCW
36 to read as follows:

1 The legislature finds that administrative rules adopted by state
2 agencies can have a disproportionate impact on the state's small
3 businesses because of the size of those businesses. This
4 disproportionate impact reduces competition, innovation, employment,
5 and new employment opportunities, and threatens the very existence of
6 some small businesses. The legislature therefore enacts the regulatory
7 fairness act with the intent of reducing the disproportionate impact of
8 state administrative rules on small business.

9 **Sec. 10.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to
10 read as follows:

11 Unless the context clearly indicates otherwise, the definitions in
12 this section apply through this chapter.

13 (1) "Small business" means any business entity, including a sole
14 proprietorship, corporation, partnership, or other legal entity, that
15 is owned and operated independently from all other businesses, that has
16 the purpose of making a profit, and that has fifty or fewer employees.

17 (2) "Small business economic impact statement" means a statement
18 meeting the requirements of RCW 19.85.040 prepared by a state agency
19 pursuant to RCW 19.85.030.

20 (3) "Industry" means all of the businesses in this state in any one
21 (~~((three-digit))~~) four-digit standard industrial classification as
22 published by the United States department of commerce. However, if the
23 use of a four-digit standard industrial classification would result in
24 the release of data that would violate state confidentiality laws,
25 "industry" means all businesses in a three-digit standard industrial
26 classification.

27 **Sec. 11.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
28 each reenacted and amended to read as follows:

29 (1) In the adoption of any rule pursuant to RCW 34.05.320 that will
30 (~~((have an economic impact))~~) impose more than minor costs on more than
31 twenty percent of all industries, or more than ten percent of any one
32 industry, the adopting agency:

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

1 ~~((a))~~ (i) Establish differing compliance or reporting
2 requirements or timetables for small businesses;

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

5 ~~((c))~~ (iii) Establish performance rather than design standards;

6 ~~((d))~~ (iv) Exempt small businesses from any or all requirements
7 of the rule;

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

9 (vi) Other mitigation techniques;

10 ~~((2))~~ (b) Before filing notice of a proposed rule, shall prepare
11 a small business economic impact statement in accordance with RCW
12 19.85.040 and file ((such)) notice of how the person can obtain the
13 statement with the code reviser ((along with)) as part of the notice
14 required under RCW 34.05.320;

15 (2) If requested to do so by a majority vote of the joint
16 administrative rules review committee within thirty days after notice
17 of the proposed rule is published in the state register, an agency
18 shall prepare a small business economic impact statement on the
19 proposed rule before adoption of the rule. Upon completion, an agency
20 shall provide a copy of the small business economic impact statement to
21 any person requesting it.

22 (3) An agency may request assistance from the business assistance
23 center in the preparation of the small business economic impact
24 statement.

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

33 **Sec. 12.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
34 each reenacted and amended to read as follows:

35 (1) A small business economic impact statement must include a brief
36 description of the reporting, recordkeeping, and other compliance
37 requirements of the proposed rule, and the kinds of professional
38 services that a small business is likely to need in order to comply

1 with such requirements. (~~(A small business economic impact statement)~~)
2 It shall analyze(~~(, based on existing data,)~~) the costs of compliance
3 for businesses required to comply with the (~~(provisions of a)~~) proposed
4 rule adopted pursuant to RCW 34.05.320, including costs of equipment,
5 supplies, labor, and increased administrative costs(~~(, and)~~). It shall
6 consider, based on input received, whether compliance with the rule
7 will cause businesses to lose sales or revenue. To determine whether
8 the proposed rule will have a disproportionate impact on small
9 businesses, the impact statement must compare (~~(to the greatest extent~~
10 ~~possible))~~) the cost of compliance for small business with the cost of
11 compliance for the ten percent of (~~(firms which)~~) businesses that are
12 the largest businesses required to comply with the proposed (~~(new or~~
13 ~~amendatory)~~) rules(~~(. The small business economic impact statement~~
14 ~~shall use)~~) using one or more of the following as a basis for comparing
15 costs:

- 16 (~~(1)~~) (a) Cost per employee;
17 (~~(2)~~) (b) Cost per hour of labor; or
18 (~~(3)~~) (c) Cost per one hundred dollars of sales(~~(+~~
19 ~~(4) Any combination of (1), (2), or (3))~~)).

20 (2) A small business economic impact statement must also include:

21 (a) A statement of the steps taken by the agency to reduce the
22 costs of the rule on small businesses as required by RCW 19.85.030(1),
23 or reasonable justification for not doing so, addressing the options
24 listed in RCW 19.85.030(1);

25 (b) A description of how the agency will involve small businesses
26 in the development of the rule; and

27 (c) A list of industries that will be required to comply with the
28 rule. However, this subsection (2)(c) shall not be construed to
29 preclude application of the rule to any business or industry to which
30 it would otherwise apply.

31 (3) To obtain information for purposes of this section, an agency
32 may survey a representative sample of affected businesses or trade
33 associations and should, whenever possible, appoint a committee under
34 RCW 34.05.310(2) to assist in the accurate assessment of the costs of
35 a proposed rule, and the means to reduce the costs imposed on small
36 business.

37 NEW SECTION. Sec. 13. A new section is added to chapter 19.85 RCW
38 to read as follows:

1 Unless so requested by a majority vote of the joint administrative
2 rules review committee under RCW 19.85.030, an agency is not required
3 to comply with this chapter when adopting any rule solely for the
4 purpose of conformity or compliance, or both, with federal law. In
5 lieu of the statement required under RCW 19.85.030, the agency shall
6 file a statement citing, with specificity, the federal law with which
7 the rule is being adopted to conform or comply, and describing the
8 consequences to the state if the rule is not adopted.

9 **Sec. 14.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read
10 as follows:

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

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

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

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

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

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

28 (f) Agency comments or recommendations, if any, regarding statutory
29 language, implementation, enforcement, and fiscal matters pertaining to
30 the rule;

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

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

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

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

4 (k) A statement indicating how a person can obtain a copy of the
5 small business economic impact statement~~((, if applicable, and a~~
6 ~~statement of steps taken to minimize the economic impact in accordance~~
7 ~~with RCW 19.85.030))~~ prepared under chapter 19.85 RCW, or an
8 explanation for why the agency did not prepare the statement.

9 (2) Upon filing notice of the proposed rule with the code reviser,
10 the adopting agency shall have copies of the notice on file and
11 available for public inspection and shall forward three copies of the
12 notice to the rules review committee.

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

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

22 NEW SECTION. Sec. 15. A new section is added to chapter 43.31 RCW
23 to read as follows:

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

27 (1) Develop agency guidelines for the preparation of a small
28 business economic impact statement and compliance with chapter 19.85
29 RCW;

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

32 (3) Advise the joint administrative rules review committee on
33 whether an agency reasonably assessed the costs of a proposed rule and
34 reduced the costs for small business as required by chapter 19.85 RCW;
35 and

36 (4) Organize and chair a state rules coordinating committee,
37 consisting of agency rules coordinators and interested members of the
38 public, to develop an education and training program that includes,

1 among other components, a component that addresses voluntary
2 compliance, for agency personnel responsible for rule development and
3 implementation. The business assistance center shall submit
4 recommendations to the department of personnel for an administrative
5 procedures training program that is based on the sharing of interagency
6 resources.

7 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
8 each repealed:

- 9 (1) RCW 19.85.010 and 1982 c 6 s 1;
10 (2) RCW 19.85.060 and 1989 c 374 s 5; and
11 (3) RCW 19.85.080 and 1992 c 197 s 2.

12 **Sec. 17.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
13 read as follows:

14 Whenever a majority of the members of the rules review committee
15 determines that a proposed rule is not within the intent of the
16 legislature as expressed in the statute which the rule implements, or
17 that an agency may not be adopting a proposed rule in accordance with
18 all applicable provisions of law, including section 4 of this act and
19 chapter 19.85 RCW, the committee shall give the affected agency written
20 notice of its decision. The notice shall be given at least seven days
21 prior to any hearing scheduled for consideration of or adoption of the
22 proposed rule pursuant to RCW 34.05.320. The notice shall include a
23 statement of the review committee's findings and the reasons therefor.
24 When the agency holds a hearing on the proposed rule, the agency shall
25 consider the review committee's decision.

26 **Sec. 18.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read
27 as follows:

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

31 (2) The rules review committee may review an agency's use of policy
32 statements, guidelines, and issuances that are of general
33 applicability, or their equivalents to determine whether or not an
34 agency has failed to adopt a rule or whether they are within the intent
35 of the legislature as expressed by the governing statute.

1 (3) If the rules review committee finds by a majority vote of its
2 members: (a) That an existing rule is not within the intent of the
3 legislature as expressed by the statute which the rule implements, (b)
4 that the rule has not been adopted in accordance with all applicable
5 provisions of law, including section 4 of this act if the rule was
6 adopted after the effective date of section 4 of this act and chapter
7 19.85 RCW, (c) that an agency is using a policy statement, guideline,
8 or issuance in place of a rule, or (d) that the policy statement,
9 guideline, or issuance is outside of legislative intent, the agency
10 affected shall be notified of such finding and the reasons therefor.
11 Within thirty days of the receipt of the rules review committee's
12 notice, the agency shall file notice of a hearing on the rules review
13 committee's finding with the code reviser and mail notice to all
14 persons who have made timely request of the agency for advance notice
15 of its rule-making proceedings as provided in RCW 34.05.320. The
16 agency's notice shall include the rules review committee's findings and
17 reasons therefor, and shall be published in the Washington state
18 register in accordance with the provisions of chapter 34.08 RCW.

19 (4) The agency shall consider fully all written and oral
20 submissions regarding (a) whether the rule in question is within the
21 intent of the legislature as expressed by the statute which the rule
22 implements, (b) whether the rule was adopted in accordance with all
23 applicable provisions of law, including section 4 of this act if the
24 rule was adopted after the effective date of section 4 of this act and
25 chapter 19.85 RCW, (c) whether the agency is using a policy statement,
26 guideline, or issuance in place of a rule, or (d) whether the policy
27 statement, guideline, or issuance is within the legislative intent.

28 **Sec. 19.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
29 as follows:

30 (1) Within seven days of an agency hearing held after notification
31 of the agency by the rules review committee pursuant to RCW 34.05.620
32 or 34.05.630, the affected agency shall notify the committee of its
33 action on a proposed or existing rule to which the committee objected
34 or on a committee finding of the agency's failure to adopt rules. If
35 the rules review committee determines, by a majority vote of its
36 members, that the agency has failed to provide for the required
37 hearings or notice of its action to the committee, the committee may
38 file notice of its objections, together with a concise statement of the

1 reasons therefor, with the code reviser within thirty days of such
2 determination.

3 (2) If the rules review committee finds, by a majority vote of its
4 members: (a) That the proposed or existing rule in question has not
5 been modified, amended, withdrawn, or repealed by the agency so as to
6 conform with the intent of the legislature, or (b) that an existing
7 rule was not adopted in accordance with all applicable provisions of
8 law, including section 4 of this act if the rule was adopted after the
9 effective date of section 4 of this act and chapter 19.85 RCW, or (c)
10 that the agency is using a policy statement, guideline, or issuance in
11 place of a rule, or that the policy statement, guideline, or issuance
12 is outside of the legislative intent, the rules review committee may,
13 within thirty days from notification by the agency of its action, file
14 with the code reviser notice of its objections together with a concise
15 statement of the reasons therefor. Such notice and statement shall
16 also be provided to the agency by the rules review committee.

17 (3) If the rules review committee makes an adverse finding under
18 subsection (2) of this section, the committee may, by a (~~two-thirds~~)
19 majority vote of its members, recommend suspension of an existing rule.
20 Within seven days of such vote the committee shall transmit to the
21 appropriate standing committees of the legislature, the governor, the
22 code reviser, and the agency written notice of its objection and
23 recommended suspension and the concise reasons therefor. Within thirty
24 days of receipt of the notice, the governor shall transmit to the
25 committee, the code reviser, and the agency written approval or
26 disapproval of the recommended suspension. If the suspension is
27 approved by the governor, it is effective from the date of that
28 approval and continues until ninety days after the expiration of the
29 next regular legislative session.

30 (4) If the governor disapproves the recommendation of the rules
31 review committee to suspend the rule, the transmittal of such decision,
32 along with the findings of the rules review committee, shall be treated
33 by the agency as a petition by the rules review committee to repeal the
34 rule under RCW 34.05.330.

35 (5) The code reviser shall publish transmittals from the rules
36 review committee or the governor issued pursuant to subsection (1),
37 (2), or (3) of this section in the Washington state register and shall
38 publish in the next supplement and compilation of the Washington
39 Administrative Code a reference to the committee's objection or

1 recommended suspension and the governor's action on it and to the issue
2 of the Washington state register in which the full text thereof
3 appears.

4 ~~((+5+))~~ (6) The reference shall be removed from a rule published in
5 the Washington Administrative Code if a subsequent adjudicatory
6 proceeding determines that the rule is within the intent of the
7 legislature or was adopted in accordance with all applicable laws,
8 whichever was the objection of the rules review committee.

9 **Sec. 20.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
10 read as follows:

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

17 (2) Notwithstanding subsection (1) of this section, if the joint
18 administrative rules review committee, by a two-thirds vote of its
19 members, recommends to the governor that an existing rule be suspended
20 because it does not conform with the intent of the legislature, the
21 recommendation shall establish a rebuttable presumption in any
22 proceeding challenging the validity of the rule that the rule is
23 invalid. The burden of demonstrating the rule's validity is then on
24 the adopting agency.

25 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 34.05.670 and 1992 c 197 s 3; and

28 (2) RCW 34.05.680 and 1992 c 197 s 4.

29 NEW SECTION. **Sec. 22.** The department of community, trade, and
30 economic development shall develop a standardized format for reporting
31 information that is commonly required from the public by state, local,
32 and where appropriate, federal government agencies for permits,
33 licenses, approvals, and services. In the development of the format,
34 the department shall work in conjunction with representatives from
35 state, local, and where appropriate, federal government agencies. In

1 developing the standardized format, the department shall also consult
2 with representatives of both small and large businesses in the state.

3 The department shall submit the standardized format together with
4 recommendations for implementation to the legislature by December 31,
5 1994.

6 NEW SECTION. **Sec. 23.** A new section is added to chapter 34.05 RCW
7 to read as follows:

8 (1) This section applies only to the department of revenue, the
9 employment security department, the department of ecology, the
10 department of labor and industries, the department of health, the
11 department of licensing, and the department of fish and wildlife for
12 rules other than those that deal only with seasons, catch or bag
13 limits, gear types, or geographical areas for fishing or shellfish
14 removal.

15 (2) If a business entity has written to an agency listed in
16 subsection (1) of this section requesting technical assistance to
17 comply with specific types of the agency's statutes or rules, the
18 agency may immediately impose a penalty otherwise provided for by law
19 for a violation of a statute or administrative rule only if the
20 business entity on which the penalty will be imposed has: (a)
21 Previously violated the same statute or rule; or (b) knowingly violated
22 the statute or rule. Where a penalty is otherwise provided, but may
23 not be imposed under this subsection, the agency shall issue a
24 statement of deficiency.

25 (3) A statement of deficiency shall specify: (a) The particular
26 rule violated; (b) the steps the entity must take to comply with the
27 rule; (c) any agency personnel designated by the agency to provide
28 technical assistance regarding compliance with the rule; and (d) a date
29 by which the entity is required to comply with the rule. The date
30 specified shall provide a reasonable period of time for the entity to
31 comply with the rule, considering the size of the entity, its available
32 resources, and the threat posed by the violation. If the entity fails
33 to comply with the rule by the date specified, it shall be subject to
34 the penalty otherwise provided in law.

35 (4) Subsection (2) of this section shall not apply to any violation
36 that places a person in danger of death or bodily harm, is causing or
37 is likely to cause more than minor environmental harm, or has caused or
38 is likely to cause physical damage to the property of others in an

1 amount exceeding one thousand dollars. With regard to a statute or
2 rule requiring the payment of a tax, subsection (2) of this section
3 shall not apply if the amount of taxes actually owed by the business
4 entity exceeds the amount paid by more than one thousand dollars and
5 shall not be construed to relieve anyone from the obligation to pay
6 interest on taxes owed.

7 (5) The state, the agency, and officers or employees of the state
8 shall not be liable for damages to any person to the extent that
9 liability is asserted to arise from the technical assistance provided
10 under this section, or if liability is asserted to arise from the
11 failure of the agency to supply technical assistance.

12 (6) An agency need not comply with this section if compliance may
13 be in conflict with a requirement of federal law for obtaining or
14 maintaining state authority to administer a federally delegated
15 program; however, the agency shall submit a written petition to the
16 appropriate federal agency for authorization to comply with this
17 section for all inspections while obtaining or maintaining the state's
18 federal delegation and shall comply with this section to the extent
19 authorized by the appropriate federal agency.

20 **Sec. 24.** RCW 34.05.220 and 1989 c 175 s 4 are each amended to read
21 as follows:

22 (1) In addition to other rule-making requirements imposed by law:

23 (a) Each agency may adopt rules governing the formal and informal
24 procedures prescribed or authorized by this chapter and rules of
25 practice before the agency, together with forms and instructions. If
26 an agency has not adopted procedural rules under this section, the
27 model rules adopted by the chief administrative law judge under RCW
28 34.05.250 govern procedures before the agency.

29 (b) To assist interested persons dealing with it, each agency shall
30 adopt as a rule a description of its organization, stating the general
31 course and method of its operations and the methods whereby the public
32 may obtain information and make submissions or requests. No person may
33 be required to comply with agency procedure not adopted as a rule as
34 herein required.

35 (2) To the extent not prohibited by federal law or regulation, nor
36 prohibited for reasons of confidentiality by state law, each agency
37 shall keep on file for public inspection all final orders, decisions,
38 and opinions in adjudicative proceedings, interpretive statements,

1 policy statements, and any digest or index to those orders, decisions,
2 opinions, or statements prepared by or for the agency.

3 (3) No agency order, decision, or opinion is valid or effective
4 against any person, nor may it be invoked by the agency for any
5 purpose, unless it is available for public inspection. This subsection
6 is not applicable in favor of any person who has actual knowledge of
7 the order, decision, or opinion. The agency has the burden of proving
8 that knowledge, but may meet that burden by proving that the person has
9 been properly served with a copy of the order.

10 (4) Each agency that is authorized by law to exercise discretion in
11 deciding individual cases is encouraged to formalize the general
12 principles that may evolve from these decisions by adopting the
13 principles as rules that the agency will follow until they are amended
14 or repealed.

15 (5) To the extent practicable, any rule proposed or adopted by an
16 agency should be clearly and simply stated, so that it can be
17 understood by those required to comply.

18 **Sec. 25.** RCW 34.05.534 and 1988 c 288 s 507 are each amended to
19 read as follows:

20 A person may file a petition for judicial review under this chapter
21 only after exhausting all administrative remedies available within the
22 agency whose action is being challenged, or available within any other
23 agency authorized to exercise administrative review, except:

24 (1) A petitioner for judicial review of a rule need not have
25 participated in the rule-making proceeding upon which that rule is
26 based, ~~((or))~~ have petitioned for its amendment or repeal, or have
27 appealed a petition for amendment or repeal to the governor;

28 (2) A petitioner for judicial review need not exhaust
29 administrative remedies to the extent that this chapter or any other
30 statute states that exhaustion is not required; or

31 (3) The court may relieve a petitioner of the requirement to
32 exhaust any or all administrative remedies upon a showing that:

33 (a) The remedies would be patently inadequate;

34 (b) The exhaustion of remedies would be futile; or

35 (c) The grave irreparable harm that would result from having to
36 exhaust administrative remedies would clearly outweigh the public
37 policy requiring exhaustion of administrative remedies.

1 **Sec. 26.** RCW 36.70A.290 and 1991 sp.s. c 32 s 10 are each amended
2 to read as follows:

3 (1) All requests for review to a growth (~~(planning)~~) management
4 hearings board shall be initiated by filing a petition that includes a
5 detailed statement of issues presented for resolution by the board.

6 (2) All petitions relating to whether or not an adopted
7 comprehensive plan, development regulation, or permanent amendment
8 thereto, is in compliance with the goals and requirements of this
9 chapter or chapter 43.21C RCW must be filed within sixty days after
10 publication by the legislative bodies of the county or city. The date
11 of publication for a city shall be the date the city publishes the
12 ordinance, or summary of the ordinance, adopting the comprehensive plan
13 or development regulations, or amendment thereto, as is required to be
14 published. Promptly after adoption, a county shall publish a notice
15 that it has adopted the comprehensive plan or development regulations,
16 or amendment thereto. The date of publication for a county shall be
17 the date the county publishes the notice that it has adopted the
18 comprehensive plan or development regulations, or amendment thereto.

19 (3) Unless the board dismisses the petition as frivolous or finds
20 that the person filing the petition lacks standing, the board shall,
21 within ten days of receipt of the petition, set a time for hearing the
22 matter.

23 (4) The board shall base its decision on the record developed by
24 the city, county, or the state and supplemented with additional
25 evidence if the board determines that such additional evidence would be
26 necessary or of substantial assistance to the board in reaching its
27 decision.

28 (5) The board, shall consolidate, when appropriate, all petitions
29 involving the review of the same comprehensive plan or the same
30 development regulation or regulations.

31 **Sec. 27.** RCW 36.70A.110 and 1993 sp.s. c 6 s 2 are each amended to
32 read as follows:

33 (1) Each county that is required or chooses to plan under RCW
34 36.70A.040 shall designate an urban growth area or areas within which
35 urban growth shall be encouraged and outside of which growth can occur
36 only if it is not urban in nature. Each city that is located in such
37 a county shall be included within an urban growth area. An urban
38 growth area may include more than a single city. An urban growth area

1 may include territory that is located outside of a city only if such
2 territory already is characterized by urban growth or is adjacent to
3 territory already characterized by urban growth.

4 (2) Based upon the population growth management planning population
5 projection made for the county by the office of financial management,
6 the urban growth areas in the county shall include areas and densities
7 sufficient to permit the urban growth that is projected to occur in the
8 county for the succeeding twenty-year period. Each urban growth area
9 shall permit urban densities and shall include greenbelt and open space
10 areas. Within one year of July 1, 1990, each county that as of June 1,
11 1991, was required or chose to plan under RCW 36.70A.040, shall begin
12 consulting with each city located within its boundaries and each city
13 shall propose the location of an urban growth area. Within sixty days
14 of the date the county legislative authority of a county adopts its
15 resolution of intention or of certification by the office of financial
16 management, all other counties that are required or choose to plan
17 under RCW 36.70A.040 shall begin this consultation with each city
18 located within its boundaries. The county shall attempt to reach
19 agreement with each city on the location of an urban growth area within
20 which the city is located. If such an agreement is not reached with
21 each city located within the urban growth area, the county shall
22 justify in writing why it so designated the area an urban growth area.
23 A city may object formally with the department over the designation of
24 the urban growth area within which it is located. Where appropriate,
25 the department shall attempt to resolve the conflicts, including the
26 use of mediation services.

27 (3) Urban growth should be located first in areas already
28 characterized by urban growth that have existing public facility and
29 service capacities to serve such development, and second in areas
30 already characterized by urban growth that will be served by a
31 combination of both existing public facilities and services and any
32 additional needed public facilities and services that are provided by
33 either public or private sources. Further, it is appropriate that
34 urban government services be provided by cities, and urban government
35 services should not be provided in rural areas.

36 (4) On or before October 1, 1993, each county that was initially
37 required to plan under RCW 36.70A.040(1) shall adopt development
38 regulations designating interim urban growth areas under this chapter.
39 Within three years and three months of the date the county legislative

1 authority of a county adopts its resolution of intention or of
2 certification by the office of financial management, all other counties
3 that are required or choose to plan under RCW 36.70A.040 shall adopt
4 development regulations designating interim urban growth areas under
5 this chapter. Adoption of the interim urban growth areas may only
6 occur after public notice; public hearing; and compliance with the
7 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
8 Such action may be appealed to the appropriate growth ((planning))
9 management hearings board under RCW 36.70A.280. Final urban growth
10 areas shall be adopted at the time of comprehensive plan adoption under
11 this chapter.

12 (5) Each county shall include designations of urban growth areas in
13 its comprehensive plan.

14 **Sec. 28.** RCW 36.70A.210 and 1993 sp.s. c 6 s 4 are each amended to
15 read as follows:

16 (1) The legislature recognizes that counties are regional
17 governments within their boundaries, and cities are primary providers
18 of urban governmental services within urban growth areas. For the
19 purposes of this section, a "county-wide planning policy" is a written
20 policy statement or statements used solely for establishing a county-
21 wide framework from which county and city comprehensive plans are
22 developed and adopted pursuant to this chapter. This framework shall
23 ensure that city and county comprehensive plans are consistent as
24 required in RCW 36.70A.100. Nothing in this section shall be construed
25 to alter the land-use powers of cities.

26 (2) The legislative authority of a county that plans under RCW
27 36.70A.040 shall adopt a county-wide planning policy in cooperation
28 with the cities located in whole or in part within the county as
29 follows:

30 (a) No later than sixty calendar days from July 16, 1991, the
31 legislative authority of each county that as of June 1, 1991, was
32 required or chose to plan under RCW 36.70A.040 shall convene a meeting
33 with representatives of each city located within the county for the
34 purpose of establishing a collaborative process that will provide a
35 framework for the adoption of a county-wide planning policy. In other
36 counties that are required or choose to plan under RCW 36.70A.040, this
37 meeting shall be convened no later than sixty days after the date the

1 county adopts its resolution of intention or was certified by the
2 office of financial management.

3 (b) The process and framework for adoption of a county-wide
4 planning policy specified in (a) of this subsection shall determine the
5 manner in which the county and the cities agree to all procedures and
6 provisions including but not limited to desired planning policies,
7 deadlines, ratification of final agreements and demonstration thereof,
8 and financing, if any, of all activities associated therewith.

9 (c) If a county fails for any reason to convene a meeting with
10 representatives of cities as required in (a) of this subsection, the
11 governor may immediately impose any appropriate sanction or sanctions
12 on the county from those specified under RCW 36.70A.340.

13 (d) If there is no agreement by October 1, 1991, in a county that
14 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
15 or if there is no agreement within one hundred twenty days of the date
16 the county adopted its resolution of intention or was certified by the
17 office of financial management in any other county that is required or
18 chooses to plan under RCW 36.70A.040, the governor shall first inquire
19 of the jurisdictions as to the reason or reasons for failure to reach
20 an agreement. If the governor deems it appropriate, the governor may
21 immediately request the assistance of the department of community,
22 trade, and economic development to mediate any disputes that preclude
23 agreement. If mediation is unsuccessful in resolving all disputes that
24 will lead to agreement, the governor may impose appropriate sanctions
25 from those specified under RCW 36.70A.340 on the county, city, or
26 cities for failure to reach an agreement as provided in this section.
27 The governor shall specify the reason or reasons for the imposition of
28 any sanction.

29 (e) No later than July 1, 1992, the legislative authority of each
30 county that was required or chose to plan under RCW 36.70A.040 as of
31 June 1, 1991, or no later than fourteen months after the date the
32 county adopted its resolution of intention or was certified by the
33 office of financial management the county legislative authority of any
34 other county that is required or chooses to plan under RCW 36.70A.040,
35 shall adopt a county-wide planning policy according to the process
36 provided under this section and that is consistent with the agreement
37 pursuant to (b) of this subsection, and after holding a public hearing
38 or hearings on the proposed county-wide planning policy.

1 (3) A county-wide planning policy shall at a minimum, address the
2 following:

3 (a) Policies to implement RCW 36.70A.110;

4 (b) Policies for promotion of contiguous and orderly development
5 and provision of urban services to such development;

6 (c) Policies for siting public capital facilities of a county-wide
7 or state-wide nature;

8 (d) Policies for county-wide transportation facilities and
9 strategies;

10 (e) Policies that consider the need for affordable housing, such as
11 housing for all economic segments of the population and parameters for
12 its distribution;

13 (f) Policies for joint county and city planning within urban growth
14 areas;

15 (g) Policies for county-wide economic development and employment;
16 and

17 (h) An analysis of the fiscal impact.

18 (4) Federal agencies and Indian tribes may participate in and
19 cooperate with the county-wide planning policy adoption process.
20 Adopted county-wide planning policies shall be adhered to by state
21 agencies.

22 (5) Failure to adopt a county-wide planning policy that meets the
23 requirements of this section may result in the imposition of a sanction
24 or sanctions on a county or city within the county, as specified in RCW
25 36.70A.340. In imposing a sanction or sanctions, the governor shall
26 specify the reasons for failure to adopt a county-wide planning policy
27 in order that any imposed sanction or sanctions are fairly and
28 equitably related to the failure to adopt a county-wide planning
29 policy.

30 (6) Cities and the governor may appeal an adopted county-wide
31 planning policy to the growth (~~(planning))~~ management hearings board
32 within sixty days of the adoption of the county-wide planning policy.

33 (7) Multicounty planning policies shall be adopted by two or more
34 counties, each with a population of four hundred fifty thousand or
35 more, with contiguous urban areas and may be adopted by other counties,
36 according to the process established under this section or other
37 processes agreed to among the counties and cities within the affected
38 counties throughout the multicounty region.

1 **Sec. 29.** RCW 36.70A.250 and 1991 sp.s. c 32 s 5 are each amended
2 to read as follows:

3 (1) There are hereby created three growth (~~(planning)~~) management
4 hearings boards for the state of Washington. The boards shall be
5 established as follows:

6 (a) An Eastern Washington board with jurisdictional boundaries
7 including all counties that are required to or choose to plan under RCW
8 36.70A.040 and are located east of the crest of the Cascade mountains;

9 (b) A Central Puget Sound board with jurisdictional boundaries
10 including King, Pierce, Snohomish, and Kitsap counties; and

11 (c) A Western Washington board with jurisdictional boundaries
12 including all counties that are required or choose to plan under RCW
13 36.70A.040 and are located west of the crest of the Cascade mountains
14 and are not included in the Central Puget Sound board jurisdictional
15 boundaries. Skamania county, should it be required or choose to plan
16 under RCW 36.70A.040, may elect to be included within the
17 jurisdictional boundaries of either the Western or Eastern board.

18 (2) Each board shall only hear matters pertaining to the cities and
19 counties located within its jurisdictional boundaries.

20 **Sec. 30.** RCW 36.70A.260 and 1991 sp.s. c 32 s 6 are each amended
21 to read as follows:

22 (1) Each growth (~~(planning)~~) management hearings board shall
23 consist of three members qualified by experience or training in matters
24 pertaining to land use planning and residing within the jurisdictional
25 boundaries of the applicable board. At least one member of each board
26 must be admitted to practice law in this state and at least one member
27 must have been a city or county elected official. Each board shall be
28 appointed by the governor and not more than two members at the time of
29 appointment or during their term shall be members of the same political
30 party. No more than two members at the time of appointment or during
31 their term shall reside in the same county.

32 (2) Each member of a board shall be appointed for a term of six
33 years. A vacancy shall be filled by appointment by the governor for
34 the unexpired portion of the term in which the vacancy occurs. The
35 terms of the first three members of a board shall be staggered so that
36 one member is appointed to serve until July 1, 1994, one member until
37 July 1, 1996, and one member until July 1, 1998.

1 **Sec. 31.** RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended
2 to read as follows:

3 (1) A growth (~~(planning)~~) management hearings board shall hear and
4 determine only those petitions alleging either:

5 (a) That a state agency, county, or city is not in compliance with
6 the requirements of this chapter, or chapter 43.21C RCW as it relates
7 to plans, regulations, (~~(and)~~) or amendments (~~(thereto)~~), adopted under
8 RCW 36.70A.040; or

9 (b) That the twenty-year growth management planning population
10 projections adopted by the office of financial management pursuant to
11 RCW 43.62.035 should be adjusted.

12 (2) A petition may be filed only by the state, a county or city
13 that plans under this chapter, a person who has either appeared before
14 the county or city regarding the matter on which a review is being
15 requested or is certified by the governor within sixty days of filing
16 the request with the board, or a person qualified pursuant to RCW
17 34.05.530.

18 (3) For purposes of this section "person" means any individual,
19 partnership, corporation, association, governmental subdivision or unit
20 thereof, or public or private organization or entity of any character.

21 (4) When considering a possible adjustment to a growth management
22 planning population projection prepared by the office of financial
23 management, a board shall consider the implications of any such
24 adjustment to the population forecast for the entire state.

25 The rationale for any adjustment that is adopted by a board must be
26 documented and filed with the office of financial management within ten
27 working days after adoption.

28 If adjusted by a board, a county growth management planning
29 population projection shall only be used for the planning purposes set
30 forth in this chapter and shall be known as a "board adjusted
31 population projection". None of these changes shall affect the
32 official state and county population forecasts prepared by the office
33 of financial management, which shall continue to be used for state
34 budget and planning purposes.

35 **Sec. 32.** RCW 36.70A.310 and 1991 sp.s. c 32 s 12 are each amended
36 to read as follows:

37 A request for review by the state to a growth (~~(planning)~~)
38 management hearings board may be made only by the governor, or with the

1 governor's consent the head of an agency, or by the commissioner of
2 public lands as relating to state trust lands, for the review of
3 whether: (1) A county or city that is required or chooses to plan
4 under RCW 36.70A.040 has failed to adopt a comprehensive plan or
5 development regulations, or county-wide planning policies within the
6 time limits established by this chapter; or (2) a county or city that
7 is required or chooses to plan under this chapter has adopted a
8 comprehensive plan, development regulations, or county-wide planning
9 policies, that are not in compliance with the requirements of this
10 chapter.

11 **Sec. 33.** RCW 36.70A.345 and 1993 sp.s. c 6 s 5 are each amended to
12 read as follows:

13 The governor may impose a sanction or sanctions specified under RCW
14 36.70A.340 on: (1) A county or city that fails to designate critical
15 areas, agricultural lands, forest lands, or mineral resource lands
16 under RCW 36.70A.170 by the date such action was required to have been
17 taken; (2) a county or city that fails to adopt development regulations
18 under RCW 36.70A.060 protecting critical areas or conserving
19 agricultural lands, forest lands, or mineral resource lands by the date
20 such action was required to have been taken; (3) a county that fails to
21 designate urban growth areas under RCW 36.70A.110 by the date such
22 action was required to have been taken; and (4) a county or city that
23 fails to adopt its comprehensive plan or development regulations when
24 such actions are required to be taken.

25 Imposition of a sanction or sanctions under this section shall be
26 preceded by written findings by the governor, that either the county or
27 city is not proceeding in good faith to meet the requirements of the
28 act; or that the county or city has unreasonably delayed taking the
29 required action. The governor shall consult with and communicate his
30 or her findings to the appropriate growth (~~planning~~) management
31 hearings board prior to imposing the sanction or sanctions. For those
32 counties or cities that are not required to plan or have not opted in,
33 the governor in imposing sanctions shall consider the size of the
34 jurisdiction relative to the requirements of this chapter and the
35 degree of technical and financial assistance provided.

36 NEW SECTION. **Sec. 34.** A new section is added to chapter 35.21 RCW
37 to read as follows:

1 (1) Before a city or town adopts a law that regulates the same
2 activity or subject matter as another provision of federal or state
3 law, the city or town shall:

4 (a) Contact appropriate state and federal government entities
5 regulating the same activity or subject matter to identify areas of
6 conflict, overlap, or duplication; and

7 (b) Make every effort to avoid conflict, overlap, and duplication;

8 (2) After the adoption of a law that conflicts with, overlaps, or
9 duplicates other laws, the city or town shall:

10 (a) Notify the state and federal entities of the adoption of the
11 law and the areas of conflict, overlap, and duplication; and

12 (b) Make every effort to coordinate implementation of the law with
13 the appropriate state and federal entities.

14 NEW SECTION. **Sec. 35.** A new section is added to chapter 36.01 RCW
15 to read as follows:

16 (1) Before a county adopts a law that regulates the same activity
17 or subject matter as another provision of federal or state law, the
18 county shall:

19 (a) Contact appropriate state and federal government entities
20 regulating the same activity or subject matter to identify areas of
21 conflict, overlap, or duplication; and

22 (b) Make every effort to avoid conflict, overlap, and duplication;

23 (2) After the adoption of a law that conflicts with, overlaps, or
24 duplicates other laws, the county shall:

25 (a) Notify the state and federal entities of the adoption of the
26 law and the areas of conflict, overlap, and duplication; and

27 (b) Make every effort to coordinate implementation of the law with
28 the appropriate state and federal entities.

29 NEW SECTION. **Sec. 36.** This act applies prospectively only and not
30 retroactively.

31 NEW SECTION. **Sec. 37.** Section 10 of this act shall take effect
32 July 1, 1994.

33 NEW SECTION. **Sec. 38.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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