
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2221

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Reams, Schoesler, Mastin, Koster, Campbell, Horn, L. Thomas, Sheahan, D. Schmidt, Elliot, Mitchell, Thompson, Stevens, Goldsmith, Backlund, Hargrove and McMahan)

Read first time 02/05/96.

1 AN ACT Relating to regulatory reform; amending RCW 76.09.010,
2 76.09.040, 48.02.060, 48.44.050, 48.46.200, 34.05.350, 34.05.380,
3 34.05.328, 34.05.230, 34.05.570, 4.84.340, and 43.41.110; adding a new
4 section to chapter 43.22 RCW; adding new sections to chapter 34.05 RCW;
5 adding a new section to chapter 4.84 RCW; adding a new chapter to Title
6 43 RCW; creating a new section; and declaring an emergency.

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

8

PART I

9

GRANTS OF RULE-MAKING AUTHORITY

10 **Sec. 101.** RCW 76.09.010 and 1993 c 443 s 1 are each amended to
11 read as follows:

12 (1) The legislature hereby finds and declares that the forest land
13 resources are among the most valuable of all resources in the state;
14 that a viable forest products industry is of prime importance to the
15 state's economy; that it is in the public interest for public and
16 private commercial forest lands to be managed consistent with sound
17 policies of natural resource protection; that coincident with
18 maintenance of a viable forest products industry, it is important to

1 afford protection to forest soils, fisheries, wildlife, water quantity
2 and quality, air quality, recreation, and scenic beauty.

3 (2) The legislature further finds and declares it to be in the
4 public interest of this state to create and maintain through the
5 adoption of this chapter a comprehensive state-wide system of laws and
6 forest practices regulations which will achieve the following purposes
7 and policies:

8 (a) Afford protection to, promote, foster and encourage timber
9 growth, and require such minimum reforestation of commercial tree
10 species on forest lands as will reasonably utilize the timber growing
11 capacity of the soil following current timber harvest;

12 (b) Afford protection to forest soils and public resources by
13 utilizing all reasonable methods of technology in conducting forest
14 practices;

15 (c) Recognize both the public and private interest in the
16 profitable growing and harvesting of timber;

17 (d) Promote efficiency by permitting maximum operating freedom
18 consistent with the other purposes and policies stated herein;

19 (e) Provide for regulation of forest practices so as to avoid
20 unnecessary duplication in such regulation;

21 (f) Provide for interagency input and intergovernmental and tribal
22 coordination and cooperation;

23 (g) Achieve compliance with all applicable requirements of federal
24 and state law with respect to nonpoint sources of water pollution from
25 forest practices;

26 (h) To consider reasonable land use planning goals and concepts
27 contained in local comprehensive plans and zoning regulations; and

28 (i) Foster cooperation among managers of public resources, forest
29 landowners, Indian tribes and the citizens of the state.

30 The authority of the board to adopt forest practices rules is
31 prescribed by this subsection (2) and RCW 76.09.040. The board may not
32 adopt forest practices rules based solely on any other section of law
33 stating a statute's intent or purpose, on the enabling provisions of
34 the statute establishing the agency, or on any combination of such
35 provisions.

36 (3) The legislature further finds and declares that it is also in
37 the public interest of the state to encourage forest landowners to
38 undertake corrective and remedial action to reduce the impact of mass
39 earth movements and fluvial processes.

1 (4) The legislature further finds and declares that it is in the
2 public interest that the applicants for state forest practice permits
3 should assist in paying for the cost of review and permitting necessary
4 for the environmental protection of these resources.

5 **Sec. 102.** RCW 76.09.040 and 1994 c 264 s 48 are each amended to
6 read as follows:

7 (1) Where necessary to accomplish the purposes and policies
8 specifically stated in RCW 76.09.010(2), and to implement the
9 provisions of this chapter, the board shall (~~promulgate~~) adopt forest
10 practices (~~regulations~~) rules pursuant to chapter 34.05 RCW and in
11 accordance with the procedures enumerated in this section that:

12 (a) Establish minimum standards for forest practices;

13 (b) Provide procedures for the voluntary development of resource
14 management plans which may be adopted as an alternative to the minimum
15 standards in (a) of this subsection if the plan is consistent with the
16 purposes and policies specifically stated in RCW 76.09.010(2) and the
17 plan meets or exceeds the objectives of the minimum standards;

18 (c) Set forth necessary administrative provisions; and

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

21 Forest practices (~~regulations~~) rules pertaining to water quality
22 protection shall be (~~promulgated~~) adopted individually by the board
23 and by the department of ecology after they have reached agreement with
24 respect thereto. All other forest practices (~~regulations~~) rules
25 shall be (~~promulgated~~) adopted by the board.

26 Forest practices (~~regulations~~) rules shall be administered and
27 enforced by the department except as otherwise provided in this
28 chapter. Such (~~regulations~~) rules shall be (~~promulgated~~) adopted
29 and administered so as to give consideration to all purposes and
30 policies specifically set forth in RCW 76.09.010(2).

31 (~~(2)~~) (3) The board shall prepare proposed forest practices
32 (~~regulations~~) rules. In addition to any forest practices
33 (~~regulations~~) rules relating to water quality protection proposed by
34 the board, the department of ecology shall prepare proposed forest
35 practices (~~regulations~~) rules relating to water quality protection.

36 Prior to initiating the rule making process, the proposed
37 (~~regulations~~) rules shall be submitted for review and comments to the
38 department of fish and wildlife and to the counties of the state.

1 After receipt of the proposed forest practices (~~((regulations))~~) rules,
2 the department of fish and wildlife and the counties of the state shall
3 have thirty days in which to review and submit comments to the board,
4 and to the department of ecology with respect to its proposed
5 (~~((regulations))~~) rules relating to water quality protection. After the
6 expiration of such thirty day period the board and the department of
7 ecology shall jointly hold one or more hearings on the proposed
8 (~~((regulations))~~) rules pursuant to chapter 34.05 RCW. At such
9 hearing(s) any county may propose specific forest practices
10 (~~((regulations))~~) rules relating to problems existing within such county.
11 The board and the department of ecology may adopt such proposals if
12 they find the proposals are consistent with the purposes and policies
13 of this chapter.

14 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.22
15 RCW to read as follows:

16 For rules adopted after the effective date of this section, the
17 director of the department of labor and industries may not rely solely
18 on a statute's statement of intent or purpose, on the enabling
19 provisions of the statute establishing the agency, or on any
20 combination of such provisions, for statutory authority to adopt any
21 rule: PROVIDED, That this section shall not apply to rules adopted
22 pursuant to chapter 39.12 RCW.

23 **Sec. 104.** RCW 48.02.060 and 1947 c 79 s .02.06 are each amended to
24 read as follows:

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

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

30 (3) The commissioner may:

31 (a) Make reasonable rules and regulations for effectuating any
32 provision of this code, except those relating to his or her election,
33 qualifications, or compensation: PROVIDED, That the commissioner may
34 not adopt rules after the effective date of this section that are based
35 solely on this statute, or on a statute's statement of intent or
36 purpose, or on the enabling provisions of the statute establishing the
37 agency, or any combination of such provisions, for statutory authority

1 to adopt any rule, except rules defining or clarifying terms in, or
2 procedures necessary to the implementation of a statute. No such rules
3 and regulations shall be effective prior to their being filed for
4 public inspection in the commissioner's office.

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

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

10 **Sec. 105.** RCW 48.44.050 and 1947 c 268 s 5 are each amended to
11 read as follows:

12 The insurance commissioner shall make reasonable regulations in aid
13 of the administration of this chapter which may include, but shall not
14 be limited to regulations concerning the maintenance of adequate
15 insurance, bonds, or cash deposits, information required of
16 registrants, and methods of expediting speedy and fair payments to
17 claimants: PROVIDED, That the commissioner may not adopt rules after
18 the effective date of this section that are based solely on this
19 section, a statute's statement of intent or purpose, or on the enabling
20 provisions of the statute establishing the agency, or any combination
21 of such provisions, for statutory authority to adopt any rule, except
22 rules defining or clarifying terms in, or procedures necessary to the
23 implementation of a statute.

24 NEW SECTION. **Sec. 106.** A new section is added to chapter 34.05
25 RCW under the subchapter heading "Part III" to read as follows:

26 No board or commission established under Title 18 RCW whose sole
27 function is to perform regulatory or licensing functions with respect
28 to a specific profession or occupation, other than a health-related
29 profession or occupation, may adopt or enforce a rule that establishes
30 education requirements in excess of a baccalaureate degree in order to
31 qualify for licensing unless those requirements are mandated by
32 statute.

33 **Sec. 107.** RCW 48.46.200 and 1975 1st ex.s. c 290 s 21 are each
34 amended to read as follows:

35 The commissioner may adopt, in accordance with the provisions of
36 the administrative procedure act, chapter 34.05 RCW, (~~promulgate~~)

1 rules and regulations as necessary or proper to carry out the
2 provisions of this chapter: PROVIDED, That the commissioner may not
3 adopt rules after the effective date of this section that are based
4 solely on this section, a statute's statement of intent or purpose, or
5 on the enabling provisions of the statute establishing the agency, or
6 any combination of such provisions, for statutory authority to adopt
7 any rule, except rules defining or clarifying terms in, or procedures
8 necessary to the implementation of a statute. Nothing in this chapter
9 shall be construed to prohibit the commissioner from requiring changes
10 in procedures previously approved by ~~((him))~~ the commissioner.

11 **PART II**

12 **RULE-MAKING REQUIREMENTS**

13 **Sec. 201.** RCW 34.05.350 and 1994 c 249 s 3 are each amended to
14 read as follows:

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

16 (a) That immediate adoption, amendment, or repeal of a rule is
17 necessary for the preservation of ~~((the))~~ public health~~((r))~~ or safety,
18 ~~((or general welfare,))~~ and that observing the time requirements of
19 notice and opportunity to comment upon adoption of a permanent rule
20 would be contrary to the public interest: PROVIDED, That the
21 department of agriculture may adopt an emergency rule if the failure to
22 adopt the rule on an emergency basis would result in substantial
23 reduction of commodity value or substantial economic detriment; or

24 (b) That state or federal law or federal rule or a federal deadline
25 for state receipt of federal funds requires immediate adoption of a
26 rule,
27 the agency may dispense with those requirements and adopt, amend, or
28 repeal the rule on an emergency basis. The agency's finding and a
29 concise statement of the reasons for its finding shall be incorporated
30 in the order for adoption of the emergency rule or amendment filed with
31 the office of the code reviser under RCW 34.05.380 and with the rules
32 review committee.

33 (2) An emergency rule adopted under this section takes effect upon
34 filing with the code reviser, unless a later date is specified in the
35 order of adoption, and may not remain in effect for longer than one
36 hundred twenty days after filing. Identical or substantially similar
37 emergency rules may not be adopted in sequence unless conditions have

1 changed or the agency has filed notice of its intent to adopt the rule
2 as a permanent rule, and is actively undertaking the appropriate
3 procedures to adopt the rule as a permanent rule. This section does
4 not relieve any agency from compliance with any law requiring that its
5 permanent rules be approved by designated persons or bodies before they
6 become effective.

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

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

22 **Sec. 202.** RCW 34.05.380 and 1989 c 175 s 11 are each amended to
23 read as follows:

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

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

37 (3) A rule may become effective immediately upon its filing with
38 the code reviser or on any subsequent date earlier than that

1 established by subsection (2) of this section, if the agency
2 establishes that effective date in the adopting order and finds that:

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

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

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

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

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

14 (5) No rule, adopted by any of the following agencies, is effective
15 for more than seven years after its adoption or seven years after the
16 effective date of this section, whichever is later: Department of
17 ecology, employment security department, department of labor and
18 industries, department of revenue, department of licensing, department
19 of health, department of social and health services, department of fish
20 and wildlife, or the office of the insurance commissioner. A rule made
21 ineffective under this subsection may be readopted according to the
22 procedures established in this chapter.

23 **Sec. 203.** RCW 34.05.328 and 1995 c 403 s 201 are each amended to
24 read as follows:

25 (1) Before adopting a rule described in subsection (5) of this
26 section, an agency shall:

27 (a) Clearly state in detail the general goals and specific
28 objectives of the statute that the rule implements;

29 (b) Determine that the rule is needed to achieve the general goals
30 and specific objectives stated under (a) of this subsection, and
31 analyze alternatives to rule making and the consequences of not
32 adopting the rule;

33 (c) Determine that the probable benefits of the rule are greater
34 than its probable costs, taking into account both the qualitative and
35 quantitative benefits and costs and the specific directives of the
36 statute being implemented;

37 (d) Determine, after considering alternative versions of the rule
38 and the analysis required under (b) and (c) of this subsection, that

1 the rule being adopted is the least burdensome alternative for those
2 required to comply with it that will achieve the general goals and
3 specific objectives stated under (a) of this subsection;

4 (e) Determine that the rule does not require those to whom it
5 applies to take an action that violates requirements of another federal
6 or state law;

7 (f) Determine that the rule does not impose more stringent
8 performance requirements on private entities than on public entities
9 unless required to do so by federal or state law;

10 (g) Determine if the rule differs from any federal regulation or
11 statute applicable to the same activity or subject matter and, if so,
12 determine that the difference is justified by the following:

13 (i) A state statute that explicitly allows the agency to differ
14 from federal standards; or

15 (ii) Substantial evidence that the difference is necessary to
16 achieve the general goals and specific objectives stated under (a) of
17 this subsection; and

18 (h) Coordinate the rule, to the maximum extent practicable, with
19 other federal, state, and local laws applicable to the same activity or
20 subject matter.

21 (2) In making its determinations pursuant to subsection (1) (b)
22 through (g) of this section, the agency shall place in the rule-making
23 file documentation of sufficient quantity and quality so as to persuade
24 a reasonable person that the determinations are justified.

25 (3) Before adopting rules described in subsection (5) of this
26 section, an agency shall place in the rule-making file a rule
27 implementation plan for rules filed under each adopting order. The
28 plan shall describe how the agency intends to:

29 (a) Implement and enforce the rule, including a description of the
30 resources the agency intends to use;

31 (b) Inform and educate affected persons about the rule;

32 (c) Promote and assist voluntary compliance; and

33 (d) Evaluate whether the rule achieves the purpose for which it was
34 adopted, including, to the maximum extent practicable, the use of
35 interim milestones to assess progress and the use of objectively
36 measurable outcomes.

37 (4) After adopting a rule described in subsection (5) of this
38 section regulating the same activity or subject matter as another

1 provision of federal or state law, an agency shall do all of the
2 following:

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

6 (b) Coordinate implementation and enforcement of the rule with the
7 other federal and state entities regulating the same activity or
8 subject matter by making every effort to do one or more of the
9 following:

10 (i) Deferring to the other entity;

11 (ii) Designating a lead agency; or

12 (iii) Entering into an agreement with the other entities specifying
13 how the agency and entities will coordinate implementation and
14 enforcement.

15 If the agency is unable to comply with this subsection (4)(b), the
16 agency shall report to the legislature pursuant to (c) of this
17 subsection;

18 (c) Report to the joint administrative rules review committee:

19 (i) The existence of any overlap or duplication of other federal or
20 state laws, any differences from federal law, and any known overlap,
21 duplication, or conflict with local laws; and

22 (ii) Make recommendations for any legislation that may be necessary
23 to eliminate or mitigate any adverse effects of such overlap,
24 duplication, or difference.

25 (5)(a) Except as provided in (b) of this subsection, this section
26 applies to:

27 (i) Significant legislative rules of the departments of ecology,
28 labor and industries, health, social and health services, revenue, and
29 natural resources, the employment security department, the forest
30 practices board, the office of the insurance commissioner, and to the
31 legislative rules of the department of fish and wildlife implementing
32 chapter 75.20 RCW; and

33 (ii) Any rule of any agency, if this section is voluntarily made
34 applicable to the rule by the agency, or is made applicable to the rule
35 by a majority vote of the joint administrative rules review committee
36 within forty-five days of receiving the notice of proposed rule making
37 under RCW 34.05.320.

38 (b) This section does not apply to:

39 (i) Emergency rules adopted under RCW 34.05.350;

1 (ii) Rules relating only to internal governmental operations that
2 are not subject to violation by a nongovernment party;

3 (iii) Rules adopting or incorporating by reference without material
4 change federal statutes or regulations, Washington state statutes,
5 rules of other Washington state agencies, shoreline master programs
6 other than those programs governing shorelines of state-wide
7 significance, or, as referenced by Washington state law, national
8 consensus codes that generally establish industry standards, if the
9 material adopted or incorporated regulates the same subject matter and
10 conduct as the adopting or incorporating rule;

11 (iv) Rules that only correct typographical errors, make address or
12 name changes, or clarify language of a rule without changing its
13 effect;

14 (v) Rules the content of which is explicitly and specifically
15 dictated by statute; or

16 (vi) Rules that set or adjust fees or rates pursuant to legislative
17 standards.

18 (c) For purposes of this subsection:

19 (i) A "procedural rule" is a rule that adopts, amends, or repeals
20 (A) any procedure, practice, or requirement relating to any agency
21 hearings; (B) any filing or related process requirement for making
22 application to an agency for a license or permit; or (C) any policy
23 statement pertaining to the consistent internal operations of an
24 agency.

25 (ii) An "interpretive rule" is a rule, the violation of which does
26 not subject a person to a penalty or sanction, that sets forth the
27 agency's interpretation of statutory provisions it administers.

28 (iii) A "significant legislative rule" is a rule other than a
29 procedural or interpretive rule that (A) adopts substantive provisions
30 of law pursuant to delegated legislative authority, the violation of
31 which subjects a violator of such rule to a penalty or sanction; (B)
32 establishes, alters, or revokes any qualification or standard for the
33 issuance, suspension, or revocation of a license or permit; or (C)
34 adopts a new, or makes significant amendments to, a policy or
35 regulatory program.

36 (d) In the notice of proposed rule making under RCW 34.05.320, an
37 agency shall state whether this section applies to the proposed rule
38 pursuant to (a)(i) of this subsection, or if the agency will apply this
39 section voluntarily.

1 (6) By January 31, 1996, and by January 31st of each even-numbered
2 year thereafter, the office of financial management, after consulting
3 with state agencies, counties, and cities, and business, labor, and
4 environmental organizations, shall report to the governor and the
5 legislature regarding the effects of this section on the regulatory
6 system in this state. The report shall document:

7 (a) The rules proposed to which this section applied and to the
8 extent possible, how compliance with this section affected the
9 substance of the rule, if any, that the agency ultimately adopted;

10 (b) The costs incurred by state agencies in complying with this
11 section;

12 (c) Any legal action maintained based upon the alleged failure of
13 any agency to comply with this section, the costs to the state of such
14 action, and the result;

15 (d) The extent to which this section has adversely affected the
16 capacity of agencies to fulfill their legislatively prescribed mission;

17 (e) The extent to which this section has improved the acceptability
18 of state rules to those regulated; and

19 (f) Any other information considered by the office of financial
20 management to be useful in evaluating the effect of this section.

21 NEW SECTION. **Sec. 204.** A new section is added to chapter 34.05
22 RCW under the subchapter heading "Part III" to read as follows:

23 (1) Each agency subject to RCW 34.05.380(5) shall submit to the
24 code reviser, no later than June 30th of each year, according to
25 procedures and time lines established by the code reviser, rules that
26 it determines can be readopted through an expedited process provided
27 for in this subsection. An agency shall file a copy of a preproposal
28 notice of inquiry, as provided in RCW 34.05.310(1), that identifies the
29 rule as one that is proposed for expedited readoption. An agency may
30 propose the expedited readoption of rules which are unopposed for
31 expedited readoption.

32 (2) The agency shall send a copy of the preproposal notice of
33 inquiry to any person who has requested notification of copies of
34 proposals for the expedited readoption of rules or of agency rule
35 making. The preproposal notice of inquiry shall include a statement
36 that any person who objects to the readoption of the rule must file a
37 written objection to the readoption within thirty days after the
38 preproposal notice of inquiry is published. The notice of inquiry

1 shall also include an explanation of the reasons the agency believes
2 the expedited readoption of the rule is appropriate. The code reviser
3 shall publish all rules proposed for expedited readoption in a separate
4 section of a regular edition of the Washington state register or in a
5 special edition of the Washington state register. The publication
6 shall be not later than July 31st of each year, or in the first
7 register published after that date.

8 (3) Any person may file a written objection to the expedited
9 readoption of a rule. The notice shall be filed with the agency rules
10 coordinator within thirty days after the notice of inquiry has been
11 published in the Washington state register. The written objection need
12 not state the reason for objecting to the expedited readoption of the
13 rule.

14 (4) If no written objections to the expedited readoption of a rule
15 are filed with an agency within thirty days after the preproposal
16 notice of inquiry is published, the agency may enter an order
17 readopting the rule without further notice or an opportunity for a
18 public hearing. The order shall be published in the manner required in
19 this chapter for any other order of an agency adopting, amending, or
20 repealing a rule.

21 (5) If a written objection to the expedited readoption of a rule is
22 filed with the agency within thirty days after the notice of inquiry
23 has been published, the preproposal notice of inquiry published
24 pursuant to this section shall be considered a preproposal notice of
25 inquiry for the purposes of RCW 34.05.310(1) and the agency may
26 initiate rule adoption proceedings in accordance with the procedures of
27 this chapter.

28 NEW SECTION. **Sec. 205.** A new section is added to chapter 34.05
29 RCW under the subchapter heading "Part III" to read as follows:

30 The department of ecology, employment security department,
31 department of labor and industries, department of revenue, department
32 of licensing, department of health, department of social and health
33 services, department of fish and wildlife, and the office of the
34 insurance commissioner shall review their respective rules within seven
35 years of the effective date of this section.

36 NEW SECTION. **Sec. 206.** A new section is added to chapter 34.05
37 RCW under the subchapter heading "Part III" to read as follows:

1 Each state agency shall prepare an annual fiscal year agenda for
2 significant legislative rules under development. The agenda shall be
3 adopted not later than June 30th. The agenda shall be made available
4 upon request to any person and shall be published by the agency in the
5 Washington State Register. The agenda shall also be submitted to the
6 director of financial management and to any other state agency that may
7 reasonably be expected to have an interest in the subject of rules that
8 will be developed.

9 NEW SECTION. **Sec. 207.** A new section is added to chapter 34.05
10 RCW under the subchapter heading "Part III" to read as follows:

11 Any agency having rules that postpone full compliance with their
12 requirements beyond ninety days after the effective date of this
13 section shall prepare a small business economic impact statement, as
14 defined in RCW 19.85.020(2), on such rules before requiring full
15 compliance with the rules.

16 NEW SECTION. **Sec. 208.** A new section is added to chapter 34.05
17 RCW under the subchapter heading "Part III" to read as follows:

18 (1) The legislature finds that when agencies use interpretive
19 statements, policy statements, and directives instead of adopting
20 rules, public notice and participation suffers. The legislature
21 recognizes that the regulatory reform act was enacted to allow for
22 responsible rule making and increase the public's opportunity to have
23 input on the development of a rule. The legislature therefore declares
24 that it is in the public interest to put limits on the use of agency
25 interpretive statements, policy statements, and directives.

26 (2) An agency must cause to be published in the state register the
27 subject matter of any new interpretive statement, policy statement, or
28 directive at least twenty days before it takes effect.

29 (3) An agency must make the full text of a new interpretive
30 statement, policy statement, or directive available at the public
31 libraries throughout the state.

32 **Sec. 209.** RCW 34.05.230 and 1995 c 403 s 702 are each amended to
33 read as follows:

34 (1) If the adoption of rules is not feasible and practicable, an
35 agency is encouraged to advise the public of its current opinions,
36 approaches, and likely courses of action by means of interpretive or

1 policy statements. Current interpretive and policy statements are
2 advisory only. An agency is encouraged to convert long-standing
3 interpretive and policy statements into rules.

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

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

19 (4) No agency interpretive statement, policy statement, or
20 directive shall be admissible in evidence in any action relative to an
21 interpretation of state law where the agency is not a party to the
22 action.

23 **PART III**
24 **JUDICIAL REVIEW**

25 **Sec. 301.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
26 read as follows:

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

29 (a) Except as provided in subsection (2) of this section, the
30 burden of demonstrating the invalidity of agency action is on the party
31 asserting invalidity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) The order is arbitrary or capricious.

10 (4) Review of other agency action.

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

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

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

26 (i) Unconstitutional;

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

29 (iii) Arbitrary or capricious; or

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

32 **PART IV**

33 **FEES AND EXPENSES**

34 NEW SECTION. **Sec. 401.** A new section is added to chapter 4.84 RCW
35 to read as follows:

36 If an agency chooses to appeal a decision of the superior court
37 rendered under chapter 34.05 RCW, the agency shall pay the subsequent

1 fees and other expenses incurred by the qualified party or parties that
2 prevailed in superior court. The amount awarded to a qualified party
3 in an appeal under this section may not exceed the amount that may be
4 awarded by a superior court to a qualified party under RCW 4.84.350.
5 Payment of any fees and other expenses under this chapter shall be paid
6 out of moneys from the agency's appropriation for administration and
7 support services and not out of moneys for program activities or
8 service delivery.

9 **Sec. 402.** RCW 4.84.340 and 1995 c 403 s 902 are each amended to
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout RCW 4.84.340 through 4.84.360 and section
13 401 of this act.

14 (1) "Agency" means any state board, commission, department,
15 institution of higher education, or officer, authorized by law to make
16 rules or to conduct adjudicative proceedings, except those in the
17 legislative or judicial branches, the governor, or the attorney general
18 except to the extent otherwise required by law.

19 (2) "Agency action" means agency action as defined by chapter 34.05
20 RCW.

21 (3) "Fees and other expenses" includes the reasonable expenses of
22 expert witnesses, the reasonable cost of a study, analysis, engineering
23 report, test, or project that is found by the court to be necessary for
24 the preparation of the party's case, and reasonable attorneys' fees.
25 Reasonable attorneys' fees shall be based on the prevailing market
26 rates for the kind and quality of services furnished, except that (a)
27 no expert witness shall be compensated at a rate in excess of the
28 highest rates of compensation for expert witnesses paid by the state of
29 Washington, and (b) attorneys' fees shall not be awarded in excess of
30 one hundred fifty dollars per hour unless the court determines that an
31 increase in the cost of living or a special factor, such as the limited
32 availability of qualified attorneys for the proceedings involved,
33 justifies a higher fee.

34 (4) "Judicial review" means a judicial review as defined by chapter
35 34.05 RCW.

36 (5) "Qualified party" means (a) an individual whose net worth did
37 not exceed one million dollars at the time the initial petition for
38 judicial review was filed or (b) a sole owner of an unincorporated

1 business, or a partnership, corporation, association, or organization
2 whose net worth did not exceed five million dollars at the time the
3 initial petition for judicial review was filed, except that an
4 organization described in section 501(c)(3) of the federal internal
5 revenue code of 1954 as exempt from taxation under section 501(a) of
6 the code and a cooperative association as defined in section 15(a) of
7 the agricultural marketing act (12 U.S.C. 1141J(a)), may be a party
8 regardless of the net worth of such organization or cooperative
9 association.

10 **PART V**

11 **REGULATORY IMPACT NOTES**

12 **Sec. 501.** RCW 43.41.110 and 1981 2nd ex.s. c 4 s 13 are each
13 amended to read as follows:

14 The office of financial management shall:

15 (1) Provide technical assistance to the governor and the
16 legislature in identifying needs and in planning to meet those needs
17 through state programs and a plan for expenditures.

18 (2) Perform the comprehensive planning functions and processes
19 necessary or advisable for state program planning and development,
20 preparation of the budget, inter-departmental and inter-governmental
21 coordination and cooperation, and determination of state capital
22 improvement requirements.

23 (3) Provide assistance and coordination to state agencies and
24 departments in their preparation of plans and programs.

25 (4) Provide general coordination and review of plans in functional
26 areas of state government as may be necessary for receipt of federal or
27 state funds.

28 (5) Participate with other states or subdivisions thereof in
29 interstate planning.

30 (6) Encourage educational and research programs that further
31 planning and provide administrative and technical services therefor.

32 (7) Carry out the provisions of RCW 43.62.010 through 43.62.050
33 relating to the state census.

34 (8) Be the official state participant in the federal-state
35 cooperative program for local population estimates and as such certify
36 all city and county special censuses to be considered in the allocation
37 of state and federal revenues.

1 (9) Be the official state center for processing and dissemination
2 of federal decennial or quinquennial census data in cooperation with
3 other state agencies.

4 (10) Be the official state agency certifying annexations,
5 incorporations, or disincorporations to the United States bureau of the
6 census.

7 (11) Review all United States bureau of the census population
8 estimates used for federal revenue sharing purposes and provide a
9 liaison for local governments with the United States bureau of the
10 census in adjusting or correcting revenue sharing population estimates.

11 (12) Provide fiscal notes depicting the expected fiscal impact of
12 proposed legislation in accordance with chapter 43.88A RCW.

13 (13) Provide regulatory impact notes depicting the expected
14 regulatory impact of proposed legislation on businesses in accordance
15 with sections 502 through 506 of this act.

16 (14) Be the official state agency to estimate and manage the cash
17 flow of all public funds as provided in chapter 43.88 RCW. To this
18 end, the office shall adopt such rules as are necessary to manage the
19 cash flow of public funds.

20 NEW SECTION. Sec. 502. The legislature hereby recognizes the
21 necessity of developing a uniform and coordinated procedure for
22 determining the expected regulatory impact of bills and resolutions on
23 businesses. The legislature also recognizes that developing the
24 statements of regulatory impact, which shall be known as regulatory
25 impact notes, requires the designation of a state agency to be
26 principally responsible for the notes.

27 NEW SECTION. Sec. 503. (1) The office of financial management
28 shall, in cooperation with appropriate legislative committees and
29 legislative staff, establish a procedure to provide regulatory impact
30 notes on the expected impact of bills and resolutions that increase or
31 decrease regulations on the operation of businesses subject to the
32 state's business and occupation taxes levied in chapter 82.04 RCW.

33 (2) A regulatory impact note shall be prepared on the basis of a
34 sample of businesses that are regulated by the bill or resolution. The
35 regulatory impact note shall contain an estimate of the fiscal impact
36 to the affected businesses for the biennium in which the bill or
37 resolution will take effect as well as a cumulative forecast of the

1 fiscal impact for the succeeding two fiscal years. If it is determined
2 that no dollar estimate is possible, the regulatory impact note shall
3 contain a statement to that effect.

4 (3) In establishing the regulatory impact procedure called for
5 under this chapter, the office of financial management shall coordinate
6 the development of regulatory impact notes with all state agencies
7 affected.

8 NEW SECTION. **Sec. 504.** (1) After a regulatory impact note that
9 depicts the expected regulatory impact of a bill or resolution is
10 prepared and approved as to form, accuracy, and completeness by the
11 office of financial management, copies shall be filed immediately with:

12 (a) The chair of the committee to which the bill or resolution was
13 referred upon introduction in the house of origin;

14 (b) The senate committee on ways and means, or its successor; and

15 (c) The house of representatives committees on revenue and
16 appropriations, or their successors.

17 (2) Whenever possible, the regulatory impact note shall be provided
18 before or at the time the bill or resolution is first heard by the
19 committee of reference in the house of origin.

20 (3) If a regulatory impact note has been prepared for a bill or
21 resolution, a copy of the regulatory impact note shall be placed in the
22 bill books or otherwise attached to the bill or resolution and shall
23 remain with the bill or resolution throughout the legislative process
24 insofar as possible.

25 NEW SECTION. **Sec. 505.** If requested by a legislator, the office
26 of financial management shall also provide a regulatory impact note on
27 a legislative proposal. The regulatory impact note shall be returned
28 to the requesting legislator, and copies shall be filed with the
29 appropriate legislative committees under section 504 of this act at the
30 time the proposed legislation is introduced in either house.

31 NEW SECTION. **Sec. 506.** Nothing in this chapter prevents either
32 house of the legislature from acting on a bill or resolution before it
33 as otherwise provided by the state Constitution, by law, and by the
34 rules and joint rules of the senate and house of representatives, nor
35 shall the lack of a regulatory impact note as provided in this chapter

1 or an error in the accuracy of the note affect the validity of a
2 measure otherwise duly passed by the legislature.

3 **PART VI**
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 601.** Part headings used in this act do not
6 constitute any part of the law.

7 NEW SECTION. **Sec. 602.** Sections 502 through 506 of this act shall
8 constitute a new chapter in Title 43 RCW.

9 NEW SECTION. **Sec. 603.** Section 208 of this act is necessary for
10 the immediate preservation of the public peace, health, or safety, or
11 support of the state government and its existing public institutions,
12 and shall take effect immediately.

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