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**SENATE BILL 5192**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators Sheldon, Winsley, Haugen, Snyder, Long, McAuliffe, Gaspard and Drew; by request of Governor Lowry

Read first time 01/13/95. Referred to Committee on Government Operations.

1 AN ACT Relating to the rule-making process; amending RCW 34.05.310,  
2 34.05.313, 34.05.325, 34.05.330, 34.04.375, and 19.85.030; adding new  
3 sections to chapter 34.05 RCW; adding a new section to chapter 19.85  
4 RCW; and repealing RCW 34.05.355.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW  
7 under the subchapter heading Part III to read as follows:

8 (1) Before adopting a rule described in subsection (4) of this  
9 section, an agency shall:

10 (a) Clearly state in detail the general goals and specific  
11 objectives of the statute that the rule implements and the specific  
12 objectives the agency seeks to achieve;

13 (b) Determine that the rule is needed to achieve the general goals  
14 and specific objectives stated under (a) of this subsection, and  
15 analyze alternatives to rule making and the consequences of not  
16 adopting the rule;

17 (c) Determine that the probable benefits of the rule are greater  
18 than its probable costs, taking into account both the qualitative and

1 quantitative benefits and costs and the specific directives of the  
2 statute being implemented;

3 (d) Determine, after considering alternative versions of the rule  
4 and the analysis required under (b) and (c) of this subsection, that  
5 the rule being adopted is the least burdensome alternative for those  
6 required to comply with the rule that will achieve the general goals  
7 and the specific objectives stated under (a) of this subsection;

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

11 (f) Coordinate the rule, to the maximum extent practicable, with  
12 other federal, state, and local laws applicable to the same  
13 circumstances and list, by citation, duplicative, inconsistent, or  
14 conflicting laws;

15 (g) Determine that the rule does not impose more stringent  
16 performance requirements on private entities than on public entities  
17 unless required to do so by federal or state law;

18 (h) Determine if the rule differs from any applicable federal  
19 regulation or statute and, if so, determine that the difference is  
20 justified by the following:

21 (i) State statutory authority that explicitly allows the agency to  
22 differ from federal standards; or

23 (ii) Substantial evidence that the difference is necessary to  
24 achieve the specific objectives of the authorizing state statute;

25 (i) Describe how the agency will monitor and evaluate on an ongoing  
26 basis whether the rule in fact achieves the general goals and specific  
27 objectives stated under (a) of this subsection, including, to the  
28 maximum extent practicable, the use of interim milestones to assess  
29 progress and the use of objectively measurable outcomes;

30 (j) Describe how the agency will implement and enforce the rule and  
31 encourage voluntary compliance with the rule;

32 (k) Describe which resources the agency intends to use to implement  
33 the rule; and

34 (l) Document compliance with the requirements of this section in  
35 the rule-making file.

36 (2) Before adopting a rule described in subsection (4) of this  
37 section, an agency shall include in the rule-making file a written plan  
38 that describes:

1 (a) The methods the agency will use in making a reasonable attempt  
2 to notify those to whom the rule applies of the adoption of the rule  
3 and how they may get more information on how to comply with the rule;  
4 and

5 (b) How the agency will provide adequate sources of information and  
6 technical assistance to those to whom the rule applies to assist them  
7 in voluntarily complying with the rule.

8 (3) For rules implementing statutes enacted after the effective  
9 date of this section, except emergency rules adopted pursuant to RCW  
10 34.05.350, an agency may not rely solely on the statute's statement of  
11 intent or purpose, or on the enabling provisions of the statute  
12 establishing the agency, or on any combination of such provisions, for  
13 its statutory authority to adopt the rule. An agency may use the  
14 statement of intent or purpose or the agency enabling provisions to  
15 interpret ambiguities in a statute's other provisions.

16 (4)(a) Subsections (1) and (2) of this section shall apply only to:

17 (i) Significant legislative rules of the departments of ecology,  
18 labor and industries, and revenue, and the employment security  
19 department, and to significant legislative rules of the department of  
20 fish and wildlife implementing chapter 75.20 RCW; and

21 (ii) Legislative rules of any agency, if such rules are designated  
22 as significant by the joint administrative rules review committee  
23 pursuant to (d) of this subsection.

24 (b) Notwithstanding (a) of this subsection, subsections (1) and (2)  
25 of this section shall not apply to:

26 (i) Emergency rules adopted pursuant to RCW 34.05.350;

27 (ii) Rules relating to internal governmental operations;

28 (iii) Rules adopting or incorporating by reference without material  
29 change federal statutes or rules, rules of other Washington state  
30 agencies, shoreline master programs, or, as referenced by Washington  
31 state law, national consensus codes that generally establish industry  
32 standards, as long as the material adopted or incorporated regulates  
33 the same subject matter and conduct as the adopting or incorporating  
34 rule;

35 (iv) Rules that simply correct typographical errors, make address  
36 or name changes, clarify language without changing intent, or conform  
37 language in the rule to mandated statutory changes or judicial  
38 decisions, as long as the need for conformance is specific; or

1 (v) Rules that set or adjust fees or rates pursuant to legislative  
2 standards.

3 (c) For purposes of this subsection:

4 (i) A "procedural rule" is a rule that establishes, alters, or  
5 revokes (A) any procedure, practice, or requirement relating to any  
6 agency hearings, or (B) any filing or related process requirement for  
7 making application to an agency for a license.

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

11 (iii) A "legislative rule" includes a rule other than a procedural  
12 or interpretive rule that (A) adopts substantive provisions of law  
13 pursuant to delegated legislative authority, the violation of which  
14 subjects a violator of such rule to a penalty or sanction, or (B)  
15 establishes, alters, or revokes any qualification or standard for the  
16 issuance, suspension, or revocation of a license.

17 (iv) A legislative rule is "significant" if it (A) adopts a new  
18 policy or regulatory program, (B) establishes a new set of  
19 qualifications or standards for the issuance, suspension, or revocation  
20 of a license, (C) makes significant amendments to an existing policy or  
21 regulatory program or existing qualification or standard for the  
22 issuance, suspension, or revocation of a license that likely are to  
23 generate controversy, (D) is designated as such by the agency, or (E)  
24 is designated as such by the joint administrative rules review  
25 committee pursuant to (d) of this subsection.

26 (d) At the time of filing a notice of proposed rule making pursuant  
27 to RCW 34.05.320, an agency shall designate whether it considers the  
28 rule contemplated to be developed a significant legislative rule and  
29 shall so inform the joint administrative rules review committee of that  
30 designation by providing to that committee a copy of that notice. The  
31 joint administrative rules review committee by a majority vote within  
32 thirty days of receipt of the notice may designate the contemplated  
33 rule as significant and so inform the agency.

34 (e) An agency may voluntarily adopt a rule other than a significant  
35 legislative rule under the factors listed in subsection (1) of this  
36 section. Such a decision by the agency shall be included in the filing  
37 of the notice of proposed rule making made pursuant to RCW 34.05.320.

38 (5) By January 31, 1996, and by January 31st of each even-numbered  
39 year thereafter, the office of financial management, after consulting

1 with state agencies, and business, labor, and environmental  
2 organizations, shall report to the governor and the legislature  
3 regarding the effects of this section on the regulatory system in this  
4 state. The report shall document:

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

8 (b) The costs incurred by state agencies in complying with this  
9 section;

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

13 (d) The extent to which this section has resulted in the increased  
14 inappropriate use by the agencies of policy statements and guidelines  
15 in place of rules;

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

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

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

22 (6) This section expires June 30, 2000.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW  
24 under the subchapter heading Part III to read as follows:

25 (1) Not later than June 30th of each year, each agency shall submit  
26 to the code reviser, according to procedures and time lines established  
27 by the code reviser, rules that it determines should be repealed by the  
28 expedited repeal procedures provided for in this section. An agency  
29 shall file a copy of a preproposal notice of intent, as provided in RCW  
30 34.05.310(1), that identifies the rule as one that is proposed for  
31 expedited repeal.

32 (2) An agency may propose the expedited repeal of rules meeting one  
33 or more of the following criteria:

34 (a) The statute on which the rule is based has been repealed and  
35 has not been replaced by another statute providing statutory authority  
36 for the rule;

37 (b) The statute on which the rule is based has been declared  
38 unconstitutional by a court with jurisdiction, there is a final

1 judgment, and no statute has been enacted to replace the  
2 unconstitutional statute;

3 (c) The rule is no longer necessary because of changed  
4 circumstances; or

5 (d) Other rules of the agency or of another agency govern the same  
6 activity as the rule, making the rule redundant.

7 (3) The agency shall also send a copy of the preproposal notice of  
8 intent to any person who has requested notification of copies of  
9 proposals for the expedited repeal of rules or of agency rule making.  
10 The preproposal notice of intent shall include a statement that any  
11 person who objects to the repeal of the rule must file a written  
12 objection to the repeal within thirty days after the preproposal notice  
13 of intent is published. The notice of intent shall also include an  
14 explanation of the reasons the agency believes the expedited repeal of  
15 the rule is appropriate.

16 (4) The code reviser shall publish all rules proposed for expedited  
17 repeal in a separate section of a regular edition of the Washington  
18 state register or in a special edition of the Washington state  
19 register. The publication shall be not later than July 31st, or in the  
20 first register published after that date.

21 (5) Any person may file a written objection to the expedited repeal  
22 of a rule. The notice shall be filed with the agency rules coordinator  
23 within thirty days after the notice of intent has been published in the  
24 Washington state register. The written objection need not state any  
25 reason for objecting to the expedited repeal of the rule.

26 (6) If no written objections to the expedited repeal of a rule are  
27 filed with the agency within thirty days after the preproposal notice  
28 of intent is published, the agency may enter an order repealing the  
29 rule without further notice or an opportunity for a public hearing.  
30 The order shall be published in the manner required by this chapter for  
31 any other order of the agency adopting, amending, or repealing a rule.  
32 If a written objection to the expedited repeal of the rule is filed  
33 with the agency within thirty days after the notice of intent has been  
34 published, the preproposal notice of intent published pursuant to this  
35 section shall be considered a preproposal notice of intent for the  
36 purposes of RCW 34.05.310(1) and the agency may initiate rule adoption  
37 proceedings in accordance with the provisions of this chapter.

1       **Sec. 3.** RCW 34.05.310 and 1994 c 249 s 1 are each amended to read  
2 as follows:

3       (1) Unless an agency makes a determination pursuant to subsection  
4 (3) of this section, to meet the intent of providing greater public  
5 access to administrative rule making and to promote consensus among  
6 interested parties, ((agencies)) it shall solicit comments from the  
7 public on a subject of possible rule making before publication of a  
8 notice of proposed rule adoption under RCW 34.05.320. The agency shall  
9 prepare a statement of intent that:

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

11       (b) Identifies the reasons the new rule is needed or the issue the  
12 agency is exploring to determine if a new rule is needed;

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

14       (d) Describes the process by which the rule will be developed,  
15 including, but not limited to, negotiated rule making((~~7~~)) or pilot  
16 rule making(~~(, or agency study)~~); and

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

19       The statement of intent shall be filed with the code reviser for  
20 publication in the state register and shall be ((~~sent~~)) provided to any  
21 party that has requested receipt of the agency's statements of intent.

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

26       (a) Negotiated rule making which ((~~includes:~~

27       *(i)* ~~Identifying individuals and organizations that have a~~  
28 ~~recognized interest in or will be significantly affected by the~~  
29 ~~adoption of the proposed rule;~~

30       *(ii)* ~~Soliciting participation by persons who are capable, willing,~~  
31 ~~and appropriately authorized to enter into such negotiations;~~

32       *(iii)* ~~Assuring that participants fully recognize the consequences~~  
33 ~~of not participating in the process, are committed to negotiate in good~~  
34 ~~faith, and recognize the alternatives available to other parties;~~

35       *(iv)* ~~Establishing guidelines to encourage consideration of all~~  
36 ~~pertinent issues, to set reasonable completion deadlines, and to~~  
37 ~~provide fair and objective settlement of disputes that may arise;~~

1 ~~(v) Agreeing on a reasonable time period during which the agency~~  
2 ~~will be bound to the rule resulting from the negotiations without~~  
3 ~~substantive amendment; and~~

4 ~~(vi) Providing a mechanism by which one or more parties may~~  
5 ~~withdraw from the process or the negotiations may be terminated if it~~  
6 ~~appears that consensus cannot be reached on a draft rule that~~  
7 ~~accommodates the needs of the agency, interested parties, and the~~  
8 ~~general public and conforms to the legislative intent of the statute~~  
9 ~~that the rule is intended to implement)) means a process by which~~  
10 ~~representatives of an agency and of the interests who are affected by~~  
11 ~~a subject of rule making seek to reach consensus on the terms of the~~  
12 ~~proposed rule and on the process by which it is negotiated; and~~

13 (b) Pilot rule making which includes testing the ~~((draft of a~~  
14 ~~proposed rule)) feasibility of complying with or administering new~~  
15 ~~draft rules or draft revisions to adopted rules through the use of~~  
16 ~~volunteer pilot ((study)) groups in various areas and circumstances, as~~  
17 ~~provided in RCW 34.05.313.~~

18 (3)~~((a) An agency must make a determination whether negotiated~~  
19 ~~rule making, pilot rule making, or another process for generating~~  
20 ~~participation from interested parties prior to development of the rule~~  
21 ~~is appropriate.~~

22 ~~(b) An agency must)) If the agency determines that an opportunity~~  
23 ~~for interested parties to participate in the rule-making process before~~  
24 ~~publication of the proposed rule is not necessary to achieve the~~  
25 ~~objectives of subsection (1) of this section, not later than the date~~  
26 ~~it publishes the proposed rule for comment pursuant to RCW 34.05.320 it~~  
27 ~~shall include ((a written justification)) in the rule-making file ((if~~  
28 ~~an opportunity for interested parties to participate in the rule-making~~  
29 ~~process prior to publication of the proposed rule has not been~~  
30 ~~provided)) a written statement explaining the reasons for not providing~~  
31 ~~such an opportunity and shall mail the statement to any person who has~~  
32 ~~requested copies of the agency's statements of intent.~~

33 (4) The provisions of this section do not apply to:

34 (a) The adoption of an emergency rule pursuant to RCW 34.05.350;

35 (b) The adoption of a rule relating to internal governmental  
36 operations;

37 (c) The amendment of a rule that had adopted or incorporated by  
38 reference without material change federal statutes or rules, rules of  
39 other Washington state agencies, laws or rules of local governments, or

1 national consensus codes that generally establish industry standards,  
2 and that simply revise the version of such adopted or incorporated  
3 material; or

4 (d) The adoption of a rule that simply corrects typographical  
5 errors, makes address or name changes, clarifies language without  
6 changing intent, or conforms language in the rule to statutory changes  
7 or judicial decisions.

8 **Sec. 4.** RCW 34.05.313 and 1993 c 202 s 4 are each amended to read  
9 as follows:

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

33 (2) An agency conducting a pilot rule project authorized under  
34 subsection (1) of this section may waive one or more provisions of  
35 agency rules otherwise applicable to participants in such a pilot  
36 project if the agency first determines that such a waiver is in the  
37 public interest and necessary to conduct the project. Such a waiver

1 may be only for a stated period of time, not to exceed the duration of  
2 the project.

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

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

8 (a) If over ten small businesses are affected, there shall be at  
9 least ten small businesses in the test group and at least one-half of  
10 the volunteers participating in the pilot test group shall be small  
11 businesses.

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

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

17 (B) Not less than twenty percent of the small businesses must  
18 employ eleven to twenty-six employees, and

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

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

26 (c) The agency may not terminate the pilot project before  
27 completion.

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

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

33 (ii) A list of the recommended revisions to the rule to make  
34 compliance with the rule easier or to reduce the cost of compliance  
35 with the rule by the small businesses participating in the pilot rule  
36 project; and

37 (iii) A written statement explaining the options it considered to  
38 resolve each of the difficulties described and a statement explaining

1 its reasons for not including a recommendation by the pilot test group  
2 to revise the rule.

3       **Sec. 5.** RCW 34.05.325 and 1994 c 249 s 7 are each amended to read  
4 as follows:

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

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

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

27       (4) The agency head, a member of the agency head, or a presiding  
28 officer designated by the agency head shall preside at the rule-making  
29 hearing. Rule-making hearings shall be open to the public. The agency  
30 shall cause a record to be made of the hearing by stenographic,  
31 mechanical, or electronic means. Unless the agency head presides or is  
32 present at substantially all the hearings, the presiding official shall  
33 prepare a memorandum for consideration by the agency head, summarizing  
34 the contents of the presentations made at the rule-making hearing. The  
35 summarizing memorandum is a public document and shall be made available  
36 to any person in accordance with chapter 42.17 RCW.

37       (5) Rule-making hearings are legislative in character and shall be  
38 reasonably conducted by the presiding official to afford interested

1 persons the opportunity to present comment. Rule-making hearings may  
2 be continued to a later time and place established on the record  
3 without publication of further notice under RCW 34.05.320.

4 (6) ~~((Before the adoption of a final rule))~~ (a) Except as otherwise  
5 provided in (c) of this subsection, at the time it files an adopted  
6 rule with the code reviser, or within thirty days thereafter, an agency  
7 shall prepare a ~~((written summary of))~~ concise explanatory statement of  
8 the rule:

9 (i) Identifying the agency's reasons for adopting the rule;

10 (ii) Describing differences between the text of the proposed rule  
11 as published in the register and the text of the rule as adopted, other  
12 than editing changes, stating the reasons for differences; and

13 (iii) Summarizing all comments received regarding the proposed  
14 rule, and ~~((a substantive response))~~ responding to the comments by  
15 category or subject matter, indicating how the final rule reflects  
16 agency consideration of the comments, or why it fails to do so.

17 (b) The agency shall provide the ~~((written summary and response))~~  
18 concise explanatory statement to any person upon request or from whom  
19 the agency received comment.

20 (c) This subsection does not apply to rules described in RCW  
21 34.05.310(4).

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

24 (1) Any person may petition an agency requesting the adoption,  
25 amendment, or repeal of any rule. ~~((Each agency may))~~ The office of  
26 financial management shall prescribe by rule the ~~((form))~~ format for  
27 such petitions and the procedure for their submission, consideration,  
28 and disposition and provide a standard form that may be used to  
29 petition any agency. Within sixty days after submission of a petition,  
30 the agency shall ~~((+1))~~ either (a) deny the petition in writing,  
31 stating (i) its reasons for the denial, specifically addressing the  
32 concerns raised by the petitioner, and, where appropriate, (ii) the  
33 alternative means by which it will address the concerns raised by the  
34 petitioner, or ~~((+2))~~ (b) initiate rule-making proceedings in  
35 accordance with this chapter.

36 (2) If an agency denies a petition to repeal or amend a rule  
37 submitted under subsection (1) of this section, the petitioner, within  
38 thirty days of the denial, may appeal the denial to the governor. The

1 governor shall immediately file notice of the appeal with the code  
2 reviser for publication in the Washington state register. Within  
3 forty-five days after receiving the appeal, the governor shall either  
4 (a) deny the petition in writing, stating (i) his or her reasons for  
5 the denial, specifically addressing the concerns raised by the  
6 petitioner, and, (ii) where appropriate, the alternative means by which  
7 he or she will address the concerns raised by the petitioner; (b) for  
8 agencies listed in RCW 43.17.010, direct the agency to initiate rule-  
9 making proceedings in accordance with this chapter; or (c) for agencies  
10 not listed in RCW 43.17.010, recommend that the agency initiate rule-  
11 making proceedings in accordance with this chapter. The governor's  
12 response to the appeal shall be published in the Washington state  
13 register and copies shall be submitted to the chief clerk of the house  
14 of representatives and the secretary of the senate.

15 (3) In petitioning for repeal or amendment of a rule under this  
16 section, a person is encouraged to address, among other concerns:

17 (a) Whether the rule is authorized;

18 (b) Whether the rule is needed;

19 (c) Whether the rule conflicts with or duplicates other federal,  
20 state, or local laws;

21 (d) Whether alternatives to the rule exist that will serve the same  
22 purpose at less cost;

23 (e) Whether the rule applies differently to public and private  
24 entities;

25 (f) Whether the rule serves the purposes for which it was adopted;

26 (g) Whether the costs imposed by the rule are unreasonable; and

27 (h) Whether the rule is clearly and simply stated.

28 (4) The business assistance center and the office of financial  
29 management shall coordinate efforts among agencies to inform the public  
30 about the existence of this rules review process.

31 (5) The office of financial management shall initiate the rule  
32 making required by subsection (1) of this section by September 1, 1995.

33 **Sec. 7.** RCW 34.04.375 and 1988 c 288 s 314 are each amended to  
34 read as follows:

35 (1) No rule proposed after July 1, 1989, is valid unless it is  
36 adopted in substantial compliance with RCW 34.05.310 through 34.05.395.  
37 Inadvertent failure to mail notice of a proposed rule adoption to any  
38 person as required by RCW 34.05.320(3) does not invalidate a rule.

1 (~~(No action based upon this section may be maintained to contest the~~  
2 ~~validity of any rule unless it is commenced within two years after the~~  
3 ~~effective date of the rule.)~~)

4 (2)(a) Except as otherwise provided in (b) of this subsection, an  
5 action based upon this section to contest the validity of a rule shall  
6 be commenced within two years after the effective date of the rule.

7 (b) An action based upon a claim that an agency failed to comply  
8 with section 1 of this act shall be commenced within ninety days after  
9 the effective date of the rule being contested. Nothing in this  
10 subsection limits the authority of a court to review a rule under RCW  
11 34.05.570(2).

12 NEW SECTION. Sec. 8. A new section is added to chapter 19.85 RCW  
13 to read as follows:

14 (1) Unless an agency receives a written objection to the expedited  
15 repeal of a rule, this chapter does not apply to a rule proposed for  
16 expedited repeal pursuant to section 2 of this act. If an agency  
17 receives a written objection to expedited repeal of the rule, this  
18 chapter applies to the rule-making proceeding.

19 (2) This chapter does not apply to the adoption of a rule described  
20 in RCW 34.05.310(4).

21 (3) An agency is not required to prepare a separate statement under  
22 this chapter if it prepared an analysis under section 1(1) of this act  
23 that makes the findings required and includes the mitigation required  
24 by this chapter and designates that part of the analysis that meets the  
25 requirements of this chapter.

26 **Sec. 9.** RCW 19.85.030 and 1994 c 249 s 11 are each amended to read  
27 as follows:

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

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

36 (i) Establish differing compliance or reporting requirements or  
37 timetables for small businesses;

1 (ii) Clarify, consolidate, or simplify the compliance and reporting  
2 requirements under the rule for small businesses;

3 (iii) Establish performance rather than design standards;

4 (iv) Exempt small businesses from any or all requirements of the  
5 rule;

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

7 (vi) Other mitigation techniques;

8 (b) Before filing notice of a proposed rule, shall either:

9 (i) Prepare a small business economic impact statement in  
10 accordance with RCW 19.85.040 and file notice of how the person can  
11 obtain the statement with the code reviser as part of the notice  
12 required under RCW 34.05.320; or

13 (ii) Complete the pilot rule process as defined by RCW 34.05.313  
14 before filing the notice of a proposed rule.

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 NEW SECTION. Sec. 10. RCW 34.05.355 and 1994 c 249 s 8 & 1988 c  
34 288 s 310 are each repealed.

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