

(g) Any other information the department may reasonably require.

*Sec. 3 was vetoed, see message at end of chapter.

Passed the House March 9, 1988.

Passed the Senate March 5, 1988.

Approved by the Governor March 25, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 25, 1988.

Source: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, Substitute House Bill No. 1883, entitled:

"AN ACT Relating to vehicle dealer regulation."

This bill was presented to the Legislature to amend a 1986 exemption in the statute which allowed financial institutions to sell vehicles. Prior to this 1986 amendment, financial institutions had been authorized to sell only vehicles which had been foreclosed upon or repossessed. Sections 1 and 2 of this Act amend the prior law and prohibit financial institutions from brokering vehicles. Apparently, the concern was that some financial institutions were brokering vehicles which resulted in cars being sold that were not under the new Washington State "lemon law," even though new car warranties were provided.

Section 3, however, would inadvertently prohibit leasing companies and new car dealers who wish to lease other makes of cars outside their franchise agreements from leasing those new cars with an option to purchase. These leasing companies would not be able to meet the requirements of having a "current service agreement with a manufacturer, or distributor of a foreign manufacture." If the law was signed as written, the leasing operations would cease. This would reduce competition in the new car marketplace and harm the consuming public.

In addition, section 3 would prohibit the practice of "buyer's agents." Typically, "buyer's agents" are employed by consumers, not dealers, to negotiate car purchases on behalf of the consumer. This practice provides a consumer service of shopping and negotiating a car purchase at a competitive price. Further, the Executive has no record of consumers being harmed from the activities of buyer's agents employed by the consumer. At this point, it does not appear that this practice places the consumer at any disadvantage relative to the "lemon law" or warranty provisions allowed under state and federal law. This business provides a consumer option for those interested in paying for the service.

With the exception of section 3, Substitute House Bill No. 1883 is approved."

CHAPTER 288

[House Bill No. 1515]

SUNSET REVISIONS—ADMINISTRATIVE PROCEDURE ACT REVISED

AN ACT Relating to state government; amending RCW 43.131.215, 43.131.216, 43.131-.301, 43.131.302, 43.131.303, 43.131.304, 43.131.323, 43.131.327, 43.131.328, 43.131.329, 43-.131.330, 43.131.331, 43.131.332, 43.131.333, 43.131.334, 34.04.010, 34.04.940, 34.04.150, 34.04.930, 34.04.050, 34.04.020, 34.04.080, 34.04.045, 34.04.060, 34.04.048, 34.04.027, 34.04-.030, 34.04.040, 34.04.055, 34.04.057, 34.04.058, 34.04.170, 34.04.090, 34.04.105, 34.04.100, 34.04.133, 34.04.135, 34.04.140, 34.04.070, 34.04.130, 34.04.210, 34.04.220, 34.04.230, 34.04-.240, 34.04.250, 34.04.260, and 42.17.260; adding a new section to chapter 38.16 RCW; creating a new chapter in Title 34 RCW; creating new sections; recodifying sections; repealing RCW 43.117.910, 28B.19.010, 28B.19.020, 28B.19.030, 28B.19.033, 28B.19.037, 28B.19.040,

28B.19.050, 28B.19.060, 28B.19.070, 28B.19.073, 28B.19.077, 28B.19.080, 28B.19.090, 28B.19.100, 28B.19.110, 28B.19.120, 28B.19.130, 28B.19.140, 28B.19.150, 28B.19.160, 28B.19.163, 28B.19.165, 28B.19.168, 28B.19.200, 28B.19.210, 34.04.022, 34.04.025, 34.04.026, 34.04.052, 34.04.090, 34.04.110, 34.04.120, 34.04.270, 34.04.280, 34.04.290, 34.04.900, 34.04.901, 34.04.910, 34.04.920, 34.04.921, and 34.04.931; repealing section 19, chapter 57, Laws of 1971 ex. sess. (uncodified); repealing section 22, chapter 57, Laws of 1971 ex. sess. (uncodified); and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

PART I

ASIAN-AMERICAN AFFAIRS COMMISSION

Sec. 1. Section 34, chapter 99, Laws of 1979 as last amended by section 1, chapter 270, Laws of 1986 and RCW 43.131.215 are each amended to read as follows:

The Washington state commission on Asian-American affairs and its powers and duties shall be terminated on June 30, (~~(1989)~~) 1996, as provided in RCW 43.131.216.

Sec. 2. Section 76, chapter 99, Laws of 1979 as last amended by section 2, chapter 270, Laws of 1986 and RCW 43.131.216 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~(1990)~~) 1997:

(1) Section 1, chapter 140, Laws of 1974 ex. sess., section 1, chapter 119, Laws of 1983 and RCW 43.117.010;

(2) Section 2, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.020;

(3) Section 3, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.030;

(4) Section 4, chapter 140, Laws of 1974 ex. sess., section 131, chapter 34, Laws of 1975-'76 2nd ex. sess., section 1, chapter 68, Laws of 1982 and RCW 43.117.040;

(5) Section 5, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.050;

(6) Section 6, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.060;

(7) Section 7, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.070;

(8) Section 8, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.080;

(9) Section 9, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.090;

(10) Section 10, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.100; and

(11) Section 11, chapter 140, Laws of 1974 ex. sess. and RCW 43.117.900(~~(; and~~

(12) Section 14, chapter 140, Laws of 1974 ex. sess., section 1, chapter 297, Laws of 1977 ex. sess., section 2, chapter 119, Laws of 1983 and RCW 43.117.910:))

NEW SECTION. Sec. 3. Section 14, chapter 140, Laws of 1974 ex. sess., section 1, chapter 297, Laws of 1977 ex. sess., section 2, chapter 119, Laws of 1983 and RCW 43.117.910 are each repealed.

PART II

NURSING HOME ADVISORY COUNCIL

Sec. 4. Section 24, chapter 197, Laws of 1983 as amended by section 3, chapter 270, Laws of 1986 and RCW 43.131.301 are each amended to read as follows:

The nursing home advisory council and its powers and duties shall be terminated on June 30, ((1989)) 1991, as provided in RCW 43.131.302.

Sec. 5. Section 50, chapter 197, Laws of 1983 as amended by section 4, chapter 270, Laws of 1986 and RCW 43.131.302 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ((1990)) 1992:

(1) Section 11, chapter 117, Laws of 1951, section 1, chapter 85, Laws of 1971 ex. sess., section 65, chapter 211, Laws of 1979 ex. sess., section 39, chapter 287, Laws of 1984 and RCW 18.51.100; and

(2) Section 12, chapter 117, Laws of 1951, section 66, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.110.

PART III

EMERGENCY MEDICAL SERVICES COMMITTEE

Sec. 6. Section 25, chapter 197, Laws of 1983 as amended by section 5, chapter 270, Laws of 1986 and RCW 43.131.303 are each amended to read as follows:

The emergency medical services committee and its powers and duties shall be terminated on June 30, ((1989)) 1991, as provided in RCW 43.131.304.

Sec. 7. Section 51, chapter 197, Laws of 1983 as amended by section 6, chapter 270, Laws of 1986 and RCW 43.131.304 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, ((1990)) 1992:

(1) Section 4, chapter 208, Laws of 1973 1st ex. sess., section 43, chapter 34, Laws of 1975-'76 2nd ex. sess., section 2, chapter 261, Laws of 1979 ex. sess., section 13, chapter 338, Laws of 1981, section 55, chapter 279, Laws of 1984 and RCW 18.73.040; and

(2) Section 5, chapter 208, Laws of 1973 1st ex. sess., section 3, chapter 261, Laws of 1979 ex. sess., section 3, chapter 214, Laws of 1987 and RCW 18.73.050.

**PART IV
EXAMINING BOARD OF PSYCHOLOGY**

Sec. 8. Section 94, chapter 279, Laws of 1984 as last amended by section 11, chapter 27, Laws of 1986 and RCW 43.131.323 are each amended to read as follows:

The powers and duties of the examining board of psychology shall be terminated on June 30, (~~(+1992)~~) 1994.

**PART V
HUMAN RIGHTS COMMISSION**

Sec. 9. Section 31, chapter 185, Laws of 1985 and RCW 43.131.327 are each amended to read as follows:

The human rights commission and its powers and duties shall be terminated on June 30, (~~(+1989)~~) 1996, as provided in RCW 43.131.328.

Sec. 10. Section 32, chapter 185, Laws of 1985 and RCW 43.131.328 are each amended to read as follows:

The following acts or parts of acts as now existing or hereafter amended are each repealed, effective June 30, (~~(+1990)~~) 1997:

(1) Section 2, chapter 270, Laws of 1955, section 5, chapter 37, Laws of 1957, section 9, chapter 338, Laws of 1981, section 3, chapter 185, Laws of 1985 and RCW 49.60.050;

(2) Section 2, chapter 52, Laws of 1971 ex. sess. and RCW 49.60.051;

(3) Section 3, chapter 270, Laws of 1955, section 4, chapter 185, Laws of 1985 and RCW 49.60.060;

(4) Section 4, chapter 270, Laws of 1955, section 145, chapter 34, Laws of 1975-'76 2nd ex. sess., section 98, chapter 287, Laws of 1984, section 5, chapter 185, Laws of 1985 and RCW 49.60.070;

(5) Section 5, chapter 270, Laws of 1955, section 6, chapter 185, Laws of 1985 and RCW 49.60.080;

(6) Section 6, chapter 270, Laws of 1955, section 6, chapter 37, Laws of 1957, section 7, chapter 185, Laws of 1985 and RCW 49.60.090;

(7) Section 7, chapter 270, Laws of 1955, section 74, chapter 75, Laws of 1977, section 8, chapter 185, Laws of 1985, section 55, chapter 505, Laws of 1987 and RCW 49.60.100;

(8) Section 5, chapter 183, Laws of 1949, section 9, chapter 185, Laws of 1985 and RCW 49.60.110;

(9) Section 8, chapter 270, Laws of 1955, section 7, chapter 37, Laws of 1957, section 1, chapter 81, Laws of 1971 ex. sess., section 7, chapter 141, Laws of 1973, section 4, chapter 214, Laws of 1973 1st ex. sess., section 10, chapter 185, Laws of 1985 and RCW 49.60.120;

(10) Section 9, chapter 270, Laws of 1955, section 2, chapter 81, Laws of 1971 ex. sess., section 8, chapter 141, Laws of 1973, section 5, chapter 214, Laws of 1973 1st ex. sess., section 146, chapter 34, Laws of 1975-'76 2nd ex. sess., section 11, chapter 185, Laws of 1985 and RCW 49.60.130;

(11) Section 10, chapter 270, Laws of 1955, section 12, chapter 185, Laws of 1985 and RCW 49.60.140;

(12) Section 11, chapter 270, Laws of 1955, section 13, chapter 185, Laws of 1985 and RCW 49.60.150;

(13) Section 12, chapter 270, Laws of 1955, section 14, chapter 185, Laws of 1985 and RCW 49.60.160;

(14) Section 13, chapter 270, Laws of 1955, section 15, chapter 185, Laws of 1985 and RCW 49.60.170;

(15) Section 8, chapter 167, Laws of 1969 ex. sess., section 20, chapter 185, Laws of 1985 and RCW 49.60.226;

(16) Section 15, chapter 270, Laws of 1955, section 16, chapter 37, Laws of 1957, section 21, chapter 185, Laws of 1985 and RCW 49.60.230;

(17) Section 16, chapter 270, Laws of 1955, section 17, chapter 37, Laws of 1957, section 1, chapter 259, Laws of 1981, section 22, chapter 185, Laws of 1985 and RCW 49.60.240;

(18) Section 17, chapter 270, Laws of 1955, section 18, chapter 37, Laws of 1957, section 2, chapter 259, Laws of 1981, section 1, chapter 293, Laws of 1983, section 23, chapter 185, Laws of 1985 and RCW 49.60.250;

(19) Section 21, chapter 37, Laws of 1957, section 118, chapter 81, Laws of 1971, section 3, chapter 259, Laws of 1981, section 24, chapter 185, Laws of 1985 and RCW 49.60.260;

(20) Section 22, chapter 37, Laws of 1957, section 4, chapter 259, Laws of 1981, section 25, chapter 185, Laws of 1985 and RCW 49.60.270;

(21) Section 23, chapter 37, Laws of 1957 and RCW 49.60.280;

(22) Section 10, chapter 183, Laws of 1949, section 26, chapter 37, Laws of 1957, section 4, chapter 100, Laws of 1961, section 26, chapter 185, Laws of 1985 and RCW 49.60.310; and

(23) Section 11, chapter 183, Laws of 1949, section 27, chapter 185, Laws of 1985 and RCW 49.60.320.

PART VI

INTERNATIONAL MARKETING PROGRAM FOR AGRICULTURAL COMMODITIES AND TRADE

Sec. 11. Section 8, chapter 39, Laws of 1985 and RCW 43.131.329 are each amended to read as follows:

The international marketing program for agricultural commodities and trade at Washington State University shall be terminated on June 30, ((1990)) 1992, as provided in RCW 43.131.330.

Sec. 12. Section 9, chapter 39, Laws of 1985 and RCW 43.131.330 are each amended to read as follows:

The following acts, or parts of acts, as now existing or as hereafter amended, are each repealed, effective June 30, (~~(+1991)~~) 1993:

(1) Section 1, chapter 57, Laws of 1984, section 1, chapter 39, Laws of 1985 and RCW 28B.30.535;

(2) Section 2, chapter 57, Laws of 1984, section 2, chapter 39, Laws of 1985, section 3, chapter 195, Laws of 1987, section 14, chapter 505, Laws of 1987 and RCW 28B.30.537;

(3) Section 3, chapter 57, Laws of 1984, section 3, chapter 39, Laws of 1985 and RCW 28B.30.539;

(4) Section 6, chapter 57, Laws of 1984, section 4, chapter 39, Laws of 1985 and RCW 28B.30.541; and

(5) Section 7, chapter 57, Laws of 1984, section 5, chapter 39, Laws of 1985 and RCW 28B.30.543.

PART VII CAREER EXECUTIVE PROGRAM

Sec. 13. Section 1, chapter 118, Laws of 1985 and RCW 43.131.331 are each amended to read as follows:

The career executive program under RCW 41.06.430 shall terminate on June 30, (~~(+1989)~~) 1993, as provided in RCW 43.131.332.

Sec. 14. Section 2, chapter 118, Laws of 1985 and RCW 43.131.332 are each amended to read as follows:

Section 7, chapter 118, Laws of 1980 and RCW 41.06.430, as now or hereafter amended, are each repealed effective June 30, (~~(+1990)~~) 1994.

PART VIII CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

Sec. 15. Section 8, chapter 122, Laws of 1985 and RCW 43.131.333 are each amended to read as follows:

The center for international trade in forest products in the college of forest resources at the University of Washington shall be terminated on June 30, (~~(+1990)~~) 1992, as provided in RCW 43.131.334.

Sec. 16. Section 9, chapter 122, Laws of 1985 and RCW 43.131.334 are each amended to read as follows:

Sections 1 through 5, chapter 122, Laws of 1985 and chapter 76.56 RCW, as now existing or as hereafter amended, are each repealed, effective June 30, (~~(+1991)~~) 1993.

PART IX WASHINGTON STATE GUARD

NEW SECTION. Sec. 17. A new section is added to chapter 38.16 RCW to read as follows:

To assist the state of Washington in the event of mobilization of state and federal military forces in the state, and notwithstanding other provisions of the state military law and other regulations governing appointment

and promotion of officers and enlisted personnel of the Washington state guard, members of the Washington committee for employer support of the guard and reserve may be appointed to serve in a civil affairs unit of the Washington state guard. The rank shall be determined by the adjutant general.

NEW SECTION. Sec. 18. LEGISLATIVE INTENT. The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before the effective date of this act shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts.

PART X GENERAL PROVISIONS

Sec. 101. DEFINITIONS. Section 5, chapter 10, Laws of 1982 and RCW 34.04.010 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceedings" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the issuance of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

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

(3) "Agency action" means the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the issuance, denial, or suspension of a license, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by eminent domain of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the

sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision of the department of natural resources in the management of public lands, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

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

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

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

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

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

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

(b) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license.

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

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

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

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

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

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

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

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

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

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

~~((2))~~ (15) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to ~~((RCW 34.04.080; as now or hereafter amended))~~ section 203 of this act, ~~((or))~~ (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

~~((3)) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law or constitutional right prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law or agency rules.~~

~~(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or any form of permission required by law, including agency rule, to engage in any activity, but does not include a license required solely for revenue purposes.~~

~~(5) "Licensing" includes the agency process respecting the or modification of a license.~~

~~(6)) (16) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to ((RCW 34.04-210)) section 601 of this act for the purpose of selectively reviewing existing and proposed rules of state agencies.~~

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

Sec. 102. SAVINGS—AUTHORITY OF AGENCIES TO COMPLY WITH CHAPTER—EFFECT OF SUBSEQUENT LEGISLATION. Section 24, chapter 237, Laws of 1967 and RCW 34.04.940 are each amended to read as follows:

Nothing in ~~((the Administrative Procedure Act shall))~~ this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of ~~((the Administrative Procedure Act))~~ this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of ~~((the Administrative Procedure Act))~~ this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly.

Sec. 103. EXCLUSIONS FROM CHAPTER OR PARTS OF CHAPTER. Section 15, chapter 234, Laws of 1959 as last amended by section 8, chapter 141, Laws of 1984 and RCW 34.04.150 are each amended to read as follows:

~~((Except as provided under RCW 34.04.290,))~~ (1) This chapter shall not apply to:

(a) The state militia, or

(b) The board of ((prison terms and paroles, or any institution of higher education as defined in RCW 28B.19.020)) clemency and pardons, or

(c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of ((RCW 34.04.090 through 34.04.130)) sections 401 through 522 of this act shall not apply ((to));

(a) To adjudicative proceedings of the board of industrial insurance appeals ((or the board of tax appeals unless an election is made pursuant to RCW 82.03.140 or 82.03.190. The provisions of RCW 34.04.090 through 34.04.130 and the provisions of RCW 34.04.170 shall not apply));

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing((. To the extent they are inconsistent with RCW 80.50.140, the provisions of RCW 34.04.130, 34.04.133, and 34.04.140 shall not apply to review of decisions made under RCW 80.50.100.));

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the state personnel board, the higher education personnel board, or the personnel appeals board; or

(e) To the extent they are inconsistent with any provisions of chapter 43.43 RCW((, the provisions of this chapter shall not apply to such provisions)).

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, sections 401 through 429 of this act do not apply to a review hearing conducted by the board of tax appeals.

(4) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act.

Sec. 104. OPERATION OF CHAPTER IF IN CONFLICT WITH FEDERAL LAW. Section 19, chapter 234, Laws of 1959 and RCW 34.04.930 are each amended to read as follows:

If any part of this chapter ((shall be)) is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, ((such)) the conflicting part of this chapter is ((hereby declared to be)) inoperative solely to the extent of ((such)) the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

NEW SECTION. Sec. 105. WAIVER. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter.

NEW SECTION. Sec. 106. INFORMAL SETTLEMENTS. Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter.

NEW SECTION. Sec. 107. CONVERSION OF PROCEEDINGS. (1) If it becomes apparent during the course of an adjudicative or rule-making proceeding undertaken pursuant to this chapter that another form of proceeding under this chapter is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, on his or her own motion or on the motion of any party, the presiding officer or other official responsible for the original proceeding shall advise the parties of necessary steps for conversion and, if within the official's power, commence the new proceeding. If the agency refuses to convert to another proceeding, that decision is not subject to judicial review. Commencement of the new proceeding shall be accomplished pursuant to the procedural rules of the new proceeding, except that elements already performed need not be repeated.

(2) If appropriate, a new proceeding may be commenced independently of the original proceeding or may replace the original proceeding.

(3) Conversion to a replacement proceeding shall not be undertaken if the rights of any party will be substantially prejudiced.

(4) To the extent feasible the record of the original proceeding shall be included in the record of a replacement proceeding.

(5) The time of commencement of a replacement proceeding shall be considered to be the time of commencement of the original proceeding.

NEW SECTION. Sec. 108. VARIATION FROM TIME LIMITS. (1) An agency may modify time limits established in this chapter only as set forth in this section.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to section 104 of this act.

(5) Time limits may be waived pursuant to section 105 of this act.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In any rule-making or adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. In an adjudicative proceeding, such notice may be given by the presiding or reviewing officer involved in the proceeding. In a rule-making proceeding, the notice may be given in the notice of proposed rule-making.

(8) Two years after the effective date of this section, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor.

PART XI

PUBLIC ACCESS TO AGENCY RULES

Sec. 201. PUBLICATION OF CODE AND REGISTER—REMOVAL OF UNCONSTITUTIONAL RULES—DISTRIBUTION OF REGISTERS AND CODES—COUNTY LAW LIBRARIES—JUDICIAL NOTICE OF RULES. Section 5, chapter 234, Laws of 1959 as last amended by section 7, chapter 32, Laws of 1982 1st ex. sess. and RCW 34.04.050 are each amended to read as follows:

(1) ~~The code reviser shall ((as soon as practicable after March 23, 1960, compile and index))~~ cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules ((adopted by each agency and remaining in effect)) of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least ((once every two years)) annually in a form compatible with the main compilation.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register ((in which he shall set)) setting forth the text of all rules filed during the appropriate register publication period.

~~((3))~~ (4) The code reviser may ~~(, in his discretion;)~~ omit from the register or the compilation, rules ~~(, the publication of which)~~ that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if ~~((such))~~ the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

~~((4))~~ (5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule ~~(, in accordance with the provisions of RCW 34.04.052))~~.

~~((5))~~ (6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

~~((6))~~ (7) Registers and compilations shall be made available, in written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) to the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) to county boards of law library trustees and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and (d) to other persons at a price fixed by the code reviser.

~~((7))~~ (8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations for use and inspection as provided in RCW 27.24.060.

~~((8))~~ (9) Judicial notice shall be taken of rules filed and published as provided in ~~((RCW 34.04.040))~~ section 315 of this act and this section.

*Sec. 202. RULES FOR AGENCY PROCEDURE—INDEXES OF OPINIONS AND STATEMENTS. Section 2, chapter 234, Laws of 1959 as last amended by section 13, chapter 67, Laws of 1981 and RCW 34.04.020 are each amended to read as follows:

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

~~((1))~~ (a) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions ~~(-PROVIDED, That))~~. Rules for the conduct of ~~((contested cases))~~ adjudicative proceedings shall be those which are ~~((promulgated))~~ adopted by the chief

administrative law judge (~~(pursuant to RCW 34.04.022, as now or hereafter amended)~~) under section 205 of this act.

~~((f2))~~ (b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

~~((f3))~~ (2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in ~~((contested cases))~~ adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, ((or)) opinions, or statements prepared by or for the agency ((for its own use)).

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection ~~((as herein required))~~. ***A written final order issued after the effective date of this section, may not be relied on as precedent by an agency to the detriment of any person until it has been indexed as required by RCW 42.17.260.*** This ~~((provision))~~ subsection is not applicable in favor of any person who has actual knowledge ~~((thereof))~~ of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

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

NEW SECTION. Sec. 203. INTERPRETIVE AND POLICY STATEMENTS. (1) If the adoption of rules is not feasible and practicable, an agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. An agency is encouraged to convert long-standing interpretive and policy statements into rules.

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

Sec. 204. DECLARATORY ORDER BY AGENCY—PETITION—COURT REVIEW. Section 8, chapter 234, Laws of 1959 and RCW 34.04.080 are each amended to read as follows:

~~((On petition of any interested)) (1) Any person(;) may petition an agency (may issue) for a declaratory (ruling) order with respect to the applicability to ((any person, property, or state of facts of any)) specified circumstances of a rule, order, or statute enforceable by ((it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the superior court of Thurston county in the manner hereinafter provided for the review of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition)) the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:~~

~~(a) That uncertainty necessitating resolution exists;~~

~~(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;~~

~~(c) That the uncertainty adversely affects the petitioner;~~

~~(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and~~

~~(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.~~

~~(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.~~

~~(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.~~

~~(4) Sections 401 through 429 of this act apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.~~

~~(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:~~

~~(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;~~

~~(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;~~

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5)(b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

NEW SECTION. Sec. 205. MODEL RULES OF PROCEDURE. The chief administrative law judge shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules shall deal with all general functions and duties performed in common by the various agencies. Each agency shall adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from the model rules shall include in the order of adoption a finding stating the reasons for variance.

PART XII

RULE-MAKING PROCEDURES

NEW SECTION. Sec. 301. SOLICITATION OF COMMENTS BEFORE NOTICE PUBLICATION—RULES COORDINATOR. (1) In addition to seeking information by other methods, an agency may, before publication of a notice of a proposed rule adoption under section 303 of this act, solicit comments from the public on a subject of possible rule making under active consideration within the agency, by causing notice to be published in the state register of the subject matter and indicating where, when, and how persons may comment.

(2) Each agency may appoint committees to comment, before publication of a notice of proposed rule adoption under section 303 of this act, on the subject of a possible rule-making action under active consideration within the agency.

(3) Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible or proposed rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and in the first issue of each calendar

year thereafter for the duration of the designation. The rules coordinator may be an employee of another agency.

NEW SECTION. Sec. 302. RULE-MAKING DOCKET. (1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain a listing of the subject of each rule currently being prepared by the agency for proposal under section 303 of this act, the name and address of agency personnel responsible for the proposal, and an indication of the present status of the proposal.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under section 303 of this act until it is terminated under section 306(3) of this act.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

- (a) The subject of the proposed rule;
- (b) A citation to all notices relating to the proceeding that have been published in the state register under section 303 of this act;
- (c) The place where written submissions about the proposed rule may be inspected;
- (d) The time during which written submissions will be accepted;
- (e) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, indexing, publication, and its effective date.

Sec. 303. NOTICE OF PROPOSED RULE—CONTENTS—DISTRIBUTION BY AGENCY—INSTITUTIONS OF HIGHER EDUCATION. Section 1, chapter 84, Laws of 1977 ex. sess. as last amended by section 2, chapter 221, Laws of 1982 and RCW 34.04.045 are each amended to read as follows:

(1) ~~((For the purpose of legislative review of agency rules filed pursuant to this chapter, any proposed new or amendatory rule shall be accompanied by a statement prepared by the adopting agency which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall be on the agency's stationery or a form bearing the agency's name and shall contain, but is not limited to,))~~ At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

- (a) A title, ~~((containing))~~ a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;
- (b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

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

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

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

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

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

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

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

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

(k) A copy of the small business economic impact statement, ((where)) if applicable.

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

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

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

NEW SECTION. Sec. 304. PUBLIC PARTICIPATION IN RULE MAKING. (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to section 303 of this act accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

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

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

(4) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under section 303 of this act.

Sec. 305. PETITION FOR ADOPTION, AMENDMENT, REPEAL OF RULE—AGENCY ACTION. Section 6, chapter 234, Laws of 1959 as amended by section 5, chapter 237, Laws of 1967 and RCW 34.04.060 are each amended to read as follows:

Any ~~((interested))~~ person may petition an agency requesting the ~~((promulgation))~~ adoption, amendment, or repeal of any rule. Each agency ~~((shall))~~ may prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. Within ~~((thirty))~~ sixty days after submission of a petition, ~~((or at the next meeting of the agency if it does not meet within thirty days;))~~ the agency shall ~~((formally consider the petition and shall within thirty days thereafter))~~ (1) either deny the petition in writing ~~((f))~~, stating its reasons for the denial~~((t))~~, or (2) initiate rule-making proceedings in accordance with ~~((RCW 34.04.025))~~ this chapter.

Sec. 306. WITHDRAWAL OF PROPOSAL—TIME AND MANNER OF ADOPTION. Section 11, chapter 186, Laws of 1980 and RCW 34.04.048 are each amended to read as follows:

(1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with ~~((RCW 34.04.025 as now or hereafter amended))~~ section 303 of this act.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted within one ~~((year))~~ hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the text of the rules without filing the text in accordance with ~~((RCW 34.04.025 as now or hereafter amended))~~ section 303 of this act. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register.

NEW SECTION. Sec. 307. VARIANCE BETWEEN PROPOSED AND FINAL RULE. (1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of section 303 of this act and reopen the proceedings for public comment on the proposed variance, or the agency may reject the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and section 305 of this act, the agency shall initiate

rule-making proceedings upon the proposed amendments within the time provided in section 305 of this act.

Sec. 308. FAILURE TO GIVE TWENTY DAYS NOTICE OF INTENDED ACTION—EFFECT. Section 4, chapter 237, Laws of 1967 and RCW 34.04.027 are each amended to read as follows:

Except for emergency rules adopted under section 309 of this act, when twenty days notice of intended action to adopt, amend, or repeal a rule has not been ((filed with the code reviser, as required in RCW 34.04.025)) published in the state register, as required by section 303 of this act, the code reviser shall not publish such rule and such rule shall not be effective for any purpose.

Sec. 309. EMERGENCY RULES AND AMENDMENTS. Section 3, chapter 234, Laws of 1959 as last amended by section 4, chapter 324, Laws of 1981 and RCW 34.04.030 are each amended to read as follows:

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

(a) That immediate adoption ((or)), amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that ((observance of)) observing the time requirements of notice and opportunity to ((present views on the proposed action)) comment upon adoption of a permanent rule would be contrary to the public interest((;));
or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with ((such)) those requirements and adopt, amend, or repeal the rule ((or amendment as)) on an emergency ((rule or amendment)) basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment ((as)) filed with the office of the code reviser under ((RCW 34.04.040)) section 315 of this act and with the rules review committee.

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

NEW SECTION. Sec. 310. CONCISE EXPLANATORY STATEMENT. (1) At the time it files an adopted rule with the code reviser or within thirty days thereafter, an agency shall place into the rule-making file

maintained under section 313 of this act a concise explanatory statement about the rule, identifying (a) the agency's reasons for adopting the rule, and (b) a description of any difference between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for change.

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

NEW SECTION. Sec. 311. ORDER ADOPTING RULE, CONTENTS. The order of adoption by which each rule is adopted by an agency shall contain all of the following:

- (1) The date the agency adopted the rule;
- (2) A concise statement of the purpose of the rule;
- (3) A reference to all rules repealed, amended, or suspended by the rule;
- (4) A reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) Any findings required by any provision of law as a precondition to adoption or effectiveness of the rule; and
- (6) The effective date of the rule if other than that specified in section 315(2) of this act.

NEW SECTION. Sec. 312. INCORPORATION BY REFERENCE. An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available.

NEW SECTION. Sec. 313. RULE-MAKING FILE. (1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

- (2) The agency rule-making file shall contain all of the following:
- (a) Copies of all publications in the state register with respect to the rule or the proceeding upon which the rule is based;

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

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

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

(e) The concise explanatory statement required by section 310 of this act;

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

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

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

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

NEW SECTION. Sec. 314. **SUBSTANTIAL COMPLIANCE WITH PROCEDURES.** No rule proposed after the effective date of this section, is valid unless it is adopted in substantial compliance with sections 301 through 318 of this act. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by section 303(3) of this act does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule.

Sec. 315. **RULES FILED WITH CODE REVISER—REGISTER—EFFECTIVE DATES.** Section 4, chapter 234, Laws of 1959 as last amended by section 17, chapter 505, Laws of 1987 and RCW 34.04.040 are each amended to read as follows:

(1) Each agency shall file ~~((forthwith))~~ in the office of the code reviser a certified copy of all rules ~~((now in effect and hereafter adopted))~~ it adopts, except ~~((the))~~ for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent register of ((such)) filed rules open to public inspection.

In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under (~~RCW 34.04.030 shall~~) section 309 of this act become effective upon filing. All other rules (~~hereafter adopted shall~~) become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the rule.

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

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

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

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

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

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

Sec. 316. RULES FOR FILING AND FORM OF RULES AND NOTICES. Section 13, chapter 237, Laws of 1967 and RCW 34.04.055 are each amended to read as follows:

The code reviser may (~~prescribe regulations~~) adopt rules for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices.

Sec. 317. STYLE, FORMAT, AND NUMBERING OF RULES—AGENCY COMPLIANCE. Section 14, chapter 237, Laws of 1967 and RCW 34.04.057 are each amended to read as follows:

After the rules of an agency have been published by the code reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code(~~(, and)~~);

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code; and

(3) Amendments of previously adopted rules shall incorporate any editorial corrections made by the code reviser.

Sec. 318. FORMAT AND STYLE OF RULES AMENDING EXISTING SECTIONS, ADDING NEW SECTIONS—EFFECT OF

FAILURE TO COMPLY. Section 1, chapter 19, Laws of 1977 as amended by section 14, chapter 186, Laws of 1980 and RCW 34.04.058 are each amended to read as follows:

(1) Rules (~~(promulgated)~~) proposed or adopted by an agency pursuant to (~~(RCW 34.04.025 or 34.04.030, as now or hereafter amended, which)~~) this chapter that amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. (~~(In the case of)~~) A new section(~~(, such)~~) shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to (~~(RCW 34.04.050(2))~~) section 201(3) of this act, include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with (~~(RCW 34.04.050, as now or hereafter amended, and RCW 34.04.052)~~) section 201 of this act.

PART XIII ADJUDICATIVE PROCEEDINGS

NEW SECTION. Sec. 401. APPLICATION OF PART IV. (1) Adjudicative proceedings are governed by sections 402 through 423 of this act, except as otherwise provided:

(a) By a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in section 425 of this act for those proceedings;

(b) By section 424 of this act pertaining to emergency adjudicative proceedings; or

(c) By section 204 of this act pertaining to declaratory proceedings.

(2) Sections 401 through 429 of this act do not apply to rule-making proceedings unless another statute expressly so requires.

NEW SECTION. Sec. 402. COMMENCEMENT—WHEN REQUIRED. (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may require by rule that an application for an adjudicative proceeding be in writing and that it be filed at a specific address and in a specified manner.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

NEW SECTION. Sec. 403. DECISION NOT TO CONDUCT AN ADJUDICATION. If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant.

NEW SECTION. Sec. 404. AGENCY ACTION ON APPLICATIONS FOR ADJUDICATION. After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with section 403 of this act;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of

eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application.

Sec. 405. RATE CHANGES, LICENSES. Section 8, chapter 237, Laws of 1967 as amended by section 1, chapter 33, Laws of 1980 and RCW 34.04.170 are each amended to read as follows:

(1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested and review of denials of applications for licenses or rate changes shall be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, modify, annul, withdraw, or amend a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license shall notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the license which are based on specific information disclosed in the application submitted to the agency. The agency shall notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee shall be refunded to the applicant. If the applicant takes the examination, the agency shall notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

~~((2))~~ (4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

NEW SECTION. Sec. 406. PRESIDING OFFICERS—DISQUALIFICATION, SUBSTITUTION. (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

- (a) The agency head or one or more members of the agency head;
- (b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order; or

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(7) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual.

NEW SECTION. Sec. 407. REPRESENTATION. (1) A party to an adjudicatory proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

NEW SECTION. Sec. 408. CONFERENCE—PROCEDURE AND PARTICIPATION. (1) Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.

(2) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the conference may be conducted by telephone, television, or other electronic means. Each participant in the conference must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

Sec. 409. NOTICE OF HEARING. Section 9, chapter 234, Laws of 1959 as last amended by section 1, chapter 31, Laws of 1980 and RCW 34.04.090 are each amended to read as follows:

~~(1) ((In any contested case all parties shall be afforded an opportunity for hearing after not less than twenty days' notice, but no hearing shall be required until the hearing is demanded unless other statutory provisions or agency rules provide otherwise.)) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.~~

~~(2) The notice shall include:~~

~~(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;~~

~~(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;~~

~~(c) The official file or other reference number and the name of the proceeding;~~

~~(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;~~

~~(e) A statement of the time, place and nature of the proceeding;~~

~~((t~~b~~)) (f) A statement of the legal authority and jurisdiction under which the hearing is to be held;~~

~~((f~~e~~)) (g) A reference to the particular sections of the statutes and rules involved;~~

~~((d~~d~~)) (h) A short and plain statement of the matters asserted by the agency; and~~

~~(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter. ((If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon request a more definite and detailed statement shall be furnished.~~

~~(2) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.~~

~~(3) An agency may provide by rule for entry of summary orders in part or in whole after notice and hearing to all parties. The motion shall be granted if the pleadings, dispositions and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to the order as a matter of law.~~

~~(4) Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.~~

~~(5) The record in a contested case shall include:~~

~~(a) All pleadings, motions, intermediate rulings;~~

~~(b) Evidence received or considered;~~

~~(c) A statement of matters officially noticed;~~

~~(d) Questions and offers of proof, objections, and ruling thereon;
 (e) Proposed findings and exceptions;
 (f) Any decision, opinion, or report by the officer presiding at the hearing;~~

~~(6) Oral proceedings shall be transcribed for the purposes of agency decision pursuant to RCW 34.04.110, as now or hereafter amended, re-hearing, or court review. A copy of the record or any part thereof shall be transcribed and furnished to any party to the hearing upon request therefor and payment of the reasonable costs thereof.~~

~~(7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.~~

~~(8) Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.~~

~~(9) Agencies, or their authorized agents, may:~~

~~(a) Administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;~~

~~(b) Issue subpoenas as provided in RCW 34.04.105;~~

~~(c) Rule upon offers of proof and receive relevant evidence;~~

~~(d) Take or cause depositions to be taken pursuant to rules promulgated by the agency, and no person shall be compelled to divulge information which he could not be compelled to divulge by deposition in connection with a court proceeding;~~

~~(e) Regulate the course of the hearing;~~

~~(f) Hold conferences for the settlement or simplification of the issues by consent of the parties;~~

~~(g) Dispose of procedural requests or similar matters;~~

~~(h) Issue summary orders;~~

~~(i) Make decisions or proposals for decisions pursuant to RCW 34.04.110;~~

~~(j) Take any other action authorized by agency rule consistent with this chapter.))~~

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency.

NEW SECTION. Sec. 410. PLEADINGS, BRIEFS, MOTIONS, SERVICE. (1) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.

(2) At appropriate stages of the proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule.

NEW SECTION. Sec. 411. **DEFAULT.** (1) An agency may provide forms for and, by rule, may provide procedures for and impose time limits upon, submission of requests for hearing. Failure of a party to request a hearing within the time limit or limits established by the agency rule constitutes a waiver of that party's right to hearing, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party. There shall be a minimum of twenty days from notice of an opportunity to request a hearing before a party is deemed to have waived his or her right to a hearing under this subsection.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

NEW SECTION. Sec. 412. **INTERVENTION.** (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

Sec. 413. SUBPOENAS, DISCOVERY, AND PROTECTIVE ORDERS. Section 10, chapter 237, Laws of 1967 and RCW 34.04.105 are each amended to read as follows:

~~(1) ((In order to determine the necessity or desirability of adopting, amending, repealing, or otherwise revising a rule or proposed rule, agencies may hold public hearings, subpoena witnesses, administer oaths, take the testimony of any person under oath, and in connection therewith, require the production for examination of any books or papers relating to the subject matter of contemplated regulation. Each agency may make rules as to the issuance of subpoenas by the agency or its authorized agents. This subsection shall not preclude the exercise of subpoena powers for investigative purposes granted agencies by other statutory provisions.~~

~~(2) In any contested case after service of notice as required in RCW 34.04.090(1), as now or hereafter amended, agencies, their authorized agents, and hearing examiners hearing the case:~~

~~(a) Shall issue a subpoena upon the request of any party and, to the extent required by agency rule, upon a statement showing general relevance and reasonable scope of the evidence sought: PROVIDED, HOWEVER, That such subpoena may be issued with like effect by the attorney of record of the party to the contested case in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the agency except that it shall only be subscribed by the signature of such attorney;~~

~~(b) May issue a subpoena upon their own motion.~~

~~(3)) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.~~

~~(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.~~

~~(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will~~

promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) Subpoenas issued and discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) The subpoena powers created by this section shall be state-wide in effect.

~~((4))~~ (6) Witnesses in an ((agency hearing or contested case)) adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, ((as now or hereafter amended: PROVIDED;)) except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010((, as now or hereafter amended;)) as to courts. ((Such)) The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances(;) and the cost of producing records required to be produced by ((agency)) subpoena(, shall be paid by the agency or, in a contested case, by the party requesting the issuance of the subpoena.

~~(5) If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the agency or attorney issuing the subpoena may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, and in the case of a rule-making hearing that the requested appearance and testimony are necessary to secure information the expected nature of which would reasonably tend to cause the agency to exercise its rule-making authority, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court).~~

NEW SECTION. Sec. 414. PROCEDURE AT HEARING. (1) The presiding officer shall regulate the course of the proceedings, in conformity with the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order issued by the presiding officer pursuant to rules adopted by the chief administrative law judge. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

Sec. 415. RULES OF EVIDENCE—CROSS-EXAMINATION. Section 10, chapter 234, Laws of 1959 and RCW 34.04.100 are each amended to read as follows:

~~((In contested cases:))~~

~~(1) ((Agencies, or their authorized agents, may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.~~

~~(2) All evidence, including but not limited to records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case.))~~
Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding

officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

~~((3) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.~~

~~(4) Agencies, or their authorized agents, may take)~~ (5) Official notice may be taken of (a) any judicially cognizable facts ((and in addition may take notice of general)), (b) technical((;) or scientific facts within ((their)) the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. ((Agencies, or their authorized agents, may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.)) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

NEW SECTION. Sec. 416. EX PARTE COMMUNICATIONS. (1)

A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to section 415 of this act.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

NEW SECTION. Sec. 417. SEPARATION OF FUNCTIONS. (1) A person who has served as investigator, prosecutor, or advocate in an adjudicative proceeding or in its preadjudicative stage, or one who is subject to the authority, direction, or discretion of such a person, may not serve as a presiding officer in the same proceeding.

(2) A person, including an agency head, who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or assist or advise a presiding officer in the same proceeding unless a party demonstrates grounds for disqualification in accordance with section 406 of this act.

(3) A person may serve as presiding officer at successive stages of the same adjudicative proceeding unless a party demonstrates grounds for disqualification in accordance with section 406 of this act.

NEW SECTION. Sec. 418. ENTRY OF ORDERS. (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in

a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in section 406 of this act. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8) Initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(9) The presiding officer shall cause copies of initial and final orders to be delivered to each party and to the agency head.

NEW SECTION. Sec. 419. REVIEW OF INITIAL ORDERS. (1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files exceptions to the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As provided by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) Sections 406 and 416 of this act apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by section 418(3) of this act.

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party.

NEW SECTION. Sec. 420. STAY. A party may submit to the presiding or reviewing officer, as is appropriate to the stage of the proceeding, a petition for stay of effectiveness of a final order within ten days of its service unless otherwise provided by statute or stated in the final order. Disposition of the petition for stay shall be made by the presiding officer, reviewing officer, or agency head as provided by agency rule. Disposition may be made either before or after the effective date of the final order. Disposition denying a stay is not subject to judicial review.

NEW SECTION. Sec. 421. RECONSIDERATION. (1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing shall be specified by agency rule.

(2) The petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. The petition shall be deemed to have been denied if not disposed of within twenty days.

(3) No petition for reconsideration may stay the effectiveness of an order.

(4) The agency head may extend the time limits in this section for good cause, with due consideration that the rights of the parties will not be prejudiced by the extension and that extension will be in the public interest.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or an extension of time limits pursuant to subsection (4) of this section is not subject to judicial review.

NEW SECTION. Sec. 422. EFFECTIVENESS OF ORDERS. (1) Unless a later date is stated in an order or a stay is granted, an order is effective when signed, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with section 418 of this act is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with section 424 of this act.

NEW SECTION. Sec. 423. AGENCY RECORD. (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

(2) The agency record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders, and exceptions;

(h) The recording prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order, or order on reconsideration;

(j) Staff memoranda or data submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with section 416 of this act; and

(k) Matters placed on the record after an ex parte communication.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings.

NEW SECTION. Sec. 424. EMERGENCY ADJUDICATIVE PROCEEDINGS. (1) Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may proceed, alternatively, under that independent authority.

NEW SECTION. Sec. 425. BRIEF ADJUDICATIVE PROCEEDINGS—APPLICABILITY. (1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and sections 426 through 429 of this act; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of sections 402 through 424 of this act.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1).

NEW SECTION. Sec. 426. BRIEF ADJUDICATIVE PROCEEDINGS—PROCEDURE. (1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

- (a) The agency head;
- (b) One or more members of the agency head;
- (c) One or more administrative law judges; or
- (d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall give each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is a proposed order. If no review is taken of the proposed order as authorized by sections 427 and 428 of this act, the proposed order shall be the final order.

NEW SECTION. Sec. 427. BRIEF PROCEEDINGS—ADMINISTRATIVE REVIEW—APPLICABILITY. Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after furnishing the written statement required by section 426(3) of this act.

NEW SECTION. Sec. 428. BRIEF PROCEEDINGS—ADMINISTRATIVE REVIEW—PROCEDURES. Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary

to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

NEW SECTION. Sec. 429. AGENCY RECORD IN BRIEF PROCEEDINGS. (1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings.

PART XIV

JUDICIAL REVIEW AND CIVIL ENFORCEMENT

NEW SECTION. Sec. 501. RELATIONSHIP BETWEEN THIS CHAPTER AND OTHER JUDICIAL REVIEW AUTHORITY. This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law.

NEW SECTION. Sec. 502. PETITION FOR REVIEW—WHERE FILED. (1) Except as provided in subsection (2) of this section and section 508 of this act, proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of a branch campus if the action involves such branch.

Sec. 503. DIRECT REVIEW BY COURT OF APPEALS. Section 1, chapter 76, Laws of 1980 and RCW 34.04.133 are each amended to read as follows:

The final decision of an administrative agency in ~~((a contested case))~~ an adjudicative proceeding under this chapter ~~((34.04 RCW))~~ may be directly reviewed by the court of appeals upon certification by the superior court pursuant to this section. An application for ~~((such))~~ direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(1) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(2) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(3) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(4) The appellate court's determination in the proceeding would have significant precedential value.

Sec. 504. REFUSAL OF REVIEW BY COURT OF APPEALS. Section 2, chapter 76, Laws of 1980 and RCW 34.04.135 are each amended to read as follows:

The court of appeals may refuse to accept review of a case certified pursuant to ~~((RCW 34.04.133))~~ section 503 of this act. The refusal to accept such review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the Rules of Appellate Procedure to the contrary.

Sec. 505. APPEAL TO SUPREME COURT OR COURT OF APPEALS. Section 14, chapter 234, Laws of 1959 as amended by section 87, chapter 81, Laws of 1971 and RCW 34.04.140 are each amended to read as follows:

An aggrieved party may secure a review of any final judgment of the superior court under this chapter by appeal to the supreme court or the court of appeals. ~~((Such))~~ The appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases.

NEW SECTION. Sec. 506. STANDING. A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely

affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

NEW SECTION. Sec. 507. EXHAUSTION OF ADMINISTRATIVE REMEDIES. A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

- (1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, or have petitioned for its amendment or repeal;
- (2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or
- (3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:
 - (a) The remedies would be patently inadequate;
 - (b) The exhaustion of remedies would be futile; or
 - (c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies.

Sec. 508. DECLARATORY JUDGMENT ON VALIDITY OF RULE. Section 7, chapter 234, Laws of 1959 as amended by section 8, chapter 6, Laws of 1982 and RCW 34.04.070 are each amended to read as follows:

~~((+))~~ The validity of any rule may be determined upon petition for a declaratory judgment ~~((thereon))~~ addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair, the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment order may be ~~((rendered))~~ entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

~~((2))~~ In a proceeding under subsection (1) of this section the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

~~(3) A petition for a declaratory judgment pursuant to this section may not be solely based on the contents of the small business economic impact statement. However, in the case of a petition for a declaratory judgment as to the validity of any rule which is adopted after June 10, 1982, and which is based on grounds other than the contents of the small business economic impact statement, the compliance or noncompliance by the agency with the provisions of this chapter and where applicable the small business economic impact statement shall constitute part of the whole record of the agency's action in connection with the petition.))~~

NEW SECTION. Sec. 509. TIME FOR FILING PETITION FOR REVIEW. Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by section 314 of this act.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

NEW SECTION. Sec. 510. PETITION FOR REVIEW—CONTENTS. A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested.

NEW SECTION. Sec. 511. STAY AND OTHER TEMPORARY REMEDIES. (1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy during the pendency of judicial review.

(2) After a petition for review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms.

NEW SECTION. Sec. 512. LIMITATION ON NEW ISSUES. (1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section.

NEW SECTION. Sec. 513. JUDICIAL REVIEW OF FACTS CONFINED TO RECORD. Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter.

NEW SECTION. Sec. 514. NEW EVIDENCE TAKEN BY COURT OR AGENCY. (1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

NEW SECTION. Sec. 515. AGENCY RECORD FOR REVIEW—COSTS. (1) Within thirty days after service of the petition, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to

the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies for the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record;

(b) As provided by section 516 of this act; or

(c) In accordance with any other provision of law.

(6) Additions to the record pursuant to section 514 of this act must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record.

Sec. 516. JUDICIAL REVIEW. Section 13, chapter 234, Laws of 1959 as last amended by section 1, chapter 52, Laws of 1977 ex. sess. and RCW 34.04.130 are each amended to read as follows:

(1) ~~((Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under the provisions of *this 1967 amendatory act, and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.~~

~~(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all parties of record. If a timely petition is filed any party of record not filing or joining in the first petition who wants relief from the decision must join in the petition or serve and file a cross-petition within twenty days after service of the first petition or thirty days after service of the final decision of the agency, whichever period of time is longer. The court, in its discretion, may permit other interested persons to intervene.~~

~~(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or supersedeas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.~~

~~(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.~~

~~(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.~~

~~(6) The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are) Generally. Except to the extent that this chapter or another statute provides otherwise:~~

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

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

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

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

~~(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to section 508 of this act or by review of other agency action.~~

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

(c) In a declaratory judgment proceeding, the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

(3) Review of agency orders. The court shall grant relief from an agency order only if it determines that:

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

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

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

(d) ((affected by other error of)) The agency has erroneously interpreted or applied the law; ((or))

(e) ((clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order)) The order, other than a rule, is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; ((or))

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

(g) The persons entering the order were subject to disqualification;

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

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

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

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to section 502 of this act, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to section 514 of this act, on material issues of fact raised by the petition.

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

(i) Unconstitutional;

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

(iii) Arbitrary or capricious; or

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

NEW SECTION. Sec. 517. TYPE OF RELIEF. (1) The court may order an agency to take action required by law, order an agency to exercise discretion required by law, affirm or set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.

NEW SECTION. Sec. 518. PETITION BY AGENCY FOR ENFORCEMENT. (1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing.

NEW SECTION. Sec. 519. PETITION BY OTHERS FOR ENFORCEMENT. (1) Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce an order directed to another person may file a petition for civil enforcement of that order, but the action may not be commenced:

(a) Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each person against whom the petitioner seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same person; or

(c) If a petition for review of the same order has been filed and a stay is in effect.

(2) The petition shall name, as respondents, the agency whose order is sought to be enforced and each person against whom the petitioner seeks civil enforcement.

(3) The agency whose order is sought to be enforced may move to dismiss the petition on the grounds that it fails to qualify under this section or that the enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss the petition unless the petitioner demonstrates that (a) the petition qualifies under this section and (b) the agency's failure to enforce its order is based on an exercise of discretion that is arbitrary or capricious.

(4) Except to the extent expressly authorized by law, a petition for civil enforcement may not request, and the court may not grant, any monetary payment apart from taxable costs.

NEW SECTION. Sec. 520. DEFENSES—LIMITATION ON NEW ISSUES. (1) In a proceeding for civil enforcement a respondent may only assert as a defense:

(a) That the rule or order is invalid under section 516(3) (a) or (b) of this act. The court may only consider issues and receive evidence within the limitations provided by sections 512, 513, and 514 of this act;

(b) That the rule or order does not apply to the party or that the party has not violated the rule or order; and

(c) A defense specifically authorized by statute.

(2) The court, to the extent necessary for the determination of the matter, may consider new issues or take new evidence.

NEW SECTION. Sec. 521. INCORPORATION OF OTHER JUDICIAL REVIEW PROVISIONS. Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) Section 501(2) of this act (ancillary procedural matters); and

(2) Section 515 of this act (agency record for judicial review).

NEW SECTION. Sec. 522. REVIEW BY HIGHER COURT. Decisions on petitions for civil enforcement are reviewable as in other civil cases.

PART XV

LEGISLATIVE REVIEW AND MISCELLANEOUS PROVISIONS

Sec. 601. JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE—MEMBERS—APPOINTMENT—TERMS—VACANCIES. Section 5, chapter 324, Laws of 1981 as amended by section 1, chapter 53, Laws of 1983 and RCW 34.04.210 are each amended to read as follows:

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

(2) ~~((The initial members of the committee shall be appointed as soon as possible after July 26, 1981, and shall serve until the next regular session of the legislature convenes in an odd-numbered year. Thereafter))~~ Members shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year, and their terms shall extend until their successors are appointed and qualified at the next regular session of the legislature in an odd-numbered year or until such members no longer serve in the legislature, whichever occurs first. Members may be reappointed to a committee.

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

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

Sec. 602. REVIEW OF PROPOSED RULES—NOTICE. Section 6, chapter 324, Laws of 1981 as amended by section 1, chapter 451, Laws of 1987 and RCW 34.04.220 are each amended to read as follows:

Whenever a majority of the members of the rules review committee determines that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements, the committee shall give the affected agency written notice of its decision. The notice shall be given at least seven days prior to any hearing scheduled for consideration of or adoption of the proposed rule pursuant to ~~((RCW 34.04.025(1)(a)(iii)))~~

section 303 of this act. The notice shall include a statement of the review committee's findings and the reasons therefor. When the agency holds a hearing on the proposed rule, the agency shall consider the review committee's decision.

Sec. 603. REVIEW OF EXISTING RULES—POLICY STATEMENTS, GUIDELINES, ISSUANCES—NOTICE—HEARING. Section 7, chapter 324, Laws of 1981 as amended by section 2, chapter 451, Laws of 1987 and RCW 34.04.230 are each amended to read as follows:

(1) All rules required to be filed pursuant to (~~RCW 34.04.040~~) section 315 of this act, and emergency rules adopted pursuant to (~~RCW 34.04.030~~) section 309 of this act, are subject to selective review by the legislature.

(2) The rules review committee may review an agency's use of policy statements, guidelines, and issuances that are of general applicability, or their equivalents to determine whether or not an agency has failed to adopt a rule (~~as defined in RCW 34.04.010(2)~~).

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy statement, guideline, or issuance in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in (~~RCW 34.04.025, as now or hereafter amended~~) section 303 of this act. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, or (c) whether the agency is using a policy statement, guideline, or issuance in place of a rule.

Sec. 604. COMMITTEE OBJECTIONS TO AGENCY ACTION OR FAILURE TO ADOPT RULE—STATEMENT IN REGISTER AND WAC—SUSPENSION OF RULE. Section 8, chapter 324, Laws of 1981 as amended by section 3, chapter 451, Laws of 1987 and RCW 34.04.240 are each amended to read as follows:

(1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to (~~RCW 34.04.220 or~~

~~34.04.230~~) section 602 or 603 of this act, the affected agency shall notify the committee of its action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules. If the rules review committee determines, by a majority vote of its members, that the agency has failed to provide for the required hearings or notice of its action to the committee, the committee may file notice of its objections, together with a concise statement of the reasons therefor, with the code reviser within thirty days of such determination.

(2) If the rules review committee finds, by a majority vote of its members: (a) That the proposed or existing rule in question has not been modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, or (b) that the agency is using a policy statement, guideline, or issuance in place of a rule, the rules review committee may, within thirty days from notification by the agency of its action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3) If the rules review committee makes an adverse finding under subsection (2) of this section, the committee may, by a two-thirds vote of its members, recommend suspension of an existing rule. Within seven days of such vote the committee shall transmit to the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

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

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

Sec. 605. RECOMMENDATIONS BY COMMITTEE TO LEGISLATURE. Section 9, chapter 324, Laws of 1981 as amended by section 4, chapter 451, Laws of 1987 and RCW 34.04.250 are each amended to read as follows:

The rules review committee may recommend to the legislature that the original enabling legislation serving as authority for the ((promulgation)) adoption of any rule reviewed by the committee be amended or repealed in such manner as the committee deems advisable.

Sec. 606. REVIEW AND OBJECTION PROCEDURES—NO PRESUMPTION ESTABLISHED. Section 10, chapter 324, Laws of 1981 and RCW 34.04.260 are each amended to read as follows:

It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by ((~~RCW 34.04.230(2) and 34.04.240(2)~~)) sections 603(2) and 604(2) of this act in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules.

NEW SECTION. Sec. 607. The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced without reasonable cause apply to petitions for judicial review under this chapter.

PART XVI TECHNICAL PROVISIONS

*NEW SECTION. Sec. 701. REPEALER. The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.010;
- (2) Section 2, chapter 57, Laws of 1971 ex. sess., section 42, chapter 169, Laws of 1977 ex. sess., section 11, chapter 324, Laws of 1981 and RCW 28B.19.020;
- (3) Section 3, chapter 57, Laws of 1971 ex. sess., section 10, chapter 240, Laws of 1977 ex. sess., section 12, chapter 324, Laws of 1981, section 7, chapter 221, Laws of 1982 and RCW 28B.19.030;
- (4) Section 23, chapter 186, Laws of 1980, section 8, chapter 221, Laws of 1982 and RCW 28B.19.033;
- (5) Section 24, chapter 186, Laws of 1980 and RCW 28B.19.037;
- (6) Section 4, chapter 57, Laws of 1971 ex. sess., section 4, chapter 46, Laws of 1973 1st ex. sess., section 11, chapter 240, Laws of 1977 ex. sess., section 13, chapter 324, Laws of 1981 and RCW 28B.19.040;
- (7) Section 5, chapter 57, Laws of 1971 ex. sess., section 9, chapter 87, Laws of 1980, section 12, chapter 505, Laws of 1987 and RCW 28B.19-.050;
- (8) Section 6, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.060;
- (9) Section 7, chapter 57, Laws of 1971 ex. sess., section 25, chapter 186, Laws of 1980 and RCW 28B.19.070;
- (10) Section 26, chapter 186, Laws of 1980 and RCW 28B.19.073;
- (11) Section 27, chapter 186, Laws of 1980 and RCW 28B.19.077;

- (12) Section 8, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.080;
- (13) Section 9, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.090;
- (14) Section 10, chapter 57, Laws of 1971 ex. scss. and RCW 28B.19-.100;
- (15) Section 11, chapter 57, Laws of 1971 ex. sess., section 5, chapter 46, Laws of 1973 1st ex. sess. and RCW 28B.19.110;
- (16) Section 12, chapter 57, Laws of 1971 ex. sess., section 6, chapter 46, Laws of 1973 1st ex. sess., section 26, chapter 67, Laws of 1981 and RCW 28B.19.120;
- (17) Section 13, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.130;
- (18) Section 14, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.140;
- (19) Section 15, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.150;
- (20) Section 14, chapter 324, Laws of 1981 and RCW 28B.19.160;
- (21) Section 15, chapter 324, Laws of 1981 and RCW 28B.19.163;
- (22) Section 16, chapter 324, Laws of 1981 and RCW 28B.19.165;
- (23) Section 17, chapter 324, Laws of 1981 and RCW 28B.19.168;
- (24) Section 16, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.200;
- (25) Section 20, chapter 57, Laws of 1971 ex. sess. and RCW 28B.19-.210;
- (26) Section 19, chapter 57, Laws of 1971 ex. sess. (uncodified);
- (27) Section 22, chapter 57, Laws of 1971 ex. sess. (uncodified);
- (28) Section 12, chapter 237, Laws of 1967, section 14, chapter 67, Laws of 1981 and RCW 34.04.022;
- (29) Section 3, chapter 237, Laws of 1967, section 17, chapter 250, Laws of 1971 ex. sess., section 7, chapter 240, Laws of 1977 ex. sess, section 3, chapter 324, Laws of 1981, section 1, chapter 221, Laws of 1982 and RCW 34.04.025;
- (30) Section 2, chapter 19, Laws of 1977 and RCW 34.04.026;
- (31) Section 13, chapter 186, Laws of 1980 and RCW 34.04.052;
- (32) Section 9, chapter 234, Laws of 1959, section 9, chapter 237, Laws of 1967, section 1, chapter 31, Laws of 1980 and RCW 34.04.090;**
- (33) Section 11, chapter 234, Laws of 1959 and RCW 34.04.110;
- (34) Section 12, chapter 234, Laws of 1959, section 1, chapter 12, Laws of 1975 and RCW 34.04.120;
- (35) Section 3, chapter 221, Laws of 1982 and RCW 34.04.270;
- (36) Section 4, chapter 221, Laws of 1982, section 18, chapter 505, Laws of 1987 and RCW 34.04.280;
- (37) Section 5, chapter 221, Laws of 1982 and RCW 34.04.290;

(38) Section 16, chapter 234, Laws of 1959 and RCW 34.04.900;

(39) Section 27, chapter 237, Laws of 1967 and RCW 34.04.901;

(40) Section 17, chapter 234, Laws of 1959, section 25, chapter 237, Laws of 1967 and RCW 34.04.910;

(41) Section 18, chapter 234, Laws of 1959 and RCW 34.04.920;

(42) Section 29, chapter 237, Laws of 1967 and RCW 34.04.921; and

(43) Section 26, chapter 237, Laws of 1967 and RCW 34.04.931.

*Sec. 701 was partially vetoed, see message at end of chapter.

***Sec. 702. DOCUMENTS AND INDEXES TO BE MADE PUBLIC.**
Section 26, chapter 1, Laws of 1973 as last amended by section 3, chapter 403, Laws of 1987 and RCW 42.17.260 are each amended to read as follows:

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

(2) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after ((January 1, 1973)) the effective date of this section:

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

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency under section 203 of this act;

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

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

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

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

(3) An agency need not maintain such an index for records issued, adopted, or promulgated before the effective date of this section or for records described in (c) through (f) of subsection (2) of this section, if to do so would be unduly burdensome, but it shall in that event:

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

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

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

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(5) (a) Except as provided in (b) of this subsection, this chapter shall not be construed as giving authority to any agency to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies shall not do so unless specifically authorized or directed by law(~~(= PROVIDED; HOWEVER, That)~~).

(b) Lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor(~~(= PROVIDED FURTHER, That)~~). Such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter ((34.04)) ... RCW (sections 101 through 607 of this act).

*Sec. 702 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 703. CAPTIONS AND HEADINGS. Section captions and subchapter headings used in this act do not constitute any part of the law.

NEW SECTION. Sec. 704. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 705. EFFECTIVE DATE—APPLICATION. Sections 18 through 706 of this act shall take effect on July 1, 1989, and shall apply to all rule-making actions and agency proceedings begun on or after that date. Rule-making actions or other agency proceedings begun before July 1, 1989, shall be completed under the applicable provisions of chapter 28B.19 or 34.04 RCW existing immediately before that date in the same manner as if they were not amended by this act or repealed by section 701 of this act.

NEW SECTION. Sec. 706. Parts X through XV of this act shall constitute a new chapter in Title 34 RCW, and the sections amended or set forth in this act shall be recodified in the order they appear in this act. The code reviser shall correct all statutory references to these sections and to the repealed chapters 28B.19 and 34.04 RCW to reflect this recodification and repeal.

Passed the House March 10, 1988.

Passed the Senate March 10, 1988.

Approved by the Governor March 25, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 25, 1988.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 701(32), 702, and a portion of section 202(3), House Bill No. 1515, entitled:

"AN ACT Relating to state government."

I have vetoed section 701(32), which repeals a section of law that is also amended in section 409 of the bill. To allow section 701(32) to become law could create confusion regarding the validity of the amendatory language in section 409.

I am also vetoing section 702. Under the current public disclosure law, agencies may waive the requirement to maintain an index of a variety of records if doing so would be "unduly burdensome." Section 702 amends that law by deleting this waiver option for all final opinions, orders, and statements of policy and interpretations of policy. This amendment would, in effect, require agencies and institutions to maintain indexes that provide identifying information on these kinds of records, regardless of cost or the significance of the indexed records.

I recognize that these indexes, if prepared in sufficient detail, could be useful to both the public and agency officials. However, agencies report that preparation and maintenance of the indexes would be costly. Since it is unlikely that necessary additional appropriations will be made available for indexing, I reluctantly cannot approve this new requirement. I would, however, be willing to work with the Legislature to devise an indexing requirement that would be both prudent from the standpoint of cost and useful in content.

In vetoing section 702, it is also necessary to veto a portion of section 202(3), which stipulates that final orders cannot be relied upon as precedent until they have been indexed. This partial veto is necessary to achieve consistency between the two sections.

With the exception of sections 701(32), 702, and a portion of section 202(3), House Bill No. 1515 is approved."

CHAPTER 289

[Engrossed Substitute House Bill No. 1312] SUPPLEMENTAL OPERATING BUDGET

AN ACT Relating to fiscal matters; amending RCW 50.16.070, 67.70.040, and 67.70.190; amending section 104, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 107, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 109, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 110, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 114, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 120, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 121, chapter 7, Laws of 1987 1st ex. sess. (uncodified); amending section 124, chapter 7, Laws