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HOUSE BILL 1032

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State of Washington

54th Legislature

1995 Regular Session

By Representative Padden

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1 AN ACT Relating to administrative procedure; amending RCW  
2 34.05.461, 34.05.467, 34.05.470, 34.05.510, 34.05.514, 34.05.518,  
3 34.05.530, 34.05.542, 34.05.546, 34.05.550, 34.05.554, 34.05.562,  
4 34.05.566, 34.05.570, 34.05.574, and 34.12.040; creating a new section;  
5 providing an effective date; and declaring an emergency.

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

7 **Sec. 1.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to read  
8 as follows:

9 (1) Except as provided in subsection (2) of this section:

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

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

17 (c) If the presiding officer is one or more administrative law  
18 judges, the presiding officer shall enter ~~((an initial))~~ a final order.  
19 The agency or a person who has standing to obtain judicial review of an

1 agency action may appeal the judge's final order as provided in RCW  
2 34.05.570.

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

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

23 (4) Findings of fact shall be based exclusively on the evidence of  
24 record in the adjudicative proceeding and on matters officially noticed  
25 in that proceeding. Findings shall be based on the kind of evidence on  
26 which reasonably prudent persons are accustomed to rely in the conduct  
27 of their affairs. Findings may be based on such evidence even if it  
28 would be inadmissible in a civil trial. However, the presiding officer  
29 shall not base a finding exclusively on such inadmissible evidence  
30 unless the presiding officer determines that doing so would not unduly  
31 abridge the parties' opportunities to confront witnesses and rebut  
32 evidence. The basis for this determination shall appear in the order.

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

36 (6) If a person serving or designated to serve as presiding officer  
37 becomes unavailable for any reason before entry of the order, a  
38 substitute presiding officer shall be appointed as provided in RCW  
39 34.05.425. The substitute presiding officer shall use any existing

1 record and may conduct any further proceedings appropriate in the  
2 interests of justice.

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

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

11 (9) The presiding officer shall cause copies of the order to be  
12 served on each party and the agency.

13 **Sec. 2.** RCW 34.05.467 and 1988 c 288 s 420 are each amended to  
14 read as follows:

15 A party may submit to the presiding or reviewing officer, as is  
16 appropriate to the stage of the proceeding, a petition for stay of  
17 effectiveness of a final order within ten days of its service unless  
18 otherwise provided by statute or stated in the final order. If an  
19 administrative law judge is the presiding officer, the judge shall  
20 dispose of the petition for a stay. In other cases, disposition of the  
21 petition for stay shall be made by the presiding officer, reviewing  
22 officer, or agency head as provided by agency rule. Disposition may be  
23 made either before or after the effective date of the final order.  
24 Disposition denying a stay is not subject to judicial review.

25 **Sec. 3.** RCW 34.05.470 and 1989 c 175 s 21 are each amended to read  
26 as follows:

27 (1) Within ten days of the service of a final order, any party may  
28 file a petition for reconsideration, stating the specific grounds upon  
29 which relief is requested. The place of filing and other procedures,  
30 if any, shall be specified by agency rule.

31 (2) No petition for reconsideration may stay the effectiveness of  
32 an order.

33 (3) If a petition for reconsideration is timely filed, and the  
34 petitioner has complied with the agency's procedural rules for  
35 reconsideration, if any, the time for filing a petition for judicial  
36 review does not commence until the agency or administrative law judge  
37 disposes of the petition for reconsideration. The agency or

1 administrative law judge is deemed to have denied the petition for  
2 reconsideration if, within twenty days from the date the petition is  
3 filed, the agency or administrative law judge does not either: (a)  
4 Dispose of the petition; or (b) serve the parties with a written notice  
5 specifying the date by which it will act on the petition.

6 (4) Unless the petition for reconsideration is deemed denied under  
7 subsection (3) of this section, the petition shall be disposed of by  
8 the same person or persons who entered the order, if reasonably  
9 available. The disposition shall be in the form of a written order  
10 denying the petition, granting the petition and dissolving or modifying  
11 the final order, or granting the petition and setting the matter for  
12 further hearing.

13 (5) The filing of a petition for reconsideration is not a  
14 prerequisite for seeking judicial review. An order denying  
15 reconsideration, or a notice provided for in subsection (3)(b) of this  
16 section is not subject to judicial review.

17 **Sec. 4.** RCW 34.05.510 and 1988 c 288 s 501 are each amended to  
18 read as follows:

19 This chapter establishes the exclusive means of judicial review of  
20 agency action or a final order of an administrative law judge, except:

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

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

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

32 **Sec. 5.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to read  
33 as follows:

34 (1) Except as provided in subsection (2) of this section (~~and RCW~~  
35 ~~36.70A.300(3))~~), proceedings for review under this chapter shall be  
36 instituted by filing a petition in the superior court, at the  
37 petitioner's option, for (a) (~~Thurston county, (b))~~) the county of the

1 petitioner's residence or principal place of business, or ~~((e))~~ (b)  
2 in any county where the property owned by the petitioner and affected  
3 by the contested decision is located.

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

8 (3) A petition for declaratory judgment challenging the validity of  
9 an agency's rule may be addressed to the superior court of Thurston  
10 county to the extent authorized in RCW 34.05.554.

11 **Sec. 6.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to  
12 read as follows:

13 The final decision of an administrative agency or an administrative  
14 law judge in an adjudicative proceeding under this chapter may be  
15 directly reviewed by the court of appeals upon certification by the  
16 superior court pursuant to this section. An application for direct  
17 review must be filed with the superior court within thirty days of the  
18 filing of the petition for review in superior court. The superior  
19 court may certify a case for direct review only if the judicial review  
20 is limited to the record of the agency proceeding and the court finds  
21 that:

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

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

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

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

31 **Sec. 7.** RCW 34.05.530 and 1988 c 288 s 506 are each amended to  
32 read as follows:

33 A person has standing to obtain judicial review of agency action or  
34 an administrative law judge's final order if that person is aggrieved  
35 or adversely affected by the agency action or administrative law  
36 judge's final order. A person is aggrieved or adversely affected

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

3 (1) The agency action or administrative law judge's final order has  
4 prejudiced or is likely to prejudice that person;

5 (2) That person's asserted interests are among those that the  
6 agency was required to consider when it engaged in the agency action  
7 challenged or are among those that the administrative law judge was  
8 required to consider when the judge entered the final order; and

9 (3) A judgment in favor of that person would substantially  
10 eliminate or redress the prejudice to that person caused or likely to  
11 be caused by the agency action or the administrative law judge's final  
12 order.

13 **Sec. 8.** RCW 34.05.542 and 1988 c 288 s 509 are each amended to  
14 read as follows:

15 Subject to other requirements of this chapter or of another  
16 statute:

17 (1) A person may file a petition for judicial review of a rule  
18 (~~may be filed~~) at any time, except as limited by RCW 34.05.375.

19 (2) A person shall file a petition for judicial review of an agency  
20 or administrative law judge's final order (~~shall be filed~~) with the  
21 court and (~~served~~) serve the petition on the agency, the office of  
22 the attorney general, and all parties of record within thirty days  
23 after service of the final order. An agency that files a petition for  
24 review of an administrative law judge's final order must file the  
25 petition with the court and serve the petition on all parties of record  
26 within thirty days of the final order.

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

36 (4) Service of the petition on the agency shall be by delivery of  
37 a copy of the petition to the office of the director, or other chief  
38 administrative officer or chairperson of the agency, at the principal

1 office of the agency. Service of a copy by mail upon the other parties  
2 of record and the office of the attorney general shall be deemed  
3 complete upon deposit in the United States mail, as evidenced by the  
4 postmark.

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

7 **Sec. 9.** RCW 34.05.546 and 1988 c 288 s 510 are each amended to  
8 read as follows:

9 (1) A person's petition for review must set forth:

10 ~~((+1))~~ (a) The name and mailing address of the petitioner;

11 ~~((+2))~~ (b) The name and mailing address of the petitioner's  
12 attorney, if any;

13 ~~((+3))~~ (c) The name and mailing address of the agency whose action  
14 is at issue;

15 ~~((+4))~~ (d) Identification of the agency action at issue, together  
16 with a duplicate copy, summary, or brief description of the agency  
17 action;

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

20 ~~((+6))~~ (f) Facts to demonstrate that the petitioner is entitled to  
21 obtain judicial review;

22 ~~((+7))~~ (g) The petitioner's reasons for believing that relief  
23 should be granted; ~~and~~

24 ~~+8))~~ (h) A request for relief, specifying the type and extent of  
25 relief requested; and

26 (i) A copy of the administrative law judge's final order if  
27 applicable.

28 (2) An agency's petition for review of an administrative law  
29 judge's final order must set forth:

30 (a) The agency's name and mailing address;

31 (b) The names and mailing addresses of all parties and their  
32 attorneys if any;

33 (c) Identification of the administrative law judge's findings of  
34 fact, conclusions of law, and duplicate copies of the final order;

35 (d) Facts to demonstrate that the agency is entitled to obtain  
36 judicial review;

37 (e) The agency's reasons for believing that relief should be  
38 granted; and

1        (f) A request for relief, specifying the type and extent of relief  
2 requested.

3        **Sec. 10.** RCW 34.05.550 and 1989 c 175 s 25 are each amended to  
4 read as follows:

5        (1) Unless precluded by law, the agency or administrative law judge  
6 may grant a stay, in whole or in part, or other temporary remedy.

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

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

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

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

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

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

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

25       **Sec. 11.** RCW 34.05.554 and 1988 c 288 s 512 are each amended to  
26 read as follows:

27       (1) Issues not raised before the agency or administrative law judge  
28 may not be raised on appeal, except to the extent that:

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

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

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



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

3 (i) A change in controlling law occurring after the agency action  
4 or administrative law judge's entry of a final order; or

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

7 (2) The court shall remand to the agency or administrative law  
8 judge if the judge was the presiding officer in an adjudicative  
9 proceeding for determination any issue that is properly raised pursuant  
10 to subsection (1) of this section.

11 **Sec. 12.** RCW 34.05.562 and 1988 c 288 s 514 are each amended to  
12 read as follows:

13 (1) The court may receive evidence in addition to that contained in  
14 the agency record for judicial review, only if it relates to the  
15 validity of the agency action at the time it was taken or to the  
16 administrative law judge's final order and is needed to decide disputed  
17 issues regarding:

18 (a) Improper constitution as a decision-making body or grounds for  
19 disqualification of the administrative law judge or of those taking the  
20 agency action;

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

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

24 (2) The court may remand a matter to the agency or administrative  
25 law judge as appropriate, before final disposition of a petition for  
26 review, with directions that the agency or administrative law judge  
27 conduct fact-finding and other proceedings the court considers  
28 necessary and that the agency or administrative law judge take such  
29 further action on the basis thereof as the court directs, if:

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

35 (b) The court finds that (i) new evidence has become available that  
36 relates to the validity of the agency action at the time it was taken  
37 or the administrative law judge's final order when entered, that one or  
38 more of the parties did not know and was under no duty to discover or

1 could not have reasonably been discovered until after the agency action  
2 or final order, and (ii) the interests of justice would be served by  
3 remand to the agency or administrative law judge;

4 (c) The agency or administrative law judge improperly excluded or  
5 omitted evidence from the record; or

6 (d) A relevant provision of law changed after the agency action or  
7 final order was entered and the court determines that the new provision  
8 may control the outcome.

9 **Sec. 13.** RCW 34.05.566 and 1989 c 175 s 26 are each amended to  
10 read as follows:

11 (1) Within thirty days after service of the petition for judicial  
12 review, or within further time allowed by the court or by other  
13 provision of law, the agency shall transmit to the court the original  
14 or a certified copy of the agency record for judicial review of the  
15 agency action or administrative law judge's final order. The record  
16 shall consist of any final orders, agency documents expressing the  
17 agency action, other documents identified by the agency as having been  
18 considered by it before its action and used as a basis for its action,  
19 and any other material described in this chapter as the agency record  
20 for the type of agency action at issue, subject to the provisions of  
21 this section.

22 (2) If part of the record has been preserved without a transcript,  
23 the agency shall prepare a transcript for inclusion in the record  
24 transmitted to the court, except for portions that the parties  
25 stipulate to omit in accordance with subsection (4) of this section.

26 (3) When a party other than the agency is the petitioner, the  
27 agency may charge a nonindigent petitioner with the reasonable costs of  
28 preparing any necessary copies and transcripts for transmittal to the  
29 court. A failure by the petitioner to pay any of this cost to the  
30 agency relieves the agency from the responsibility for preparation of  
31 the record and transmittal to the court.

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

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

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

38 (b) In accordance with any provision of law.

1 (6) Additions to the record pursuant to RCW 34.05.562 must be made  
2 as ordered by the court.

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

5 **Sec. 14.** RCW 34.05.570 and 1989 c 175 s 27 are each amended to  
6 read as follows:

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

9 (a) The burden of demonstrating the invalidity of agency action or  
10 an administrative law judge's order is on the party asserting  
11 invalidity;

12 (b) The validity of agency action or an administrative law judge's  
13 order shall be determined in accordance with the standards of review  
14 provided in this section, as applied to the agency action at the time  
15 it was taken or to the administrative law judge's final order when  
16 entered, as appropriate;

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

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

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

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

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

1 procedures, or could not conceivably have been the product of a  
2 rational decision-maker.

3 (3) Review of agency or administrative law judges' orders in  
4 adjudicative proceedings. The court shall grant relief from an agency  
5 or administrative law judge's order in an adjudicative proceeding only  
6 if it determines that:

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

9 (b) The order is outside the statutory authority or jurisdiction of  
10 the agency or administrative law judge conferred by any provision of  
11 law;

12 (c) The agency or administrative law judge has engaged in unlawful  
13 procedure or decision-making process, or has failed to follow a  
14 prescribed procedure;

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

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

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

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

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

32 (i) The order is arbitrary or capricious.

33 (4) Review of other agency action.

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

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

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

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

10 (i) Unconstitutional;

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

13 (iii) Arbitrary or capricious; or

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

16 **Sec. 15.** RCW 34.05.574 and 1989 c 175 s 28 are each amended to  
17 read as follows:

18 (1) In a review under RCW 34.05.570, the court may (a) affirm the  
19 agency action or the administrative law judge's final order or (b)  
20 order an agency or administrative law judge to take action required by  
21 law, order an agency or administrative law judge to exercise discretion  
22 required by law, set aside agency action or the administrative law  
23 judge's final order, enjoin or stay the agency action or the  
24 administrative law judge's final order, remand the matter for further  
25 proceedings, or enter a declaratory judgment order. The court shall  
26 set out in its findings and conclusions, as appropriate, each violation  
27 or error by the agency or administrative law judge under the standards  
28 for review set out in this chapter on which the court bases its  
29 decision and order. In reviewing matters within agency discretion, the  
30 court shall limit its function to assuring that the agency has  
31 exercised its discretion in accordance with law, and shall not itself  
32 undertake to exercise the discretion that the legislature has placed in  
33 the agency. The court shall remand to the agency for modification of  
34 agency action, unless remand is impracticable or would cause  
35 unnecessary delay.

36 (2) The sole remedy available to a person who is wrongfully denied  
37 licensure based upon a failure to pass an examination administered by  
38 a state agency, or under its auspices, is the right to retake the

1 examination free of the defect or defects the court may have found in  
2 the examination or the examination procedure.

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

5 (4) If the court sets aside or modifies agency action or the  
6 administrative law judge's final order or remands the matter to the  
7 agency or administrative law judge for further proceedings, the court  
8 may make any interlocutory order it finds necessary to preserve the  
9 interests of the parties and the public, pending further proceedings or  
10 agency action.

11 **Sec. 16.** RCW 34.12.040 and 1981 c 67 s 4 are each amended to read  
12 as follows:

13 Whenever a state agency conducts a hearing which is not presided  
14 over by officials of the agency who are to render the final decision,  
15 the hearing shall be conducted by an administrative law judge assigned  
16 under this chapter. In assigning administrative law judges, the chief  
17 administrative law judge shall (~~wherever practical~~) (1) use personnel  
18 having expertise in the field or subject matter of the hearing, and (2)  
19 assign administrative law judges primarily to the hearings of  
20 particular agencies on a long-term basis.

21 NEW SECTION. **Sec. 17.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 18.** This act applies to all applications for  
26 adjudicative proceedings filed on or after July 1, 1995.

27 NEW SECTION. **Sec. 19.** This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the  
29 state government and its existing public institutions, and shall take  
30 effect July 1, 1995.

--- END ---