
HOUSE BILL 1969

State of Washington

57th Legislature

2001 Regular Session

By Representatives Lambert, Boldt, Dunn and Mulliken

Read first time 02/12/2001. Referred to Committee on State Government.

1 AN ACT Relating to legislative oversight of agency rules; and
2 amending RCW 34.05.570, 34.05.610, 34.05.630, 34.05.640, and
3 34.05.660.

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

5 **Sec. 1.** RCW 34.05.570 and 1995 c 403 s 802 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
10 is on the party asserting invalidity;

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

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

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

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

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

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

20 (d) If the rules review committee has made an adverse finding
21 under RCW 34.05.640(2) (a) or (b) on the rule in question, the
22 agency has the burden of demonstrating the validity of the rule,
23 notwithstanding subsection (1)(a) of this section.

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

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

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

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

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

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

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

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

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

12 (i) The order is arbitrary or capricious.

13 (4) Review of other agency action.

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

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

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

29 (i) Unconstitutional;

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

32 (iii) Arbitrary or capricious; or

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

35 **Sec. 2.** RCW 34.05.610 and 1998 c 280 s 9 are each amended to read
36 as follows:

37 (1) There is hereby created a joint administrative rules review

1 committee which shall be a bipartisan committee consisting of the
2 lieutenant governor, four senators, and four representatives from
3 the state legislature. The lieutenant governor shall serve as a
4 nonvoting committee member unless there is a tie vote among the
5 members voting on an issue, in which case the lieutenant governor
6 may vote to break the tie. The senate members of the committee
7 shall be appointed by the president of the senate, and the house
8 members of the committee shall be appointed by the speaker of the
9 house. Not more than two members from each house may be from the
10 same political party. The appointing authorities shall also appoint
11 one alternate member from each caucus of each house. All
12 appointments to the committee are subject to approval by the
13 caucuses to which the appointed members belong.

14 (2) Members and alternates shall be appointed as soon as
15 possible after the legislature convenes in regular session in an
16 odd-numbered year, and their terms shall extend until their
17 successors are appointed and qualified at the next regular session
18 of the legislature in an odd-numbered year or until such persons
19 no longer serve in the legislature, whichever occurs first.
20 Members and alternates may be reappointed to the committee.

21 (3) On or about January 1, 1999, the president of the senate
22 shall appoint the chairperson and the vice chairperson from among
23 the committee membership. The speaker of the house shall appoint
24 the chairperson and the vice chairperson in alternating even-
25 numbered years beginning in the year 2000 from among the committee
26 membership. The secretary of the senate shall appoint the
27 chairperson and the vice chairperson in the alternating even-
28 numbered years beginning in the year 2002 from among the committee
29 membership. Such appointments shall be made in January of each even-
30 numbered year as soon as possible after a legislative session
31 convenes.

32 (4) The chairperson of the committee shall cause all meeting
33 notices and committee documents to be sent to the members and
34 alternates. A vacancy shall be filled by appointment of a
35 legislator from the same political party as the original
36 appointment. The appropriate appointing authority shall make the
37 appointment within thirty days of the vacancy occurring.

38

1 **Sec. 3.** RCW 34.05.630 and 1998 c 21 s 1 are each amended to read
2 as follows:

3 (1) All rules required to be filed pursuant to RCW 34.05.380,
4 and emergency rules adopted pursuant to RCW 34.05.350, are subject
5 to selective review by the committee.

6 (2) All agency policy and interpretive statements, guidelines,
7 and documents that are of general applicability, or their
8 equivalents, are subject to selective review by the committee to
9 determine whether or not a statement, guideline, or document that
10 is of general applicability, or its equivalent, is being used as a
11 rule that has not been adopted in accordance with all applicable
12 provisions of law.

13 (3) If the rules review committee finds by a majority vote of
14 its members: (a) That an existing rule is not within the intent of
15 the legislature as expressed by the statute which the rule
16 implements, (b) that the rule has not been adopted in accordance
17 with all applicable provisions of law, or (c) that an agency is
18 using a policy or interpretive statement in place of a rule, the
19 agency affected shall be notified of such finding and the reasons
20 therefor. Within thirty days of the receipt of the rules review
21 committee's notice, the agency shall file notice of a hearing on
22 the rules review committee's finding with the code reviser and
23 mail notice to all persons who have made timely request of the
24 agency for advance notice of its rule-making proceedings as
25 provided in RCW 34.05.320. The agency's notice shall include the
26 rules review committee's findings and reasons therefor, and shall
27 be published in the Washington state register in accordance with
28 the provisions of chapter 34.08 RCW.

29 (4) The agency shall conduct the hearing within ninety days of
30 receiving the rules review committee's finding. The agency shall
31 consider fully all written and oral submissions regarding (a)
32 whether the rule in question is within the intent of the
33 legislature as expressed by the statute which the rule implements,
34 (b) whether the rule was adopted in accordance with all applicable
35 provisions of law, and (c) whether the agency is using a policy or
36 interpretive statement, guideline, or document that is of general
37 applicability, or its equivalent, in place of a rule.

38

1 **Sec. 4.** RCW 34.05.640 and 1998 c 21 s 2 are each amended to read
2 as follows:

3 (1) Within seven days of an agency hearing held after
4 notification of the agency by the rules review committee pursuant
5 to RCW 34.05.620 or 34.05.630, the affected agency shall notify
6 the committee of its intended action on a proposed or existing
7 rule to which the committee objected or on a committee finding of
8 the agency's failure to adopt rules.

9 (2) If the rules review committee finds by a majority vote of
10 its members: (a) That the proposed or existing rule in question
11 will not be modified, amended, withdrawn, or repealed by the
12 agency so as to conform with the intent of the legislature, (b)
13 that an existing rule was not adopted in accordance with all
14 applicable provisions of law, or (c) that the agency will not
15 replace the policy or interpretive statement, guideline, or
16 document that is of general applicability, or its equivalent, with
17 a rule, the rules review committee may, within (~~thirty~~) one
18 hundred twenty days from notification by the agency of its
19 intended action, file with the code reviser notice of its
20 objections together with a concise statement of the reasons
21 therefor. Such notice and statement shall also be provided to the
22 agency by the rules review committee.

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

37 (b) If the rules review committee makes an adverse finding
38 regarding a policy or interpretive statement, guideline, or

1 document that is of general applicability, or its equivalent,
2 under subsection (2)(c) of this section, the committee may, by a
3 majority vote of its members, advise the governor of its finding.

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

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

17 **Sec. 5.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to
18 read as follows:

19 (1) Except as provided in subsection (2) of this section, it is
20 the express policy of the legislature that establishment of
21 procedures for review of administrative rules by the legislature
22 and the notice of objection required by RCW 34.05.630(~~(+2)~~) (3)
23 and 34.05.640(2) in no way serves to establish a presumption as to
24 the legality or constitutionality of a rule in any subsequent
25 judicial proceedings interpreting such rules.

26 (2) If the joint administrative rules review committee
27 recommends to the governor that an existing rule be suspended
28 because it does not conform with the intent of the legislature or
29 was not adopted in accordance with all applicable provisions of
30 law, the recommendation establishes a rebuttable presumption in a
31 proceeding challenging the validity of the rule that the rule is
32 invalid. The burden of demonstrating the validity of the rule is
33 then on the adopting agency.

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