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5 On page 9, after line 34, insert the following:

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

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

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

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

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

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

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

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

33 (c) In a proceeding involving review of a rule, the court shall
34 declare the rule invalid only if it finds that it violates
35 constitutional provisions, exceeds the statutory authority of the
36 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 orders in adjudicative proceedings. The court
4 shall grant relief from an agency order in an adjudicative proceeding
5 only if it determines that:

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

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

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

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

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

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

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

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

27 (i) The order is arbitrary or capricious.

28 (4) Review of other agency action.

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

31 (b) A person whose rights are violated by an agency's failure to
32 perform a duty that is required by law to be performed may file a
33 petition for review pursuant to RCW 34.05.514, seeking an order
34 pursuant to this subsection requiring performance. Within twenty days
35 after service of the petition for review, the agency shall file and
36 serve an answer to the petition, made in the same manner as an answer
37 to a complaint in a civil action. The court may hear evidence,
38 pursuant to RCW 34.05.562, on material issues of fact raised by the
39 petition and answer.

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

5 (i) Unconstitutional;

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

8 (iii) Arbitrary or capricious; or

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

11 (5) Grants of rule-making authority to an agency by the legislature
12 are to be narrowly construed."

13 Renumber the remaining sections consecutively and correct any
14 internal references accordingly.

15 EFFECT: Adds to the Administrative Procedure Act a sentence which
16 requires courts to narrowly construe grants of rule-making authority to
17 agencies.

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