
HOUSE BILL 2233

State of Washington

54th Legislature

1996 Regular Session

By Representatives Mastin and Thompson

Read first time 01/08/96. Referred to Committee on Government Operations.

1 AN ACT Relating to regulatory reform; and amending RCW 4.84.350,
2 34.05.375, and 34.05.570.

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

4 **Sec. 1.** RCW 4.84.350 and 1995 c 403 s 903 are each amended to read
5 as follows:

6 (1) Except as otherwise specifically provided by statute, a court
7 shall award a qualified party that prevails in a judicial review of an
8 agency action fees and other expenses, including reasonable attorneys'
9 fees, unless the court finds that the agency action was substantially
10 justified or that circumstances make an award unjust. A qualified
11 party shall be considered to have prevailed if the qualified party
12 obtained relief on a significant issue that achieves some benefit that
13 the qualified party sought.

14 (2) The amount awarded a qualified party under subsection (1) of
15 this section shall not exceed:

16 (a) For cases involving rule validity:

17 (i) Twenty-five thousand dollars for superior court cases; and

18 (ii) Fifteen thousand dollars for appeals to the court of appeals
19 and the supreme court; and

1 (b) For cases involving other agency action:

2 (i) Fifty thousand dollars for superior court cases; and

3 (ii) Fifteen thousand dollars for appeals to the court of appeals
4 and the supreme court.

5 (3) Subsection (1) of this section shall not apply unless all
6 parties challenging the agency action are qualified parties. If two or
7 more qualified parties join in an action, the award in total shall not
8 exceed twenty-five thousand dollars. The court, in its discretion, may
9 reduce the amount to be awarded pursuant to subsection (1) of this
10 section, or deny any award, to the extent that a qualified party during
11 the course of the proceedings engaged in conduct that unduly or
12 unreasonably protracted the final resolution of the matter in
13 controversy.

14 (4) Qualified parties shall receive awards under this section for
15 cases pending July 23, 1995.

16 **Sec. 2.** RCW 34.05.375 and 1988 c 288 s 314 are each amended to
17 read as follows:

18 No rule proposed after July 1, 1989, is valid unless it is adopted
19 in substantial compliance with RCW 34.05.310 through 34.05.395.
20 Inadvertent failure to mail notice of a proposed rule adoption to any
21 person as required by RCW 34.05.320(3) does not invalidate a rule. No
22 action based upon this section may be maintained to contest the
23 validity of any rule unless it is commenced within ~~((two))~~ seven years
24 after the effective date of the rule.

25 **Sec. 3.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to
26 read as follows:

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

29 (a) Except as provided in subsection (2) of this section, the
30 burden of demonstrating the invalidity of agency action is on the party
31 asserting invalidity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) The order is arbitrary or capricious.

10 (4) Review of other agency action.

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

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

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

26 (i) Unconstitutional;

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

29 (iii) Arbitrary or capricious; or

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

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