
SENATE BILL 6269

State of Washington

53rd Legislature

1994 Regular Session

By Senators Moore, Amondson, Prentice, McAuliffe, Deccio, Sellar, Vognild, Newhouse, Bauer, Winsley and Ludwig

Read first time 01/18/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to review of administrative rules; amending RCW
2 34.05.620, 34.05.630, 34.05.640, and 34.05.660; adding a new section to
3 chapter 34.05 RCW; and repealing RCW 34.05.670 and 34.05.680.

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

5 **Sec. 1.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to
6 read as follows:

7 Whenever a majority of the members of the rules review committee
8 determines that a proposed rule is not within the intent of the
9 legislature as expressed in the statute which the rule implements, or
10 that an agency may not be adopting a proposed rule in accordance with
11 all applicable provisions of law, including section 5, chapter ... (S-
12 4041.3/94), Laws of 1994 and chapter 19.85 RCW, the committee shall
13 give the affected agency written notice of its decision. The notice
14 shall be given at least seven days prior to any hearing scheduled for
15 consideration of or adoption of the proposed rule pursuant to RCW
16 34.05.320. The notice shall include a statement of the review
17 committee's findings and the reasons therefor. When the agency holds
18 a hearing on the proposed rule, the agency shall consider the review
19 committee's decision.

1 **Sec. 2.** RCW 34.05.630 and 1993 c 277 s 1 are each amended to read
2 as follows:

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

6 (2) The rules review committee may review an agency's use of policy
7 statements, guidelines, and issuances that are of general
8 applicability, or their equivalents to determine whether or not an
9 agency has failed to adopt a rule or whether they are within the intent
10 of the legislature as expressed by the governing statute.

11 (3) If the rules review committee finds by a majority vote of its
12 members: (a) That an existing rule is not within the intent of the
13 legislature as expressed by the statute which the rule implements, (b)
14 that the rule has not been adopted in accordance with all applicable
15 provisions of law, including section 5, chapter ... (S-4041.3/94), Laws
16 of 1994 and chapter 19.85 RCW, (c) that an agency is using a policy
17 statement, guideline, or issuance in place of a rule, or (d) that the
18 policy statement, guideline, or issuance is outside of legislative
19 intent, the agency affected shall be notified of such finding and the
20 reasons therefor. Within thirty days of the receipt of the rules
21 review committee's notice, the agency shall file notice of a hearing on
22 the rules review committee's finding with the code reviser and mail
23 notice to all persons who have made timely request of the agency for
24 advance notice of its rule-making proceedings as provided in RCW
25 34.05.320. The agency's notice shall include the rules review
26 committee's findings and reasons therefor, and shall be published in
27 the Washington state register in accordance with the provisions of
28 chapter 34.08 RCW.

29 (4) The agency shall consider fully all written and oral
30 submissions regarding (a) whether the rule in question is within the
31 intent of the legislature as expressed by the statute which the rule
32 implements, (b) whether the rule was adopted in accordance with all
33 applicable provisions of law, including section 5, chapter ... (S-
34 4041.3/94), Laws of 1994 and chapter 19.85 RCW, (c) whether the agency
35 is using a policy statement, guideline, or issuance in place of a rule,
36 or (d) whether the policy statement, guideline, or issuance is within
37 the legislative intent.

1 **Sec. 3.** RCW 34.05.640 and 1993 c 277 s 2 are each amended to read
2 as follows:

3 (1) Within seven days of an agency hearing held after notification
4 of the agency by the rules review committee pursuant to RCW 34.05.620
5 or 34.05.630, the affected agency shall notify the committee of its
6 action on a proposed or existing rule to which the committee objected
7 or on a committee finding of the agency's failure to adopt rules. If
8 the rules review committee determines, by a majority vote of its
9 members, that the agency has failed to provide for the required
10 hearings or notice of its action to the committee, the committee may
11 file notice of its objections, together with a concise statement of the
12 reasons therefor, with the code reviser within thirty days of such
13 determination.

14 (2) If the rules review committee finds, by a majority vote of its
15 members: (a) That the proposed or existing rule in question has not
16 been modified, amended, withdrawn, or repealed by the agency so as to
17 conform with the intent of the legislature, or (b) that an existing
18 rule was not adopted in accordance with all applicable provisions of
19 law, including section 5, chapter ... (S-4041.3/94), Laws of 1994 and
20 chapter 19.85 RCW, or (c) that the agency is using a policy statement,
21 guideline, or issuance in place of a rule, or that the policy
22 statement, guideline, or issuance is outside of the legislative intent,
23 the rules review committee may, within thirty days from notification by
24 the agency of its action, file with the code reviser notice of its
25 objections together with a concise statement of the reasons therefor.
26 Such notice and statement shall also be provided to the agency by the
27 rules review committee.

28 (3) If the rules review committee makes an adverse finding under
29 subsection (2) of this section, the committee may, by a (~~two-thirds~~)
30 three-fourths vote of its members, recommend suspension of an existing
31 rule. Within seven days of such vote the committee shall transmit to
32 the appropriate standing committees of the legislature, the governor,
33 the code reviser, and the agency written notice of its objection and
34 recommended suspension and the concise reasons therefor. Within thirty
35 days of receipt of the notice, the governor shall transmit to the
36 committee, the code reviser, and the agency written approval or
37 disapproval of the recommended suspension. If the suspension is
38 approved by the governor, it is effective from the date of that

1 approval and continues until ninety days after the expiration of the
2 next regular legislative session.

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

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

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 34.05 RCW
17 to read as follows:

18 (1) Notwithstanding any other provision of law, an election by the
19 rules review committee under RCW 34.05.640 to recommend suspension of
20 a rule, regardless of whether the suspension is approved by the
21 governor, establishes a presumption in a subsequent judicial review of
22 the rule that it is invalid. The burden of demonstrating the rule's
23 validity is then on the adopting agency. The court shall declare the
24 rule valid only if it finds that the rule does not violate
25 constitutional provisions, does not exceed the statutory authority of
26 the agency, that it was adopted in compliance with statutory rule-
27 making procedures, and that it could conceivably have been the product
28 of a rational decision maker.

29 (2) Upon judicial review, if a rule is declared invalid that had
30 previously been recommended for suspension under RCW 34.05.640, the
31 party challenging the rule shall be awarded fees and other expenses not
32 to exceed ten thousand dollars. The award shall be paid from the
33 operating fund of the agency that adopted the rule. For purposes of
34 this subsection, "fees and other expenses" includes the reasonable
35 expenses of expert witnesses, the reasonable cost of a study, analysis,
36 engineering report, test, or project that is found to be necessary for
37 the preparation of the party's case, and reasonable attorneys' fees.

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

3 Except as provided in section 4 of this act, it is the express
4 policy of the legislature that establishment of procedures for review
5 of administrative rules by the legislature and the notice of objection
6 required by RCW 34.05.630(2) and 34.05.640(2) in no way serves to
7 establish a presumption as to the legality or constitutionality of a
8 rule in any subsequent judicial proceedings interpreting such rules.

9 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
10 repealed:

11 (1) RCW 34.05.670 and 1992 c 197 s 3; and

12 (2) RCW 34.05.680 and 1992 c 197 s 4.

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