

SB 5254 - S AMD 53
By Senator Roach

ADOPTED AS AMENDED 03/07/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 34.05.570 and 1995 c 403 s 802 are each amended to
4 read as follows:

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

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

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

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

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

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

22 (b) The validity of any rule may be determined upon petition for a
23 declaratory judgment addressed to the superior court of (i) Thurston
24 county, (ii) the county of the petitioner's residence or principal
25 place of business, or (iii) in a county where property owned by the
26 petitioner and affected by the contested rule is located, when it
27 appears that the rule, or its threatened application, interferes with
28 or impairs or immediately threatens to interfere with or impair the
29 legal rights or privileges of the petitioner. The declaratory judgment

1 order may be entered whether or not the petitioner has first requested
2 the agency to pass upon the validity of the rule in question.

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

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

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

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

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

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

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

22 (f) The agency has not decided all issues requiring resolution by
23 the agency;

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

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

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

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

11 (i) Unconstitutional;

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

14 (iii) Arbitrary or capricious; or

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

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17 On page 1, line 2 of the title, after "rules;" strike the remainder
18 of the title and insert "and amending RCW 34.05.570."

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