
HOUSE BILL 2029

State of Washington 58th Legislature 2003 Regular Session

By Representatives Schoesler, Schindler, Buck, Armstrong and Mielke

Read first time 02/19/2003. 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 34.05.660.

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

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

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

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

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

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

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

18 (2) Review of rules. (a) A rule may be reviewed by petition for
19 declaratory judgment filed pursuant to this subsection or in the

1 context of any other review proceeding under this section. In an
2 action challenging the validity of a rule, the agency shall be made a
3 party to the proceeding.

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

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

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

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

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

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

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

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

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

35 (f) The agency has not decided all issues requiring resolution by
36 the agency;

37 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
38 was made and was improperly denied or, if no motion was made, facts are

1 shown to support the grant of such a motion that were not known and
2 were not reasonably discoverable by the challenging party at the
3 appropriate time for making such a motion;

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

7 (i) The order is arbitrary or capricious.

8 (4) Review of other agency action.

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

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

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

24 (i) Unconstitutional;

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

27 (iii) Arbitrary or capricious; or

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

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

32 (1) There is (~~hereby~~) created a joint administrative rules review
33 committee, which shall be a bipartisan committee consisting of the
34 lieutenant governor, four senators, and four representatives from the
35 state legislature. The lieutenant governor shall serve as a nonvoting
36 committee member unless there is a tie vote among the members voting on
37 an issue, in which case the lieutenant governor may vote to break the

1 tie. The senate members of the committee shall be appointed by the
2 president of the senate, and the house members of the committee shall
3 be appointed by the speaker of the house. Not more than two members
4 from each house may be from the same political party. The appointing
5 authorities shall also appoint one alternate member from each caucus of
6 each house. All appointments to the committee are subject to approval
7 by the caucuses to which the appointed members belong.

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

15 (3) (~~On or about January 1, 1999, the president of the senate~~
16 ~~shall appoint the chairperson and the vice chairperson from among the~~
17 ~~committee membership.)) The speaker of the house shall appoint the
18 chairperson and the vice chairperson in alternating even- numbered
19 years beginning in the year 2000 from among the committee membership.
20 The secretary of the senate shall appoint the chairperson and the vice
21 chairperson in the alternating even- numbered years beginning in the
22 year 2002 from among the committee membership. Such appointments shall
23 be made in January of each even- numbered year as soon as possible
24 after a legislative session convenes.~~

25 (4) The chairperson of the committee shall cause all meeting
26 notices and committee documents to be sent to the members and
27 alternates. A vacancy shall be filled by appointment of a legislator
28 from the same political party as the original appointment. The
29 appropriate appointing authority shall make the appointment within
30 thirty days of the vacancy occurring.

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

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

36 (2) All agency policy and interpretive statements, guidelines, and
37 documents that are of general applicability, or their equivalents, are

1 subject to selective review by the committee to determine whether or
2 not a statement, guideline, or document that is of general
3 applicability, or its equivalent, is being used as a rule that has not
4 been adopted in accordance with all applicable provisions of law.

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

20 (4) The agency shall conduct the hearing within ninety days of
21 receiving the rules review committee's finding. The agency shall
22 consider fully all written and oral submissions regarding (a) whether
23 the rule in question is within the intent of the legislature as
24 expressed by the statute which the rule implements, (b) whether the
25 rule was adopted in accordance with all applicable provisions of law,
26 and (c) whether the agency is using a policy or interpretive statement,
27 guideline, or document that is of general applicability, or its
28 equivalent, in place of a rule.

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

31 (1) Within seven days of an agency hearing held after notification
32 of the agency by the rules review committee pursuant to RCW 34.05.620
33 or 34.05.630, the affected agency shall notify the committee of its
34 intended action on a proposed or existing rule to which the committee
35 objected or on a committee finding of the agency's failure to adopt
36 rules.

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

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

27 (b) If the rules review committee makes an adverse finding
28 regarding a policy or interpretive statement, guideline, or document
29 that is of general applicability, or its equivalent, under subsection
30 (2)(c) of this section, the committee may, by a majority vote of its
31 members, advise the governor of its finding.

32 (4) The code reviser shall publish transmittals from the rules
33 review committee or the governor issued pursuant to subsection (2) or
34 (3) of this section in the Washington state register and shall publish
35 in the next supplement and compilation of the Washington Administrative
36 Code a reference to the committee's objection or recommended suspension
37 and the governor's action on it and to the issue of the Washington
38 state register in which the full text thereof appears.

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

6 **Sec. 5.** RCW 34.05.660 and 2001 c 64 s 2 are each amended to read
7 as follows:

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

15 (2) If the joint administrative rules review committee recommends
16 to the governor that an existing rule be suspended because it does not
17 conform with the intent of the legislature or was not adopted in
18 accordance with all applicable provisions of law, the recommendation
19 establishes a rebuttable presumption in a proceeding challenging the
20 validity of the rule that the rule is invalid. The burden of
21 demonstrating the validity of the rule is then on the adopting agency.

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