

2 **SB 6242** - S AMD TO S AMD (S5067.3) 000157

3 By Senator Prince

4 NOT ADOPTED 2/12/94

5 On page 20, after line 18, insert the following:

6 "Sec. 28. 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 section consecutively

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16 On page 20, line 31 of the title, after "34.05.640," strike ", and  
17 34.05.660" and insert "34.05.660, and 34.05.570"

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