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HOUSE BILL 2805

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State of Washington

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1994 Regular Session

By Representatives McMorris, Brough, L. Thomas, B. Thomas, Reams, Sheahan, Stevens, Fuhrman, Edmondson, Chandler, Cooke, Talcott, Wood, Schoesler, Van Luven, Horn, Silver, Long, Sehlin and Mielke

Read first time 01/24/94. Referred to Committee on State Government.

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

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

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

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

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

15 (3) If the rules review committee finds by a majority vote of its  
16 members: (a) That an existing rule is not within the intent of the  
17 legislature as expressed by the statute which the rule implements, (b)  
18 that the rule exceeds federal law without specific state legislative  
19 authorization to do so, (c) that the rule has not been adopted in

1 accordance with all applicable provisions of law, (~~(e)~~) (d) that an  
2 agency is using a policy statement, guideline, or issuance in place of  
3 a rule, or (~~(d)~~) (e) that the policy statement, guideline, or  
4 issuance is outside of legislative intent, the agency affected shall be  
5 notified of such finding and the reasons therefor. Within thirty days  
6 of the receipt of the rules review committee's notice, the agency shall  
7 file notice of a hearing on the rules review committee's finding with  
8 the code reviser and mail notice to all persons who have made timely  
9 request of the agency for advance notice of its rule-making proceedings  
10 as provided in RCW 34.05.320. The agency's notice shall include the  
11 rules review committee's findings and reasons therefor, and shall be  
12 published in the Washington state register in accordance with the  
13 provisions of chapter 34.08 RCW.

14 (4) The agency shall consider fully all written and oral  
15 submissions regarding (a) whether the rule in question is within the  
16 intent of the legislature as expressed by the statute which the rule  
17 implements, (b) whether the rule exceeds federal law without specific  
18 state legislative authorization to do so, (c) whether the rule was  
19 adopted in accordance with all applicable provisions of law, (~~(e)~~)  
20 (d) whether the agency is using a policy statement, guideline, or  
21 issuance in place of a rule, or (~~(d)~~) (e) whether the policy  
22 statement, guideline, or issuance is within the legislative intent.

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

25 (1) Within seven days of an agency hearing held after notification  
26 of the agency by the rules review committee pursuant to RCW 34.05.620  
27 or 34.05.630, the affected agency shall notify the committee of its  
28 action on a proposed or existing rule to which the committee objected  
29 or on a committee finding of the agency's failure to adopt rules. If  
30 the rules review committee determines, by a majority vote of its  
31 members, that the agency has failed to provide for the required  
32 hearings or notice of its action to the committee, the committee may  
33 file notice of its objections, together with a concise statement of the  
34 reasons therefor, with the code reviser within thirty days of such  
35 determination.

36 (2) If the rules review committee finds, by a majority vote of its  
37 members: (a) That the proposed or existing rule in question has not  
38 been modified, amended, withdrawn, or repealed by the agency so as to

1 conform with the intent of the legislature, or (b) that the agency is  
2 using a policy statement, guideline, or issuance in place of a rule, or  
3 that the policy statement, guideline, or issuance is outside of the  
4 legislative intent, the rules review committee may, within thirty days  
5 from notification by the agency of its action, file with the code  
6 reviser notice of its objections together with a concise statement of  
7 the reasons therefor. Such notice and statement shall also be provided  
8 to the agency by the rules review committee.

9 (3) If the rules review committee makes an adverse finding under  
10 subsection (2) of this section, the committee may, by a ~~((two-thirds))~~  
11 majority vote of its members, recommend suspension of an existing rule.  
12 Within seven days of such vote the committee shall transmit to the  
13 governor, the code reviser, and the agency written notice of its  
14 objection and recommended suspension and the concise reasons therefor.  
15 Within thirty days of receipt of the notice, the governor shall  
16 transmit to the committee, the code reviser, and the agency written  
17 approval or disapproval of the recommended suspension. If the  
18 suspension is approved by the governor, it is effective from the date  
19 of that approval and continues until ninety days after the expiration  
20 of the next regular legislative session.

21 (4) If the governor denies the recommendation for suspension, the  
22 agency shall consider the governor's transmittal of the denial to be a  
23 petition for rule making under RCW 34.05.330, and shall proceed as  
24 directed by that section. If the agency denies the petition, it must  
25 state the basis for finding the rule to be within the scope of the  
26 agency's statutory authority.

27 (5) The code reviser shall publish transmittals from the rules  
28 review committee or the governor issued pursuant to subsection (1),  
29 (2), ~~((or))~~ (3), or (4) of this section in the Washington state  
30 register and shall publish in the next supplement and compilation of  
31 the Washington Administrative Code a reference to the committee's  
32 objection or recommended suspension and the governor's action on it and  
33 to the issue of the Washington state register in which the full text  
34 thereof appears.

35 ~~((+5))~~ (6) The reference shall be removed from a rule published in  
36 the Washington Administrative Code if a subsequent adjudicatory  
37 proceeding determines that the rule is within the intent of the  
38 legislature or was adopted in accordance with all applicable laws,  
39 whichever was the objection of the rules review committee.

1       **Sec. 3.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
2 read as follows:

3       It is the express policy of the legislature that establishment of  
4 procedures for review of administrative rules by the legislature and  
5 the notice of objection required by RCW 34.05.630(2) and 34.05.640(2)  
6 in no way serves to establish a presumption as to the legality or  
7 constitutionality of a rule in any subsequent judicial proceedings  
8 interpreting such rules. However, the rules review committee may, by  
9 a majority vote of its membership, create a rebuttable presumption, for  
10 purposes of a judicial proceeding in which the validity of the rule is  
11 at issue, that a rule was adopted without proper legal authority.

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

14       If the rules review committee votes to recommend suspension of a  
15 rule under RCW 34.05.640 or to create a rebuttable presumption under  
16 RCW 34.05.660, the prevailing party is entitled to receive attorneys'  
17 fees and costs not to exceed ten thousand dollars. The agency over  
18 which the party prevails shall pay these fees and other expenses from  
19 operating funds appropriated to the agency.

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