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SENATE BILL 6575

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State of Washington

55th Legislature

1998 Regular Session

By Senators Hale, T. Sheldon, McCaslin, Snyder, Horn, McDonald, Sellar, Newhouse, Schow, Strannigan, Benton, Zarelli, Stevens, Roach, Heavey and Oke

Read first time 01/21/98. Referred to Committee on Government Operations.

1 AN ACT Relating to extending the powers of the joint administrative  
2 rules review committee; and amending RCW 34.05.630, 34.05.640,  
3 34.05.655, and 34.05.660.

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

5 **Sec. 1.** RCW 34.05.630 and 1996 c 318 s 4 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) All agency policy and interpretive statements, guidelines, and  
11 issuances that are of general applicability, or their equivalents, are  
12 subject to selective review by the legislature to determine whether or  
13 not an agency has failed to adopt a rule or whether they are within the  
14 intent 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 has not been adopted in accordance with all applicable  
19 provisions of law, (~~or~~) (c) that an agency is using (~~a~~) policy or

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

23 **Sec. 2.** RCW 34.05.640 and 1996 c 318 s 5 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 intended action on a proposed or existing rule to which the committee  
29 objected or on a committee finding of the agency's failure to adopt  
30 rules.

31 (2) If the rules review committee finds by a majority vote of its  
32 members: (a) That the proposed or existing rule in question will not  
33 be modified, amended, withdrawn, or repealed by the agency so as to  
34 conform with the intent of the legislature, (b) that an existing rule  
35 was not adopted in accordance with all applicable provisions of law, or  
36 (c) that the agency is using a policy or interpretive statement,  
37 guideline, or issuance, or its equivalent, in place of a rule, or that  
38 the policy or interpretive statement, guideline, or issuance, or its

1 equivalent, is outside the legislative intent, and that the agency will  
2 not replace the policy or interpretive statement, guideline, or  
3 issuance, or its equivalent, with a rule, the rules review committee  
4 may, within thirty days from notification by the agency of its intended  
5 action, file with the code reviser notice of its objections together  
6 with a concise statement of the reasons therefor. Such notice and  
7 statement shall also be provided to the agency by the rules review  
8 committee.

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

22 (4) The code reviser shall publish transmittals from the rules  
23 review committee or the governor issued pursuant to subsection (2) or  
24 (3) of this section in the Washington state register and shall publish  
25 in the next supplement and compilation of the Washington Administrative  
26 Code a reference to the committee's objection or recommended suspension  
27 and the governor's action on it and to the issue of the Washington  
28 state register in which the full text thereof appears.

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

34 **Sec. 3.** RCW 34.05.655 and 1996 c 318 s 7 are each amended to read  
35 as follows:

36 (1) Any person may petition the rules review committee for a review  
37 of a proposed or existing rule or a proposed or existing policy or  
38 interpretive statement, guideline, or issuance, or its equivalent.

1 Within thirty days of the receipt of the petition, the rules review  
2 committee shall acknowledge receipt of the petition and describe any  
3 initial action taken. If the rules review committee rejects the  
4 petition, a written statement of the reasons for rejection shall be  
5 included.

6 (2) A person may petition the rules review committee under  
7 subsection (1) of this section requesting review of an existing rule  
8 only if the person has petitioned the agency to amend or repeal the  
9 rule under RCW 34.05.330(1) and such petition was denied.

10 (3) A petition for review of a rule under subsection (1) of this  
11 section shall:

12 (a) Identify with specificity the proposed or existing rule to be  
13 reviewed;

14 (b) Identify the specific statute identified by the agency as  
15 authorizing the rule, the specific statute which the rule interprets or  
16 implements, and, if applicable, the specific statute the department is  
17 alleged not to have followed in adopting the rule;

18 (c) State the reasons why the petitioner believes that the rule is  
19 not within the intent of the legislature, or that its adoption was not  
20 or is not in accordance with law, and provide documentation to support  
21 these statements;

22 (d) Identify any known judicial action regarding the rule or  
23 statutes identified in the petition.

24 A petition to review an existing rule shall also include a copy of  
25 the agency's denial of a petition to amend or repeal the rule issued  
26 under RCW 34.05.330(1) and, if available, a copy of the governor's  
27 denial issued under RCW 34.05.330(3).

28 (4) A petition for review of a policy or interpretive statement,  
29 guideline, or issuance, or its equivalent, under subsection (1) of this  
30 section shall:

31 (a) Identify the specific policy or interpretative statement,  
32 guideline, or issuance, or its equivalent, to be reviewed;

33 (b) Identify the specific statute which the rule interprets or  
34 implements;

35 (c) State the reasons why the petitioner believes that the policy  
36 or interpretive statement, guideline, or issuance, or its equivalent,  
37 meets the definition of a rule under RCW 34.05.010 and should have been  
38 adopted according to the procedures of this chapter;

1 (d) Identify any known judicial action regarding the policy or  
2 interpretive statement, guideline, or issuance, or its equivalent, or  
3 statutes identified in the petition.

4 (5) Within ninety days of receipt of the petition, the rules review  
5 committee shall make a final decision on the rule for which the  
6 petition for review was not previously rejected.

7 **Sec. 4.** RCW 34.05.660 and 1988 c 288 s 606 are each amended to  
8 read as follows:

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

16 (2) If the joint administrative rules review committee recommends  
17 to the governor that an existing rule be suspended because it does not  
18 conform with the intent of the legislative, 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 rule's validity is then on the adopting agency.

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