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HOUSE BILL 2962

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Reardon, Cairnes, Sehlin, Chandler, Linville, Crouse, Clements, Mulliken, Grant, Holmquist, Carrell, Skinner, Hankins, Mielke, Schmidt, Buck, Nixon, Campbell, Benson, Mitchell, Cox, Alexander, Sump, Talcott, Woods, Pflug, Dunn, Anderson, Eickmeyer, Hatfield, Kessler, Ruderman, Schindler, Bush, Casada and Pearson

Read first time 02/14/2002. Referred to Committee on State Government.

1 AN ACT Relating to ensuring that agency rules do not exceed their  
2 statutory authorization; amending RCW 34.05.570; and adding new  
3 sections to chapter 34.05 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW  
6 to read as follows:

7 (1) An agency may not adopt a proposed rule unless the legislature  
8 has had the opportunity to consider the proposed rule during a regular  
9 session or special legislative session as defined in Article II,  
10 section 12 of the state Constitution. For purposes of this section,  
11 the legislature has had the opportunity to consider a proposed rule  
12 after the adjournment of:

13 (a) For proposed rules published in the state register on or before  
14 the first day of November in a calendar year, the regular session and  
15 any special legislative session in the calendar year after the year in  
16 which the rule was published; or

17 (b) For proposed rules published in the state register after the  
18 first day of November in a calendar year, the regular session and any

1 special legislative session in the second calendar year after the year  
2 in which the rule was published.

3 (2) An agency seeking to adopt a proposed rule shall submit a copy  
4 of the rule, along with the summary and responses required by RCW  
5 34.05.325(6), to the chief clerk of the house of representatives and  
6 the secretary of the senate no later than the fifteenth day of January  
7 after the convening of the regular session in the calendar year  
8 required by subsection (1) of this section.

9 (3) This section does not apply to:

10 (a) Emergency rules adopted in accordance with RCW 34.05.350; and

11 (b) Rules adopted by the department of fish and wildlife  
12 establishing hunting and fishing seasons under RCW 77.12.047 and  
13 77.12.040.

14 (4) This section applies only to proposed rules that are published  
15 in the state register after the effective date of this act.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW  
17 to read as follows:

18 When delegating authority to an agency through legislation, the  
19 legislature, unless it specifically states otherwise, limits its  
20 delegation of authority to:

21 (1) The minimum delegation necessary to administer the  
22 legislation's clear and unambiguous directives; and

23 (2) The administration of circumstances and behaviors foreseeable  
24 at the time of the legislation's enactment.

25 **Sec. 3.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
26 read as follows:

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

29 (a) The burden of demonstrating the invalidity of agency action is  
30 on the party asserting invalidity except that the agency bears the  
31 burden of demonstrating that an agency action was authorized by law;

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

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

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

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

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

17 (c) In a proceeding involving review of a rule, the court shall  
18 declare the rule invalid only if it finds that: The rule violates  
19 constitutional provisions; the rule exceeds the statutory authority of  
20 the agency; the rule was adopted without compliance with statutory  
21 rule-making procedures; or the rule is arbitrary and capricious. For  
22 purposes of this subsection, in determining whether a rule exceeds the  
23 agency's statutory authority, the court must also consider whether the  
24 rule exceeds the limited delegation under section 2 of this act.

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

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

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

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

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

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

1 (f) The agency has not decided all issues requiring resolution by  
2 the agency;

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

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

11 (i) The order is arbitrary or capricious.

12 (4) Review of other agency action.

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

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

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

28 (i) Unconstitutional;

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

31 (iii) Arbitrary or capricious; or

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

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