
HOUSE BILL 1313

State of Washington

58th Legislature

2003 Regular Session

By Representatives Anderson, Morris, Nixon, Linville, Pflug, Ahern, Hatfield, Schindler, Roach, Ericksen, Kristiansen, Holmquist, Wallace, Mielke, Woods, Cox, Benson and McMahan

Read first time 01/22/2003. Referred to Committee on State Government.

1 AN ACT Relating to requiring state agencies to justify rules they
2 adopt; amending RCW 34.05.360 and 34.05.570; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the people of
6 this state do not yield their sovereignty to the agencies that serve
7 them, that one of the most fundamental principles of a free people is
8 that citizens are presumed innocent of wrongdoing until proven guilty,
9 and that due process requires that government bear the burden of
10 establishing a person's guilt, not that the citizen bear the burden of
11 proving his or her innocence. The legislature further finds that
12 citizens generally lack the resources that state agencies have at their
13 disposal to defend administrative rules that may have been adopted
14 unlawfully and are therefore invalid because of agency noncompliance
15 with proper administrative procedures, that may violate constitutional
16 provisions, that may exceed the agency's statutory authority, or that
17 may be arbitrary and capricious. The legislature further finds that in
18 order to enhance the faith, credibility, and trust of the people in

1 government, it is necessary and proper to place the burden upon state
2 agencies, not individual citizens, to demonstrate that the
3 administrative rules they adopt are lawful and valid.

4 **Sec. 2.** RCW 34.05.360 and 1988 c 288 s 311 are each amended to
5 read as follows:

6 The order of adoption by which each rule is adopted by an agency
7 shall contain all of the following:

- 8 (1) The signature of the governor;
- 9 (2) The date the agency adopted the rule;
- 10 ~~((+2))~~ (3) A concise statement of the purpose of the rule;
- 11 ~~((+3))~~ (4) A reference to all rules repealed, amended, or
12 suspended by the rule;
- 13 ~~((+4))~~ (5) A reference to the specific statutory or other
14 authority authorizing adoption of the rule;
- 15 ~~((+5))~~ (6) Any findings required by any provision of law as a
16 precondition to adoption or effectiveness of the rule; and
- 17 ~~((+6))~~ (7) The effective date of the rule if other than that
18 specified in RCW 34.05.380(2).

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

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

23 (a) Except as provided in subsection (2) of this section and except
24 that an agency bears the burden of demonstrating that the agency action
25 was authorized by law, the burden of demonstrating the invalidity of
26 agency action is on the party asserting invalidity;

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

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

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

35 (2) Review of rules. (a) A rule may be reviewed by petition for
36 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 any county, when it appears that the rule, or its threatened
7 application, interferes with or impairs or immediately threatens to
8 interfere with or impair the legal rights or privileges of the
9 petitioner. When the validity of a rule is challenged, after the
10 petitioner has identified probable defects in the rule, the burden of
11 going forward with the evidence is on the agency to establish validity.

12 The declaratory judgment order may be entered whether or not the
13 petitioner has first requested the agency to pass upon the validity of
14 the rule in question.

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

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

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

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

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

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

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

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

36 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050
37 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; or

8 (j) The order is based on a de facto rule.

9 (4) Review of other agency action.

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

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

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

25 (i) Unconstitutional;

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

28 (iii) Arbitrary or capricious; (~~or~~)

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

31 (v) Based on a de facto rule.

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