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HOUSE BILL 2598

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State of Washington

58th Legislature

2004 Regular Session

**By** Representatives Grant, Holmquist, Linville, Kessler, Quall, Clements, Ahern, Cox, Sehlin, Morris, Priest, Kristiansen, Nixon, Santos, Buck, Wallace, Orcutt, Armstrong, Clibborn, Chandler, Schoesler, Sump, Bush, Jarrett, Kenney, Hatfield, Lovick, Eickmeyer, O'Brien, Blake, Ruderman, Skinner, Hinkle, Newhouse, Anderson, Schindler, Tom, Wood, Hankins, McMahan and Condotta; by request of Governor Locke

Read first time 01/16/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to providing venue for administrative rule  
2 challenges in Spokane, Yakima, and Bellingham for residents of those  
3 appellate districts; and amending RCW 34.05.570.

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

5 **Sec. 1.** RCW 34.05.570 and 1995 c 403 s 802 are each amended to  
6 read as follows:

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

9 (a) The burden of demonstrating the invalidity of agency action is  
10 on the party asserting invalidity;

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

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

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

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

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

14 (ii) From the effective date of this section until July 1, 2008:

15 (A) If the petitioner's residence or principal place of business is  
16 within the geographical boundaries of the third division of the court  
17 of appeals as defined by RCW 2.06.020(3), the petition may be filed in  
18 the superior court of Spokane, Yakima, or Thurston county; and

19 (B) If the petitioner's residence or principal place of business is  
20 within the geographical boundaries of district three of the first  
21 division of the court of appeals as defined by RCW 2.06.020(1), the  
22 petition may be filed in the superior court of Whatcom or Thurston  
23 county.

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

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

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

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

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

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

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

5 (f) The agency has not decided all issues requiring resolution by  
6 the agency;

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

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

15 (i) The order is arbitrary or capricious.

16 (4) Review of other agency action.

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

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

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

32 (i) Unconstitutional;

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

35 (iii) Arbitrary or capricious; or

36 (iv) Taken by persons who were not properly constituted as agency

1 officials lawfully entitled to take such action.

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