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SENATE BILL 5254

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State of Washington

58th Legislature

2003 Regular Session

By Senators Roach, Hale, Stevens, T. Sheldon, Mulliken, Hewitt, Parlette, Horn, Rossi, Benton, Schmidt, Johnson and Esser

Read first time 01/20/2003. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to the burden of proof in actions asserting  
2 invalidity of agency rules; and amending RCW 34.05.570.

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

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

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

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

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

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

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

18 (2) Review of rules. (a) A rule may be reviewed by petition for  
19 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 (i) Thurston  
6 county, (ii) the county of the petitioner's residence or principal  
7 place of business, or (iii) in a county where property owned by the  
8 petitioner and affected by the contested rule is located, when it  
9 appears that the rule, or its threatened application, interferes with  
10 or impairs or immediately threatens to interfere with or impair the  
11 legal rights or privileges of the petitioner. The declaratory judgment  
12 order may be entered whether or not the petitioner has first requested  
13 the agency to pass upon the validity of the rule in question.

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

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

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

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

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

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

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

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

35 (g) A motion for disqualification under RCW 34.05.425 or 34.12.050  
36 was made and was improperly denied or, if no motion was made, facts are  
37 shown to support the grant of such a motion that were not known and

1 were not reasonably discoverable by the challenging party at the  
2 appropriate time for making such a motion;

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

6 (i) The order is arbitrary or capricious.

7 (4) Review of other agency action.

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

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

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

23 (i) Unconstitutional;

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

26 (iii) Arbitrary or capricious; or

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

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