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SENATE BILL 5983

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State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kline, Oemig, and Pridemore

Read first time 02/11/09. Referred to Committee on Judiciary.

1            AN ACT Relating to the scope of agency actions under the  
2 administrative procedure act; amending RCW 34.05.010; and creating a  
3 new section.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds that chapter 34.05  
6 RCW, the administrative procedure act, promotes consistency in state  
7 agency administrative actions and promotes accountability to and  
8 oversight by the public of state agency actions. The legislature  
9 further finds that the administrative procedure act provides certainty  
10 and consistency in the procedures for judicial review of agency actions  
11 obtainable under the act and that the scope of agency actions subject  
12 to the act should not be unduly narrowed. In *Department of Natural*  
13 *Resources v. State Owned Forests (Court of Appeals Division One; No.*  
14 *52550-7-I, November 29, 2004)*, the court held that a public land  
15 resource planning decision by the department of natural resources was  
16 not agency action subject to the administrative procedure act. The  
17 legislature intends by this act to ensure that in all future planning  
18 decisions the requirements of the administrative procedure act will be  
19 applicable.

1       **Sec. 2.** RCW 34.05.010 and 1997 c 126 s 2 are each amended to read  
2 as follows:

3       The definitions (~~(set forth)~~) in this section (~~(shall)~~) apply  
4 throughout this chapter(~~(7)~~) unless the context clearly requires  
5 otherwise.

6       (1) "Adjudicative proceeding" means a proceeding before an agency  
7 in which an opportunity for hearing before that agency is required by  
8 statute or constitutional right before or after the entry of an order  
9 by the agency. Adjudicative proceedings also include all cases of  
10 licensing and rate making in which an application for a license or rate  
11 change is denied except as limited by RCW 66.08.150, or a license is  
12 revoked, suspended, or modified, or in which the granting of an  
13 application is contested by a person having standing to contest under  
14 the law.

15       (2) "Agency" means any state board, commission, department,  
16 institution of higher education, or officer, authorized by law to make  
17 rules or to conduct adjudicative proceedings, except those in the  
18 legislative or judicial branches, the governor, or the attorney general  
19 except to the extent otherwise required by law and any local  
20 governmental entity that may request the appointment of an  
21 administrative law judge under chapter 42.41 RCW.

22       (3) "Agency action" means licensing, the implementation or  
23 enforcement of a statute, the adoption or application of an agency rule  
24 or order, the imposition of sanctions, or the granting or withholding  
25 of benefits.

26       Agency action does not include an agency decision regarding (a)  
27 contracting or procurement of goods, services, public works, and the  
28 purchase, lease, or acquisition by any other means, including eminent  
29 domain, of real estate, as well as all activities necessarily related  
30 to those functions, or (b) determinations as to the sufficiency of a  
31 showing of interest filed in support of a representation petition, or  
32 mediation or conciliation of labor disputes or arbitration of labor  
33 disputes under a collective bargaining law or similar statute, or (c)  
34 any sale, lease, or contract(~~(, or other proprietary)~~) decision in the  
35 management of public lands or real property interests, or (d) the  
36 granting of a license, franchise, or permission for the use of  
37 trademarks, symbols, and similar property owned or controlled by the  
38 agency.

1 (4) "Agency head" means the individual or body of individuals in  
2 whom the ultimate legal authority of the agency is vested by any  
3 provision of law. If the agency head is a body of individuals, a  
4 majority of those individuals constitutes the agency head.

5 (5) "Entry" of an order means the signing of the order by all  
6 persons who are to sign the order, as an official act indicating that  
7 the order is to be effective.

8 (6) "Filing" of a document that is required to be filed with an  
9 agency means delivery of the document to a place designated by the  
10 agency by rule for receipt of official documents, or in the absence of  
11 such designation, at the office of the agency head.

12 (7) "Institutions of higher education" are the University of  
13 Washington, Washington State University, Central Washington University,  
14 Eastern Washington University, Western Washington University, The  
15 Evergreen State College, the various community colleges, and the  
16 governing boards of each of the above, and the various colleges,  
17 divisions, departments, or offices authorized by the governing board of  
18 the institution involved to act for the institution, all of which are  
19 sometimes referred to in this chapter as "institutions."

20 (8) "Interpretive statement" means a written expression of the  
21 opinion of an agency, entitled an interpretive statement by the agency  
22 head or its designee, as to the meaning of a statute or other provision  
23 of law, of a court decision, or of an agency order.

24 (9)(a) "License" means a franchise, permit, certification,  
25 approval, registration, charter, or similar form of authorization  
26 required by law, but does not include (i) a license required solely for  
27 revenue purposes, or (ii) a certification of an exclusive bargaining  
28 representative, or similar status, under a collective bargaining law or  
29 similar statute, or (iii) a license, franchise, or permission for use  
30 of trademarks, symbols, and similar property owned or controlled by the  
31 agency.

32 (b) "Licensing" includes the agency process respecting the  
33 issuance, denial, revocation, suspension, or modification of a license.

34 (10) "Mail" or "send," for purposes of any notice relating to rule  
35 making or policy or interpretive statements, means regular mail or  
36 electronic distribution, as provided in RCW 34.05.260. "Electronic  
37 distribution" or "electronically" means distribution by electronic mail  
38 or facsimile mail.

1 (11)(a) "Order," without further qualification, means a written  
2 statement of particular applicability that finally determines the legal  
3 rights, duties, privileges, immunities, or other legal interests of a  
4 specific person or persons.

5 (b) "Order of adoption" means the official written statement by  
6 which an agency adopts, amends, or repeals a rule.

7 (12) "Party to agency proceedings," or "party" in a context so  
8 indicating, means:

9 (a) A person to whom the agency action is specifically directed; or

10 (b) A person named as a party to the agency proceeding or allowed  
11 to intervene or participate as a party in the agency proceeding.

12 (13) "Party to judicial review or civil enforcement proceedings,"  
13 or "party" in a context so indicating, means:

14 (a) A person who files a petition for a judicial review or civil  
15 enforcement proceeding; or

16 (b) A person named as a party in a judicial review or civil  
17 enforcement proceeding, or allowed to participate as a party in a  
18 judicial review or civil enforcement proceeding.

19 (14) "Person" means any individual, partnership, corporation,  
20 association, governmental subdivision or unit thereof, or public or  
21 private organization or entity of any character, and includes another  
22 agency.

23 (15) "Policy statement" means a written description of the current  
24 approach of an agency, entitled a policy statement by the agency head  
25 or its designee, to implementation of a statute or other provision of  
26 law, of a court decision, or of an agency order, including where  
27 appropriate the agency's current practice, procedure, or method of  
28 action based upon that approach.

29 (16) "Rule" means any agency order, directive, or regulation of  
30 general applicability (a) the violation of which subjects a person to  
31 a penalty or administrative sanction; (b) which establishes, alters, or  
32 revokes any procedure, practice, or requirement relating to agency  
33 hearings; (c) which establishes, alters, or revokes any qualification  
34 or requirement relating to the enjoyment of benefits or privileges  
35 conferred by law; (d) which establishes, alters, or revokes any  
36 qualifications or standards for the issuance, suspension, or revocation  
37 of licenses to pursue any commercial activity, trade, or profession; or  
38 (e) which establishes, alters, or revokes any mandatory standards for

1 any product or material which must be met before distribution or sale.  
2 The term includes the amendment or repeal of a prior rule, but does not  
3 include (i) statements concerning only the internal management of an  
4 agency and not affecting private rights or procedures available to the  
5 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,  
6 (iii) traffic restrictions for motor vehicles, bicyclists, and  
7 pedestrians established by the secretary of transportation or his  
8 designee where notice of such restrictions is given by official traffic  
9 control devices, or (iv) rules of institutions of higher education  
10 involving standards of admission, academic advancement, academic  
11 credit, graduation and the granting of degrees, employment  
12 relationships, or fiscal processes.

13 (17) "Rules review committee" or "committee" means the joint  
14 administrative rules review committee created pursuant to RCW 34.05.610  
15 for the purpose of selectively reviewing existing and proposed rules of  
16 state agencies.

17 (18) "Rule making" means the process for formulation and adoption  
18 of a rule.

19 (19) "Service," except as otherwise provided in this chapter, means  
20 posting in the United States mail, properly addressed, postage prepaid,  
21 or personal service. Service by mail is complete upon deposit in the  
22 United States mail. Agencies may, by rule, authorize service by  
23 electronic telefacsimile transmission, where copies are mailed  
24 simultaneously, or by commercial parcel delivery company.

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