

---

HOUSE BILL 1659

---

State of Washington

65th Legislature

2017 Regular Session

By Representatives Manweller, Holy, Hayes, Buys, McCaslin, and Hargrove

Read first time 01/26/17. Referred to Committee on Judiciary.

1 AN ACT Relating to judicial interpretation of law and other  
2 writings without deference to agency interpretation; and amending RCW  
3 34.05.570.

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

5 **Sec. 1.** RCW 34.05.570 and 2004 c 30 s 1 are each amended to read  
6 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  
10 is on the party asserting invalidity;

11 (b) The validity of agency action shall be determined in  
12 accordance with the standards of review provided in this section, as  
13 applied to 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  
18 the action complained of; and

19 (e) In interpreting laws or other writings, the court shall make  
20 its own determination without deference to the agency interpretation.

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

14 (ii) From June 10, 2004, until July 1, 2008:

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

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

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

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

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

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

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

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

1 (e) The order is not supported by evidence that is substantial  
2 when viewed in light of the whole record before the court, which  
3 includes the agency record for judicial review, supplemented by any  
4 additional 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  
8 34.12.050 was made and was improperly denied or, if no motion was  
9 made, facts are shown to support the grant of such a motion that were  
10 not known and were not reasonably discoverable by the challenging  
11 party at the appropriate time for making such a motion;

12 (h) The order is inconsistent with a rule of the agency unless  
13 the 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)  
18 of 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)  
30 of this subsection can be granted only if the court determines that  
31 the action is:

32 (i) Unconstitutional;

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

35 (iii) Arbitrary or capricious; or

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

--- END ---