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**HOUSE BILL 2267**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representatives Walsh, Van Werven, Gildon, Young, and Irwin

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1 AN ACT Relating to respecting the will of the people following  
2 the rejection of a statewide ballot measure; amending RCW 34.05.570;  
3 adding a new section to chapter 43.06 RCW; and adding a new chapter  
4 to Title 34 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) An agency may not adopt a rule or  
7 issue a policy statement that effectuates the policy goals of an  
8 initiative or referendum that has been rejected by the people in a  
9 statewide election within two years of the election at which the  
10 measure was rejected.

11 (2) In judicial review of a rule or agency action under chapter  
12 34.05 RCW for compliance with this section, the will of the people,  
13 as reflected in the people's rejection of certain policy goals  
14 through their vote, must be broadly construed.

15 (3) For purposes of this section, the definitions in RCW  
16 34.05.010 apply.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06  
18 RCW to read as follows:

19 (1) The governor may not issue an executive order or policy  
20 statement that effectuates the policy goals of an initiative or

1 referendum that has been rejected by the people in a statewide  
2 election within two years of the election at which the measure was  
3 rejected.

4 (2) In judicial review of an executive order or policy statement  
5 for compliance with this section, the will of the people, as  
6 reflected in the people's rejection of certain policy goals through  
7 their vote, must be broadly construed.

8 (3) For purposes of this section, "policy statement" means the  
9 same as in RCW 34.05.010.

10 **Sec. 3.** RCW 34.05.570 and 2004 c 30 s 1 are each amended to read  
11 as follows:

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

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

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

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

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

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

29 (b)(i) The validity of any rule may be determined upon petition  
30 for a declaratory judgment addressed to the superior court of  
31 Thurston county, when it appears that the rule, or its threatened  
32 application, interferes with or impairs or immediately threatens to  
33 interfere with or impair the legal rights or privileges of the  
34 petitioner. The declaratory judgment order may be entered whether or  
35 not the petitioner has first requested the agency to pass upon the  
36 validity of the rule in question.

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

38 (A) If the petitioner's residence or principal place of business  
39 is within the geographical boundaries of the third division of the

1 court of appeals as defined by RCW 2.06.020(3), the petition may be  
2 filed in the superior court of Spokane, Yakima, or Thurston county;  
3 and

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

9 (c) In a proceeding involving review of a rule, the court shall  
10 declare the rule invalid only if it finds that: The rule violates  
11 constitutional provisions; the rule exceeds the statutory authority  
12 of the agency; the rule was adopted without compliance with statutory  
13 rule-making procedures; ~~((or))~~ the rule is arbitrary and capricious;  
14 or the rule violates section 1 of this act.

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

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

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

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

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

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

30 (f) The agency has not decided all issues requiring resolution by  
31 the agency;

32 (g) A motion for disqualification under RCW 34.05.425 or  
33 34.12.050 was made and was improperly denied or, if no motion was  
34 made, facts are shown to support the grant of such a motion that were  
35 not known and were not reasonably discoverable by the challenging  
36 party at the appropriate time for making such a motion;

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

40 (i) The order is arbitrary or capricious.

1 (4) Review of other agency action.

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

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

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

17 (i) Unconstitutional;

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

20 (iii) Arbitrary or capricious; (~~(e)~~)

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

23 (v) Taken pursuant to a rule or policy that violates section 1 of  
24 this act.

25 NEW SECTION. Sec. 4. Section 1 of this act constitute a new  
26 chapter in Title 34 RCW.

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