
HOUSE BILL 2628

State of Washington

66th Legislature

2020 Regular Session

By Representative Walsh

Read first time 01/16/20. Referred to Committee on State Government & Tribal Relations.

1 AN ACT Relating to the responsibilities of the three branches of
2 government for administrative rules and procedure; amending RCW
3 34.05.570; adding new sections to chapter 44.04 RCW; adding new
4 sections to chapter 34.05 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
7 finds that Washington's state government has made it too difficult
8 for the people of Washington to discern which branch of government is
9 responsible for making the policies that govern them. This problem
10 originates in the legislature, which too often tasks executive branch
11 agencies with implementing legislation that contains unclear
12 direction, ill-defined standards, and broad grants of discretion. The
13 legislature finds that this regrettable practice undermines
14 accountability for decisions that are made in state government.

15 (2)(a) The legislature intends to make specific reforms that will
16 help restore accountability to the policy-making process in
17 Washington. The legislature recognizes that each branch of government
18 plays an important role in governing the state, and that each branch
19 is responsible for faithfully fulfilling its own duties, while
20 respecting the duties of the other branches. This act emphasizes the
21 distinct functions of each branch, seeking to achieve an appropriate

1 balance of power among the legislative, executive, and judicial
2 branches, for the benefit of the people of Washington.

3 (b) The legislature further intends for:

4 (i) Part I of this act to remind the legislature that it is not
5 permitted to transfer the legislative authority to other bodies, and
6 require the legislature to notify the public when bills authorize the
7 adoption of new rules by executive branch agencies;

8 (ii) Part II of this act to require executive branch agencies to
9 thoroughly document the applicable statutory sources of authority for
10 their proposed actions during the rule-making process; and

11 (iii) Part III of this act to promote an independent judiciary by
12 preventing courts from deferring to agencies' interpretation of
13 statutes, and allowing courts to determine if the reasons given for
14 an agency action genuinely align with information in the record for
15 judicial review.

16 **PART I**

17 **THE LEGISLATURE**

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 44.04
19 RCW to read as follows:

20 LEGISLATIVE AUTHORITY. The legislature affirms that the people of
21 Washington vested the legislative authority of the state of
22 Washington in the legislature under Article II, section 1 of the
23 state Constitution. Because the legislative authority is vested in
24 the legislature by the people, the legislature may not transfer the
25 legislative authority to another branch or agency of government.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 44.04
27 RCW to read as follows:

28 LEGISLATIVE TRANSPARENCY. (1) Every bill analysis and bill report
29 published by the house of representatives office of program research
30 or senate committee services, or their successor entities, must
31 contain a section indicating whether the bill authorizes an agency to
32 adopt a new rule under chapter 34.05 RCW.

33 (2) Failure to comply with subsection (1) of this section does
34 not invalidate any law or rule.

35 (3) This section does not create any civil liability on the part
36 of the state or any state agency, officer, employee, or agent.

37 (4) This section does not create a private right of action.

1 **PART II**

2 **THE EXECUTIVE BRANCH**

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 34.05
4 RCW to read as follows:

5 EXECUTIVE TRANSPARENCY. For the purpose of rule making, when
6 citing a statute that authorizes an agency to adopt the rule, the
7 agency shall identify the title, chapter, and section of the Revised
8 Code of Washington for each pertinent statute. If the agency cites a
9 session law, the agency shall identify each pertinent section of the
10 session law.

11 **PART III**

12 **THE JUDICIARY**

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 34.05
14 RCW to read as follows:

15 JUDICIAL INDEPENDENCE. A court may not defer to an agency's
16 interpretation of a statute when reviewing agency action under this
17 chapter. The court shall serve as a neutral and impartial decision
18 maker responsible for interpreting the statutes that apply in each
19 case.

20 **Sec. 6.** RCW 34.05.570 and 2004 c 30 s 1 are each amended to read
21 as follows:

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

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

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

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

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

34 (2) Review of rules. (a) A rule may be reviewed by petition for
35 declaratory judgment filed pursuant to this subsection or in the
36 context of any other review proceeding under this section. In an

1 action challenging the validity of a rule, the agency shall be made a
2 party to the proceeding.

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

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

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

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

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

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

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

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

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

39 (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; or

16 (j) The record for judicial review reveals that the stated
17 rationale for the order is a pretext.

18 (4) Review of other agency action.

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

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

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

34 (i) Unconstitutional;

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

37 (iii) Arbitrary or capricious; ((~~or~~))

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

1 (v) Shown to be based on a stated rationale that is a pretext, as
2 revealed in the record for judicial review.

3 **PART IV**
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 7.** SHORT TITLE. This act may be known and
6 cited as the three branches act.

7 NEW SECTION. **Sec. 8.** SEVERABILITY. If any provision of this act
8 or its application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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