

INITIATIVE 322

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 322 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to regulatory reform of state agencies; amending
2 RCW 34.05.360, 34.05.534, 34.12.020, and 43.06.092; adding new sections
3 to chapter 34.05 RCW; creating new sections; and providing an effective
4 date.

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

6 NEW SECTION. **Sec. 1.** We the people find that many state agencies
7 have for practical purposes become independent, unaccountable arms of
8 state government beyond the effective control of the people and the
9 legislature and continue to assume powers reserved for the legislative
10 and judicial branches by the Washington state Constitution. The
11 regulatory reform act of 1995 and subsequent legislation were well-
12 meaning attempts at correcting the problem, but have been largely
13 ineffective in deterring ongoing abuse of power by agencies. The
14 unacceptable result is that citizens have become encumbered with far
15 too many overly complicated, burdensome, and restrictive rules. Many
16 of these rules provide little real benefit to society, at worst amount
17 to draconian infringements for no valid reason on citizen's rights and
18 freedoms, are very expensive to comply with, are not uniformly
19 enforced, and unnecessarily put businesses in this state at a major

1 competitive disadvantage. This loss of agency accountability and
2 control has reached a point where enactment of comprehensive follow-on
3 regulatory reform of Title 34 RCW is urgently needed.

4 NEW SECTION. **Sec. 2.** This act may be known and cited as the
5 follow-on regulatory reform act of 2005.

6 **Sec. 3.** RCW 34.05.360 and 1988 c 288 s 311 are each amended to
7 read as follows:

8 The order of adoption by which each rule is adopted by an agency
9 shall contain all of the following:

10 (1) The date the agency adopted the rule;

11 (2) A concise statement of the purpose of the rule;

12 (3) A reference to all rules repealed, amended, or suspended by the
13 rule;

14 (4) A reference to the specific statutory or other authority
15 authorizing adoption of the rule;

16 (5) Any findings required by any provision of law as a precondition
17 to adoption or effectiveness of the rule; ~~((and))~~

18 (6) The effective date of the rule if other than that specified in
19 RCW 34.05.380(2); and

20 (7) The signature of the governor, if the agency head is appointed
21 by the governor and a rule is a significant legislative rule under RCW
22 34.05.328.

23 **Sec. 4.** RCW 34.05.534 and 1997 c 409 s 302 are each amended to
24 read as follows:

25 A person may file a petition for judicial review under this chapter
26 only after exhausting ~~((all))~~ one administrative ~~((remedies))~~ remedy
27 available within the agency whose action is being challenged, or
28 available within the office of administrative hearings or any other
29 agency authorized to exercise administrative review, including informal
30 settlements under RCW 34.05.060 and other informal appeals or dispute
31 resolutions, except:

32 (1) A petitioner for judicial review of a rule need not have
33 participated in the rule-making proceeding upon which that rule is
34 based, have petitioned for its amendment or repeal, have petitioned the
35 joint administrative rules review committee for its review, or have
36 appealed a petition for amendment or repeal to the governor;

1 (2) A petitioner for judicial review need not exhaust
2 administrative remedies to the extent that this chapter or any other
3 statute states that exhaustion is not required; or

4 (3) The court may relieve a petitioner of the requirement to
5 exhaust any or all administrative remedies upon a showing that:

6 (a) The remedies would be patently inadequate;

7 (b) The exhaustion of remedies would be futile; or

8 (c) The grave irreparable harm that would result from having to
9 exhaust administrative remedies would clearly outweigh the public
10 policy requiring exhaustion of administrative remedies.

11 **Sec. 5.** RCW 34.12.020 and 2002 c 354 s 226 are each amended to
12 read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Office" means the office of administrative hearings.

16 (2) "Administrative law judge" means any person appointed by the
17 chief administrative law judge to conduct or preside over hearings as
18 provided in this chapter.

19 (3) "Hearing" means an adjudicative proceeding within the meaning
20 of RCW 34.05.010(1) conducted by a state agency under RCW 34.05.413
21 through 34.05.476.

22 (4) "State agency" means any state board, commission, department,
23 or officer authorized by law to make rules or to conduct adjudicative
24 proceedings, except those in the legislative or judicial branches,
25 (~~the growth management hearings boards,~~) the utilities and
26 transportation commission, (~~the pollution control hearings board, the~~
27 ~~shorelines hearings board, the forest practices appeals board, the~~
28 ~~environmental hearings office, the board of industrial insurance~~
29 ~~appeals,~~) the Washington personnel resources board, the public
30 employment relations commission, and the board of tax appeals.

31 **Sec. 6.** RCW 43.06.092 and 1981 c 338 s 2 are each amended to read
32 as follows:

33 (1) Any gubernatorial appointee subject to senate confirmation
34 shall continue to serve unless rejected by a vote of the senate, except
35 that all agency heads as defined by RCW 34.05.010 and appointed by the
36 governor must be confirmed by the senate within one year of appointment
37 in order to continue to serve. An appointee who is rejected by a vote

1 of the senate shall not be reappointed to the same position for a
2 period of one year from termination of service.

3 (2) Any person appointed by the governor to fill the unexpired term
4 of an appointment subject to senate confirmation must also be confirmed
5 by the senate.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 34.05 RCW
7 to read as follows:

8 (1) Agency actions must be derived from explicit grants of
9 legislative authority and are constrained to the minimum necessary to
10 administer clear and unambiguous directives in the law and to
11 circumstances and behaviors foreseeable at the time of enactment.
12 Delegation of legislative authority to agencies shall be narrowly
13 construed in light of both the letter and intent of applicable laws.
14 Rules must include the specific statutory section or sections from
15 which a grant of authority is derived, and may not rely solely on
16 sections stating a statute's intent or purpose or general enabling
17 provisions.

18 (2) Agencies bear the burden of demonstrating that agency actions
19 are authorized by law. Agencies are admonished that citizens and
20 businesses are presumed innocent until proven guilty and are not
21 required to prove their innocence.

22 (3) Agency actions that impose environmental regulations must be
23 based on peer-reviewed best available science and shall be uniformly
24 applied in all areas of the state.

25 (4) All agencies are prohibited from engaging in any of the
26 following actions without explicit legislative direction for each
27 activity:

28 (a) Extending rules applicable to public lands to private property;

29 (b) Applying rules to private employers but not to public
30 employers;

31 (c) Adopting rules that exceed standards required by federal
32 guidelines, regulations, or law applicable to the same activity or
33 subject matter; or

34 (d) Adopting rules that restrict the normal and customary legal
35 rights of owners to full use of their private property without paying
36 them full value compensation for that lost use within three months of
37 rule implementation.

1 (5) All new and existing rules that are significant legislative
2 rules under RCW 34.05.328 shall be subject to sunset review and formal
3 reissue by the adopting agency at least once every ten years. Review
4 of all significant rules already in effect for over ten years shall be
5 completed within seven years of the effective date of this section,
6 absent an extension of time by the legislature.

7 (6) New or amended rules adopted by agencies through a formal
8 hearing process or that are significant legislative rules under RCW
9 34.05.328:

10 (a) Must be preceded by adoption of a finding of necessity that
11 clearly demonstrates how each rule is required to achieve the intent of
12 enabling legislation or federal law, and that shows how the proposed
13 rule is the least burdensome and most cost-effective alternative.
14 Proposed findings of necessity shall be based on best available science
15 or information and filed with the office of the code reviser by June
16 1st of each year. After a thirty to sixty-day public comment period
17 and at least four public hearings around the state that allow
18 opportunities for oral and written comments, final findings of
19 necessity must be filed by September 15th. Final findings of necessity
20 must be filed prior to filing notice of intent to adopt or amend a rule
21 under RCW 34.05.320, and may be appealed to superior court under RCW
22 34.05.514;

23 (b) Must be adopted before November 15th of any year, but shall not
24 take effect before the end of the regular legislative session in the
25 next year; and

26 (c) Are not covered by this subsection if they meet exclusionary
27 criteria specified in RCW 34.05.328(5)(b), are adopted under RCW
28 77.12.047 or 77.12.150, or are published in the state register prior to
29 the effective date of this section.

30 (7) When agencies adopt emergency rules under RCW 34.05.350 they
31 bear the burden of substantiating that the action is a valid emergency.

32 (8) Fines and penalties levied by agencies shall be paid only into
33 the general fund, and never to any account of a particular agency or
34 program.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 34.05 RCW
36 to read as follows:

37 If parties prevail in superior court under this chapter and agency
38 actions at issue involve significant legislative rules under RCW

1 34.05.328, then the qualified party net worth limitations in RCW
2 4.84.340(5) and the amount awarded limitations in RCW 4.84.350(2) do
3 not apply.

4 NEW SECTION. **Sec. 9.** (1) If any provision of this act is found to
5 be in conflict with any other provision of law, then the provisions of
6 this act shall prevail.

7 (2) The provisions of this act are to be liberally construed to
8 effectuate the intent, policies, and purposes of this act.

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

13 NEW SECTION. **Sec. 11.** Section 5 of this act takes effect July 1,
14 2006.

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