

INITIATIVE 323

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. 323 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to the burden of proof in actions asserting
2 invalidity of agency rules; amending RCW 34.05.570; and creating new
3 sections.

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

5 NEW SECTION. **Sec. 1.** We the people find that placing the entire
6 burden of proof on parties attempting to demonstrate state agency
7 actions are invalid and significantly limiting the venue for judicial
8 review of those actions is fundamentally unfair. As a practical
9 matter, for many citizens and businesses the time and resources
10 required to prevail under circumstances tilted that far in favor of the
11 agencies amounts to unobtainable justice. The advantage enjoyed by
12 agencies under chapter 34.05 RCW, the administrative procedure act, is
13 so large that corrective action is urgently needed. This act levels
14 the playing field and puts citizens and state agencies on a more
15 equitable footing for agency actions at issue.

16 NEW SECTION. **Sec. 2.** This act may be known and cited as the
17 citizen-agency equal standing act of 2005.

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

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

5 (a) ~~((The burden of demonstrating the invalidity of agency action
6 is on the party asserting invalidity;~~

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

10 ~~((e))~~ **(b)** The court shall make a separate and distinct ruling on
11 each material issue on which the court's decision is based; and

12 ~~((d))~~ **(c)** The court shall grant relief only if it determines that
13 a person seeking judicial relief has been substantially prejudiced by
14 the action complained of.

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

20 **(b)((i))** The validity of any rule may be determined upon petition
21 for a declaratory judgment addressed to the superior court of (i)
22 Thurston county, (ii) the county of the petitioner's residence or
23 principal place of business, or (iii) any county where property owned
24 by the petitioner and affected by the contested rule is located, when
25 it appears that the rule, or its threatened application, interferes
26 with or impairs or immediately threatens to interfere with or impair
27 the legal rights or privileges of the petitioner. When the validity of
28 a rule is challenged, after the petitioner has identified probable
29 defects in the rule, the burden of going forward with the evidence is
30 on the agency to establish validity. The declaratory judgment order
31 may be entered whether or not the petitioner has first requested the
32 agency to pass upon the validity of the rule in question.

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

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

38 ~~(B) If the petitioner's residence or principal place of business is~~
39 ~~within the geographical boundaries of district three of the first~~

1 ~~division of the court of appeals as defined by RCW 2.06.020(1), the~~
2 ~~petition may be filed in the superior court of Whatcom or Thurston~~
3 ~~county.)~~)

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

9 (d) If the legislature appropriates funds for distribution to
10 counties as reimbursement for the cost of hearing a petition for a
11 declaratory judgment under (b) of this subsection, the total
12 distribution shall reflect the relative caseload among the counties
13 where such petitions are filed.

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

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

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

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

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

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

28 (f) The agency has not decided all issues requiring resolution by
29 the agency;

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

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

38 (i) The order is arbitrary or capricious; or

39 (j) The order is based on a de facto rule.

1 (4) Review of other agency action.
2 (a) All agency action not reviewable under subsection (2) or (3) of
3 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) of
15 this subsection can be granted only if the court determines that the
16 action is:
17 (i) Unconstitutional;
18 (ii) Outside the statutory authority of the agency or the authority
19 conferred by a provision of law;
20 (iii) Arbitrary or capricious; ~~((or))~~
21 (iv) Taken by persons who were not properly constituted as agency
22 officials lawfully entitled to take such action; or
23 (v) Based on a de facto rule.

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