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HOUSE BILL 1800

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Kilmer, Crouse and Chase

Read first time 02/07/2005.    Referred to Committee on Technology,  
Energy & Communications.

1            AN ACT Relating to prohibiting the utilities and transportation  
2 commission and its staff in an adjudicative proceeding from  
3 participating in settlement conferences that are not open to other  
4 parties and governing treatment of nonunanimous settlements; adding new  
5 sections to chapter 80.01 RCW; and creating a new section.

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

7            NEW SECTION.    **Sec. 1.** The legislature finds that the participation  
8 of the utilities and transportation commission or its staff in  
9 settlement conferences that are not open to other parties undermines  
10 the public faith in the commission and that it is in the public  
11 interest to require the commission and its staff to ensure that such  
12 settlement conferences are open to all parties appearing in the  
13 proceeding.    Further, it is the intent of the legislature that  
14 nonsettling parties' due process rights be protected.

15            NEW SECTION.    **Sec. 2.** A new section is added to chapter 80.01 RCW  
16 to read as follows:

17            The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise:

1 (1) "Commission" means the utilities and transportation commission.

2 (2) "Commission staff" means the commission regulatory staff that  
3 functions as a party in adjudicatory proceedings and performs  
4 investigative, prosecutorial, and advocacy functions independently from  
5 the commission functioning in its decision-making role.

6 (3) "Party" means a person who has complied with all requirements  
7 for establishing and maintaining party status in a proceeding before  
8 the commission, including applicants, complainants, petitioners,  
9 respondents, intervenors, or protestants, according to the nature of  
10 the proceeding and the nature of the parties.

11 (4) "Settlement" means an agreement among two or more parties to a  
12 proceeding that is filed with the commission as a proposed resolution  
13 of one or more issues.

14 (5) "Settlement conference" means a meeting called to discuss  
15 resolution of issues in a proceeding. Examples of communications not  
16 constituting settlement conferences include, but are not limited to,  
17 communications primarily for the purpose of discovery, and  
18 communications occurring before initiation of docketed proceedings.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.01 RCW  
20 to read as follows:

21 (1) The commission and commission staff may not participate in  
22 settlement conferences in an adjudicative proceeding without prior  
23 notification to other parties. Ten calendar days before a settlement  
24 conference with a party, the commission staff shall notify the  
25 administrative law judge and all parties on the master service list of  
26 the proposed settlement conference and shall file, with the secretary,  
27 a notice of the impending negotiation. If a prehearing conference has  
28 not yet been held in the case, notice shall be sent to all persons who  
29 regularly appear before the commission in similar adjudicative  
30 proceedings.

31 (2) The notice shall contain a general description of the issues  
32 and a certification that all appropriate persons and parties are being  
33 notified. The administrative law judge assigned to the case shall  
34 review the notice to ensure all persons who reasonably should have been  
35 notified have been notified, and he or she may take any action  
36 necessary to protect the rights of persons participating or desiring to

1 participate. The administrative law judge shall report the results of  
2 the procedural review to the commission.

3 (3) Any party given notice under subsection (1) of this section may  
4 attend a settlement conference. Additional notice of continuing  
5 settlement conferences involving the same issue need only be provided  
6 to parties attending the initial conference, or who have requested  
7 continuing notice.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.01 RCW  
9 to read as follows:

10 (1) When a nonunanimous settlement has been presented to the  
11 commission, the nonsettling parties retain the right to conduct  
12 discovery, present evidence, a hearing, cross-examine witnesses, and  
13 present arguments on all disputed material issues of fact and law. The  
14 commission's final order shall be based upon substantial evidence in  
15 the record and shall include findings and conclusions on all disputed  
16 issues of fact, law, or discretion presented on the record.

17 (2) If a nonunanimous settlement or stipulation is presented to the  
18 commission, the commission may not deny nonsettling parties the  
19 procedural rights set forth in subsection (1) of this section by  
20 dismissing them as parties or restricting their participation in the  
21 proceeding.

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