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**SUBSTITUTE HOUSE BILL 2426**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris; by request of Utilities & Transportation Commission)

READ FIRST TIME 02/12/06.

1       AN ACT Relating to duties of the utilities and transportation  
2 commission, including commissioner appointments, delegation of powers,  
3 and appointment of administrative law judges; amending RCW 80.01.010,  
4 80.01.030, 80.01.050, and 80.01.060; and adding a new section to  
5 chapter 80.01 RCW.

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

7       **Sec. 1.** RCW 80.01.010 and 1961 c 307 s 4 are each amended to read  
8 as follows:

9       There is hereby created and established a state commission to be  
10 known and designated as the Washington utilities and transportation  
11 commission, and in this chapter referred to as the commission.

12       The commission shall be composed of three members appointed by the  
13 governor, with the consent of the senate. Not more than two members of  
14 said commission shall belong to the same political party.

15       ~~((The members of the first commission to be appointed after taking  
16 effect of this section shall be appointed for terms beginning April 1,  
17 1951, and expiring as follows: One commissioner for the term expiring  
18 January 1, 1953; one commissioner for the term expiring January 1,  
19 1955; one commissioner for the term expiring January 1, 1957. Each of~~

1 ~~the commissioners shall hold office until his successor is appointed~~  
2 ~~and qualified. Upon the expiration of the terms of the three~~  
3 ~~commissioners first to be appointed as herein provided,~~) Each  
4 ((~~succeeding~~)) commissioner shall be appointed and hold office for the  
5 term of six years. ((~~One of such commissioners to be designated by~~))  
6 The governor((~~τ~~)) shall((~~τ~~)) designate one of the commissioners to be  
7 chair of the commission during the term of the ((~~appointing~~))  
8 governor((~~τ, be the chairman of the commission~~)).

9 Each commissioner shall receive a salary as may be fixed by the  
10 governor in accordance with the provisions of RCW 43.03.040.

11 Any member of the commission may be removed for inefficiency,  
12 malfeasance or misfeasance in office, upon specific written charges  
13 filed by the governor, who shall transmit such written charges to the  
14 member accused and to the chief justice of the supreme court. The  
15 chief justice shall thereupon designate a special tribunal composed of  
16 three judges of the superior court to hear and adjudicate the charges.  
17 Such tribunal shall fix the time, place and procedure for the hearing,  
18 and the hearing shall be public. The decision of such tribunal shall  
19 be final and not subject to review.

20 If the tribunal specified herein finds the charges of the governor  
21 to be true, the governor shall have the right to immediately remove the  
22 commissioner from office, to declare the position of the commissioner  
23 vacant, and appoint another commissioner to the position in accordance  
24 with the provisions of the law.

25 Any vacancy arising in the office of commissioner shall be filled  
26 by appointment by the governor, and, except for persons appointed as  
27 pro tempore commissioners, an appointee selected to fill ((~~such~~)) a  
28 vacancy shall hold office for the balance of the full term for which  
29 his or her predecessor on the commission was appointed.

30 If a vacancy occurs while the senate is not in session, the  
31 governor shall make a temporary appointment until the next meeting of  
32 the senate, when he or she shall present to the senate his or her  
33 nomination or nominations for the office to be filled.

34 **Sec. 2.** RCW 80.01.030 and 1961 c 14 s 80.01.030 are each amended  
35 to read as follows:

36 The commission shall appoint and employ a secretary and such

1 accounting, engineering, expert and clerical assistants, and such other  
2 qualified assistants as may be necessary to carry on the administrative  
3 work of the commission.

4 The secretary shall be the custodian of the commission's official  
5 seal, and shall keep full and accurate minutes of all transactions,  
6 proceedings and determinations of the commission and perform such other  
7 duties as may be required by the commission.

8 The commission may deputize one or more of its assistants to  
9 perform, in the name of the commission, such duties of the commission  
10 as it deems expedient. The commission may, by rule or order, delegate  
11 to designated assistants any of the powers and duties vested in or  
12 imposed upon the commission by law except matters governed by chapter  
13 34.05 RCW; however, a matter may not be delegated to a person who has  
14 worked as an advocate on the same docket. Delegated powers and duties  
15 may be exercised in the name of the commission. The commission by rule  
16 shall implement a process by which notice shall be provided of matters  
17 designated for delegation. Any such matter shall be heard or reviewed  
18 by commissioners at the request of any commissioner or any affected  
19 person.

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

22 When a commissioner has heard all or a substantial part of an  
23 adjudicative proceeding and leaves office before entry of a final order  
24 in the proceeding, at the request of the remaining commissioners the  
25 commissioner leaving office may be appointed by the governor as  
26 commissioner pro tempore to complete the proceeding. A proceeding is  
27 completed when the commission enters a final order purporting to  
28 resolve all contested issues therein, from which no party seeks  
29 clarification or reconsideration, or upon entry of an order on  
30 clarification or reconsideration, even though the order is subject to  
31 a petition for judicial review. A commissioner pro tempore shall  
32 receive a reasonable compensation to be fixed by the remaining members  
33 of the commission.

34 **Sec. 4.** RCW 80.01.050 and 1995 c 331 s 2 are each amended to read  
35 as follows:

36 A majority of the commissioners shall constitute a quorum for the

1 transaction of any business, for the performance of any duty, or for  
2 the exercise of any power of the commission, and may hold hearings at  
3 any time or place within or without the state. A quorum of  
4 commissioners need not affirm any matter delegated under RCW 80.01.030.  
5 Any investigation, inquiry, or hearing which the commission has power  
6 to undertake or to hold may be undertaken or held by or before any  
7 commissioner or any (~~employee designated and authorized by the~~  
8 ~~commission~~) administrative law judge as provided in RCW 80.01.060.  
9 All investigations, inquiries, and hearings of the commission, and all  
10 findings, orders, or decisions, made by a commissioner or  
11 administrative law judge, when approved and confirmed by the commission  
12 or allowed to become final pursuant to RCW 80.01.060 and filed in its  
13 office, shall be (~~and be deemed to be~~) the orders or decisions of the  
14 commission.

15 **Sec. 5.** RCW 80.01.060 and 1995 c 331 s 3 are each amended to read  
16 as follows:

17 (1) The commission may (~~designate employees of the commission as~~  
18 ~~hearing examiners,~~) appoint administrative law judges(~~, and review~~  
19 ~~judges~~) when it deems such action necessary for its general  
20 administration. The (~~designated employees have power to~~)  
21 administrative law judges may administer oaths, (~~to~~) issue subpoenas  
22 for the attendance of witnesses and the production of papers, waybills,  
23 books, accounts, documents, and testimony, (~~to~~) examine witnesses,  
24 make findings of probable cause and issue complaints in the name of the  
25 commission, and (~~to~~) receive testimony in any inquiry, investigation,  
26 hearing, or proceeding in any part of the state, under such rules as  
27 the commission may adopt. The administrative law judges appointed  
28 under this subsection are not subject to chapter 41.06 RCW; however,  
29 they are subject to discipline and termination, for cause, by the  
30 executive secretary of the commission. Upon written request of the  
31 person so disciplined or terminated, the executive secretary shall  
32 state the reasons for such action in writing. The person affected has  
33 a right of review by the superior court of Thurston county on petition  
34 for reinstatement or other remedy filed within thirty days of receipt  
35 of the written reasons.

36 (2) In general rate increase filings by a natural gas, electric, or  
37 telecommunications company, the (~~designated employee~~) administrative

1 law judges may preside, but may not enter an initial order unless  
2 expressly agreed to in writing by the company making the filing. In  
3 all other cases, the ((~~designated employee~~)) administrative law judge  
4 may enter an initial order including findings of fact and conclusions  
5 of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through  
6 (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry  
7 of orders under this section. ((~~The designated employee~~))

8 (3) Administrative law judges may not enter final orders, except  
9 that the commission may designate persons by rule to preside and enter  
10 final orders in emergency adjudications under RCW 34.05.479. Initial  
11 orders of administrative law judges shall become final on the day  
12 following expiration of the time established by the commission for  
13 filing a petition for administrative review, unless, within that time,  
14 a party petitions for administrative review or the commission notifies  
15 parties that it will review the initial order on its own motion.

16 ((~~(3)~~)) (4) If the ((~~designated employee~~)) administrative law judge  
17 does not enter an initial order as provided in subsection (2) of this  
18 section, then a majority of the members of the commission who are to  
19 enter the final order must hear or review substantially all of the  
20 record submitted by any party.

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