
SENATE BILL 5245

State of Washington

61st Legislature

2009 Regular Session

By Senator Carrell

Read first time 01/19/09. Referred to Committee on Judiciary.

1 AN ACT Relating to evidence in administrative hearings; and
2 amending RCW 34.05.434 and 34.05.449.

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

4 **Sec. 1.** RCW 34.05.434 and 1988 c 288 s 409 are each amended to
5 read as follows:

6 (1) The agency or the office of administrative hearings shall set
7 the time and place of the hearing and give not less than seven days
8 advance written notice to all parties and to all persons who have filed
9 written petitions to intervene in the matter.

10 (2) The notice shall include:

11 (a) Unless otherwise ordered by the presiding officer, the names
12 and mailing addresses of all parties to whom notice is being given and,
13 if known, the names and addresses of their representatives;

14 (b) If the agency intends to appear, the mailing address and
15 telephone number of the office designated to represent the agency in
16 the proceeding;

17 (c) The official file or other reference number and the name of the
18 proceeding;

1 (d) The name, official title, mailing address, and telephone number
2 of the presiding officer, if known;

3 (e) A statement of the time, place and nature of the proceeding;

4 (f) A statement of the legal authority and jurisdiction under which
5 the hearing is to be held;

6 (g) A reference to the particular sections of the statutes and
7 rules involved;

8 (h) A short and plain statement of the matters asserted by the
9 agency;

10 (i) A statement explaining the process for requesting a subpoena
11 for the production of testimony or evidence relevant to the proceeding;

12 and

13 ~~((i))~~ (j) A statement that a party who fails to attend or
14 participate in a hearing or other stage of an adjudicative proceeding
15 may be held in default in accordance with this chapter.

16 (3) If the agency is unable to state the matters required by
17 subsection (2)(h) of this section at the time the notice is served, the
18 initial notice may be limited to a statement of the issues involved.
19 If the proceeding is initiated by a person other than the agency, the
20 initial notice may be limited to the inclusion of a copy of the
21 initiating document. Thereafter, upon request, a more definite and
22 detailed statement shall be furnished.

23 (4) The notice may include any other matters considered desirable
24 by the agency.

25 **Sec. 2.** RCW 34.05.449 and 1989 c 175 s 18 are each amended to read
26 as follows:

27 (1) The presiding officer shall regulate the course of the
28 proceedings, in conformity with applicable rules and the prehearing
29 order, if any.

30 (2) To the extent necessary for full disclosure of all relevant
31 facts and issues, the presiding officer shall require each party to
32 disclose any knowledge of the existence of audio or video recordings
33 that may be relevant to the proceeding, and the presiding officer may
34 issue a subpoena to obtain such recordings. The presiding officer
35 shall afford to all parties the opportunity to respond, present
36 evidence and argument, conduct cross-examination, and submit rebuttal

1 evidence, except as restricted by a limited grant of intervention or by
2 the prehearing order.

3 (3) In the discretion of the presiding officer, and where the
4 rights of the parties will not be prejudiced thereby, all or part of
5 the hearing may be conducted by telephone, television, or other
6 electronic means. Each party in the hearing must have an opportunity
7 to participate effectively in, to hear, and, if technically and
8 economically feasible, to see the entire proceeding while it is taking
9 place.

10 (4) The presiding officer shall cause the hearing to be recorded by
11 a method chosen by the agency. The agency is not required, at its
12 expense, to prepare a transcript, unless required to do so by a
13 provision of law. Any party, at the party's expense, may cause a
14 reporter approved by the agency to prepare a transcript from the
15 agency's record, or cause additional recordings to be made during the
16 hearing if the making of the additional recording does not cause
17 distraction or disruption.

18 (5) The hearing is open to public observation, except for the parts
19 that the presiding officer states to be closed under a provision of law
20 expressly authorizing closure or under a protective order entered by
21 the presiding officer pursuant to applicable rules. A presiding
22 officer may order the exclusion of witnesses upon a showing of good
23 cause. To the extent that the hearing is conducted by telephone,
24 television, or other electronic means, and is not closed, the
25 availability of public observation is satisfied by giving members of
26 the public an opportunity, at reasonable times, to hear or inspect the
27 agency's record, and to inspect any transcript obtained by the agency.

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