
SENATE BILL 6558

State of Washington

61st Legislature

2010 Regular Session

By Senator Haugen

Read first time 01/18/10. Referred to Committee on Transportation.

1 AN ACT Relating to timelines for the issuance of final orders
2 applicable to railroad crossing petitions; amending RCW 34.05.461; and
3 adding a new section to chapter 81.53 RCW.

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

5 **Sec. 1.** RCW 34.05.461 and 1995 c 347 s 312 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (2) of this section:

8 (a) If the presiding officer is the agency head or one or more
9 members of the agency head, the presiding officer may enter an initial
10 order if further review is available within the agency, or a final
11 order if further review is not available;

12 (b) If the presiding officer is a person designated by the agency
13 to make the final decision and enter the final order, the presiding
14 officer shall enter a final order; and

15 (c) If the presiding officer is one or more administrative law
16 judges, the presiding officer shall enter an initial order.

17 (2) With respect to agencies exempt from chapter 34.12 RCW or an
18 institution of higher education, the presiding officer shall transmit
19 a full and complete record of the proceedings, including such comments

1 upon demeanor of witnesses as the presiding officer deems relevant, to
2 each agency official who is to enter a final or initial order after
3 considering the record and evidence so transmitted.

4 (3) Initial and final orders shall include a statement of findings
5 and conclusions, and the reasons and basis therefor, on all the
6 material issues of fact, law, or discretion presented on the record,
7 including the remedy or sanction and, if applicable, the action taken
8 on a petition for a stay of effectiveness. Any findings based
9 substantially on credibility of evidence or demeanor of witnesses shall
10 be so identified. Findings set forth in language that is essentially
11 a repetition or paraphrase of the relevant provision of law shall be
12 accompanied by a concise and explicit statement of the underlying
13 evidence of record to support the findings. The order shall also
14 include a statement of the available procedures and time limits for
15 seeking reconsideration or other administrative relief. An initial
16 order shall include a statement of any circumstances under which the
17 initial order, without further notice, may become a final order.

18 (4) Findings of fact shall be based exclusively on the evidence of
19 record in the adjudicative proceeding and on matters officially noticed
20 in that proceeding. Findings shall be based on the kind of evidence on
21 which reasonably prudent persons are accustomed to rely in the conduct
22 of their affairs. Findings may be based on such evidence even if it
23 would be inadmissible in a civil trial. However, the presiding officer
24 shall not base a finding exclusively on such inadmissible evidence
25 unless the presiding officer determines that doing so would not unduly
26 abridge the parties' opportunities to confront witnesses and rebut
27 evidence. The basis for this determination shall appear in the order.

28 (5) Where it bears on the issues presented, the agency's
29 experience, technical competency, and specialized knowledge may be used
30 in the evaluation of evidence.

31 (6) If a person serving or designated to serve as presiding officer
32 becomes unavailable for any reason before entry of the order, a
33 substitute presiding officer shall be appointed as provided in RCW
34 34.05.425. The substitute presiding officer shall use any existing
35 record and may conduct any further proceedings appropriate in the
36 interests of justice.

37 (7) The presiding officer may allow the parties a designated time

1 after conclusion of the hearing for the submission of memos, briefs, or
2 proposed findings.

3 (8)(a) Except as otherwise provided in (b) or (c) of this
4 subsection, initial or final orders shall be served in writing within
5 ninety days after conclusion of the hearing or after submission of
6 memos, briefs, or proposed findings in accordance with subsection (7)
7 of this section unless this period is waived or extended for good cause
8 shown.

9 (b) This subsection does not apply to the final order of the
10 shorelines hearings board on appeal under RCW 90.58.180(3).

11 (c) This subsection does not apply to the final order of the
12 utilities and transportation commission for petitions related to
13 railroad crossings under chapter 81.53 RCW.

14 (9) The presiding officer shall cause copies of the order to be
15 served on each party and the agency.

16 NEW SECTION. Sec. 2. A new section is added to chapter 81.53 RCW
17 to read as follows:

18 The commission shall issue its final order in writing on a petition
19 filed under this chapter within one hundred twenty days after the date
20 the petition is filed with the commission.

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