
ENGROSSED HOUSE BILL 1400

State of Washington

63rd Legislature

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By Representatives Bergquist, Kochmar, and Jinkins; by request of Office of Administrative Hearings

Read first time 01/25/13. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to clarifying that service includes electronic
2 distribution of hearing notices and orders in administrative
3 proceedings; and amending RCW 34.05.434, 34.05.461, and 34.05.010.

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

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

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

11 (2) The notice shall include:

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

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

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

10 (i) A statement that a party who fails to attend or participate in
11 a hearing or other stage of an adjudicative proceeding may be held in
12 default in accordance with this chapter.

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

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

22 (5) The notice may be served on a party via electronic
23 distribution, with a party's agreement.

24 **Sec. 2.** RCW 34.05.461 and 1995 c 347 s 312 are each amended to
25 read as follows:

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

27 (a) If the presiding officer is the agency head or one or more
28 members of the agency head, the presiding officer may enter an initial
29 order if further review is available within the agency, or a final
30 order if further review is not available;

31 (b) If the presiding officer is a person designated by the agency
32 to make the final decision and enter the final order, the presiding
33 officer shall enter a final order; and

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

36 (2) With respect to agencies exempt from chapter 34.12 RCW or an
37 institution of higher education, the presiding officer shall transmit

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

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

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

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

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

1 (7) The presiding officer may allow the parties a designated time
2 after conclusion of the hearing for the submission of memos, briefs, or
3 proposed findings.

4 (8)(a) Except as otherwise provided in (b) of this subsection,
5 initial or final orders shall be served in writing within ninety days
6 after conclusion of the hearing or after submission of memos, briefs,
7 or proposed findings in accordance with subsection (7) of this section
8 unless this period is waived or extended for good cause shown. The
9 initial or final order may be served on a party via electronic
10 distribution, with a party's agreement.

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

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

15 **Sec. 3.** RCW 34.05.010 and 2011 c 336 s 762 are each amended to
16 read as follows:

17 The definitions set forth in this section shall apply throughout
18 this chapter, unless the context clearly requires otherwise.

19 (1) "Adjudicative proceeding" means a proceeding before an agency
20 in which an opportunity for hearing before that agency is required by
21 statute or constitutional right before or after the entry of an order
22 by the agency. Adjudicative proceedings also include all cases of
23 licensing and rate making in which an application for a license or rate
24 change is denied except as limited by RCW 66.08.150, or a license is
25 revoked, suspended, or modified, or in which the granting of an
26 application is contested by a person having standing to contest under
27 the law.

28 (2) "Agency" means any state board, commission, department,
29 institution of higher education, or officer, authorized by law to make
30 rules or to conduct adjudicative proceedings, except those in the
31 legislative or judicial branches, the governor, or the attorney general
32 except to the extent otherwise required by law and any local
33 governmental entity that may request the appointment of an
34 administrative law judge under chapter 42.41 RCW.

35 (3) "Agency action" means licensing, the implementation or
36 enforcement of a statute, the adoption or application of an agency rule

1 or order, the imposition of sanctions, or the granting or withholding
2 of benefits.

3 Agency action does not include an agency decision regarding (a)
4 contracting or procurement of goods, services, public works, and the
5 purchase, lease, or acquisition by any other means, including eminent
6 domain, of real estate, as well as all activities necessarily related
7 to those functions, or (b) determinations as to the sufficiency of a
8 showing of interest filed in support of a representation petition, or
9 mediation or conciliation of labor disputes or arbitration of labor
10 disputes under a collective bargaining law or similar statute, or (c)
11 any sale, lease, contract, or other proprietary decision in the
12 management of public lands or real property interests, or (d) the
13 granting of a license, franchise, or permission for the use of
14 trademarks, symbols, and similar property owned or controlled by the
15 agency.

16 (4) "Agency head" means the individual or body of individuals in
17 whom the ultimate legal authority of the agency is vested by any
18 provision of law. If the agency head is a body of individuals, a
19 majority of those individuals constitutes the agency head.

20 (5) "Entry" of an order means the signing of the order by all
21 persons who are to sign the order, as an official act indicating that
22 the order is to be effective.

23 (6) "Filing" of a document that is required to be filed with an
24 agency means delivery of the document to a place designated by the
25 agency by rule for receipt of official documents, or in the absence of
26 such designation, at the office of the agency head.

27 (7) "Institutions of higher education" are the University of
28 Washington, Washington State University, Central Washington University,
29 Eastern Washington University, Western Washington University, The
30 Evergreen State College, the various community colleges, and the
31 governing boards of each of the above, and the various colleges,
32 divisions, departments, or offices authorized by the governing board of
33 the institution involved to act for the institution, all of which are
34 sometimes referred to in this chapter as "institutions."

35 (8) "Interpretive statement" means a written expression of the
36 opinion of an agency, entitled an interpretive statement by the agency
37 head or its designee, as to the meaning of a statute or other provision
38 of law, of a court decision, or of an agency order.

1 (9)(a) "License" means a franchise, permit, certification,
2 approval, registration, charter, or similar form of authorization
3 required by law, but does not include (i) a license required solely for
4 revenue purposes, or (ii) a certification of an exclusive bargaining
5 representative, or similar status, under a collective bargaining law or
6 similar statute, or (iii) a license, franchise, or permission for use
7 of trademarks, symbols, and similar property owned or controlled by the
8 agency.

9 (b) "Licensing" includes the agency process respecting the
10 issuance, denial, revocation, suspension, or modification of a license.

11 (10) "Mail" or "send," for purposes of any notice relating to rule
12 making or policy or interpretive statements, means regular mail or
13 electronic distribution, as provided in RCW 34.05.260. "Electronic
14 distribution" or "electronically" means distribution by electronic mail
15 or facsimile mail.

16 (11)(a) "Order," without further qualification, means a written
17 statement of particular applicability that finally determines the legal
18 rights, duties, privileges, immunities, or other legal interests of a
19 specific person or persons.

20 (b) "Order of adoption" means the official written statement by
21 which an agency adopts, amends, or repeals a rule.

22 (12) "Party to agency proceedings," or "party" in a context so
23 indicating, means:

24 (a) A person to whom the agency action is specifically directed; or

25 (b) A person named as a party to the agency proceeding or allowed
26 to intervene or participate as a party in the agency proceeding.

27 (13) "Party to judicial review or civil enforcement proceedings,"
28 or "party" in a context so indicating, means:

29 (a) A person who files a petition for a judicial review or civil
30 enforcement proceeding; or

31 (b) A person named as a party in a judicial review or civil
32 enforcement proceeding, or allowed to participate as a party in a
33 judicial review or civil enforcement proceeding.

34 (14) "Person" means any individual, partnership, corporation,
35 association, governmental subdivision or unit thereof, or public or
36 private organization or entity of any character, and includes another
37 agency.

1 (15) "Policy statement" means a written description of the current
2 approach of an agency, entitled a policy statement by the agency head
3 or its designee, to implementation of a statute or other provision of
4 law, of a court decision, or of an agency order, including where
5 appropriate the agency's current practice, procedure, or method of
6 action based upon that approach.

7 (16) "Rule" means any agency order, directive, or regulation of
8 general applicability (a) the violation of which subjects a person to
9 a penalty or administrative sanction; (b) which establishes, alters, or
10 revokes any procedure, practice, or requirement relating to agency
11 hearings; (c) which establishes, alters, or revokes any qualification
12 or requirement relating to the enjoyment of benefits or privileges
13 conferred by law; (d) which establishes, alters, or revokes any
14 qualifications or standards for the issuance, suspension, or revocation
15 of licenses to pursue any commercial activity, trade, or profession; or
16 (e) which establishes, alters, or revokes any mandatory standards for
17 any product or material which must be met before distribution or sale.
18 The term includes the amendment or repeal of a prior rule, but does not
19 include (i) statements concerning only the internal management of an
20 agency and not affecting private rights or procedures available to the
21 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,
22 (iii) traffic restrictions for motor vehicles, bicyclists, and
23 pedestrians established by the secretary of transportation or his or
24 her designee where notice of such restrictions is given by official
25 traffic control devices, or (iv) rules of institutions of higher
26 education involving standards of admission, academic advancement,
27 academic credit, graduation and the granting of degrees, employment
28 relationships, or fiscal processes.

29 (17) "Rules review committee" or "committee" means the joint
30 administrative rules review committee created pursuant to RCW 34.05.610
31 for the purpose of selectively reviewing existing and proposed rules of
32 state agencies.

33 (18) "Rule making" means the process for formulation and adoption
34 of a rule.

35 (19) "Service," except as otherwise provided in this chapter, means
36 posting in the United States mail, properly addressed, postage prepaid,
37 or personal or electronic service. Service by mail is complete upon

1 deposit in the United States mail. Agencies may, by rule, authorize
2 service by electronic ((telefacsimile)) transmission, ((~~where copies~~
3 ~~are mailed simultaneously,~~)) or by commercial parcel delivery company.

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