
Judiciary Committee

SSB 6464

Title: An act relating to deadlines for final determinations and dispositions in agency adjudicative proceedings.

Brief Description: Establishing deadlines for final determinations and dispositions in agency adjudicative proceedings.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Padden).

Brief Summary of Substitute Bill

- Requires an agency to make a final administrative determination or disposition within two years after commencement of an adjudicative proceeding under the Administrative Procedures Act (APA), and allows a person to seek judicial review if an agency fails to do so.

Hearing Date: 2/17/16

Staff: Cece Clynch (786-7195).

Background:

Washington's Administrative Procedures Act (APA) includes provisions governing public access to agency records, rule-making procedures, adjudicative proceedings, and judicial review and civil enforcement of agency action. Generally, state agencies must adhere to the provisions of the APA, although some agencies, such as the state militia, are excluded from the entire APA, and others, such as the Board of Industrial Insurance Appeals, are excluded from the adjudicative provisions of the APA but not other provisions.

An "adjudicative proceeding" is a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings include most cases of licensing and rate-making in which an application for a license or rate change is denied, or a license is revoked,

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suspended, or modified, or in which the granting of an application is contested by persons having standing to contest.

An agency may initiate an adjudicative proceeding with respect to a matter within the agency's jurisdiction. Adjudications may also be initiated by an applicant by making an application. Within 90 days of an application, or after the agency receives a response to a request for information, agencies are required to: approve or deny the application in a brief or emergency proceeding, if either is available; commence an adjudicative proceeding; or decide not to hold an adjudicative proceeding. An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

The APA includes provisions regarding discovery, procedure at the hearing, rules of evidence, ex parte communications, and entry of orders. With one exception, initial or final orders are required to be served in writing within 90 days after conclusion of the hearing or after submission of memos, briefs, or proposed findings that the presiding officer allows, unless this period is waived or extended for good cause.

Failure to request an adjudicative proceeding when one is available or failure to exhaust administrative remedies generally preclude a party from bringing a judicial action against the agency.

Summary of Bill:

Absent agreement by all parties to an adjudicative proceeding under the APA, an agency must make a final administrative determination or disposition within two years after the proceeding was commenced. The final administrative determination or disposition must allow a person with standing in the proceeding to obtain judicial review of any agency action that is subject to the proceeding. This two year time limit is tolled during any period in which the proceeding is stayed and all parties agree to the stay.

A person may file a petition for judicial review pursuant to the APA if an agency fails to make a final administrative determination or disposition within two years. In such event:

- The petitioner is presumed to have exhausted all administrative remedies.
- The adjudicative proceeding is stayed pending further order by the court. The court may grant an exception to the stay only on the petitioner's request that the adjudicative proceeding be continued, concurrent with judicial review, with respect to issues and facts not identified as contested in, or relevant to, the petition for judicial review.
- The court may not remand the matter without the consent of all parties.
- The court may receive evidence in addition to that contained in the agency record with respect to any issue or fact identified as contested in the petition for judicial review.
- Review by the court is limited to the issues and facts identified as contested in the petition or amended petition. If the petition requests de novo review regarding a contested issue or fact, the standard of judicial review is de novo as to that issue or fact only. If the petition does not request de novo review, existing standards of review apply and the court must enter a final order based on the agency record and any additional evidence received pursuant to the APA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.