

SENATE BILL REPORT

SB 5350

As of January 31, 2017

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: Senators Fortunato, Padden, O'Ban, Braun, Angel, Schoesler, Brown and Kuderer.

Brief History:

Committee Activity: Law & Justice: 1/25/17.

Brief Summary of Bill

- Requires an agency make a final decision within two years after an administrative challenge to an agency action.
- Allows an appeal of the agency final decision to a superior court.
- Allows waiver of the two year limit where all parties consent.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: The Administrative Procedure Act (APA) sets the process that state agencies must use when the agency takes administrative action. Individuals appealing agency actions must exhaust their administrative remedies with the agency prior to judicial review. Agencies offer administrative hearings that are quasi-judicial to hear appeals of agency actions. Administrative hearings adjudicate appeals by interpreting agency policy and regulations. Adjudication resembles what a court does but is less formal. Adjudicative proceedings determine legal rights, duties, or privileges when a hearing is required by law.

Agencies may use a two-step process to reach a final agency decision in adjudicative proceedings. First, a presiding officer hears evidence and makes an initial, or recommended decision. Second, the agency reviews the initial decision and makes a final decision to accept or reject the initial decision. A party may appeal the final agency decision to the

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superior court for judicial review. In a judicial review, the superior court becomes an appellate court. The superior court decides if the final agency decision is correct.

Summary of Bill: An agency must make a final administrative decision within two years after a person commences an administrative challenge to an agency action. The agency's final decision must allow the person to appeal to a superior court. A person may file a petition for review with a superior court if the agency fails to issue a final administrative decision within two years. On appeal, a superior court may not remand the case for further administrative proceedings unless all parties consent. Review by a superior court is limited to the issues and facts identified in the petition for review.

The two-year limit may be waived where all parties consent.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: As a private business, you get stuck in a trap, an administrative proceeding that goes on and on while you are writing checks to your lawyer. This bill sets a limit so it has to be done in two years. An administrative challenge from the trucking industry went on for over five years. Some agencies view the administrative process as a means to obstruct review. They make it difficult to get judicial review.

Other: We appreciate the intent of the bill. Most administrative proceedings are made within a two year time. Appeals shouldn't drag on and on. One concern is that when a proceeding is stayed, a provision of the bill allows the petitioner to request the administrative hearing to continue on issues not under appeal. We don't think that two tribunals should proceed because it is duplicative and messy. The bill allows the court to take new evidence which is fine so long as the agency has not accepted evidence on the issue. Sometimes there is multi-party litigation and all parties may not agree to waive the deadline. The deadline should be waived on good cause even if all parties don't agree. The bill should be applied prospectively to administrative proceedings filed after the effective date.

Persons Testifying: PRO: Senator Phil Fortunato, Prime Sponsor; Arthur West, citizen.

Other: Laura Watson, Assistant Attorney General.

Persons Signed In To Testify But Not Testifying: No one.