

SENATE BILL REPORT

SB 5350

As Reported by Senate Committee On:
Law & Justice, February 1, 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, 2/01/17 [DPS].

Brief Summary of Substitute Bill

- Requires an agency make a final decision within two years after an administrative challenge to an agency action.
- Limits the admission of evidence on appeal where the agency has already received evidence on an issue.
- Allows a waiver of the 2 year limit without consent of all parties for good cause.
- Authorizes a court to remand a matter without consent of all parties for good cause.
- Limits the application prospectively for actions filed after the effective date.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5350 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 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 (First Substitute): 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.

Limits the admission of evidence on appeal where the agency has already received evidence on an issue. Allows a waiver of the 2 year limit without consent of all parties for good cause. Authorizes a court to remand a matter without consent of all parties for good cause. Application is prospective for actions filed after the effective date.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Limits the application of the bill to actions filed after the effective date.
- Allows a waiver of the 2 year limit where the agency has good cause to delay, such as for other related proceedings or investigations.
- Allows the court to remand the matter, without consent of all parties, where the agency has good cause to delay, such as for other related proceedings or investigations.
- Removes an exception to any stay of proceedings where the petitioner requests the adjudicative proceeding not be stayed for issues not on appeal in a petition for judicial review before a superior court.
- Limits evidence a superior court may receive on an issue or fact identified as contested in a petition if the agency has not already received evidence on that issue at an evidentiary hearing.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* 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.