
SUBSTITUTE SENATE BILL 5350

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Fortunato, Padden, O'Ban, Braun, Angel, Schoesler, Brown, and Kuderer)

READ FIRST TIME 02/02/17.

1 AN ACT Relating to deadlines for final determinations and
2 dispositions in agency adjudicative proceedings; and amending RCW
3 34.05.413, 34.05.534, 34.05.562, and 34.05.570.

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

5 **Sec. 1.** RCW 34.05.413 and 1989 c 175 s 12 are each amended to
6 read as follows:

7 (1) Within the scope of its authority, an agency may commence an
8 adjudicative proceeding at any time with respect to a matter within
9 the agency's jurisdiction.

10 (2) When required by law or constitutional right, and upon the
11 timely application of any person, an agency shall commence an
12 adjudicative proceeding.

13 (3) An agency may provide forms for and, by rule, may provide
14 procedures for filing an application for an adjudicative proceeding.
15 An agency may require by rule that an application be in writing and
16 that it be filed at a specific address, in a specified manner, and
17 within specified time limits. The agency shall allow at least twenty
18 days to apply for an adjudicative proceeding from the time notice is
19 given of the opportunity to file such an application.

20 (4) If an agency is required to hold an adjudicative proceeding,
21 an application for an agency to enter an order includes an

1 application for the agency to conduct appropriate adjudicative
2 proceedings, whether or not the applicant expressly requests those
3 proceedings.

4 (5) An adjudicative proceeding commences when the agency or a
5 presiding officer notifies a party that a prehearing conference,
6 hearing, or other stage of an adjudicative proceeding will be
7 conducted.

8 (6) For any matter filed on or after the effective date of this
9 section that is subject to an adjudicative proceeding, an agency must
10 make a final administrative determination or disposition for that
11 matter within two years after the commencement of the adjudicative
12 proceeding, unless all parties to the proceeding agree to waive such
13 time limitation or unless the agency otherwise has good cause to
14 delay the proceeding, including but not limited to circumstances
15 where there is a criminal investigation or parallel criminal or civil
16 proceeding relating to the subject matter of the adjudicative
17 proceeding. This time limitation is tolled during any period in which
18 the adjudicative proceeding is stayed and all parties to the
19 proceeding agree to such stay. The final administrative determination
20 or disposition must allow a person with standing in an adjudicative
21 proceeding to obtain judicial review of any agency action that is
22 subject to the adjudicative proceeding. For the purposes of this
23 subsection, an adjudicative proceeding includes any hearing under
24 chapter 34.12 RCW.

25 **Sec. 2.** RCW 34.05.534 and 1997 c 409 s 302 are each amended to
26 read as follows:

27 A person may file a petition for judicial review under this
28 chapter only after exhausting all administrative remedies available
29 within the agency whose action is being challenged, or available
30 within any other agency authorized to exercise administrative review,
31 except:

32 (1) A petitioner for judicial review of a rule need not have
33 participated in the rule-making proceeding upon which that rule is
34 based, have petitioned for its amendment or repeal, have petitioned
35 the joint administrative rules review committee for its review, or
36 have appealed a petition for amendment or repeal to the governor;

37 (2) A petitioner for judicial review need not exhaust
38 administrative remedies to the extent that this chapter or any other
39 statute states that exhaustion is not required; ((~~or~~))

1 (3) The court may relieve a petitioner of the requirement to
2 exhaust any or all administrative remedies upon a showing that:

3 (a) The remedies would be patently inadequate;

4 (b) The exhaustion of remedies would be futile; or

5 (c) The grave irreparable harm that would result from having to
6 exhaust administrative remedies would clearly outweigh the public
7 policy requiring exhaustion of administrative remedies; or

8 (4) A person may file a petition for judicial review under this
9 chapter and is presumed to have exhausted all administrative remedies
10 when an agency fails to comply with RCW 34.05.413(6). When a petition
11 for judicial review is filed under this subsection, the adjudicative
12 proceeding for which judicial review is sought is stayed, pending
13 further order by the court.

14 **Sec. 3.** RCW 34.05.562 and 1988 c 288 s 514 are each amended to
15 read as follows:

16 (1) The court may receive evidence in addition to that contained
17 in the agency record for judicial review, only if it relates to the
18 validity of the agency action at the time it was taken and is needed
19 to decide disputed issues regarding:

20 (a) Improper constitution as a decision-making body or grounds
21 for disqualification of those taking the agency action;

22 (b) Unlawfulness of procedure or of decision-making process;
23 (~~or~~)

24 (c) Material facts in rule making, brief adjudications, or other
25 proceedings not required to be determined on the agency record; or

26 (d) Any issue or fact identified as contested in a petition for
27 judicial review filed under RCW 34.05.534(4) if the agency has not
28 already received evidence on that issue at an evidentiary hearing.

29 (2) The court may remand a matter to the agency, before final
30 disposition of a petition for review, with directions that the agency
31 conduct fact-finding and other proceedings the court considers
32 necessary and that the agency take such further action on the basis
33 thereof as the court directs, if:

34 (a) The agency was required by this chapter or any other
35 provision of law to base its action exclusively on a record of a type
36 reasonably suitable for judicial review, but the agency failed to
37 prepare or preserve an adequate record;

38 (b) The court finds that (i) new evidence has become available
39 that relates to the validity of the agency action at the time it was

1 taken, that one or more of the parties did not know and was under no
2 duty to discover or could not have reasonably been discovered until
3 after the agency action, and (ii) the interests of justice would be
4 served by remand to the agency;

5 (c) The agency improperly excluded or omitted evidence from the
6 record; or

7 (d) A relevant provision of law changed after the agency action
8 and the court determines that the new provision may control the
9 outcome.

10 (3) When a petition for judicial review is filed under RCW
11 34.05.534(4), the court may not remand a matter under subsection (2)
12 of this section unless all parties consent or the court determines
13 that the agency had good cause for delaying the proceeding, including
14 but not limited to circumstances where there is a criminal
15 investigation or parallel criminal or civil proceeding relating to
16 the subject matter of the adjudicative proceeding.

17 **Sec. 4.** RCW 34.05.570 and 2004 c 30 s 1 are each amended to read
18 as follows:

19 (1) Generally. Except to the extent that this chapter or another
20 statute provides otherwise:

21 (a) The burden of demonstrating the invalidity of agency action
22 is on the party asserting invalidity;

23 (b) The validity of agency action shall be determined in
24 accordance with the standards of review provided in this section, as
25 applied to the agency action at the time it was taken;

26 (c) The court shall make a separate and distinct ruling on each
27 material issue on which the court's decision is based; and

28 (d) The court shall grant relief only if it determines that a
29 person seeking judicial relief has been substantially prejudiced by
30 the action complained of.

31 (2) Review of rules. (a) A rule may be reviewed by petition for
32 declaratory judgment filed pursuant to this subsection or in the
33 context of any other review proceeding under this section. In an
34 action challenging the validity of a rule, the agency shall be made a
35 party to the proceeding.

36 (b)(i) The validity of any rule may be determined upon petition
37 for a declaratory judgment addressed to the superior court of
38 Thurston county, when it appears that the rule, or its threatened
39 application, interferes with or impairs or immediately threatens to

1 interfere with or impair the legal rights or privileges of the
2 petitioner. The declaratory judgment order may be entered whether or
3 not the petitioner has first requested the agency to pass upon the
4 validity of the rule in question.

5 (ii) From June 10, 2004, until July 1, 2008:

6 (A) If the petitioner's residence or principal place of business
7 is within the geographical boundaries of the third division of the
8 court of appeals as defined by RCW 2.06.020(3), the petition may be
9 filed in the superior court of Spokane, Yakima, or Thurston county;
10 and

11 (B) If the petitioner's residence or principal place of business
12 is within the geographical boundaries of district three of the first
13 division of the court of appeals as defined by RCW 2.06.020(1), the
14 petition may be filed in the superior court of Whatcom or Thurston
15 county.

16 (c) In a proceeding involving review of a rule, the court shall
17 declare the rule invalid only if it finds that: The rule violates
18 constitutional provisions; the rule exceeds the statutory authority
19 of the agency; the rule was adopted without compliance with statutory
20 rule-making procedures; or the rule is arbitrary and capricious.

21 (3) Review of agency orders in adjudicative proceedings. The
22 court shall grant relief from an agency order in an adjudicative
23 proceeding only if it determines that:

24 (a) The order, or the statute or rule on which the order is
25 based, is in violation of constitutional provisions on its face or as
26 applied;

27 (b) The order is outside the statutory authority or jurisdiction
28 of the agency conferred by any provision of law;

29 (c) The agency has engaged in unlawful procedure or decision-
30 making process, or has failed to follow a prescribed procedure;

31 (d) The agency has erroneously interpreted or applied the law;

32 (e) The order is not supported by evidence that is substantial
33 when viewed in light of the whole record before the court, which
34 includes the agency record for judicial review, supplemented by any
35 additional evidence received by the court under this chapter;

36 (f) The agency has not decided all issues requiring resolution by
37 the agency;

38 (g) A motion for disqualification under RCW 34.05.425 or
39 34.12.050 was made and was improperly denied or, if no motion was
40 made, facts are shown to support the grant of such a motion that were

1 not known and were not reasonably discoverable by the challenging
2 party at the appropriate time for making such a motion;

3 (h) The order is inconsistent with a rule of the agency unless
4 the agency explains the inconsistency by stating facts and reasons to
5 demonstrate a rational basis for inconsistency; or

6 (i) The order is arbitrary or capricious.

7 (4) Review of other agency action.

8 (a) All agency action not reviewable under subsection (2) or (3)
9 of this section shall be reviewed under this subsection.

10 (b) A person whose rights are violated by an agency's failure to
11 perform a duty that is required by law to be performed may file a
12 petition for review pursuant to RCW 34.05.514, seeking an order
13 pursuant to this subsection requiring performance. Within twenty days
14 after service of the petition for review, the agency shall file and
15 serve an answer to the petition, made in the same manner as an answer
16 to a complaint in a civil action. The court may hear evidence,
17 pursuant to RCW 34.05.562, on material issues of fact raised by the
18 petition and answer.

19 (c) Relief for persons aggrieved by the performance of an agency
20 action, including the exercise of discretion, or an action under (b)
21 of this subsection can be granted only if the court determines that
22 the action is:

23 (i) Unconstitutional;

24 (ii) Outside the statutory authority of the agency or the
25 authority conferred by a provision of law;

26 (iii) Arbitrary or capricious; or

27 (iv) Taken by persons who were not properly constituted as agency
28 officials lawfully entitled to take such action.

29 (5) When a petition for judicial review is filed under RCW
30 34.05.534(4), review by the court is limited to the issues and facts
31 specifically identified as contested in the petition, or amended
32 petition. If the petition, or amended petition, requests de novo
33 review as to any issue or fact identified as contested, the standard
34 of judicial review is de novo as to that issue or fact only. Where a
35 petition does not request de novo review, the standards of review
36 provided in subsections (1) through (4) of this section apply, and
37 the court must enter a final order based on the agency record and any
38 additional evidence received under RCW 34.05.562.

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