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SENATE BILL 5350

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State of Washington

65th Legislature

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

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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) An agency must make a final administrative determination or  
9 disposition for any matter that is subject to an adjudicative  
10 proceeding within two years after the commencement of the  
11 adjudicative proceeding, unless all parties to the proceeding agree  
12 to waive such time limitation. This time limitation is tolled during  
13 any period in which the adjudicative proceeding is stayed and all  
14 parties to the proceeding agree to such stay. The final  
15 administrative determination or disposition must allow a person with  
16 standing in an adjudicative proceeding to obtain judicial review of  
17 any agency action that is subject to the adjudicative proceeding. For  
18 the purposes of this subsection, an adjudicative proceeding includes  
19 any hearing under chapter 34.12 RCW.

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

22 A person may file a petition for judicial review under this  
23 chapter only after exhausting all administrative remedies available  
24 within the agency whose action is being challenged, or available  
25 within any other agency authorized to exercise administrative review,  
26 except:

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

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

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

37 (a) The remedies would be patently inadequate;

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

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

4 (4) A person may file a petition for judicial review under this  
5 chapter and is presumed to have exhausted all administrative remedies  
6 when an agency fails to comply with RCW 34.05.413(6). When a petition  
7 for judicial review is filed under this subsection, the adjudicative  
8 proceeding for which judicial review is sought is stayed, pending  
9 further order by the court. The court may grant an exception to the  
10 stay only on the petitioner's request that the adjudicative  
11 proceeding be continued, concurrent with judicial review, with  
12 respect to issues and facts not identified as contested in, or  
13 otherwise relevant to, the petition for judicial review.

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 (~~(c)~~)

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).

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

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

37 (b) The court finds that (i) new evidence has become available  
38 that relates to the validity of the agency action at the time it was  
39 taken, that one or more of the parties did not know and was under no

1 duty to discover or could not have reasonably been discovered until  
2 after the agency action, and (ii) the interests of justice would be  
3 served by remand to the agency;

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

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

9 (3) When a petition for judicial review is filed under RCW  
10 34.05.534(4), the court may not remand a matter under subsection (2)  
11 of this section unless all parties consent.

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

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

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

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

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

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

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

31 (b)(i) The validity of any rule may be determined upon petition  
32 for a declaratory judgment addressed to the superior court of  
33 Thurston county, when it appears that the rule, or its threatened  
34 application, interferes with or impairs or immediately threatens to  
35 interfere with or impair the legal rights or privileges of the  
36 petitioner. The declaratory judgment order may be entered whether or  
37 not the petitioner has first requested the agency to pass upon the  
38 validity of the rule in question.

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

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

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

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

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

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

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

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

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

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

31 (f) The agency has not decided all issues requiring resolution by  
32 the agency;

33 (g) A motion for disqualification under RCW 34.05.425 or  
34 34.12.050 was made and was improperly denied or, if no motion was  
35 made, facts are shown to support the grant of such a motion that were  
36 not known and were not reasonably discoverable by the challenging  
37 party at the appropriate time for making such a motion;

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

1 (i) The order is arbitrary or capricious.

2 (4) Review of other agency action.

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

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

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

18 (i) Unconstitutional;

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

21 (iii) Arbitrary or capricious; or

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

24 (5) When a petition for judicial review is filed under RCW  
25 34.05.534(4), review by the court is limited to the issues and facts  
26 specifically identified as contested in the petition, or amended  
27 petition. If the petition, or amended petition, requests de novo  
28 review as to any issue or fact identified as contested, the standard  
29 of judicial review is de novo as to that issue or fact only. Where a  
30 petition does not request de novo review, the standards of review  
31 provided in subsections (1) through (4) of this section apply, and  
32 the court must enter a final order based on the agency record and any  
33 additional evidence received under RCW 34.05.562.

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