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SENATE BILL 5571

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State of Washington

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By Senators Hochstatter, Owen, McCaslin, Schow, Deccio, Moyer, Oke, Swecker, Strannigan, Hale, Johnson, Long, Wood, Morton, West, Palmer, McDonald and Roach

Read first time 01/26/95. Referred to Committee on Government Operations.

1 AN ACT Relating to conflicting rules; and amending RCW 34.05.413,  
2 34.05.425, and 34.05.461.

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

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

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

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

12 (3) If a person files an application for adjudicative review of a  
13 rule adopted by a state agency claiming that the rule conflicts with an  
14 existing state, federal, or local rule, the agency shall commence an  
15 adjudicative proceeding.

16 (4) An agency may provide forms for and, by rule, may provide  
17 procedures for filing an application for an adjudicative proceeding.  
18 An agency may require by rule that an application be in writing and  
19 that it be filed at a specific address, in a specified manner, and

1 within specified time limits. The agency shall allow at least twenty  
2 days to apply for an adjudicative proceeding from the time notice is  
3 given of the opportunity to file such an application.

4 ~~((4))~~ (5) If an agency is required to hold an adjudicative  
5 proceeding, an application for an agency to enter an order includes an  
6 application for the agency to conduct appropriate adjudicative  
7 proceedings, whether or not the applicant expressly requests those  
8 proceedings.

9 ~~((5))~~ (6) An adjudicative proceeding commences when the agency or  
10 a presiding officer notifies a party that a prehearing conference,  
11 hearing, or other stage of an adjudicative proceeding will be  
12 conducted.

13 **Sec. 2.** RCW 34.05.425 and 1989 c 175 s 14 are each amended to read  
14 as follows:

15 (1) Except as provided in subsections (2) and (3) of this section,  
16 in the discretion of the agency head, the presiding officer in an  
17 administrative hearing shall be:

18 (a) The agency head or one or more members of the agency head;

19 (b) If the agency has statutory authority to do so, a person other  
20 than the agency head or an administrative law judge designated by the  
21 agency head to make the final decision and enter the final order; or

22 (c) One or more administrative law judges assigned by the office of  
23 administrative hearings in accordance with chapter 34.12 RCW.

24 (2) An agency expressly exempted under RCW 34.12.020(4) or other  
25 statute from the provisions of chapter 34.12 RCW or an institution of  
26 higher education shall designate a presiding officer as provided by  
27 rules adopted by the agency.

28 (3) An administrative law judge assigned by the office of  
29 administrative hearings in accordance with chapter 34.12 RCW for  
30 adjudicative review of conflicting administrative rules under RCW  
31 34.05.413(3).

32 (4) Any individual serving or designated to serve alone or with  
33 others as presiding officer is subject to disqualification for bias,  
34 prejudice, interest, or any other cause provided in this chapter or for  
35 which a judge is disqualified.

36 ~~((4))~~ (5) Any party may petition for the disqualification of an  
37 individual promptly after receipt of notice indicating that the

1 individual will preside or, if later, promptly upon discovering facts  
2 establishing grounds for disqualification.

3 ~~((+5))~~ (6) The individual whose disqualification is requested  
4 shall determine whether to grant the petition, stating facts and  
5 reasons for the determination.

6 ~~((+6))~~ (7) When the presiding officer is an administrative law  
7 judge, the provisions of this section regarding disqualification for  
8 cause are in addition to the motion of prejudice available under RCW  
9 34.12.050.

10 ~~((+7))~~ (8) If a substitute is required for an individual who  
11 becomes unavailable as a result of disqualification or any other  
12 reason, the substitute must be appointed by the appropriate appointing  
13 authority.

14 ~~((+8))~~ (9) Any action taken by a duly appointed substitute for an  
15 unavailable individual is as effective as if taken by the unavailable  
16 individual.

17 **Sec. 3.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to read  
18 as follows:

19 (1) Except as provided in subsection (2) of this section:

20 (a) If the presiding officer is the agency head or one or more  
21 members of the agency head, the presiding officer may enter an initial  
22 order if further review is available within the agency, or a final  
23 order if further review is not available;

24 (b) If the presiding officer is a person designated by the agency  
25 to make the final decision and enter the final order, the presiding  
26 officer shall enter a final order; and

27 (c) If the presiding officer is one or more administrative law  
28 judges, the presiding officer shall enter an initial order, except that  
29 in adjudicative review of conflicting administrative rules under RCW  
30 34.05.413(3), the presiding officer shall enter a final order.

31 (2) With respect to agencies exempt from chapter 34.12 RCW or an  
32 institution of higher education, the presiding officer shall transmit  
33 a full and complete record of the proceedings, including such comments  
34 upon demeanor of witnesses as the presiding officer deems relevant, to  
35 each agency official who is to enter a final or initial order after  
36 considering the record and evidence so transmitted.

37 (3) Initial and final orders shall include a statement of findings  
38 and conclusions, and the reasons and basis therefor, on all the

1 material issues of fact, law, or discretion presented on the record,  
2 including the remedy or sanction and, if applicable, the action taken  
3 on a petition for a stay of effectiveness. Upon a finding in an  
4 adjudicative review under RCW 34.05.413(3) that an administrative rule  
5 conflicts with an existing state, federal, or local rule, the final  
6 order shall suspend the rule and the conflicting rule as well if it was  
7 adopted by a state agency. Any findings based substantially on  
8 credibility of evidence or demeanor of witnesses shall be so  
9 identified. Findings set forth in language that is essentially a  
10 repetition or paraphrase of the relevant provision of law shall be  
11 accompanied by a concise and explicit statement of the underlying  
12 evidence of record to support the findings. The order shall also  
13 include a statement of the available procedures and time limits for  
14 seeking reconsideration or other administrative relief. An initial  
15 order shall include a statement of any circumstances under which the  
16 initial order, without further notice, may become a final order.

17 (4) Findings of fact shall be based exclusively on the evidence of  
18 record in the adjudicative proceeding and on matters officially noticed  
19 in that proceeding. Findings shall be based on the kind of evidence on  
20 which reasonably prudent persons are accustomed to rely in the conduct  
21 of their affairs. Findings may be based on such evidence even if it  
22 would be inadmissible in a civil trial. However, the presiding officer  
23 shall not base a finding exclusively on such inadmissible evidence  
24 unless the presiding officer determines that doing so would not unduly  
25 abridge the parties' opportunities to confront witnesses and rebut  
26 evidence. The basis for this determination shall appear in the order.

27 (5) Where it bears on the issues presented, the agency's  
28 experience, technical competency, and specialized knowledge may be used  
29 in the evaluation of evidence.

30 (6) If a person serving or designated to serve as presiding officer  
31 becomes unavailable for any reason before entry of the order, a  
32 substitute presiding officer shall be appointed as provided in RCW  
33 34.05.425. The substitute presiding officer shall use any existing  
34 record and may conduct any further proceedings appropriate in the  
35 interests of justice.

36 (7) The presiding officer may allow the parties a designated time  
37 after conclusion of the hearing for the submission of memos, briefs, or  
38 proposed findings.

1       (8) Initial or final orders shall be served in writing within  
2 ninety days after conclusion of the hearing or after submission of  
3 memos, briefs, or proposed findings in accordance with subsection (7)  
4 of this section unless this period is waived or extended for good cause  
5 shown.

6       (9) The presiding officer shall cause copies of the order to be  
7 served on each party and the agency.

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