
SENATE BILL 6019

State of Washington 64th Legislature 2015 Regular Session

By Senators Padden, Pedersen, Frockt, and O'Ban

Read first time 02/17/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to adjudicative proceedings involving a state
2 agency; and amending RCW 34.05.461, 34.05.464, and 34.05.455.

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

4 **Sec. 1.** RCW 34.05.461 and 2013 c 110 s 2 are each amended to
5 read as follows:

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

7 (a) If the presiding officer is the agency head or one or more
8 members of the agency head, the presiding officer (~~((may))~~) shall enter
9 (~~((an initial order if further review is available within the agency,~~
10 ~~or))~~) a final order (~~((if further review is not available))~~);

11 (b) If the presiding officer is a person designated by the agency
12 (~~((to make the final decision and enter the final order))~~) other than
13 under (c) of this subsection, the presiding officer shall enter a
14 final order; and

15 (c) If the presiding officer is one or more administrative law
16 judges assigned by the office of administrative hearings in
17 accordance with chapter 34.12 RCW, the presiding officer shall enter
18 an initial order.

19 (2) With respect to agencies exempt from chapter 34.12 RCW or an
20 institution of higher education, the presiding officer shall
21 (~~((transmit a full and complete record of the proceedings, including~~

1 ~~such comments upon demeanor of witnesses as the presiding officer~~
2 ~~deems relevant, to each agency official who is to))~~ enter a final
3 ~~((or initial))~~ order ~~((after considering the record and evidence so~~
4 ~~transmitted))~~.

5 (3) Initial and final orders shall include a statement of
6 findings and conclusions, and the reasons and basis therefor, on all
7 the material issues of fact, law, or discretion presented on the
8 record, including the remedy or sanction and, if applicable, the
9 action taken on a petition for a stay of effectiveness. Any findings
10 based substantially on credibility of evidence or demeanor of
11 witnesses shall be so identified. Findings set forth in language that
12 is essentially a repetition or paraphrase of the relevant provision
13 of law shall be accompanied by a concise and explicit statement of
14 the underlying evidence of record to support the findings. The order
15 shall also include a statement of the available procedures and time
16 limits for seeking reconsideration or other administrative relief. An
17 initial order shall include a statement of any circumstances under
18 which the initial order, without further notice, may become a final
19 order.

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

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

34 (6) If a person serving or designated to serve as presiding
35 officer becomes unavailable for any reason before entry of the order,
36 a substitute presiding officer shall be appointed as provided in RCW
37 34.05.425. The substitute presiding officer shall use any existing
38 record and may conduct any further proceedings appropriate in the
39 interests of justice.

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

4 (8)(a) Except as otherwise provided in (b) of this subsection,
5 initial or final orders shall be served in writing within ninety days
6 after conclusion of the hearing or after submission of memos, briefs,
7 or proposed findings in accordance with subsection (7) of this
8 section unless this period is waived or extended for good cause
9 shown. The initial or final order may be served on a party via
10 electronic distribution, with a party's agreement.

11 (b) This subsection does not apply to the final order of the
12 shorelines hearings board on appeal under RCW 90.58.180(3).

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

15 **Sec. 2.** RCW 34.05.464 and 1989 c 175 s 20 are each amended to
16 read as follows:

17 (1) As authorized by law, an agency may by rule provide that
18 initial orders issued by administrative law judges under chapter
19 34.12 RCW in specified classes of cases may become final without
20 further agency action unless, within a specified period, (a) the
21 agency head upon its own motion determines that the initial order
22 should be reviewed, or (b) a party to the proceedings files a
23 petition for administrative review of the initial order. Upon
24 occurrence of either event, notice shall be given to all parties to
25 the proceeding.

26 (2) As authorized by law, an agency head may appoint a person to
27 review initial orders issued by administrative law judges under
28 chapter 34.12 RCW and to prepare and enter final agency orders.

29 (3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an
30 initial order on behalf of an agency as part of the decision process,
31 and to persons communicating with them, to the same extent that it is
32 applicable to presiding officers.

33 (4) The officer reviewing the initial order (including the agency
34 head reviewing an initial order) is, for the purposes of this
35 chapter, termed the reviewing officer. The reviewing officer shall
36 exercise all the decision-making power that the reviewing officer
37 would have had to decide and enter the final order had the reviewing
38 officer presided over the hearing, except to the extent that the
39 issues subject to review are limited by a provision of law or by the

1 reviewing officer upon notice to all the parties. In reviewing
2 findings of fact by presiding officers, the reviewing officers shall
3 give due regard to the presiding officer's opportunity to observe the
4 witnesses.

5 (5) The reviewing officer shall personally consider the whole
6 record or such portions of it as may be cited by the parties.

7 (6) The reviewing officer shall afford each party an opportunity
8 to present written argument and may afford each party an opportunity
9 to present oral argument.

10 (7) The reviewing officer shall enter a final order disposing of
11 the proceeding or remand the matter for further proceedings, with
12 instructions to the presiding officer who entered the initial order.
13 Upon remanding a matter, the reviewing officer shall order such
14 temporary relief as is authorized and appropriate.

15 (8) A final order shall include, or incorporate by reference to
16 the initial order, all matters required by RCW 34.05.461(3).

17 (9) The reviewing officer shall cause copies of the final order
18 or order remanding the matter for further proceedings to be served
19 upon each party.

20 **Sec. 3.** RCW 34.05.455 and 1988 c 288 s 416 are each amended to
21 read as follows:

22 (1) A presiding officer may not communicate, directly or
23 indirectly, regarding any issue in the proceeding other than
24 communications necessary to procedural aspects of maintaining an
25 orderly process, with any person employed by the agency without
26 notice and opportunity for all parties to participate, except as
27 provided in this subsection:

28 (a) Where the ultimate legal authority of an agency is vested in
29 a multimember body, and where that body presides at an adjudication,
30 members of the body may communicate with one another regarding the
31 proceeding;

32 (b) Any presiding officer may receive aid from legal counsel, or
33 from staff assistants who are subject to the presiding officer's
34 supervision; and

35 (c) Presiding officers may communicate with other employees or
36 consultants of the agency who have not participated in the proceeding
37 in any manner, and who are not engaged in any investigative or
38 prosecutorial functions in the same or a factually related case;
39 provided this subsection shall not allow communication with an agency

1 employee that requires as part of an employment evaluation that a
2 presiding officer shall decide cases according to the agency head's
3 unwritten policies.

4 (d) This subsection does not apply to communications required for
5 the disposition of ex parte matters specifically authorized by
6 statute.

7 (2) Unless required for the disposition of ex parte matters
8 specifically authorized by statute or unless necessary to procedural
9 aspects of maintaining an orderly process, a presiding officer may
10 not communicate, directly or indirectly, regarding any issue in the
11 proceeding, with any person not employed by the agency who has a
12 direct or indirect interest in the outcome of the proceeding, without
13 notice and opportunity for all parties to participate.

14 (3) Unless necessary to procedural aspects of maintaining an
15 orderly process, persons to whom a presiding officer may not
16 communicate under subsections (1) and (2) of this section may not
17 communicate with presiding officers without notice and opportunity
18 for all parties to participate.

19 (4) If, before serving as presiding officer in an adjudicative
20 proceeding, a person receives an ex parte communication of a type
21 that could not properly be received while serving, the person,
22 promptly after starting to serve, shall disclose the communication in
23 the manner prescribed in subsection (5) of this section.

24 (5) A presiding officer who receives an ex parte communication in
25 violation of this section shall place on the record of the pending
26 matter all written communications received, all written responses to
27 the communications, and a memorandum stating the substance of all
28 oral communications received, all responses made, and the identity of
29 each person from whom the presiding officer received an ex parte
30 communication. The presiding officer shall advise all parties that
31 these matters have been placed on the record. Upon request made
32 within ten days after notice of the ex parte communication, any party
33 desiring to rebut the communication shall be allowed to place a
34 written rebuttal statement on the record. Portions of the record
35 pertaining to ex parte communications or rebuttal statements do not
36 constitute evidence of any fact at issue in the matter unless a party
37 moves the admission of any portion of the record for purposes of
38 establishing a fact at issue and that portion is admitted pursuant to
39 RCW 34.05.452.

1 (6) If necessary to eliminate the effect of an ex parte
2 communication received in violation of this section, a presiding
3 officer who receives the communication may be disqualified, and the
4 portions of the record pertaining to the communication may be sealed
5 by protective order.

6 (7) The agency shall, and any party may, report any violation of
7 this section to appropriate authorities for any disciplinary
8 proceedings provided by law. In addition, each agency by rule may
9 provide for appropriate sanctions, including default, for any
10 violations of this section.

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