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HOUSE BILL 2426

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State of Washington

59th Legislature

2006 Regular Session

By Representative Morris; by request of Utilities & Transportation Commission

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1 AN ACT Relating to duties of the utilities and transportation  
2 commission, including commissioner appointments, delegation of powers,  
3 and appointment of administrative law judges; and amending RCW  
4 80.01.010, 80.01.030, 80.01.050, and 80.01.060.

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

6 **Sec. 1.** RCW 80.01.010 and 1961 c 307 s 4 are each amended to read  
7 as follows:

8 There is hereby created and established a state commission to be  
9 known and designated as the Washington utilities and transportation  
10 commission, and in this chapter referred to as the commission.

11 The commission shall be composed of three members appointed by the  
12 governor, with the consent of the senate. Not more than two members of  
13 said commission shall belong to the same political party.

14 ~~((The members of the first commission to be appointed after taking  
15 effect of this section shall be appointed for terms beginning April 1,  
16 1951, and expiring as follows: One commissioner for the term expiring  
17 January 1, 1953; one commissioner for the term expiring January 1,  
18 1955; one commissioner for the term expiring January 1, 1957. Each of  
19 the commissioners shall hold office until his successor is appointed~~

1 ~~and qualified. Upon the expiration of the terms of the three~~  
2 ~~commissioners first to be appointed as herein provided,~~) Each  
3 ~~((succeeding))~~ commissioner shall be appointed and hold office for the  
4 term of six years. ~~((One of such commissioners to be designated by))~~  
5 The governor((~~τ~~)) shall((~~τ~~)) designate one of the commissioners to be  
6 chair of the commission during the term of the ~~((appointing))~~  
7 governor(~~(~~τ~~, be the chairman of the commission)~~)).

8 Each commissioner shall receive a salary as may be fixed by the  
9 governor in accordance with the provisions of RCW 43.03.040.

10 Any member of the commission may be removed for inefficiency,  
11 malfeasance or misfeasance in office, upon specific written charges  
12 filed by the governor, who shall transmit such written charges to the  
13 member accused and to the chief justice of the supreme court. The  
14 chief justice shall thereupon designate a special tribunal composed of  
15 three judges of the superior court to hear and adjudicate the charges.  
16 Such tribunal shall fix the time, place and procedure for the hearing,  
17 and the hearing shall be public. The decision of such tribunal shall  
18 be final and not subject to review.

19 If the tribunal specified herein finds the charges of the governor  
20 to be true, the governor shall have the right to immediately remove the  
21 commissioner from office, to declare the position of the commissioner  
22 vacant, and appoint another commissioner to the position in accordance  
23 with the provisions of the law.

24 Any vacancy arising in the office of commissioner shall be filled  
25 by appointment by the governor, and, except for persons appointed as  
26 pro tempore commissioners, an appointee selected to fill ~~((such))~~ a  
27 vacancy shall hold office for the balance of the full term for which  
28 his or her predecessor on the commission was appointed. When a  
29 commissioner who has heard all or a substantial part of an adjudicative  
30 proceeding leaves office before entry of a final order in the  
31 proceeding, he or she may at the request of the remaining commissioners  
32 be appointed by the governor to become a commissioner pro tempore to  
33 conclude and decide the proceeding, and sign the final order or orders.  
34 A proceeding is completed when the commission enters a final order  
35 purporting to resolve all contested issues therein, from which no party  
36 seeks clarification or reconsideration, or upon entry of an order on  
37 clarification or reconsideration, even though the order is subject to  
38 a petition for judicial review.

1 In the event of a commissioner's recusal from a proceeding being  
2 conducted before the commission under part IV of chapter 34.05 RCW, or  
3 in the event of a temporary vacancy in the office of commissioner due  
4 to serious illness or other valid reason requiring a commissioner's  
5 extended but not permanent absence, the governor may at the request of  
6 the commission appoint a commissioner pro tempore of the same political  
7 affiliation as the absent commissioner to perform, for a defined period  
8 of time, specific and limited tasks requested by the governor, such as  
9 presiding with other commissioners at open meetings and in one or more  
10 specific adjudications under part IV of chapter 34.05 RCW. The  
11 commission shall, after consultation with affected interests, maintain  
12 a list of former commissioners and present and former administrative  
13 law judges and advisory staff members from whom the governor may choose  
14 a pro tempore appointment. A pro tempore appointment is not subject to  
15 senate confirmation and the appointment or service of a commissioner  
16 pro tempore shall not affect the appointment, qualification, or  
17 confirmation of a commissioner to a full or unexpired term.

18 A commissioner pro tempore shall serve at the pleasure of the  
19 governor until completion of the assignments for which he or she is  
20 appointed. A commissioner pro tempore shall receive a reasonable  
21 compensation to be fixed by the remaining members of the commission.

22 If a vacancy occurs while the senate is not in session, the  
23 governor shall make a temporary appointment until the next meeting of  
24 the senate, when he or she shall present to the senate his or her  
25 nomination or nominations for the office to be filled.

26 **Sec. 2.** RCW 80.01.030 and 1961 c 14 s 80.01.030 are each amended  
27 to read as follows:

28 The commission shall appoint and employ a secretary and such  
29 accounting, engineering, expert and clerical assistants, and such other  
30 qualified assistants as may be necessary to carry on the administrative  
31 work of the commission.

32 The secretary shall be the custodian of the commission's official  
33 seal, and shall keep full and accurate minutes of all transactions,  
34 proceedings and determinations of the commission and perform such other  
35 duties as may be required by the commission.

36 The commission may deputize one or more of its assistants to  
37 perform, in the name of the commission, such duties of the commission

1 as it deems expedient. The commission may, by rule or order, delegate  
2 to designated assistants any of the powers and duties vested in or  
3 imposed upon the commission by law except matters governed by chapter  
4 34.05 RCW. Delegated powers and duties may be exercised in the name of  
5 the commission. The commission by rule shall implement a process by  
6 which notice shall be provided of matters designated for delegation.  
7 Any such matter shall be heard or reviewed by commissioners at the  
8 request of any commissioner or any affected person.

9 **Sec. 3.** RCW 80.01.050 and 1995 c 331 s 2 are each amended to read  
10 as follows:

11 A majority of the commissioners shall constitute a quorum for the  
12 transaction of any business, for the performance of any duty, or for  
13 the exercise of any power of the commission, and may hold hearings at  
14 any time or place within or without the state. A quorum of  
15 commissioners need not affirm any matter delegated under RCW 80.01.030.  
16 Any investigation, inquiry, or hearing which the commission has power  
17 to undertake or to hold may be undertaken or held by or before any  
18 commissioner or any ~~((employee designated and authorized by the~~  
19 ~~commission)) administrative law judge as provided in RCW 80.01.060.  
20 All investigations, inquiries, and hearings of the commission, and all  
21 findings, orders, or decisions, made by a commissioner or  
22 administrative law judge, when approved and confirmed by the commission  
23 or allowed to become final pursuant to RCW 80.01.060 and filed in its  
24 office, shall be ~~((and be deemed to be))~~ the orders or decisions of the  
25 commission.~~

26 **Sec. 4.** RCW 80.01.060 and 1995 c 331 s 3 are each amended to read  
27 as follows:

28 (1) The commission may ~~((designate employees of the commission as~~  
29 ~~hearing examiners,)) appoint administrative law judges~~((, and review~~  
30 ~~judges))~~ when it deems such action necessary for its general  
31 administration. The ~~((designated employees have power to))~~  
32 administrative law judges may administer oaths, ~~((to))~~ issue subpoenas  
33 for the attendance of witnesses and the production of papers, waybills,  
34 books, accounts, documents, and testimony, ~~((to))~~ examine witnesses,  
35 make findings of probable cause and issue complaints in the name of the  
36 commission, and ~~((to))~~ receive testimony in any inquiry, investigation,~~

1 hearing, or proceeding in any part of the state, under such rules as  
2 the commission may adopt. The administrative law judges appointed  
3 under this subsection are not subject to chapter 41.06 RCW.

4 (2) In general rate increase filings by a natural gas, electric, or  
5 telecommunications company, the ((~~designated employee~~)) administrative  
6 law judges may preside, but may not enter an initial order unless  
7 expressly agreed to in writing by the company making the filing. In  
8 all other cases, the ((~~designated employee~~)) administrative law judge  
9 may enter an initial order including findings of fact and conclusions  
10 of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through  
11 (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry  
12 of orders under this section. ((~~The designated employee~~))

13 (3) Administrative law judges may not enter final orders, except  
14 that the commission may designate persons by rule to preside and enter  
15 final orders in emergency adjudications under RCW 34.05.479. Initial  
16 orders of administrative law judges shall become final on the day  
17 following expiration of the time established by the commission for  
18 filing a petition for administrative review, unless, within that time,  
19 a party petitions for administrative review or the commission notifies  
20 parties that it will review the initial order on its own motion.

21 ((~~+3~~)) (4) If the ((~~designated employee~~)) administrative law judge  
22 does not enter an initial order as provided in subsection (2) of this  
23 section, then a majority of the members of the commission who are to  
24 enter the final order must hear or review substantially all of the  
25 record submitted by any party.

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