

CHAPTER 234.

[S. B. 257.]

ADMINISTRATIVE PROCEDURES.

AN ACT relating to procedure of state administrative agencies and review of their determinations.

Be it enacted by the Legislature of the State of Washington:

Definitions.
"Agency."

SECTION 1. For the purpose of this act:

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

"Rule."

(2) "Rule" includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations which concern only the internal management of the agency and do not directly affect the rights of or procedures available to the public.

"Contested case."

(3) "Contested case" means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

Rule-making requirements enumerated.

SEC. 2. In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this act. Such rules may state the qualifications of persons for practice before the agency. Such rules shall also include rules of practice before the agency, together with forms and instructions.

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

(3) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall file notice thereof with the office of code reviser. So far as practicable, the adopting agency shall also publish or otherwise circulate notice of its intended action and afford interested persons opportunity to submit data or views either orally or in writing. Such notice shall include (a) a statement of the time, place, and nature of public rule-making proceedings, (b) reference to the authority under which the rule is proposed, and (c) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, subdivision (3) of this section shall not apply to interpretative rules, general statements of policy, or rules of internal agency organization, procedure or practice.

SEC. 3. If the agency finds that immediate adoption or amendment of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, the agency may dispense with such requirements and adopt the rule or amendment as an emergency rule or amendment. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule or amendment as filed with the office of the code reviser under section 4 of this act. An emergency rule or amendment shall not remain in effect for longer than ninety days. This section does not relieve any agency from compliance with any law

Emergency
rules or
amendments.

requiring that its rules be approved by designated persons or bodies before they become effective.

Rules filed—
Effective date
—Register
kept—Re-
viser's report
to legislature.

SEC. 4. (1) Each agency shall file forthwith in the office of the code reviser a certified copy of all rules now in effect and hereafter adopted, except the rules contained in tariffs filed with or published by the Washington public service commission. The code reviser shall keep a permanent register of such rules open to public inspection.

(2) Emergency rules adopted under section 3 of this act shall become effective upon filing. All other rules hereafter adopted shall become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the rule.

(3) The code reviser shall report to each regular session of the legislature on the state of compliance of the agencies with this section. For this purpose, all agencies shall supply the code reviser with such information as he may request.

SEC. 5. (1) The code reviser shall, as soon as practicable after the effective date of this act, compile and index all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years.

(2) The code reviser shall publish a monthly bulletin in which he shall set forth the text of all rules filed during the preceding month excluding rules in effect upon the adoption of this act.

(3) The code reviser may, in his discretion, omit from the bulletin or the compilation, rules, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if such bulletin or compilation contains a notice stating the general

subject matter of the rules so omitted and stating how copies thereof may be obtained.

(4) Bulletins and compilations shall be made available, in written form to officials of this state upon request and to county boards of law library trustees and to the Olympia representatives of the Associated Press and the United Press International without request, free of charge, and to other persons at a price fixed by the code reviser to cover publication and mailing costs.

(5) The board of law library trustees of each county shall keep and maintain a complete and current set of bulletins and compilations for use and inspection as provided in RCW 27.24.060.

(6) Judicial notice shall be taken of rules filed and published as provided in section 4 and this section.

SEC. 6. Any interested person may petition an agency requesting the promulgation, amendment, or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

Petitions
as to rules
authorized.

SEC. 7. (1) The validity of any rule may be determined upon petition for a declaratory judgment thereon addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair, the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

Determining
validity of
rule—Declaratory
judgment.

(2) In a proceeding under subsection (1) of this section the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or

was adopted without compliance with statutory rule-making procedures.

Determining
applicability
to subject—
Declaratory
ruling—
Appeal.

SEC. 8. On petition of any interested person, an agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the superior court of Thurston county in the manner hereinafter provided for the review of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

Contested
cases—Pro-
cedure—
Rights.

SEC. 9. (1) In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record of the hearing which shall include testimony recorded manually or by a mechanical device and exhibits, in each contested case, but it shall not be necessary to transcribe testimony unless requested for purposes of agency decision pursuant to section 11 of this act, rehearing, or court review. A copy of the record shall be furnished to any party to the hearing upon request therefor and payment of the reasonable costs thereof. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

- (2) Agencies, or their authorized agents, may
 - (a) administer oaths and affirmations, examine witnesses, and receive evidence,
 - (b) issue subpoenas as provided by law,
 - (c) rule upon offers of proof and receive relevant evidence,
 - (d) take or cause depositions to be taken pursuant to rules promulgated by the agency,
 - (e) regulate the course of the hearing,
 - (f) hold conferences for the settlement or simplification of the issues by consent of the parties,
 - (g) dispose of procedural requests or similar matters,
 - (h) make decisions or proposals for decision pursuant to section 11 of this act,
 - (i) take any other action authorized by agency rule consistent with this act.

SEC. 10. In contested cases:

(1) Agencies, or their authorized agents, may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(2) All evidence, including but not limited to records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-

Rules of
evidence
(contested
cases).

examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

(4) Agencies, or their authorized agents, may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies, or their authorized agents, may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

Proposal
for decision
authorized.

SEC. 11. Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law has been served upon the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present written argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties. Oral arguments may be heard in the discretion of the agency.

Decision
or order.

SEC. 12. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order

and accompanying findings and conclusions shall be delivered or mailed to each party or to his attorney of record.

SEC. 13. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under this act. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

Judicial
review (only
under act).
Procedure.

(2) Proceedings for review under this act shall be instituted by filing a petition in a superior court. In cases where review by the superior court for Thurston county was previously or hereafter is specifically provided by statute, the petition shall be filed in that court. In all other cases the petition shall be filed in the superior court for the county of the petitioner's residence or principal place of business, or in the absence of a residence or principal place of business, for Thurston county. All petitions shall be filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or supersedeas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by

stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by material and substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Appeal to
supreme
court.

SEC. 14. An aggrieved party may secure a review of any final judgment of the superior court under this act by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases.

State agencies
excepted
under act.

SEC. 15. This act shall not apply to the state militia, the liquor control board, or the board of prison terms and paroles. The provisions of section 9 through 13 of this act shall not apply to the board

of industrial insurance appeals, the state board of equalization or the insurance commissioner or the state tax commission. The provisions of sections 6, 7 and 8 of this act shall not apply to the department of public assistance.

SEC. 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. **Severability.**

SEC. 17. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed, but such repeal shall not affect pending proceedings. **General repeal—Savings.**

SEC. 18. Sections 2, 3, 4, and 5 of this act shall take effect upon the elapse of one year from the date of its enactment. The other sections of this act shall take effect upon the elapse of six months from the date of its enactment. **Effective date.**

SEC. 19. If any part of this act shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. **Conflicts with federal requirements, inoperative.**

Passed the Senate March 10, 1959.

Passed the House March 9, 1959.

Approved by the Governor March 23, 1959.