CHAPTER 57

[Engrossed Senate Bill No. 469]

STATE HIGHER EDUCATION ADMINISTRATIVE PROCEDURE ACT

AN ACT Relating to state institutions of higher education; establishing an administrative procedures act for state institutions of higher education; authorizing the delegation of powers; amending section 15, chapter 234, Laws of 1959 as last amended by section 1, chapter 21, Laws of 1971 and RCW 34.04.150; adding new sections to chapter 223, Laws of 1969 ex. sess. and to Title 28B RCW as a new chapter thereof; adding a new section to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.10 RCW; providing an effective date; and declaring an emergency.

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

NEW SECTION. Section 1. The interest of state institutions of higher education, those students and other citizens whom the institutions serve, employees, and the public generally, will be furthered by providing a uniform framework for the adoption, identification, and enforcement of rules and regulations governing aspects of institutional operation which affect substantial rights of individuals. The general purpose of this chapter is to provide a uniform framework for promulgation of certain administrative rules and regulations and the conduct of hearings where contested cases arise in connection with those rules and regulations, consistent with the particular needs of institutions of higher education and the people they serve.

NEW SECTION. Sec. 2. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise:

(1) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington State College, Eastern Washington State College, Western Washington State College, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions." The various state community colleges are sometimes referred to in this chapter as "community colleges."

(2) "Rule" means any order, directive, or regulation of any institution of higher education which affects the relationship of the general public with the institution, or the relationship of particular segments of the particular educational community such as students, faculty, or other employees, with the institution or with

each other, (a) the violation of which subjects a person to a penalty or administrative sanction; or (b) which establishes, alters, or revokes any procedures, practice, or requirement relating to institutional hearings; or (c) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law. The term includes the amendment or repeal of a prior rule but does not include rules, regulations, orders, statements, or policies relating primarily to the following: Standards for admission; academic advancement, academic credits, graduation and the granting of degrees; tuition and fees, scholarships, financial aids, and similar academic matters; employment relationships; fiscal processes; or matters concerning only the internal management of an institution and not affecting private rights or procedures available to the general public; and such matters need not be established by rule adopted under this chapter unless otherwise required by law.

(3) "Contested case" means a formal or informal proceeding before an institution of higher education, division, department, office, or designated official or representative thereof in which an opportunity for hearing is required by law, constitutional rights, or institutional policy, prior or subsequent to the determination by the institution of the legal rights, duties, or privileges of specific parties.

NEW SECTION. Sec. 3. (1) Prior to the adoption, amendment, or repeal of any rule adopted under this chapter, each institution, college, division, department, or official thereof exercising rule-making authority delegated by the governing board or the president, shall:

(a) Give at least twenty days' notice of its intended action by filing the notice with the code reviser and by mailing the notice to all persons who have made timely request of the institution or related board for advance notice of its rule-making proceedings. Such notice shall include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon.

(b) Provide notice to the campus or standard newspaper of the institution involved and to a newspaper of general circulation in the area at least seven days prior to the date of the rule-making proceeding. The notice shall state the time when, place where and manner in which interested persons may present their views thereon and the general subject matter to be covered.

(c) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. An

opportunity for oral hearing must be granted if requested by twenty-five persons. The institution shall consider fully all written and oral statements respecting the proposed rule.

(2) No rule adopted under this chapter is valid unless adopted in substantial compliance with this section, or, if an emergency rule designated as such, adopted in substantial compliance with section 4 of this 1971 amendatory act, as now or hereafter amended. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of this section, or of section 4 of this 1971 amendatory act, as now or hereafter amended, after two years have elapsed from the effective date of the rule.

(3) When twenty days notice of intended action to adopt, amend or repeal a rule has not been filed with the code reviser, as required by subsection (1) (a) of this section, the code reviser shall not publish such rule and such rule shall not be effective for any purpose.

NEW SECTION. Sec. 4. If the institution of higher education finds that immediate adoption or amendment of a rule is necessary for the preservation of the public health, safety, or general welfare, and the observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, the institution may dispense with such requirements and adopt the rule or amendment as an emergency rule or amendment. The institution's finding and a brief statement of the reasons for its finding shall accompany the emergency rule or amendment as filed with the code reviser. An emergency rule or amendment shall not remain in effect for longer than ninety days.

Emergency rules shall become effective when promulgated unless an effective date is specified in the rule.

NEW SECTION. Sec. 5. (1) Any rules adopted after the effective date of this chapter shall be filed forthwith with the office of the code reviser. The code reviser shall keep a permanent register of such rules open to public inspection.

(2) Emergency rules adopted under section 4 of this 1971 amendatory 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 institutions of higher education with this section. For this purpose, all institutions of higher education shall supply the code reviser with such information as he may request.

NEW SECTION. Sec. 6. Any rules which have been adopted prior to the effective date of this 1971 amendatory act shall be filed

within six months of that date with the code reviser, who is not authorized to prescribe the form of nor required to publish such rules. Such rules shall not be valid after December 31, 1972, except that they shall continue to be valid for the purpose of proceedings pending as of that date, unless readopted pursuant to this chapter in the form and style of the code reviser: PROVIDED, HOWEVER, That any rules previously adopted and filed in accordance with chapter 34.04 RCW need not be refiled and they shall remain valid as though they had been adopted under this chapter.

NEW SECTION. Sec. 7. The code reviser shall as soon as practicable compile, index and publish in the Washington administrative code all rules adopted pursuant to this chapter by each institution of higher education and remaining in effect. The code reviser, in his discretion, may omit from publication in the Washington administrative code those 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 institution of higher education and if the Washington administrative code states the general subject matter of the rules so omitted and states how copies thereof may be obtained. Judicial notice shall be taken of rules published pursuant to this section.

NEW SECTION. Sec. 8. The code reviser may prescribe regulations for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various institutions of higher education in the drafting of such rules and notices.

NEW SECTION. Sec. 9. After the rules of institutions of higher education have been published by the code reviser all institution of higher education orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington administrative code.

NEW SECTION. Sec. 10. (1) The validity of any rule promulgated by an institution of higher education may be determined upon petition for a declaratory judgment thereon addressed to the superior court of the county in which the primary office of the institution of higher education is located, 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 institution shall be made a party to the proceeding. The declaratory judgment may not be rendered unless the petitioner has first requested the institution to pass upon the validity of the rule in question.

(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 or statutory provision or exceeds the statutory authority of the institution or was adopted without compliance with statutory rule-making procedures established by this chapter.

NEW SECTION. Sec. 11. (1) The informal procedures heretofore established or hereafter promulgated by rule by institutions of higher education for the disposition of contested cases, may be utilized by institutions, where authorized by the governing boards of the institutions.

(2) Any person who is charged with an offense potentially punishable by suspension, or termination of his relationship with the institution and (a) who elects to waive the opportunity for an informal hearing, or (b) who by his conduct in the judgment of the hearing officer or board makes it impossible to conduct an informal hearing, or (c) who deems himself aggrieved by the disposition of any contested case following an informal proceeding undertaken pursuant to subsection (1) above, may have charges against him adjudicated in a formal hearing pursuant to section 12 of this 1971 amendatory act: PROVIDED, That any request for a formal hearing is directed to the president of the institution or his designee (i) within ten days after notification of the time and place of an informal hearing, or (ii) within five days after communication of the hearing officer or board chairman ruling that it is impossible to conduct an informal hearing for whatever reason, or (iii) within ten days after conclusion of the informal proceeding and notice of the final decision to the party charged with an offense.

(3) Where a formal hearing is conducted following conclusion or termination of an informal hearing authorized by subsection (1) above, the formal hearing shall be conducted as if the informal hearing had not commenced or taken place.

NEW SECTION. Sec. 12. (1) In any contested case where informal procedures authorized by section 11 subsection (1) of this 1971 amendatory act are not used and where the formal procedures are invoked because of necessity or request in accordance with section 11 subsection (2) of this 1971 amendatory act, all parties shall be afforded an opportunity for hearing after not less than ten days' notice. The notice shall include:

(a) A statement of the time, place, and nature of the proceeding;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular rules of the institution involved;

(d) A short and plain statement of the matters asserted. If the institution or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon request a more definite and detailed statement shall be furnished.

(2) Hearings may be held or conducted by any officer or committee authorized by the president of any institution of higher education. The hearing officer or committee shall determine whether the hearing shall be open to the educational community in which it takes place, or whether particular persons should be permitted in attendance or excluded from attendance.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved, and to examine and cross-examine witnesses.

(4) Statements, testimony, and all other evidence given at an informal proceeding authorized pursuant to section 11 subsection (1) of this 1971 amendatory act shall be confidential and shall not be subject to discovery or released to anyone, including the officer or committee conducting a formal hearing or the parties involved, or used for impeachment purposes, without permission of the person who divulged the information.

(5) Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default, or other established informal procedure.

(6) The record in a contested case shall include:

(a) All documents, motions, and intermediate rulings;

(b) Evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof, objections, and rulings thereon;

(e) Proposed findings and exceptions; and

(f) Any decision, opinion, or report by the officer or committee chairman presiding at the hearing.

(7) Oral proceedings shall be transcribed if necessary for the purposes of rehearing, or court review. A copy of the record or any part thereof shall be transcribed and furnished to any party to the hearing upon request therefor and payment of the costs thereof.

(8) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(9) Each institution shall adopt appropriate rules of procedure for notice and hearing informal contested cases.

(10) Institutions, or their authorized hearing officer or committee, may:

(a) Administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge

information which he could not be compelled to divulge in a court of law;

(b) Issue subpoenas;

(c) Take or cause depositions to be taken pursuant to rules promulgated by the institution, and no person shall be compelled to divulge information which he could not be compelled to divulge by deposition in connection with a court proceeding;

(d) Regulate the course of the hearing;

(e) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(f) Dispose of procedural requests or similar matters;

(g) Make decisions or proposals for decisions; and

(h) Take any other action authorized by rule consistent with this chapter.

NEW SECTION. Sec. 13. (1) In any contested case institutions of higher education and their officers or agents conducting hearings:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by institution rule, upon a statement showing general relevance and reasonable scope of the evidence sought; and

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers created by this section shall be statewide in effect.

(3) Fees and allowances, and the cost of producing records required to be produced by institution subpoena, shall be paid by the party requesting the issuance of the subpoena.

(4) If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the institution issuing the subpoena may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the hearing body. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. The court may, in its discretion, require an

institution or party to pay fees and allowances for witnesses in the same manner and under the same conditions as provided for witnesses in the courts of this state by chapter 2.40 RCW and RCW 5.56.010, as now or hereafter amended.

NEW SECTION. Sec. 14. Except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, no institution officer or committee conducting a hearing in a contested case or preparing a decision, or proposal for decision, shall consult with any person or party on any issue of fact or law in the proceeding, except that in analyzing and appraising the record for decision any hearing officer or committee may (1) consult with officials of the institution making the decision appealed from, (2) have the aid and advice of one or more personal assistants, (3) have the assistance of other employees of the institution who have not participated in the proceeding in any manner and who are not engaged for the institution in any investigative functions in the same or any current factually related case and who are not engaged for the institution in any prosecutory functions.

NEW SECTION. Sec. 15. (1) Any party, including the institution involved, aggrieved by a final decision in a contested case where formal proceeding has been utilized, whether such decision is affirmative or negative in form, is entitled to judicial review thereof only under the provisions of this chapter, and such party may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the institution's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the decision shall not be final until action has been taken thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court in the county wherein the primary office of the institution involved is located. All petitions shall be filed, together with an appropriate cost bond securing payment of costs necessary to prepare the record, within thirty days after the service of the final decision by the institution. Copies of the petition shall be served upon the institution or related board and all other parties of record.

(3) The filing of the petition shall not stay enforcement of the decision being appealed. Where other statutes provide for stay or supersedeas of a decision, it may be stayed by the institution or the reviewing court only as provided therein; otherwise the institution 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 institution 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 proceedings, 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 a 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 institution now 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 appealed from, 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 any state or federal constitutional provision; or

(b) In excess of the statutory authority or jurisdiction of the institution; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(f) Arbitrary or capricious.

NEW SECTION. Sec. 16. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state or to an institution of higher education, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the institutions directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to other institutions.

Sec. 17. Section 15, chapter 234, Laws of 1959 as last amended by section 1, chapter 21, Laws of 1971 and RCW 34.04.150 are each amended to read as follows:

This chapter shall not apply to the state militia, or the board of prison terms and paroles, or any institution of higher education as defined in section 2 of this 1971 amendatory act. The provisions of RCW 34.04.090 through 34.04.130 shall not apply to the board of industrial insurance appeals or the board of tax appeals

unless an election is made pursuant to RCW 82.03.140 or 82.03.190. The provisions of RCW 34.04.090 through 34.04.130 and the provisions of RCW 34.04.170 shall not apply to the denial, suspension or revocation of a driver's license by the department of motor vehicles. All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act.

NEW SECTION. Sec. 18. Sections 1 through 16 and 20 of this 1971 amendatory act are added to chapter 223, Laws of 1969 ex. sess. and to Title 28B RCW as a new chapter thereof.

NEW SECTION. Sec. 19. If any provision of this 1971 amendatory act or the application thereof 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 any section, sentence, or word is declared to be severable.

NEW SECTION. Sec. 20. Sections 1 through 16 of this 1971 amendatory act shall be referred to as the State Higher Education Administrative Procedure Act.

NEW SECTION. Sec. 21. There is added to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.10 RCW a new section to read as follows:

The governing boards of institutions of higher education shall have power, when exercised by resolution, to delegate to the president or his designee, of their respective university or college, any of the powers and duties vested in or imposed upon such governing board by law. Delegated powers and duties may be exercised in the name of the respective governing boards.

NEW SECTION. Sec. 22. Sections 1 through 20 of this 1971 amendatory act shall become effective September 1, 1971: PROVIDED, That institutions of higher education are authorized and empowered to undertake to perform duties and conduct activities necessary to comply with sections 1 through 16 of this 1971 amendatory act immediately: PROVIDED FURTHER, That section 21 of this 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, and the support of the state government and its existing public institutions and shall take effect immediately.

Passed the Senate March 17, 1971.
Passed the House April 16, 1971.
Approved by the Governor May 6, 1971.
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