



Effect: The two year limit may be waived where all parties consent.

1 AN ACT Relating to deadlines for final determinations and  
2 dispositions in agency adjudicative proceedings; and amending RCW  
3 34.05.413, 34.05.534, 34.05.562, and 39.05.570.

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

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

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

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

13 (3) An agency may provide forms for and, by rule, may provide  
14 procedures for filing an application for an adjudicative proceeding.  
15 An agency may require by rule that an application be in writing and  
16 that it be filed at a specific address, in a specified manner, and  
17 ~~within specified time limits. The agency shall allow at least twenty~~  
18 days to apply for an adjudicative proceeding from the time notice is  
19 given of the opportunity to file such an application.

20 (4) If an agency is required to hold an adjudicative proceeding,  
21 an application for an agency to enter an order includes an

1 application for the agency to conduct appropriate adjudicative  
2 proceedings, whether or not the applicant expressly requests those  
3 proceedings.

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

8 (6) An agency must make a final administrative determination or  
9 disposition for any matter that is subject to an adjudicative  
10 proceeding within two years after the commencement of the  
11 adjudicative proceeding, unless all parties to the proceeding agree  
12 to waive such time limitation. The final administrative determination  
13 or disposition must allow a person with standing in an adjudicative  
14 proceeding to obtain judicial review of any agency action that is  
15 subject to the adjudicative proceeding. For the purposes of this  
16 subsection, an adjudicative proceeding includes any hearing under  
17 chapter 34.12 RCW.

18 **Sec. 2.** RCW 34.05.534 and 1997 c 409 s 302 are each amended to  
19 read as follows:

20 A person may file a petition for judicial review under this  
21 chapter only after exhausting all administrative remedies available  
22 within the agency whose action is being challenged, or available  
23 within any other agency authorized to exercise administrative review,  
24 except:

25 (1) A petitioner for judicial review of a rule need not have  
26 participated in the rule-making proceeding upon which that rule is  
27 based, have petitioned for its amendment or repeal, have petitioned  
28 the joint administrative rules review committee for its review, or  
29 have appealed a petition for amendment or repeal to the governor;

30 (2) A petitioner for judicial review need not exhaust  
31 administrative remedies to the extent that this chapter or any other  
32 statute states that exhaustion is not required; ~~((or))~~

33 (3) The court may relieve a petitioner of the requirement to  
34 exhaust any or all administrative remedies upon a showing that:

35 (a) The remedies would be patently inadequate;

36 (b) The exhaustion of remedies would be futile; or

37 (c) The grave irreparable harm that would result from having to  
38 exhaust administrative remedies would clearly outweigh the public  
39 policy requiring exhaustion of administrative remedies; or

1       (4) A person may file a petition for judicial review under this  
2 chapter and is presumed to have exhausted all administrative remedies  
3 when an agency fails to comply with RCW 34.05.413(6). When a petition  
4 for judicial review is filed under this subsection, the adjudicative  
5 proceeding for which judicial review is sought is stayed, pending  
6 further order by the court. The court may grant an exception to the  
7 stay only on the petitioner's request that the adjudicative  
8 proceeding be continued, concurrent with judicial review, with  
9 respect to issues and facts not identified as contested in, or  
10 otherwise relevant to, the petition for judicial review.

11       **Sec. 3.** RCW 34.05.562 and 1988 c 288 s 514 are each amended to  
12 read as follows:

13       (1) The court may receive evidence in addition to that contained  
14 in the agency record for judicial review, only if it relates to the  
15 validity of the agency action at the time it was taken and is needed  
16 to decide disputed issues regarding:

17       (a) Improper constitution as a decision-making body or grounds  
18 for disqualification of those taking the agency action;

19       (b) Unlawfulness of procedure or of decision-making process;  
20 ((or))

21       (c) Material facts in rule making, brief adjudications, or other  
22 proceedings not required to be determined on the agency record; or

23       (d) Any issue or fact identified as contested in a petition for  
24 judicial review filed under RCW 34.05.534(4).

25       (2) The court may remand a matter to the agency, before final  
26 disposition of a petition for review, with directions that the agency  
27 conduct fact-finding and other proceedings the court considers  
28 necessary and that the agency take such further action on the basis  
29 thereof as the court directs, if:

30       (a) The agency was required by this chapter or any other  
31 provision of law to base its action exclusively on a record of a type  
32 reasonably suitable for judicial review, but the agency failed to  
33 prepare or preserve an adequate record;

34       (b) The court finds that (i) new evidence has become available  
35 that relates to the validity of the agency action at the time it was  
36 taken, that one or more of the parties did not know and was under no  
37 duty to discover or could not have reasonably been discovered until  
38 after the agency action, and (ii) the interests of justice would be  
39 served by remand to the agency;

1 (c) The agency improperly excluded or omitted evidence from the  
2 record; or

3 (d) A relevant provision of law changed after the agency action  
4 and the court determines that the new provision may control the  
5 outcome.

6 (3) When a petition for judicial review is filed under RCW  
7 34.05.534(4), the court may not remand a matter under subsection (2)  
8 of this section unless all parties consent.

9 **Sec. 4.** RCW 34.05.570 and 2004 c 30 s 1 are each amended to read  
10 as follows:

11 (1) Generally. Except to the extent that this chapter or another  
12 statute provides otherwise:

13 (a) The burden of demonstrating the invalidity of agency action  
14 is on the party asserting invalidity;

15 (b) The validity of agency action shall be determined in  
16 accordance with the standards of review provided in this section, as  
17 applied to the agency action at the time it was taken;

18 (c) The court shall make a separate and distinct ruling on each  
19 material issue on which the court's decision is based; and

20 (d) The court shall grant relief only if it determines that a  
21 person seeking judicial relief has been substantially prejudiced by  
22 the action complained of.

23 (2) Review of rules. (a) A rule may be reviewed by petition for  
24 declaratory judgment filed pursuant to this subsection or in the  
25 context of any other review proceeding under this section. In an  
26 action challenging the validity of a rule, the agency shall be made a  
27 party to the proceeding.

28 (b)(i) The validity of any rule may be determined upon petition  
29 for a declaratory judgment addressed to the superior court of  
30 Thurston county, when it appears that the rule, or its threatened  
31 application, interferes with or impairs or immediately threatens to  
32 interfere with or impair the legal rights or privileges of the  
33 petitioner. The declaratory judgment order may be entered whether or  
34 not the petitioner has first requested the agency to pass upon the  
35 validity of the rule in question.

36 (ii) From June 10, 2004, until July 1, 2008:

37 (A) If the petitioner's residence or principal place of business  
38 is within the geographical boundaries of the third division of the  
39 court of appeals as defined by RCW 2.06.020(3), the petition may be

1 filed in the superior court of Spokane, Yakima, or Thurston county;  
2 and

3 (B) If the petitioner's residence or principal place of business  
4 is within the geographical boundaries of district three of the first  
5 division of the court of appeals as defined by RCW 2.06.020(1), the  
6 petition may be filed in the superior court of Whatcom or Thurston  
7 county.

8 (c) In a proceeding involving review of a rule, the court shall  
9 declare the rule invalid only if it finds that: The rule violates  
10 constitutional provisions; the rule exceeds the statutory authority  
11 of the agency; the rule was adopted without compliance with statutory  
12 rule-making procedures; or the rule is arbitrary and capricious.

13 (3) Review of agency orders in adjudicative proceedings. The  
14 court shall grant relief from an agency order in an adjudicative  
15 proceeding only if it determines that:

16 (a) The order, or the statute or rule on which the order is  
17 based, is in violation of constitutional provisions on its face or as  
18 applied;

19 (b) The order is outside the statutory authority or jurisdiction  
20 of the agency conferred by any provision of law;

21 (c) The agency has engaged in unlawful procedure or decision-  
22 making process, or has failed to follow a prescribed procedure;

23 (d) The agency has erroneously interpreted or applied the law;

24 (e) The order is not supported by evidence that is substantial  
25 when viewed in light of the whole record before the court, which  
26 includes the agency record for judicial review, supplemented by any  
27 additional evidence received by the court under this chapter;

28 (f) The agency has not decided all issues requiring resolution by  
29 the agency;

30 (g) A motion for disqualification under RCW 34.05.425 or  
31 34.12.050 was made and was improperly denied or, if no motion was  
32 made, facts are shown to support the grant of such a motion that were  
33 not known and were not reasonably discoverable by the challenging  
34 party at the appropriate time for making such a motion;

35 (h) The order is inconsistent with a rule of the agency unless  
36 the agency explains the inconsistency by stating facts and reasons to  
37 demonstrate a rational basis for inconsistency; or

38 (i) The order is arbitrary or capricious.

39 (4) Review of other agency action.

1 (a) All agency action not reviewable under subsection (2) or (3)  
2 of this section shall be reviewed under this subsection.

3 (b) A person whose rights are violated by an agency's failure to  
4 perform a duty that is required by law to be performed may file a  
5 petition for review pursuant to RCW 34.05.514, seeking an order  
6 pursuant to this subsection requiring performance. Within twenty days  
7 after service of the petition for review, the agency shall file and  
8 serve an answer to the petition, made in the same manner as an answer  
9 to a complaint in a civil action. The court may hear evidence,  
10 pursuant to RCW 34.05.562, on material issues of fact raised by the  
11 petition and answer.

12 (c) Relief for persons aggrieved by the performance of an agency  
13 action, including the exercise of discretion, or an action under (b)  
14 of this subsection can be granted only if the court determines that  
15 the action is:

16 (i) Unconstitutional;

17 (ii) Outside the statutory authority of the agency or the  
18 authority conferred by a provision of law;

19 (iii) Arbitrary or capricious; or

20 (iv) Taken by persons who were not properly constituted as agency  
21 officials lawfully entitled to take such action.

22 (5) When a petition for judicial review is filed under RCW  
23 34.05.534(4), review by the court is limited to the issues and facts  
24 specifically identified as contested in the petition, or amended  
25 petition. If the petition, or amended petition, requests de novo  
26 review as to any issue or fact identified as contested, the standard  
27 of judicial review is de novo as to that issue or fact only. Where a  
28 petition does not request de novo review, the standards of review  
29 provided in subsections (1) through (4) of this section apply, and  
30 the court must enter a final order based on the agency record and any  
31 additional evidence received under RCW 34.05.562.

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