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## Judiciary Committee

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### SSB 6019

**Title:** An act relating to adjudicative proceedings involving a state agency.

**Brief Description:** Addressing adjudicative proceedings by state agencies.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen, Frockt and O'Ban).

#### Brief Summary of Substitute Bill

- Requires presiding officers in adjudicative proceedings under the Administrative Procedure Act to enter final orders.
- Prohibits communications between a presiding officer of an adjudicative proceeding under the Administrative Procedure Act and an agency employee that requires as part of an employment evaluation that a presiding officer shall decide cases according to the agency head's unwritten policies.

**Hearing Date:** 3/18/15

**Staff:** Brent Campbell (786-7152).

#### Background:

Washington's Administrative Procedure Act (APA) establishes procedures under which state agencies adopt rules and conduct adjudicative proceedings. Adjudicative proceedings under the APA are similar to court proceedings and are used to determine legal rights, duties, or privileges for an individual person or persons.

Agencies designate presiding officers to oversee administrative hearings. The presiding officer of an adjudicative hearing may be: (1) the agency head or one or more members of the agency head; (2) one or more administrative law judges assigned by the office of administrative hearings in accordance with statute; (3) a person other than the agency head or an administrative law

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judge designated by the agency head to make the final decision and enter the final order; or (4) a person or persons designated by the secretary of health pursuant to statute.

Agencies may use a two-step process for adjudicative proceedings, consisting of initial and final orders, to reach a final agency decision. If an initial order is entered, that order may, under certain circumstances, become a final order without further agency action or it may be further reviewed by the agency for the purpose of entering a final order.

The use of initial orders can depend on the presiding officer of the hearing. If the presiding officer is the agency head or one or more members of the agency head, an initial order may be entered if further review is available within the agency. A final order is issued if further review is not available. If the presiding officer is a person designated by the agency to make a final decision and enter the final order, that person must enter a final order. If the presiding officer is one or more administrative law judges, that person or persons must enter an initial order.

The APA requires presiding officers who regulate the course of adjudicative proceedings to be free from bias, conflict of interest, or undue influence, and it prohibits ex parte communications with limited exceptions. An ex parte communication is any direct or indirect communication between a presiding officer and a person employed by the agency regarding any issue in the proceeding, other than communications necessary to maintaining an orderly process, when there is no opportunity for all parties to participate in the communication. There are specific listed exceptions to the prohibition against ex parte communications. These exceptions permit: (1) a multimember body that presides over the adjudication to communicate with one another regarding the proceeding; (2) presiding officers to receive aid from legal counsel or staff assistants under their supervision; (3) presiding officers to communicate with other employees of the agency who have not participated in the proceeding in any manner and who are not engaged in any investigative or prosecutorial functions related to the case; and (4) communications regarding ex parte matters specifically authorized by statute.

**Summary of Bill:**

Presiding officers in adjudicative hearings under the APA are required to enter only final orders. References to "initial orders" are removed from the chapter regarding a presiding officer's authority to enter orders. Some, but not all, references to "initial orders" are removed from further chapters.

Communications are prohibited between a presiding officer and an agency employee that requires as part of an employment evaluation that a presiding officer shall decide cases according to the agency head's unwritten policies.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.