

SENATE BILL REPORT

SHB 2426

As Reported By Senate Committee On:
Water, Energy & Environment, February 23, 2006

Title: An act relating to duties of the utilities and transportation commission, including commissioner appointments, delegation of powers, and appointment of administrative law judges.

Brief Description: Modifying utilities and transportation commission provisions.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris; by request of Utilities & Transportation Commission).

Brief History: Passed House: 2/14/06, 97-0.

Committee Activity: Water, Energy & Environment: 2/23/06 [DP, DNP].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Delvin, Honeyford and Mulliken.

Staff: William Bridges (786-7424)

Background: The Washington Utilities and Transportation Commission (WUTC) is a quasi-judicial and quasi-legislative state agency that regulates the rates, services, and practices of privately-owned utilities and transportation companies. The WUTC is led by three commissioners appointed by the Governor and confirmed by the Senate for staggered six-year terms.

No temporary (*pro tem*) commissioners. If a commissioner position should become vacant, the Governor may appoint a replacement subject to the confirmation process. However, there is no provision for the appointment of *pro tem* commissioners that can serve for a specified time or on a particular case.

Commissioners may determine probable cause and act as judges in the same case. When the WUTC initiates a complaint against a regulated company, it must be preceded by a determination of probable cause by the commissioners. The determination is based on evidence provided by staff. If probable cause is found, the complaint will be heard by the same commissioners at an adjudicative hearing.

Final orders at the WUTC must be approved by the commissioners. Commissioners personally preside in adjudicative hearings or they make final decisions based on the initial

determinations of administrative law judges (ALJs). Under current law, the WUTC must enter an order confirming the result of initial orders, even if no appeal is sought.

Commissioners must formally approve matters, whether contested or not. Two to three times a month, the WUTC convenes regularly scheduled meetings, called "open meetings," to process various filings. During an open meeting, commission staff present their analyses and recommend orders on various agenda items. According to the WUTC, the majority of items are uncontested and require little discretion on the part of the commissioners.

Administrative law judges at the WUTC are civil service employees. Unlike ALJs at some agencies, such as the Office of Administrative Hearings, Department of Health, and the Environmental Hearings Office, the ALJs at the WUTC are not exempt from civil service provisions.

Summary of Bill: A limited process for the appointment of *pro tem* commissioners is established. At the request of the remaining commissioners, the Governor may appoint a commissioner leaving office as a *pro tem* commissioner in order to complete an adjudicative proceeding that he or she has substantially heard. A *pro tem* commissioner must receive reasonable compensation to be determined by the remaining commissioners.

Delegation authority is provided for certain duties. Commissioners may delegate responsibility to designated assistants for "any of the powers and duties vested in or imposed upon the commission by law," except matters governed by the Administrative Procedures Act. A matter may not be delegated to any person who has worked as an advocate on the same docket. All matters will still be heard or reviewed by the commissioners upon request of any commissioner or any affected person.

Provisions concerning final orders and the civil service status of ALJs are specified. In general, initial orders of ALJs will become final if no review is sought. Commissioners may appoint ALJs that are exempt from the civil service law, but they are still subject to discipline and termination for cause.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill increases efficiency, reduces waste, and improves the quality of justice at the commission. The bill has been scaled down to accommodate concerns.

Testimony Against: None.

Who Testified: PRO: Mark Sidran, WUTC.