

HOUSE BILL REPORT

HB 2230

As Reported by House Committee On:
State Government & Tribal Affairs
Ways & Means

Title: An act relating to requiring certain health agencies to use administrative law judges from the office of administrative hearings.

Brief Description: Requiring certain health agencies to use administrative law judges from the office of administrative hearings.

Sponsors: Representatives Jenkins, Ladenburg, Ryu, Pollet, Ormsby, Wylie, Cody and Roberts.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/19/12, 1/30/12 [DPS];
Ways & Means: 2/6/12, 2/7/12 [DPS(SGTA)].

Brief Summary of Substitute Bill

- Establishes that all administrative adjudicative matters coming before the Department of Health (DOH) or its Secretary must be conducted by the Office of Administrative Hearings (OAH).
- Establishes that all employees of the DOH serving as presiding officers in administrative adjudicatory proceedings are transferred to the jurisdiction of the OAH.
- Provides the Secretary of the DOH with specified authority to review the initial decisions of administrative law judges and issue final orders in adjudicative proceedings.
- Prohibits both the DOH and the OAH from adding full-time staff in response to the transfers authorized under the act, except for those staff explicitly made subject to the transfer.
- Creates a nonsupervisory bargaining unit in the OAH consisting of the employees transferred from the DOH to the OAH.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, Hurst, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Staff: Thamas Osborn (786-7129).

Background:

Specified Regulatory Functions of the Department of Health.

The powers, authority, and functions of the Department of Health (DOH) are extremely broad and include the regulation of:

- specified health care providers and entities under the Uniform Disciplinary Act (chapter 18.130 RCW);
- the dispensation and distribution of controlled substances (chapter 69.45 RCW);
- specified aspects of the Uniform Controlled Substances Act (chapter 69.50 RCW); and
- local health departments and officers (chapter 70.05 RCW).

The DOH is authorized to conduct administrative adjudicatory actions for regulatory violations by those persons and entities falling within the purview of its authority. Such adjudicatory actions are subject to the requirements of the Administrative Procedures Act (APA) and are conducted by presiding officers employed by the DOH.

Overview of the Health Professions Disciplinary Process.

Credentialed health care providers are subject to professional discipline under the Uniform Disciplinary Act (UDA). The UDA authorizes the DOH and other specified agencies, boards, and commissions to take action against a provider for a variety of reasons, including unprofessional conduct, unlicensed practice, and the mental or physical inability to practice skillfully or safely.

Under the UDA, responsibilities in the disciplinary process are divided between the Secretary of the DOH (Secretary) and the 16 health profession boards and commissions, collectively known as "disciplining authorities." A "disciplining authority" is defined to mean an agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of the UDA or other regulatory provision pertaining to specified health care-related professions. The DOH acts as the disciplining authority for many specified health care providers, and various statutorily designated boards and commissions serve as the disciplining authority for the remainder.

The UDA requires a disciplining authority to use either a designated "presiding officer" or the Office of Administrative Hearings (OAH) for the purpose of conducting adjudicative

proceedings. The presiding officer may either be the Secretary or his or her designee. In the context of proceedings under the UDA, presiding officers are the functional equivalent of an administrative law judge (ALJ) and are analogous to the ALJs that conduct adjudicative hearings within the OAH. These presiding officers employed by the DOH are often referred to as "health law judges."

Presiding officers issue initial orders that are subject to review by the disciplining authority, which must then issue the final order. However, in most cases a disciplinary authority may delegate to the presiding officer the authority to issue the final order. However, final decisions regarding the *disposition of a license* must be made by the disciplining authority unless such decision making power is expressly delegated to the presiding officer. In cases pertaining to *standards of practice, or where clinical expertise is necessary*, certain specified disciplining authorities may not delegate final decision making power to the presiding officer.

Formal adjudicative hearings convened under the authority of the UDA must conform to the requirements of the APA.

Office of Administrative Hearings.

The OAH is an independent state agency responsible for the review of the actions of other state agencies. The Director of the OAH is the Chief Administrative Law Judge, appointed by the Governor and confirmed by the Senate. Hearings before the OAH are presided over by an ALJ. The hearings are conducted in accordance with statutory procedures outlined in the APA, and are generally less formal than court proceedings.

Summary of Substitute Bill:

Adjudicative Proceedings Involving the DOH.

All adjudicative proceedings coming before the Secretary or the DOH must be conducted by the OAH.

All employees of the DOH serving as presiding officers in administrative adjudicatory proceedings are transferred to the jurisdiction of the OAH. Upon transfer to the OAH, these employees will continue to perform their usual duties upon the same terms per their employment by the DOH, without any loss of rights. All transferred employees will continue to be subject to state civil service law. The DOH is also authorized to transfer administrative staff to the OAH, as necessary, based upon the anticipated workload resulting from the transfer of the presiding officers.

The DOH and the OAH are prohibited from adding full-time staff in response to the transfers authorized under the act, except for those staff explicitly made subject to the transfer.

The act creates a nonsupervisory bargaining unit in the OAH consisting of the employees transferred from the DOH to the OAH.

In all adjudicative proceedings before the Secretary or the DOH, initial orders issued by an ALJ are subject to review by the Secretary or his or her designee. However, the Secretary may, by rule, establish that initial orders in specified classes of cases may become final without further agency action, unless:

- the Secretary determines that a particular case warrants additional administrative review; or
- a party to the proceedings files a petition for administrative review of the initial order.

Adjudicative Proceedings Under the UDA.

All adjudicative proceedings arising under the authority of the UDA must be conducted by the OAH. The ALJs employed by the OAH will act as presiding officers in conducting such hearings and will issue initial orders.

In all adjudicative proceedings arising under the UDA and involving disciplining authorities other than the Secretary, final decisions regarding licensing matters must be made by the disciplining authority unless such authority is expressly delegated to the ALJ acting as the presiding officer. In cases pertaining to standards of practice or where clinical expertise is necessary, the disciplining authority may not delegate its authority to issue the final order if such order involves the disposition of a license or the imposition of sanctions.

In all adjudicative proceedings arising under the UDA and in which the Secretary serves as the disciplining authority, initial orders issued by an ALJ are subject to review by the Secretary or his or her designee. However, the Secretary may, by rule, establish that initial orders in specified cases may become final without further agency action, unless:

- the Secretary determines that a particular case warrants additional administrative review; or
- a party to the proceedings files a petition for administrative review of the initial order.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- authorizes the transfer of the DOH administrative staff to the OAH, as necessary, based upon the anticipated workload;
- prohibits both the DOH and the OAH from adding full-time staff in response to the transfers authorized under the act, except for those staff explicitly made subject to the transfer; and
- creates a nonsupervisory bargaining unit in the OAH consisting of the employees transferred from the DOH to the OAH.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 31, 2012.

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

Staff Summary of Public Testimony:

(In support) This bill would ensure consistency and efficiency with respect to adjudicative proceedings conducted pursuant to the APA. Currently, the DOH has its own presiding officers, known as health law judges, who conduct administrative adjudicative proceedings. These health law judges are analogous to the ALJs employed by the OAH. Under the bill, these health law judges would be transferred to the OAH. This transfer of the health law judges would promote consistency of policy with respect to the review of initial decisions and would also promote efficiencies. The additional review procedures authorized under the bill allow for an intermediate review process before a case must be taken to court. Transferring the DOH's health law judges to the OAH would ensure that the provisions of the APA would be applied with greater consistency and predictability. This is good public policy.

(Neutral) There are two concerns about the transfers authorized under this bill: (1) whether the transfers would effect the timeliness of rulings in cases involving the DOH; and (2) whether the OAH would fully utilize the substantial expertise of the health law judges in handling matters relating to health care. Over 1,800 case are handled by health care judges each year and it is important that the OAH retains and utilizes their specialized expertise.

(Opposed) None.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Melissa Johnson, Physical Therapy Association of Washington; and Brad Tower, Optometric Physicians of Washington.

(Neutral) Mary Selecky, Department of Health.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill by Committee on State Government & Tribal Affairs be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Ross, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Parker, Schmick and Wilcox.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On State Government & Tribal Affairs:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is a good cost-savings measure, although further complications may have arisen.

(Opposed) None.

Persons Testifying: Brad Tower, Optometric Physicians of Washington.

Persons Signed In To Testify But Not Testifying: None.