
Judiciary Committee

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 that presiding officers in adjudicative hearings under the Administrative Procedures Act (APA) must enter only final orders.
- Provides that "communication with 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" is not allowed under the APA provision that permits a presiding officer to communicate with other agency employees or consultants who have not participated in the adjudicative proceeding.

Hearing Date: 2/17/16

Staff: Cece Clynch (786-7195).

Background:

Office of Administrative Hearings.

The Office of Administrative Hearings (OAH) is a state agency independent of other state administrative agencies and is responsible for impartial administration of adjudicative proceedings. Administrative law judges (ALJs) employed by the OAH, or with whom the OAH has contracted, are assigned by the chief administrative law judge to conduct or preside over state agency hearings.

To the extent that it is practical, the assigned ALJ should have expertise in the field or subject matter of the hearing, and assignments to particular agencies should be on a long-term basis.

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.

Hearings must be conducted in accordance with the Administrative Procedures Act (APA). When the hearing is conducted by an ALJ employed or provided by the OAH, the agency is billed for the actual costs of the services.

Appeals filed against actions by the Department of Social and Health Services and the Employment Security Department (ESD) account for more than 90 percent of the OAH hearings. Other state agencies for which OAH conducts hearings include: the Department of Licensing (DOL), the Gambling Commission, the Washington State Patrol, the Office of the Insurance Commissioner (OIC), the Liquor and Cannabis Board, the Executive Ethics Board, the Department of Transportation, the Department of Labor and Industries, the Office of the Superintendent of Public Instruction, the Health Care Authority, the Minority and Women's Business Enterprises, the Human Rights Commission, and the Department of Financial Institutions.

Adjudicative Proceedings Under the Administrative Procedures Act.

Washington's APA establishes procedures under which state agencies conduct adjudicative proceedings. "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency, and include almost all cases of licensing and rate-making in which an application for a license or rate change is denied or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person with standing.

The APA recognizes that 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 ALJs assigned by the OAH in accordance with statute; (3) if there is a statutory authority, a person other than the agency head or an ALJ 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 (Secretary) pursuant to statute. Under the APA, "agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

If the agency head or one or members of an agency head presided at the hearing, the presiding officer may enter an initial or a final order. If the presiding officer was designated by the agency head, pursuant to explicit statutory authority, to hear and make the final decision, the designee may enter a final order. If one or more ALJs preside, the presiding officer must enter an initial order, except where a statute mandates that the ALJ enter a final order such as is the case under Washington's Law Against Discrimination.

The APA requires presiding officers 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 APA section regarding a presiding officer's authority to enter orders and a section in the chapter governing the OAH. Some, but not all, references to "initial orders" are removed from other APA sections.

While the exception remains for presiding officers to communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case, provision is made that this "shall not allow communication with 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.