

HOUSE BILL REPORT

SSB 6019

As Reported by House Committee On:
Judiciary

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 History:

Committee Activity:

Judiciary: 3/18/15, 4/1/15 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Prohibits an employee or consultant of the agency from coercing or improperly influencing a presiding officer of an adjudicative proceeding under the Administrative Procedure Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

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.

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.

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 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.

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 Amended Bill:

Employees or consultants of an agency are prohibited from coercing or improperly influencing the action of a presiding officer in reaching his or her decision in a proceeding. An expectation that the presiding officer consider written agency policy is not coercion or an improper influence.

Amended Bill Compared to Substitute Bill:

Presiding officers are no longer required to give only final orders.

The ex parte communications provision was modified from prohibiting communications between presiding officers and agency employees that require, as part of an employment evaluation, that a presiding officer must decide cases according to the agency head's unwritten policies to prohibiting any other employee or consultant of the agency from attempting to coerce or improperly influence the action of the presiding officer in reaching his or her decision in a proceeding.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) It is important for the public to have confidence in the administrative process. For this to happen, the process must be impartial and unbiased. This bill has two parts that should help the public gain that confidence. First, it requires administrative law judges to issue only final orders. Second, it prohibits agency employees from ex parte communications that attempt to influence decision-making.

There may be some things about this bill that need to be fixed. There are suggested amendments out there. Consider those amendments and send this bill back to the Senate for concurrence.

Agencies should be able to make policy. However, presiding officers should be able to form their own conclusion in adjudicative proceedings. Policy should not be made in a hearing.

All presiding officers should make final decisions. Adjudications under the APA are less formal and are largely meant for people of low income. These people deserve fair hearings, and it is difficult to say that these adjudicative proceedings are fair when the final decision is made by the same agency that they are opposing. Having administrative law judges make final decisions would fix this. Requiring presiding officers to make final decisions would also make hearings more efficient

(In support with amendment(s)) There should be an amendment clarifying the ex parte provisions of this bill.

(With concerns) The University of Washington has a number of adjudicative processes on campus. Parking tickets, student conduct, and faculty concerns are all addressed through adjudicative proceedings. This is good because a hearing board that deals with these issues should be qualified to hear issues of higher education. This bill should therefore have an amendment that exempts higher education from the requirement for final orders.

(Opposed) This bill would fundamentally change the way some agencies undertake adjudication. Requiring a final order also runs directly against statutes that govern some agencies. The only way for these agencies to comply with both this bill and current law would be for the agencies' head to preside in all cases. That is not possible. This bill will cause delays in adjudication and would mean that agencies would undertake less discretionary cases.

This would be a substantial change to the APA. Something like this should not be done in a short amount of time. Multiple statutes need to be modified to account for each agency.

This bill could also result in significant costs to agencies.

(Other) This bill may undo the unique relationship that exists between the Public Employees Relations Commission, public employers, and public employees. The current labor-management resolution process works very well for all parties and should not be changed.

Persons Testifying: (In support) Senator Padden, prime sponsor; Tim Parker; Robert Battles, Association of Washington Business; and Robin Zukoski, Columbia Legal Services.

(In support with amendment(s)) Michael Temple, Washington State Association of Justice.

(With concerns) Genesee Adkins, University of Washington.

(Opposed) Greg Gupta, Utilities and Transportation Commission; Mike Sellars, Public Employment Relations Commission; Michael Shaw, Washington State Bar Association; Neil Gorrell, Employment Security Department; and Dolores Chiechi, Recreational Gaming Association.

(Other) Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.