

# SENATE BILL REPORT

## SSB 6019

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As Passed Senate, January 27, 2016

**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:** Law & Justice: 2/18/15, 2/19/15 [DPS].

Passed Senate: 3/02/15, 47-0; 1/27/16, 48-0.

Passed House: 4/14/15, 97-0.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6019 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Pearson, Roach and Kohl-Welles.

**Staff:** Tim Ford (786-7423)

**Background:** The Administrative Procedure Act (APA) sets the process state agencies must use when the agency takes administrative action. Individuals appealing agency actions must exhaust their administrative remedies with the agency prior to judicial review. Agencies offer administrative hearings that are quasi-judicial to hear appeals of agency actions. Administrative hearings adjudicate appeals by interpreting agency policy and regulations. Adjudication resembles what a court does but is less formal. Adjudicative proceedings determine legal rights, duties, or privileges when a hearing is required by law or by the Constitution.

Currently, agencies designate a presiding officer to hear and decide an adjudicative proceeding. The presiding officer may be the agency's head, an agency employee designated and trained as a hearing officer, or an administrative law judge who is not the agency's employee. In a limited number of adjudicative proceedings, an administrative law judge must be the presiding officer.

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*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.*

The APA requires the presiding officer to be free from bias, conflict of interest, or undue influence whether the presiding officer is inside or outside the agency. Agencies may use a two-step process to reach a final agency decision in adjudicative proceedings. First a presiding officer hears evidence and makes an initial, or recommended decision. Then the agency reviews the initial decision and makes a final decision to accept or reject the initial decision. A party appeals the final agency decision to the superior court for judicial review. In a judicial review the superior court becomes an appellate court. The superior court decides if the final agency decision is correct.

In the APA, ex-parte communications are generally prohibited with limited exceptions. An ex-parte communication is any direct or indirect communication, regarding any issue in the appeal, between the presiding officer and any persons employed by the agency, or between the presiding officer and any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate. A prohibited ex-parte communication must be disclosed and placed on the record with any responses, and also identifying the persons involved in the communication. A presiding judge receiving a prohibited ex-parte communication must allow any party to rebut the communication. A presiding officer who receives a prohibited ex-parte communication may be disqualified and the communication may be sealed. Disciplinary action may be required and sanctions may include a default judgment in the appeal.

**Summary of Substitute Bill:** A presiding officer for an internal state agency administrative hearing must issue final orders. An administrative law judge at the Office of Administrative Hearings must issue final orders. Prohibited ex-parte contacts include, as a part of an employment evaluation, communications that a presiding officer must decide cases according to the agency head's unwritten policies.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Substitute Bill:** PRO: This is a positive step in renewing the public's trust in a quasi-judicial review forum. The review process should be fair in appearance and fair in fact. The tribunal should be impartial, unbiased, and transparent. The judge should be fair and an in-house administrative judge creates an appearance of bias. The administrative law judge should not be subject to undue influence by the judge's employer in an employment evaluation when the agency employer is a party in the proceedings before the judge. Prohibited ex-parte communications should be a violation of the state whistleblower law. There are over 69,000 administrative hearings every year conducted by Administrative Law Judges employed by the Office of Administrative Hearings (OAH) alone and it is very important that they are fair and impartial. You don't want the agency to serve as judge, jury, and executioner. It calls into question the fairness of the system. OAH is best suited to resolve disputes in a fair and speedy manner. The bill requires

administrative law judges with OAH to issue final orders appealable to superior court. This principle should apply broadly to all state agencies.

**Persons Testifying on Substitute Bill:** PRO: Senator Padden, prime sponsor; Larry Shannon, WA State Assn. for Justice; Bob Battles, Assn. of WA Business; Tim Parker, attorney.