

# HOUSE BILL REPORT

## SHB 1032

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**As Passed House:**

January 10, 1996

**Title:** An act relating to administrative procedure.

**Brief Description:** Revising the procedure for issuing orders under the administrative procedure act.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by Representative Padden).

**Brief History:**

**Committee Activity:**

Law & Justice: 1/11/95, 1/17/95 [DPS].

**Floor Activity:**

Passed House: 1/27/95, 93-0;

Passed House: 1/10/96, 93-1.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Padden, Chair; Delvin, Vice Chair; Hickel, Vice Chair; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith and Veloria.

**Staff:** Pat Shelledy (786-7149).

**Background:** The Administrative Procedure Act governs procedures to appeal agency action. A person or business adversely affected by an agency action may ask the agency for an adjudicative hearing. In the agency head's discretion, the presiding officer in an administrative hearing must be:

The agency head or one or more members of the agency head;

A person designated by the agency if the agency has statutory authority to do so; or

An administrative law judge assigned by the office of the administrative hearings. The office is independent of state agencies.

If an administrative law judge is the presiding officer, the judge enters an "initial" order. The agency may review the initial order upon the agency's own motion or upon a party's petition for review.

The officer that reviews the initial order has the power to exercise all the decision-making power of the administrative law judge, including making findings of fact. The reviewing officer must give due consideration to the presiding officer's opportunity to observe the witnesses. The review procedure is an informal procedure usually conducted on the record.

The reviewing officer enters an order that represents the final agency decision. A person adversely affected by the final order may file a petition for judicial review to superior court. A 1993 Washington Supreme Court decision held that the superior court must defer to the reviewing officer's findings of fact rather than the administrative law judge's findings.

**Summary of Bill:** Reviewing officers' power to modify presiding officers' findings of fact, conclusions of law, and decisions is restricted to the following grounds:

- (1) Irregularity in the proceedings preventing the petitioning party from having a fair hearing;
- (2) The findings of fact are unsupported by substantial evidence in view of the entire record;
- (3) Errors of law; or
- (4) Need for clarification for the parties to implement the decision.

If none of the grounds exist, the reviewing officer must enter a final order affirming the initial order.

**Appropriation:** None.

**Fiscal Note:** Requested January 9, 1995.

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

**Testimony For:** Administrative law judges are in the best position to ascertain the facts. Reviewing judges should not have authority to make new findings of fact unless the factual findings of the administrative law judge are not supported by substantial evidence. Having agencies review their own decisions creates problems with fairness and appearance of fairness.

**Testimony Against:** An agency should retain some authority to make findings of fact because making findings may involve analyzing complex information within the agency's area of expertise. Additionally, the final order should reflect agency policy. Eliminating review authority will flood the courts and will result in agencies taking poor people to court who cannot afford it.

**Testified:** Scott Sigmon, Washington Health Care Association; Jan Gee, Washington Retail Association (in favor); Dick Welsh, private citizen; Ken Isserlis, attorney; Elizabeth Schott, Evergreen Legal Services; Judge Paula Casey, Superior Court Judges Association; Tom Fender and Teresa Morris, Employment Security Department (with concerns); Ken Isserlis, private attorney; Elizabeth Schott, Evergreen Legal Services; David La Rose, Office of Administrative Hearings; Dean Little, attorney and former Chair of Administrative Law Task Force; Scott Sigmon, Washington Health Care Association; Jan Gee, Washington Retail Association (in favor of alternative measure); Dave La Rose, Office of Administrative Hearings; Mary Gallagher Dilley, Washington Administrative Law Judges Association; and Dean Little, attorney and former Chair of Administrative Law Task Force (opposed) .