

SENATE BILL REPORT

SHB 1032

As Reported By Senate Committee On:
Government Operations, February 23, 1999

Title: An act relating to administrative procedure.

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

Sponsors: House Representative Law & Justice (originally sponsored by Representative Padden).

Brief History:

Committee Activity: Government Operations: 3/16/95, 3/30/95 [DPA]; 2/14/96, 2/23/96 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass as amended.

Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Goings, Hale, Heavey, McCaslin and Winsley.

Staff: Diane Smith (786-7410)

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:

1. The agency head or one or more members of the agency head;
2. A person designated by the agency if the agency has statutory authority to do so;
or
3. 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 Amended Bill: Except for DSHS licensing and civil fines and custodial parent address disclosure proceedings, 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;
4. Need for clarification for the parties to implement the decision; or
5. Facts not found in the initial order but supported by substantial evidence in the record.

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

Amended Bill Compared to Substitute Bill: The striking amendment allows two exceptions to the new review standard. These are DSHS licensing and civil fines pertaining thereto and DSHS custodial parent address disclosures. The striking amendment adds a fifth ground for agency reversal of the administrative law judge's findings and conclusion. This new ground is the review examiner's finding that these were facts not found in the initial order that were supported by substantial evidence in the record.

Appropriation: None.

Fiscal Note: Requested on January 9, 1995.

Effective Date: 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.

Testified: Ron Weaver, Dept. of Health; Lisa Brodoff, DSHS.