
**Technology, Energy &
Communications Committee**

HB 2426

Brief Description: Modifying utilities and transportation commission provisions.

Sponsors: Representative Morris; by request of Utilities & Transportation Commission.

Brief Summary of Bill

- Creates a process for *pro tem* commissioners to be appointed to the Washington Utilities and Transportation Commission (WUTC).
- Allows the WUTC to delegate certain duties to designated assistants.
- Provides that initial decisions made by administrative law judges (ALJs) are final unless review is sought.
- Authorizes the WUTC to appoint ALJs as exempt employees.

Hearing Date: 1/20/06

Staff: Kara Durbin (786-7133).

Background:

The Washington Utilities and Transportation Commission (WUTC) is a quasi-judicial and quasi-legislative state agency that regulates the rates, services, and practices of privately owned utilities and transportation companies. The WUTC is led by three commissioners appointed by the Governor and confirmed by the Senate for staggered six-year terms.

If a commissioner position should become vacant, the Governor may appoint a replacement subject to the confirmation process. However, there is no provision for the appointment of *pro tem* commissioners that can serve for a specified time or on a particular case. This is unlike the court system, which is permitted to appoint *pro tem* judges.

When the WUTC initiates a complaint against a regulated company, it must be preceded by a determination of probable cause by the commissioners. The determination is based on evidence provided by staff. If probable cause is found, the complaint will be heard by the same commissioners at an adjudicative hearing.

Commissioners personally preside in adjudicative hearings or they make final decisions based on the initial determinations of administrative law judges (ALJs). Under current law, the WUTC must enter an order confirming the result of initial orders, even if no appeal is sought.

Two to three times a month, the WUTC convenes regularly scheduled meetings, called "open meetings," to process various filings. During an open meeting, commission staff present their analyses and recommend orders on various agenda items. According to the WUTC, the majority of items are uncontested and require little discretion on the part of the commissioners.

Unlike ALJs at some agencies, such as the Office of Administrative Hearings, Department of Health, and the Environmental Hearings Office, the ALJs at the WUTC are not exempt from civil service provisions.

Summary of Bill:

A process for the appointment of *pro tem* commissioners is established. At the request of the WUTC, the Governor may appoint a *pro tem* commissioner for the following circumstances: (1) to allow a commissioner whose term has expired to complete an adjudicative proceeding that he or she has substantially heard; and (2) to fill temporary vacancies due to recusal, serious illness, or other valid reasons.

In the case of temporary vacancies, the *pro tem* commissioner must be of the same political party as the absent commissioner and may only serve for a defined period of time and only for the tasks specified by the Governor. The WUTC must, after consultation with affected interests, maintain a list of eligible *pro tem* candidates made up of former commissioners, present and former Administrative Law Judges (ALJs), and advisory staff.

Pro tem commissioners are not subject to Senate confirmation. They must receive reasonable compensation, and they must serve at the pleasure of the Governor.

The commission is given delegation authority for certain duties. Commissioners may delegate responsibility to designated assistants for "any of the powers and duties vested in or imposed upon the commission by law," except matters governed by the Administrative Procedures Act, chapter 34.05 RCW. A quorum of commissioners is not needed to affirm any matter that has been delegated. All matters will still be heard or reviewed by the commissioners upon request of an affected party.

Provisions concerning final orders and the civil service status of ALJs are specified. In general, initial orders of ALJs will become final if no review is sought. Commissioners may appoint ALJs that are exempt from the civil service law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.