

# SENATE BILL REPORT

## SB 6174

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As of January 12, 2006

**Title:** An act relating to duties of the utilities and transportation commission, including commissioner appointments, delegation of powers, and appointment of administrative law judges.

**Brief Description:** Modifying utilities and transportation commission provisions.

**Sponsors:** Senators Poulsen, Morton and Rockefeller; by request of Utilities & Transportation Commission.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 1/12/06.

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Staff:** William Bridges (786-7424)

**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.

No temporary (*pro tem*) commissioners. 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 *pro tem* judges.

Commissioners may determine probable cause and act as judges in the same case. 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.

Final orders at the WUTC must be approved by the commissioners. 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.

Commissioners must formally approve matters, whether contested or not. 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.

Administrative law judges at the WUTC are civil service employees. 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 ALJs, and advisory staff.

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

Delegation authority is provided for certain duties. Commissioners may delegate responsibility for (1) probable cause determinations and (2) decisions concerning other matters to be determined by administrative rule. 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:** Available.

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

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

**Testimony For:** By allowing *pro tem* commissioners and the delegation of authority to ALJs, the WUTC will be able to improve the efficiency and quality of its regulatory process. *Pro tem* judges are routinely used in the judicial system and the administration of justice is more efficient because of it. *Pro tem* commissioners are needed for the same reason, particularly to fill vacancies in complex cases that can last for more than two years. By exempting ALJs from the civil service provisions, the WUTC will be able to raise their salaries. Currently, very senior ALJs are paid less than some of the assistant attorney generals who appear before them. This has created retention and recruitment problems for the WUTC.

**Testimony Against:** None.

**Testimony Other:** The provision concerning pro tem judges should be amended to prevent the appointment of persons who acted as advocates in the same or similar matter that will be before them. There is a concern that pro tem commissioners will not be subject to the confirmation process. The WUTC has been able to work around vacancies in the past, so there does not seem to be a pressing reason for allowing pro tem commissioners.

**Who Testified:** PRO: Mark Sidran, Commissioner, WUTC. CON: None. OTHER: Tim Boyd, Industrial Customers of Northwest Utilities; Rick Finnigan, Wash. Independent Telephone Association; Terry Stapleton, Wash. Independent Telephone Association