

SENATE BILL REPORT

SB 5686

As of February 19, 2015

Title: An act relating to adjudicative proceedings involving a state agency that is also a party to the proceeding.

Brief Description: Addressing adjudicative proceedings involving a state agency that is also a party to the proceeding.

Sponsors: Senators Padden, Miloscia, Rivers, Dandel, Dammeier, Becker, Schoesler, Braun, Litzow, Warnick and Honeyford.

Brief History:

Committee Activity: Law & Justice: 2/05/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: The Administrative Procedure Act (APA) sets the process state agencies must use when the agency takes administrative action. Agencies apply policies to individuals through adjudication. Adjudication resembles what a court does. 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.

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.

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.

Summary of Bill: For most APA adjudicative proceedings, the presiding officer must be an administrative law judge from the Office of Administrative Hearings. The administrative law judge takes testimony and makes the final decision unless there is a statutory exception, or a federal law requires otherwise. The agency head cannot change the administrative law judge's decision. A party may appeal the administrative law judge's decision to the superior court.

Appropriation: None.

Fiscal Note: Requested on February 2, 2015.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2016.

Staff Summary of Public Testimony: PRO: This is a positive step in renewing the public's trust in a quasi-judicial forum. The review process should be fair in appearance and fair in fact. The tribunal should be impartial, unbiased, and transparent. People who depend on subsistence benefits require speedy hearings. The Office of Administrative Hearings (OAH) is best suited to resolve these subsistence disputes in a fair and speedy manner.

CON: Many governor-appointed boards and commissions are composed of members with specific expertise in the subject matter. An administrative law judge is assigned to the Electrical Board but the Board makes the final decision. The Department of Labor & Industries (L&I) does not preside over the Board. The Board is important because of the technical issues that comes before it. The panel on the Board is made of experts.

OTHER: The Department of Licensing (DOL) driver's licensing hearings are currently exempt from APA. DOL has about 12,000 driver's licensing hearings per year mostly related to driving while impaired. We would like that to remain exempt. Those hearings can be appealed to superior court. Our business and professions hearings are about 300 per year and are conducted by administrative law judges or agency staff.

The WA State Apprenticeship Training Council is within L&I. Apprenticeship programs should be exempt from the bill.

Higher Education hearings should be exempt from this bill. These hearings include parking tickets, student conduct, and especially faculty matters. Higher Education hearings are best suited to resolve these matters.

OAH was created in 1981 to provide a fair and impartial independent hearing office. At OAH there is not only actual fairness but also the appearance of fairness for the citizens. There are over 100 administrative law judges in five offices around the state. OAH received over 69,000 appeals last fiscal year on a wide variety of cases for over 20 state agencies and local governments. Hearings are accessible and the majority of businesses and citizens appear without a lawyer. There is a quick resolution of disputes. The hearings impact the lives of citizens and OAH has a code of ethics similar to the Code of Judicial Conduct. OAH has an in-house continuing legal education training program for our administrative law

judges. The bill delegates final order authority to OAH judges. An appeal from a final order is to a superior court. An appeal from an initial order is sent back to the agency before it may be appealed to superior court. OAH is neutral on the bill. Judges are assigned to hearings based on their subject matter expertise in the area of the dispute. In a variety of cases before OAH, we are accustomed to dealing with confidentiality. Administrative Law Judges employed by OAH issue final orders for 30 different types of hearings under current law; and for 19 of these, that is mandated by statute.

Persons Testifying: PRO: Robin Zukoski, Columbia Legal Services; Jeff Gingold, citizen.

CON: Nicole Grant, Executive Director, Certified Electrical Workers of WA; Neil Hartman, WA Building and Construction Trades Council; Genesee Adkins, University of WA.

OTHER: Jane Habegger, OAH; Larry Stevens, Mechanical Contractors Assn., National Electrical Contractors Assn; Tony Sermonti, DOL; Chris Mulick, WA State University.