

HOUSE BILL REPORT

HB 2013

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to mediation to address adverse licensing decisions by the department of early learning.

Brief Description: Providing for the use of independent mediators to address adverse child care licensing decisions.

Sponsors: Representatives Dent, McDonald, Senn, Klippert, Kagi, Griffey, Jinkins and Johnson.

Brief History:

Committee Activity:

Early Learning & Human Services: 2/15/17, 2/17/17 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Early Learning to enter into mediation at the request of license applicants or licensees who have received an adverse licensing decision by the DEL.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kagi, Chair; Dent, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Goodman, Griffey, Kilduff, Klippert, Lovick, McCaslin and Muri.

Minority Report: Do not pass. Signed by 3 members: Representatives Senn, Vice Chair; Frame and Ortiz-Self.

Staff: Dawn Eychaner (786-7135).

Background:

Department of Early Learning Licensing.

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.

The Department of Early Learning (DEL) adopts licensing standards for child care and early education programs. The licensing standards must provide minimum requirements for health and safety, address quality, consider the different needs of family care providers and child care centers, and promote the continued safety of child care settings.

If a party does not meet the minimum licensing requirements or violates licensing rules, the DEL may assess a fine, deny a license application, or suspend, modify, or revoke an existing license. The DEL must give written notice of the agency's action and reasons for the action to the applicant or licensee. In general, the fine is due or the license revocation, suspension, or modification is effective 28 days after the licensee receives the notice. The DEL may make the effective date of license suspensions or revocations earlier than 28 days from the date of the notice in certain circumstances.

A license applicant or licensee who disagrees with the DEL's adverse licensing action has the right to an adjudicative proceeding governed by the provisions of the Administrative Procedure Act (APA). The aggrieved party must serve the DEL and the Office of Administrative Hearings (OAH) with written notice contesting the agency's action within 28 days of the party receiving the adverse notice.

Administrative Procedure Act.

The APA establishes the procedures for state agency rulemaking and other administrative proceedings. Under the APA, individuals may appeal an agency action and must exhaust all available administrative remedies prior to filing a petition for judicial review. Administrative review allows the parties the opportunity to create a record of relevant facts and issues in dispute.

The OAH is an independent agency under the direction of a chief administrative law judge. Hearings before the OAH are presided over by an administrative law judge and are conducted in accordance with procedures outlined in the APA.

Summary of Substitute Bill:

The DEL must enter into mediation at the request of an applicant or licensee who has received a denial, modification, suspension, or revocation of a license from the DEL. The mediation must be conducted as part of a prehearing conference for an adjudicative proceeding. An administrative law judge who has received training in dispute resolution techniques or has a demonstrated history in resolving disputes must conduct the mediation and may not: participate in a hearing on the appeal, write the decision and order in the appeal, and be related to a party. The mediator may communicate with the applicant or licensee and an appointed representative of the DEL during the mediation.

Applicants and licensees who participate in mediation retain their rights to contest the adverse licensing action under the provisions of the APA. As long as both parties are demonstrating a good faith effort to participate in mediation, proceedings under the APA, including a hearing, are stayed until the mediator indicates in writing that the mediation process has terminated or a settlement has been reached.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) replaces mediators contracted by the DEL with administrative law judges to provide the mediation; (2) requires the administrative law judge to conduct the mediation as part of a prehearing conference for the purpose of mediating the case as part of an adjudicative proceeding; (3) stays proceedings under the APA, including a hearing, as long as both parties are demonstrating a good faith effort to participate in mediation, until the mediator indicates in writing that the mediation process has terminated or a settlement has been reached; and (4) removes the requirement that the mediation be complete within 28 days of the request.

Appropriation: None.

Fiscal Note: Requested on February 17, 2017.

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

Staff Summary of Public Testimony:

(In support) This would put an independent mediator in place to address adverse child care licensing decisions and provide an opportunity to resolve licensing issues more quickly. Once the DEL makes an adverse licensing decision, it's impossible to get the agency to change their minds, and the issue drags on. A mediator would provide independent oversight and stop the current practice of the "fox watching the hen house."

(Opposed) None.

Persons Testifying: Representative Dent, prime sponsor; and Perry Langston, Kid's Country Child Care Center.

Persons Signed In To Testify But Not Testifying: None.