

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 0 - 0

Yeas: Beyer, Kruse, Prozanski, Walker, Burdick

Nays: 0

Exc.: 0

Prepared By: Matt Kalmanson, Counsel

Meeting Dates: 5/22, 5/29

WHAT THE MEASURE DOES: Establishes that a presiding officer in a contested case hearing must ensure that the record developed at a hearing shows a “full and fair inquiry into the facts necessary for consideration of all issues properly before the officer, and the correct application of the law to those facts.” Requires an administrative law judge to develop the record in a contested case proceeding in the same manner. Requires a reviewing court to remand an order for further agency action if the court finds that the presiding officer failed to comply with the above requirements.

ISSUES DISCUSSED:

- The Oregon Administrative Procedure Act
- The duties of presiding officers and administrative law judges in contested case hearings
- The need for clarity regarding the requirement to develop the record
- Current practice

EFFECT OF COMMITTEE AMENDMENT: Resolves conflicts.

BACKGROUND: The Administrative Procedure Act (APA) currently provides that a presiding officer in a contested case hearing must ensure that the record shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer. HB 2822 B would clarify that a presiding officer must also ensure that there is a “correct application of the law to those facts,” which is consistent with current practice. The bill also clarifies that the same standard of review applies whether a hearing is conducted by an administrative law judge or a presiding officer. Finally, the bill makes the failure to comply with the duty to develop the record a possible basis for remand, and would apply to all contested cases subject to judicial review under the APA.