

HOUSE BILL REPORT

HJR 4214

As Reported By House Committee On:

Government Reform & Land Use

Brief Description: Allowing legislative veto of agency rules.

Sponsors: Representatives Lambert, Carrell, McCune, Zellinsky, Mulliken, D. Sommers, Schoesler and Thompson.

Brief History:

Committee Activity:

Government Reform & Land Use: 1/28/98, 1/29/98 [DP].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

Staff: Joan Elgee (786-7135).

Background: Many state agencies have authority to adopt rules to implement their statutory mandates. The Joint Administrative Rules Review Committee (JARRC), a statutory legislative committee, provides the Legislature's oversight of agency rule-making. JARRC may examine whether a rule was adopted in compliance with required procedures and whether it is within the intent of the Legislature.

A process is established in statute for JARRC to make findings, and for the agency to respond. Ultimately, JARRC may recommend that the Governor suspend a rule. JARRC has no authority to require the agency to take any action. A JARRC finding expressly does not establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceeding. Several times, the Governor has vetoed legislation stating that a suspension recommendation by JARRC creates a rebuttable presumption that a rule is invalid.

Congress and a number of states have attempted to create legislative veto— authority in which the legislative branch is allowed to overrule agency action. In 1983, the United States Supreme Court invalidated a Congressional legislative veto. The court found that permitting one house of Congress to veto agency action violated the bicameral (majority vote in both houses) and presentment (bills must be presented to the President) requirements in the United States Constitution. The Washington State Constitution contains similar provisions providing that no bill may become a law unless a majority of each house votes in favor (Art. 2, Sec. 22) and that every act passed by the Legislature must be presented to the governor before it becomes law. (Art. 3, Sec. 12).

Summary of Bill: At the next general election, an amendment to the Washington State Constitution will be submitted to the people for their approval or rejection.

The amendment will allow the Legislature to invalidate an agency rule if it finds that the rule is inconsistent with legislative intent or in excess of the agency’s authority. A veto resolution requires a majority vote of each house and becomes effective 90 days after adjournment. Veto resolutions are not subject to the presentment requirements of the state constitution. The authority to invalidate rules does not apply to quasi-judicial actions or internal management rules.

Appropriation: None.

Fiscal Note: Not requested.

Testimony For: If the Legislature has oversight, maybe we won’t have as many problems with rules. The implementing rules on a bill I worked on gave me heartburn and all I could do was pass a new bill. This bill restores the checks and balances. The Legislature should be able to say go back and try again. For small businesses, the only remedy now is to go to court.

Testimony Against: The current system works well. We have an established process for input through rule-making. JARRC can review rules and standing committees can demand performance reports. The role of statute interpretation is for the courts. Can the Legislature conduct a deliberative process on rules during session?

Testified: Representative Kathy Lambert, prime sponsor (pro); Amber Balch, Association of Washington Business (pro); Carolyn Logue, National Federation of Independent Business (pro); Gary Smith, Independent Business Association (pro); Jeff Johnson, Washington State Labor Council (con); Don Whiting, Secretary of State (no position); Bruce Wishart, People for Puget Sound (con); Fred Hellberg, Governor’s Office (con); and Ron Schultz, National Audubon Society (con).