

HOUSE BILL REPORT

HJM 4018

As Reported By House Committee On:

Local Government

Brief Description: Petitioning the Governor to impose a moratorium on state agencies adopting rules that would create new costs for local governments.

Sponsors: Representatives Mulliken, Doumit, Mielke, Scott, Ericksen, Fortunato, Hatfield, Schindler, Dunn, Thomas, D. Sommers and Esser.

Brief History:

Committee Activity:

Local Government: 1/20/00, 2/3/00 [DPS].

Brief Summary of Substitute Bill

- Requests that the Governor issue an executive order that requires all state agencies (until March 30, 2002) to assess costs of rules on local governments and to determine if a rule creates new costs for local governments.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen; Fisher and Fortunato.

Staff: Scott MacColl (786-7106).

Background:

Local governments have experienced revenue reductions due to the passage of Initiative 695, which repealed the Motor Vehicle Excise Tax (MVET). Certain local governments formerly received revenue in the form of Sales Tax Equalization, which was funded through MVET receipts.

Administrative agencies are created by the Legislature and have only the authority given to them by the Legislature. Administrative agency powers may be expressly stated in statute or may be implied from statutorily mandated duties. An administrative agency authorized or required to take some action has the implied authority to take those actions that are lawful and necessary to carry out the granted authority or to satisfy the statutory requirement. This "implied authority" of state agencies can be limited by constitutional or statutory conditions or restrictions.

Administrative agencies may be granted statutory authority to promulgate "rules," defined generally by the Administrative Procedure Act (APA) to include any agency orders, directives or regulations of general applicability that may impose penalties or sanctions, establish standards or qualifications, or relate to benefits conferred by law. Agency rules may also specify procedures for agency actions or hearings. The APA includes statutory procedural requirements for promulgation of agency rules, including public notice and opportunity to comment.

Summary of Substitute Bill:

The memorial requests the Governor to issue an executive order that would require state agencies to examine impacts of proposed rules to determine if the rule would create new costs for local governments. If determination would create new costs, the local government associations will be notified, and agencies will use APA rule development procedures, and ensure that any new rule complies with the executive order 97-02.

Substitute Bill Compared to Original Bill: The request language that asks the Governor to require state agencies to implement a moratorium has been changed. The resolution asks that state agencies consider the following:

- examine impacts of proposed rules on local governments to determine any increased costs to local governments;
- notify local government associations of proposed rules if costs are determined to increase due to a proposed rule;
- utilize rule development process outlined in the administrative procedures act;
- ensure that adoption of new rules are consistent with the Governor's Executive Order 97-02; and
- utilize rule development mechanisms to ensure that cost impacts are minimized and participation in the rule development process is maximized.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) The moratorium is not to exacerbate the problem, but to give the local governments a chance to adjust to I-695. The Legislature needs to focus on new costs; if new ideas are good enough and important enough, they should be fully funded. If there is no moratorium, then pay the full cost of a mandate. If the full cost is not covered, put in flexibility to let local governments work it out.

Testimony Against: (Original bill) The shoreline management act updates need to happen, and funding from the Legislature is necessary to continue the process. Also, the costs from 4(d) liability for local governments if they do not respond could be large, and the federal agencies can issue rules that the locals are liable for if they don't respond with new rules.

Businesses don't want to be treated differently than local governments when it comes to complying with rules.

(Opposed) The moratorium has a very broad effect, and it may have unintended consequences. There are financial concerns, and public health and safety concerns. For instance, what if there is a state emergency action for a water or food borne illness, and the state can't adopt rules? Also, a delay in protection of salmon, may mean that federal agencies can assume responsibility by default under the Endangered Species Act and the Clean Water Act. There is also the possibility of losses in federal funding, if some local governments are treated differently than private businesses, it would jeopardize tax credits for unemployment insurance. Also, there is an issue with requesting the Governor to tell state agencies not to promulgate rules, as the Governor doesn't have authority over all state agencies.

Testified: (Support) Pat Jones, Public Ports Association; Jodi Slavik, Building Industry Association of Washington; Dave Williams, Association of Washington Cities; Paul Parker, Washington State Association of Counties; Karla Kay Fullerton, Washington Cattlemen's Association; and Duke Schaub, Associated General Contractors of Washington.

(Concerns) Pat Thompson, Washington State Council of County and City Employees; and Fred Hellberg, Governor's Office.

(Opposed) Ron Shultz, Audubon Society; Randy Loomes, citizen; and Bruce Wishart, People for Puget Sound.