

HOUSE BILL REPORT

HB 2598

As Passed House:

February 11, 2004

Title: An act relating to providing venue for administrative rule challenges in Spokane, Yakima, and Bellingham for residents of those appellate districts.

Brief Description: Providing venue for administrative rule challenges in Spokane, Yakima, and Bellingham for residents of those appellate districts.

Sponsors: By Representatives Grant, Holmquist, Linville, Kessler, Quall, Clements, Ahern, Cox, Sehlin, Morris, Priest, Kristiansen, Nixon, Santos, Buck, Wallace, Orcutt, Armstrong, Clibborn, Chandler, Schoesler, Sump, Bush, Jarrett, Kenney, Hatfield, Lovick, Eickmeyer, O'Brien, Blake, Ruderman, Skinner, Hinkle, Newhouse, Anderson, Schindler, Tom, Wood, Hankins, McMahan and Condotta; by request of Governor Locke.

Brief History:

Committee Activity:

Judiciary: 1/29/04 [DP].

Floor Activity:

Passed House: 2/11/04, 85-8.

Brief Summary of Bill

- Expands, for a limited time, where persons in certain geographical locations may petition for declaratory judgment challenging an agency rule.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Asst Ranking Minority Member; Campbell; Kirby; Lovick and Newhouse.

Minority Report: Do not pass. Signed by 1 member: Representative Flannigan.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

The Administrative Procedure Act (APA) details procedures state agencies are required to follow when adopting rules. Generally, a rule is any agency order, directive, or regulation of general applicability that: (1) subjects a person to a sanction if violated; or (2) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials. Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding a hearing.

Under the APA, the validity of any rule adopted by an agency may be challenged by a petition for declaratory judgment when it appears the rule or application of the rule interferes with or impairs the legal rights or privileges of the petitioner. The petitioner has the burden of demonstrating the invalidity of the rule. The court may declare a rule invalid only if it finds that the rule: (1) violates the constitution; (2) exceeds the statutory authority of the agency; (3) was adopted without compliance with rule-making procedures; or (4) is arbitrary and capricious.

The petition for declaratory judgment on the validity of an agency rule must be filed in Thurston County Superior Court.

Last session, the Legislature passed ESHB 1530, which allowed a petitioner to seek a declaratory judgment challenging an agency rule in the superior courts of Clark, Spokane, or Whatcom counties, in addition to Thurston County. The Governor vetoed the legislation, but in his veto message, suggested other possibilities.

Summary of Bill:

A petitioner who resides or has a principal place of business within the geographical boundaries of Division III of the Court of Appeals (the 20 counties east of the Cascades) may file a petition for declaratory judgment challenging an agency rule in the superior court of either Spokane, Yakima, or Thurston County.

A petitioner who resides or has a principal place of business within the geographical boundaries of district three of Division I of the Court of Appeals (Whatcom, Skagit, San Juan, and Island counties) may file a petition for declaratory judgment challenging an agency rule in the superior court of either Whatcom or Thurston County.

This provision allowing a petition to be filed in these counties other than Thurston County expires on July 1, 2008.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill does not allow for venue shopping. It gives the petitioner a choice to bring an action in the place the petitioner lives or in Thurston County. This is set up as a pilot project to see what the caseloads are like, and then the Legislature can revisit the issue in 2008. This will take the pressure off Thurston County courts. Last year's bill had no requirement that the petitioner be connected to the county where the petition is brought. This bill is a compromise from last year's bill and has bipartisan support.

Testimony Against: None.

Persons Testifying: Claire Hesselholt, Governor's Policy Office; Representative Grant, prime sponsor; Mark Johnson, National Federation of Independent Businesses; and Representative Holmquist.

Persons Signed In To Testify But Not Testifying: None.