

SENATE BILL REPORT

ESB 5254

As Passed Senate, March 7, 2003

Title: An act relating to the burden of proof in actions asserting invalidity of agency rules.

Brief Description: Shifting the burden of proof in actions against rules.

Sponsors: Senators Roach, Hale, Stevens, T. Sheldon, Mulliken, Hewitt, Parlette, Horn, Rossi, Benton, Schmidt, Johnson and Esser.

Brief History:

Committee Activity: Government Operations & Elections: 1/22/03 [DP, DNP].

Ways & Means: 2/3/03, 2/4/03 [DP, DNP].

Passed Senate: 3/7/03, 35-14.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Horn and McCaslin.

Minority Report: Do not pass.

Signed by Senators Fairley, Kastama and Reardon.

Staff: Mac Nicholson (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Hale, Honeyford, Johnson, Parlette, Roach and Sheahan.

Minority Report: Do not pass.

Signed by Senators Brown, Doumit, Fairley, Fraser, Regala and B. Sheldon.

Staff: Terry Wilson (786-7433)

Background: The validity of an agency rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston County.

Summary of Bill: An individual can file a petition for declaratory judgment to determine the validity of a rule in Thurston County, the county of his or her residence or principal place of business, or in the county where the petitioner owns property that is affected by the contested rule.

Money appropriated for distribution to counties as reimbursement for the cost of hearing petitions for declaratory judgment must be equitably distributed to all counties where such petitions are filed.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Government Operations & Elections): Businesses do not have the resources to challenge the validity of agency action in court. The burden should be on the agency to prove its action is right. Businesses shouldn't have to come to Thurston County to file a petition for review of agency action; they should be able to file such petitions where they live or own the business.

Testimony Against (Government Operations & Elections): The rule-making process is lengthy and contains ample room for public comment. Shifting the burden to the agency will encourage litigation of rules rather than participation in the rule-making process. Requiring agencies to prove that every challenged action is lawful would increase government costs. Allowing individuals to file petitions for review in any county will politicize the review process and encourage venue shopping.

Testified (Government Operations & Elections): PRO: Amber Balch, AWB; Dan Fazio, WA Farm Bureau; Susan Hahn, Middle Fork Enterprises; Steven Stillwell, Bracy & Thomas; Carolyn Logue, NFIB; Gary Smith, IBA. CON: Carol Jolly, Governor's Office; Bruce Wishart, People for Puget Sound.

Testimony For (Ways & Means): This is a huge burden on a petitioner. The agency should have a good reason to do something and should prove it. Some agencies ignore requirements and should demonstrate that what they did is legal.

Testimony Against (Ways & Means): This invites litigation and increases the costs. Rule-making takes years. This invites lawsuits at the end instead of participating in the process. It also invites venue shopping and politicizes the process.

Testified (Ways & Means): PRO: Gary Smith, IBA; Amber Balch, AWB.; Mark Johnson, NFIB; CON: Bruce Wishart, People for Puget Sound.