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## Environment Committee

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### HB 1881

**Brief Description:** Requiring express legislative authorization prior to the enactment of any regulation regarding the carbon content of fuel.

**Sponsors:** Representatives Short, Harris, Parker, Chandler, Kretz, Scott, Young, Schmick and Buys.

#### Brief Summary of Bill

- Prohibits the executive branch from adopting rules, without prior express direction from the Legislature, related to fuel standards or that establish a carbon reduction requirement for fuel distributors or vehicles based on the fuel's carbon intensity or the related greenhouse gas emissions.

**Hearing Date:** 2/16/15

**Staff:** Jason Callahan (786-7117).

#### **Background:**

##### Rulemaking in General.

Agency rulemaking is a quasi-legislative function and agencies are only able to engage in rulemaking when delegated the authority to do so from the Legislature. An agency generally may not rely solely on the section of law stating a statute's intent or purpose or on the enabling provisions establishing the agency for its statutory authority to adopt a rule.

Some rules are considered to be significant legislative rules. These are rules that adopt substantive provisions of law that subject a violator to a penalty or sanction; establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or adopts or amends a new policy or regulatory program.

The following agencies must engage in a special rulemaking process when adopting significant legislative rules: The Department of Ecology (DOE), the Department of Labor and Industries,

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the Department of Health, the Department of Revenue, the Department of Social and Health Services, the Department of Natural Resources, the Employment Security Department, the Forest Practices Board, the Office of the Insurance Commissioner, and the Department of Fish and Wildlife. The significant legislative rulemaking process imposes requirements in addition to the "regular" rulemaking process, such as requiring the agency to determine that the rule is needed in order to achieve the rule's goals and requiring the agency to perform a cost-benefit analysis.

There are several ways agency rulemaking is overseen. For example, the Office of Regulatory Assistance within the Office of Financial Management operates a website that contains information on federal, state, and local rulemaking requirements. The Legislature also exercises some oversight over agency rulemaking through the Joint Administrative Rules Review Committee (JARRC). The JARRC is empowered to examine three main issues: Whether a rule is consistent with the intent of the Legislature, whether a rule was adopted in accordance with the law, and whether an agency is using a policy or interpretive statement in place of a rule. The JARRC may also, by majority vote, order an agency to engage in the significant legislative rulemaking process or develop a small business economic impact statement.

If the JARRC issues an adverse finding on a rule, the agency in question is required to conduct a hearing on the committee's findings. If the JARRC is dissatisfied with the agency response to its findings, it may publish notice of its dissatisfaction in the State Register, recommend to the Governor that he or she suspend the rule, or refer the matter to a standing policy committee of the Legislature.

In addition to the JARRC process, a person may bring an action in Thurston County Superior Court challenging the validity of an agency action. In such a suit, the person challenging the agency action has the burden of proving the agency action was invalid.

#### Fuel Content.

All motor fuel sold in Washington must be registered with the Washington State Department of Agriculture (WSDA). It is unlawful to deceive the purchaser of fuel as to, among other aspects, its nature or quality. Violations of this prohibition are enforced by the WSDA.

Fuels sold in Washington are prohibited from having the chemical methyl tertiary-butyl ether, better known as MTBE, intentionally added to it. In addition, any fuels that contain biofuels, such as biodiesel and ethanol blends, are required to meet standards adopted by the WSDA. These standards include signage at the retail location.

#### Clean Fuel Standards.

The state of Washington does not currently have a fuel standard related to carbon content. However, pursuant to an executive order, the Office of Financial Management released a document on December 12, 2014, that assessed the technical feasibility, costs and benefits, and job impacts of a carbon standard for fuel. Since the release of the assessment, the Office of the Governor has directed the DOE to develop a clean fuel standard discussion document.

According to the DOE, the discussion document represents the DOE's preliminary thinking about a clean fuel standard and how it would be implemented. The discussion document is not an official rulemaking activity of the DOE.

**Summary of Bill:**

The executive branch is prohibited from adopting certain specific rules without prior express direction from the Legislature. The rules specifically included in the limitation include any rules related to fuel standards or that establish a carbon reduction requirement for fuel distributors or vehicles based on the fuel's carbon intensity or the related greenhouse gas emissions.

Rules related to the specifically expressed topics may only be adopted after the passage of a bill that is either signed by the Governor, or allowed to take effect absent a gubernatorial signature that expressly directs an executive branch agency to either implement a state low-carbon fuel standard or to otherwise implement a fuel standard or set carbon reduction requirements for fuel distributors or vehicles based upon or defined by the carbon intensity of the fuel or greenhouse gas emissions.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.