

# SENATE BILL REPORT

## SB 5055

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As of January 20, 2017

**Title:** An act relating to proceedings of the joint administrative rules review committee.

**Brief Description:** Concerning proceedings of the joint administrative rules review committee.

**Sponsors:** Senator Dandel.

**Brief History:**

**Committee Activity:** State Government: 1/20/17.

### Brief Summary of Bill

- Requires a stay of implementation, enforcement, or changes to a rule or policy to be triggered upon the filing of a petition for review of a rule or policy with the Joint Administrative Rules Review Committee (JARRC).
- Establishes the period of time for the triggered stay of implementation, enforcement, or changes to a rule or policy to last until the conclusion of the JARRC review process.
- Allows the initial stay to remain in effect if JARRC makes an adverse finding and finds by a majority vote that the agency has not corrected the issue.
- Requires the Code Reviser to note the existence of the stay in the next publication of the relevant rule or policy, which may only be removed under certain conditions.

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### SENATE COMMITTEE ON STATE GOVERNMENT

**Staff:** Melissa Van Gorkom (786-7491)

**Background:** Overview of the JARRC. JARRC is an eight-member legislative committee consisting of four senators and four representatives, with no more than two members from each house of the same political party. JARRC is authorized to conduct selective review, initiated on its own or by petition, of agency rules and policies to determine whether:

- rules are consistent with legislative intent;
- rules are adopted consistent with the law; or

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- agency policy or interpretive statements are being used in place of a rule.

Petitions to JARRC. Any person may petition JARRC for a review of a proposed or existing rule, policy, or interpretive statement after they have petitioned the agency to amend or repeal the language and such petition was denied. JARRC must acknowledge receipt of a petition within 30 days and describe any initial action taken. If JARRC rejects the petition, a written statement of the reasons must be included. Within 90 days, unless the Legislature is in session, JARRC must make a final decision on any petition for which review was not previously rejected. During the legislative session, JARRC has until 90 days after adjournment to make a decision on any petition.

JARRC Sanction Authority. JARRC may exercise its selective rule review authority. The JARRC sanction process under current law involves the following steps:

1. If JARRC finds, by a majority vote, that a rule is not consistent with legislative intent, was not adopted consistent with the law, or that policies or interpretive statements are being used in place of a rule, it must notify the agency of its decision and reasons for the decision.
2. The agency must, within 30 days of receipt of the JARRC notice, file a notice of hearing on the rule or policy and consider written and in-person testimony.
3. Within seven days after a hearing, the agency must notify JARRC of its intended action on the rule or policy.
4. If JARRC finds, by a majority vote, that the agency has not addressed the issue, it may file its objections with the Code Reviser for publication. JARRC may also, by a majority vote, recommend suspension of an existing rule, policy or interpretive statement. Recommendations to suspend a rule must be filed within seven days of the vote to the appropriate standing committees of the Legislature, the Governor, the Code Reviser, and the agency. The Governor must, within 30 days, provide written approval or disapproval of the suspension. If the suspension is approved, it is effective from the date of the Governor's notice until 90 days after the expiration of the next regular legislative session.

The Code Reviser will publish determinations made by JARRC or the Governor's Office in the Washington State Register. References can be removed if a subsequent adjudicative proceeding determines that the rule meets legislative intent or was properly adopted.

**Summary of Bill:** Petitions to JARRC. The filing of a petition with JARRC for review of a rule or policy automatically triggers a stay of implementation, enforcement, or changes to a rule or policy until the conclusion of the review process.

JARRC Sanction Authority. If JARRC makes an initial decision that a rule is not consistent with legislative intent, receives the agency intended action on the rule or policy, and finds by a majority vote that the agency has not corrected the issue:

- the initial stay remains in effect; and
- JARRC must file its objections with the Code Reviser for publication within ten days of the decision.

In addition to publishing a reference to the JARRC's objections, the Code Reviser must also note the existence of the stay of the relevant rule or policy. This reference may only be removed if:

- a later judicial proceeding determines that the rule meets legislative intent and was properly adopted; or
- the Senate adopts a resolution lifting the stay.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: There are agencies that are not using the process as intended. Agencies are relying on legal advice that has no accountability; if they don't like the information, they go shopping for other opinions. Accountability and metrics are needed to indicate that one or two emergency rules may be satisfactory but more than that should be questioned. By the fourth or fifth emergency rule, something is wrong. This change would provide enough risk to agencies that they may follow the process.

**Persons Testifying:** PRO: Loren Freeman, Freeman & Associates.

**Persons Signed In To Testify But Not Testifying:** No one.