

SENATE BILL REPORT

ESB 5214

As Passed Senate, March 2, 2017

Title: An act relating to adding responsibilities to the duties of the joint administrative rules review committee.

Brief Description: Adding responsibilities to the duties of the joint administrative rules review committee.

Sponsors: Senators Wilson, Zeiger and Schoesler.

Brief History:

Committee Activity: State Government: 1/27/17, 2/08/17 [DP, DNP].

Floor Activity:

Passed Senate: 3/02/17, 25-24.

Brief Summary of Engrossed Bill

- Requires the Joint Administrative Rules Review Committee (JARRC) to review a rule or agency action if the rule or action has an economic impact of \$10 million or more, or if a petition for review is received from either a minimum of 15 members of the Legislature or from at least five local governments representing a total of 50,000 or more residents.
- Authorizes the JARRC to review agency actions related to general permits impacting local governments which have been filed in accordance with agency rules, as well as guidance documents and advisory material incorporated into local government ordinances.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Pearson.

Minority Report: Do not pass.

Signed by Senators Hunt, Ranking Minority Member; Kuderer.

Staff: Melissa Van Gorkom (786-7491)

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.

Background: Administrative Procedure Act (APA). Under the APA, state agencies and public institutions of higher education may engage in rulemaking to implement legislation. A rule is an agency order, directive, or regulation that is issued under the authority of a legislatively enacted statute.

JARRC in General. 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
- 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. The statute is silent as to how the committee should determine whether an issue is within JARRC's jurisdiction. 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. If JARRC makes an adverse finding regarding a policy or interpretive statement, guideline, or document, JARRC must notify the agency of its decision. The agency would be required to hold a hearing and notify JARRC of its intended actions. If JARRC finds, by majority vote, that the agency has not addressed the issue, the JARRC may:

- file its objections with the Code Reviser for publication; or
- recommend suspension of a rule to the governor.

Summary of Engrossed Bill: JARRC must review a rule or an agency action if the rule or action has an economic impact of \$10 million or more, or if a petition for review is received from either a minimum of 15 members of the Legislature or from at least five local governments representing a total of 50,000 or more residents.

JARRC may review agency actions related to:

- general permits impacting local governments which have been filed in accordance with agency rules; and
- guidance documents and advisory material incorporated into local government ordinances.

If JARRC finds, through a majority vote, that an agency issuance of a permit or use of guidelines or advisory materials is not consistent with the agency's adopted guidelines, administrative regulations for issuing a permit, or both, the agency affected must be notified of the findings.

The agency must consider all comments received as a result of JARRC review within 30 days and provide a response to JARRC. Upon receipt of the agency response, JARRC must

transmit their findings, comments received, and the agency response to the governor and the Legislature.

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: The bill adds three components to the JARRC purview, which give local governments more tools in their toolbox. This is a good step forward for folks to have the ability to review the rules and impacts they may have. The bill allows for local entities to have a means to require a review of a rule if necessary. Counties have a rulemaking ability but regulations are adopted through a public process and also have political accountability; having these go through JARRC is a good concept and would bring political accountability to these agency actions.

Persons Testifying: PRO: Senator Lynda Wilson, Prime Sponsor; Mark Johnson, Washington Retail Association; Josh Weiss, Washington State Association of Counties.

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