

# HOUSE BILL REPORT

## HJR 4213

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### As Reported By House Committee On:

Government Operations

**Brief Description:** Amending the Constitution to authorize legislative invalidation of agency rules.

**Sponsors:** Representatives Appelwick, Foreman, Cooke, B. Thomas and D. Schmidt.

### Brief History:

#### Committee Activity:

Government Operations: 1/30/96, 1/31/96 [DPS].

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## HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Conway; R. Fisher; Hargrove; Honeyford; Hymes; Mulliken; Scheuerman; D. Schmidt and Wolfe.

**Staff:** Charlie Murphy (786-7135).

**Background:** In 1983, the United States Supreme Court invalidated Congressional use of the "legislative veto." The court held that Congressional action altering the legal rights, duties, and relations of persons outside the legislative branch of government must meet the bicameral passage (majority vote in both houses) and presentment (to the executive for signature or veto) requirements of the United States Constitution.

Since that time, a number of states have litigated the issue of the legislative veto of state agency rules. Most state courts have followed the U.S. Supreme Court's analysis, although two have interpreted their state constitutions more broadly and allowed a legislative veto by concurrent resolution (Idaho) and a temporary veto by a Joint Administrative Rules Review Committee (JARRC) equivalent, pending the next legislative session (Wisconsin).

Four states (Connecticut, Iowa, Michigan, and South Dakota) have amended their state constitutions to allow the Legislature to veto state agency rules. Alaska has twice attempted to amend its constitution for this authority, but both those attempts

failed. The Oregon Legislature passed a Senate Joint Resolution last year containing even broader veto authority. It will be presented to Oregon voters in the Fall 1996 general election.

A vetoed provision in SHB 1010, the 1995 regulatory reform bill, gave the JARRC the ability by majority vote to recommend that a rule be suspended. This included a rebuttable presumption in judicial proceedings that the agency rule did not conform to legislative intent. It also shifted the burden in court to the agency of establishing that the rule was valid. The Governor felt it violated (1) the provision requiring legislative acts be done by the entire Legislature with presentment to the Governor for approval; and (2) the separation of powers doctrine in that it unduly intruded into the constitutional powers reserved for the executive and judicial branches of government.

ESSB 6037 (Chapter 388 L 1995) required a joint interim study of an independent rules review commission as a possible alternative to JARRC by the Senate and House Government Operations Committees. Authority was given to examine appropriate roles for the legislative, executive, and judicial branches of government in the oversight of rule-making and the costs, benefits, functions, and role of an independent commission.

**Summary of Substitute Bill:** At the next general election, an amendment to the Washington State Constitution will be submitted to the people for their approval or rejection. The amendment will allow the Legislature to veto an agency rule (except quasi-judicial and internal management rules) if the Legislature finds that the rule is inconsistent with legislative intent or in excess of the authority of the agency. A veto resolution requires a majority vote of both houses and becomes effective 90 days after adjournment. Veto resolutions are not subject to the presentment requirements of the state constitution.

**Substitute Bill Compared to Original Bill:** The substitute bill makes clear that the legislative veto does not apply to other agency actions, including those of a quasi-judicial nature or internal management rules.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Upon certification of election results, if voters approve the constitutional amendment.

**Testimony For:** This seeks a new balance between the legislative and executive branches of government over state agencies who stray beyond their authority.

**Testimony Against:** This is a fundamental alteration of the separation of powers.

**Testified:** Representative Appelwick, prime sponsor; Carolyn Logue, National Federation of Independent Businesses; Bruce Wishart, Sierra Club; and Carol Monohan, Association of Washington Business.