

SENATE BILL REPORT

SHJR 4213

As Reported By Senate Committee On:
Government Operations, February 23, 1996

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

Sponsors: House Committee on Government Operations (originally sponsored by Representatives Appelwick, Foreman, Cooke, B. Thomas and D. Schmidt).

Brief History:

Committee Activity: Government Operations: 2/22/96, 2/23/96 [DPA-WM].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means. Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Goings, Hale, Heavey and Winsley.

Staff: Diane Smith (786-7410)

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.

In a vetoed provision in SHB 1010, the 1995 regulatory reform bill, JARRC's recommendation to the Governor to suspend a rule became 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 Amended Bill: At the next general election, an amendment to the Washington State Constitution is submitted to the people for their approval or rejection. The constitutional amendment allows 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. When a resolution of the Legislature is challenged in court, the Legislature bears the burden of proof of the validity of the findings on which the resolution was based.

Amended Bill Compared to Substitute Bill: The Senate amendment adds that in a court action, the burden of proof of the validity of the findings on which the Legislature based its resolution is on the Legislature.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This brings authority and responsibility back to the Legislature. It is especially important in these days of term limits.

Testimony Against: This violates separation of powers. Agencies are doing much better using stakeholder models. It fundamentally alters the founding fathers' system of checks and balances and eliminates executive branch authority on policy matters.

Testified: Carolyn Logue, NFIB (pro); Ed Danzer, Danzco (pro); Dan Sexton, WA Assn. of Plumbers and Pipefitters (con); Charlie Brown, WNG/AWB (pro); Gary Smith, Ind. Bus. Assn. (pro); Jeff Larsen (con); Stu Halsan (pro); Dick Dicharme (pro).