

HOUSE BILL REPORT

HB 1897

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to air pollution control authority's rule-making authority.

Brief Description: Changing the rule-making authority of the air pollution control authority.

Sponsors: Representatives G. Chandler, Linville and Schoesler.

Brief History:

Committee Activity:

Agriculture & Ecology: 3/2/99 [DPS].

<h4>Brief Summary of Substitute Bill</h4>

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| <ul style="list-style-type: none">· Relates to the authority of air pollution control authorities to adopt rules. |
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HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Minority Report: Without recommendation. Signed by 1 member: Representative Cooper, Democratic Vice Chair.

Staff: Carole Richmond (786-7114).

Background:

The Washington Clean Air Act authorizes the creation of an air pollution control authority in each county to address and prevent air pollution within the county. Multi-county air pollution control authorities may also be formed. An authority must be activated by the county to operate. Activated authorities are deemed municipal corporations and are not deemed to be state agencies. Activated authorities have

specific powers and duties, including the authority to adopt their own rules and regulations.

In adopting rules and regulations, activated authorities must comply with the Open Public Meetings Act, provide notice of proposed rules, provide various opportunities for public participation as long as such opportunities do not conflict with the Open Public Meetings Act (34.05.325), comply with certain rule-making procedures except that rules are not required to be published in the Washington Administrative Code , and provide for judicial review under the Administrative Procedure Act. The Department of Ecology (DOE) is currently required to adopt as significant legislative rules any rules that exceed the requirements of the federal Clean Air Act. This section expires on July 1, 1999.

A significant legislative rule is defined as a rule other than a procedural or interpretive rule that: (a) adopts significant provisions of law pursuant to delegated legislative authority, the violation of which entails a penalty or sanction; (b) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (c) adopts a new, or makes significant amendments to, a policy or regulatory program. A significant legislative rule requires more analysis than a rule which is not a significant legislative rule. The requirements pursuant to significant legislative rule-making were adopted as part of the Regulatory Reform Act of 1995.

The rule-adopting agency must also include documentation of the analysis required for significant legislative rule-making in a rule-making file, and the documentation must persuade a reasonable person that the rule is justified. The rule-adopting agency must also file a rule implementation plan that describes how the agency intends to: implement and enforce the rule, including a description of the resources the agency intends to use; inform and educate affected persons about the rule; promote and assist voluntary compliance; and evaluate whether the rule achieves the purpose for which it was adopted.

Significant legislative rule-making requirements apply to the departments of Ecology, Labor and Industries, Health, Revenue, Social and Health Services, and Natural Resources, the Employment Security Department, the Forest Practices Board, the Office of the Insurance Commissioner, and rules of the Department of Fish and Wildlife implementing Chapter 75.20 RCW (hydraulic project approval). Significant legislative rule-making requirements do not apply to certain types of rules, such as emergency rules.

Summary of Substitute Bill:

In adopting rules and regulations, air pollution control authorities are required to comply with the provisions for significant legislative rule-making, and also with the Regulatory Fairness Act, which requires that disproportionate impacts of rules on small businesses be mitigated.

Substitute Bill Compared to Original Bill: Instead of referencing the provisions for significant legislative rule-making in the Administrative Procedure Act, the substitute bill restates these provisions.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) Air pollution control authorities should be held to the same standards as other agencies. Their decisions should be documented. We support doing small business economic impact statements and cost-benefit analysis.

Testimony Against: (Original bill) There is a significant difference between the DOE and air pollution control authorities. We are responding to immediate threats to public health. There are significant costs associated with rule-making. We are required to recover costs; that will mean raising fees. We have adopted some regulatory reform provisions: We solicit public input and involve affected businesses. We've received positive feedback. Three-quarters of our rules have to do with streamlining. This bill is a disincentive. The bill imposes costs and reduces benefits. It also imposes on local control. Small business economic impact statements cost \$20,000 each. We may not be able to adopt rules under this bill. This will have an impact on public health.

Testified: (In support) Charlie Brown, Washington Oil Marketers Association; Dale Cooper, Cooper Oil, Inc.; Joseph Rockne, Davis Industries; and Chris Cheney, Hop Growers.

(Opposed) Dennis McLerran, Puget Sound Air Pollution Control Authority; and Les Ornelas, Yakima Regional Clean Air Authority.