

SENATE BILL REPORT

ESB 6037

As Passed Senate, March 15, 1995

Title: An act relating to the creation of the Washington independent regulatory affairs commission.

Brief Description: Creating the Washington Independent Regulatory Affairs Commission.

Sponsors: Senators Sheldon, Hale, Rinehart, Haugen, Drew, Oke, Kohl, Fairley, Franklin, Snyder, Quigley, Bauer, McAuliffe, Fraser, Sutherland and Gaspard.

Brief History:

Committee Activity: Government Operations: 2/28/95, 3/1/95 [DP].

Ways & Means: 3/3/95, 3/6/95 [DP].

Passed Senate, 3/15/95, 37-11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass.

Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Drew, Hale, Heavey and Winsley.

Staff: Jonathan Seib (786-7427)

Background: The state Administrative Procedure Act (APA) sets forth the process that agencies must follow when adopting all rules. It requires an agency to first prepare a "statement of intent" and solicit comments on a subject of possible rule-making. The agency must hold a hearing on a proposed rule, after notice of the proposed rule and hearing is given in the State Register. The agency is required to consider, summarize, and respond to the comments it receives. The agency may then withdraw the rule, modify it, or adopt it as proposed. At the time a rule is adopted, the agency must prepare a concise explanatory statement about the rule.

The APA encourages agencies to use new procedures for reaching agreement among interested parties before publishing a notice of a proposed rule adoption. This includes negotiated rule-making, a formal process allowing the agency to reach consensus on the rules with affected parties, and pilot rule-making, which tests the feasibility and impact of rules with a pilot group prior to their statewide adoption.

A legal action to contest the validity of a rule must be commenced within two years of the effective date of the rule. A court may invalidate a rule if it finds that the rule "could not conceivably have been the product of a rational decision-maker." This has been interpreted by our Supreme Court to require courts to examine whether an agency used correct factors in deciding a rule. What the factors are was not articulated.

Any person may petition a state agency to adopt, amend, or repeal a rule. Within 60 days, the agency is required to either deny the petition and state the reasons for the denial, or initiate rule-making proceedings.

The Regulatory Fairness Act was adopted in 1982 to promote agency consideration and mitigation of the impact of their rules on small business.

The act requires that in the adoption of certain rules, the agency must prepare a small business economic impact statement. If it is legal and feasible, the agency is required to reduce the economic impact of the rule in ways specified in the act.

The Joint Administrative Rules Review Committee (JARRC) is an eight-member bipartisan legislative committee established to selectively review proposed and existing state agency rules. JARRC is authorized to recommend the suspension of an agency rule when it finds that the rule does not conform with the intent of the Legislature or was not adopted in compliance with applicable provisions of law

Summary of Bill: The Washington Independent Regulatory Review Commission (WIRRC) is created. The commission consists of five part-time members, one appointed by each of the four largest caucuses in the Legislature, and one appointed by the Governor. The members serve three-year staggered terms. Except for the member appointed by the Governor, members may be removed for cause only. The member appointed by the Governor serves at the Governor's pleasure.

The commission must appoint an executive director and a chief counsel, and may employ or contract with other employees as necessary.

Commission members are subject to public disclosure requirements and the requirements of the executive ethics law.

Before adopting a rule subject to review by the commission, an agency is required to address certain "factors" regarding the rule and its effects. Among other things, these factors include a determination that the rule is needed, that its probable benefits are greater than its probable costs, that it does not conflict with other laws, and, if the rule differs from an existing federal standard, that such difference is justified.

The existing "statement of intent" is changed to a "statement of inquiry" and the terms of the statement are changed. Agencies are exempt from filing such a statement when adopting certain listed types of rules. When such a statement is required, agencies are to file the statement with WIRRC. If WIRRC believes that the rule contemplated in the statement may violate its review criteria, it is to notify the agency of its concerns, and identify how those concerns may be addressed. WIRRC is also to notify the agency if it feels the contemplated rule could be developed through negotiated rule-making or pilot rules.

An agency is also required to file its notice of a proposed rule-making with WIRRC. WIRRC is to notify the agency if it believes the proposed rule may violate the review criteria, and suggest how the violation may be addressed. WIRRC may also notify the agency if it finds that final review of the rule by WIRRC is unnecessary.

All rules are filed with WIRRC after their adoption by the agency. Certain rules are not subject to WIRRC review and are filed by the commission immediately with the Code Reviser. The remaining rules are reviewed by the commission for consistency with statutory authority and agency compliance with all applicable provisions of law, including the regulatory fairness act and the rule-making "factors" section of the bill.

If WIRRC approves a rule, it files the rule with the Code Reviser. The rule becomes effective per existing law. If WIRRC does not approve the rule, it returns the rule to the agency and the rule does not become effective. The agency, however, may amend a disapproved rule, or otherwise attempt to address the concerns raised by WIRRC, and refile the rule with the commission. A rule disapproved by WIRRC may nonetheless be filed by the agency with the Code Reviser following the end of the next legislative session after the date of disapproval, if the Legislature fails to explicitly disapprove the rule, or explicitly approves it. The rule then become effective per existing law.

WIRRC may also review existing rules and administrative procedures, and may petition an agency to adopt, amend or repeal an existing rule. It also acts as a clearinghouse for complaints, comments, and other input from members of the Legislature and from the public regarding administrative rules and procedures.

The commission must report annually to the Governor and the Legislature. It is to be evaluated biannually by the joint committee on performance audits, which is to evaluate for both intended and unintended consequences.

The Joint Administrative Rules Review Committee is repealed.

The bill is contingent upon funding in the state budget.

Appropriation: None.

Fiscal Note: Available.

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

Testimony: The idea is intriguing, but the particular language of the bill is of concern. Of particular concern is whether the commission would truly operate independently. There is also concern about the nature and breadth of the commission's review, and whether it could have adequate staff and technical expertise to do a proper review. Repealing JARRC would remove the political element from the review process.

Testified: Anne Aagaard, League of Women Voters; Ron Judd, King County Labor Council; Bruce Wishart, Sierra Club; Naki Stevens, People for Puget Sound; Clifton Finch, Association of Washington Business; Tony Menhardt, Independent Business Association; Carolyn Logue, National Federal of Independent Business.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Fraser, Gaspard, Hargrove, Hochstatter, Johnson, Long, McDonald, Moyer, Pelz, Roach, Sheldon, Snyder, Sutherland, West, Winsley and Wojahn.

Staff: Randy Hodgins (786-7438)

Testimony For: There is a concern about whether the commission would have adequate staff and expertise to do a proper review.

Testimony Against: None.

Testified: Bruce Wishart, Sierra Club.

House Amendment(s): The House adopted a striking amendment which replaced the entire bill with language requiring the Senate and House Government Operations Committees to conduct a study on the advisability of creating an independent commission to provide oversight of the state's regulatory system.