

HOUSE BILL REPORT

ESHB 1530

As Passed Legislature

Title: An act relating to venue for declaratory judgments under the administrative procedure act.

Brief Description: Changing rules for venue for declaratory judgments under the administrative procedure act.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Grant, Holmquist, Armstrong, Blake, Shabro, Talcott, Ruderman, Schual-Berke, Schoesler, Hinkle, Condotta, Newhouse, Skinner, Sehlin, Bailey, Woods, Kristiansen and Alexander).

Brief History:

Committee Activity:

Judiciary: 2/7/03, 2/25/03 [DPS].

Floor Activity:

Passed House: 3/19/03, 83-15.

Passed Senate: 4/16/03, 35-14.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows a petition for declaratory judgment challenging an agency rule to be filed in Clark, Spokane or Whatcom counties, in addition to Thurston County.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

The Administrative Procedure Act (APA) details procedures state agencies are required to

follow when adopting rules. Generally, a rule is any agency order, directive, or regulation of general applicability which: (1) subjects a person to a sanction if violated; or (2) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials. Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding a hearing.

Under the APA, the validity of any rule adopted by an agency may be challenged by a petition for declaratory judgment when it appears the rule or application of the rule interferes with or impairs the legal rights or privileges of the petitioner. The petitioner has the burden of demonstrating the invalidity of the rule. The court may declare a rule invalid only if it finds that the rule: (1) violates the constitution; (2) exceeds the statutory authority of the agency; (3) was adopted without compliance with rule-making procedures; or (4) is arbitrary and capricious.

The petition for declaratory judgment on the validity of an agency rule must be filed in Thurston County Superior Court.

Summary of Engrossed Substitute Bill:

A declaratory action challenging an agency rule under the APA may be brought in Clark, Spokane, or Whatcom counties, in addition to Thurston County.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is a matter of fairness. It allows challenges to rules that affect a local jurisdiction to be heard by judges who are representative of the people affected by the rule. Requiring small businesses to travel to Olympia to challenge an agency rule is onerous and increases the costs for small businesses. Allowing the petitions to be filed in counties other than Thurston will spread out the caseload and alleviate the impact on Thurston County. The bill still gives the option of filing in Thurston County. Judges in other counties are just as qualified and capable of hearing these kinds of actions.

Testimony Against: The Thurston County Superior Court has extensive expertise in APA challenges to rules which would be lost if these actions were brought all over the state. This will result in less efficiency and greater costs in the process. In addition, the

bill will result in multiple determinations concerning the validity of a single rule, which will require appeal in order to get a final decision. The bill raises serious venue shopping concerns. People would seek locally elected judges to gain a home court advantage. This politicizes the whole process which is not good for anyone.

Testified: (In support) Representative Grant, prime sponsor; Representative Holmquist, secondary sponsor; Amber Balch, Association of Washington Business; Gary Smith, Independent Business Association; and Mark Johnson, National Federation of Independent Business.

(Opposed) Mike Ryherd, Northwest Ecosystems Alliance; Bruce Wishart, People for Puget Sound; and Carol Jolly, Office of the Governor.