

SENATE BILL REPORT

SB 6266

As Reported By Senate Committee On:
Government Operations & Elections, January 26, 2006

Title: An act relating to county and city participation in the rule-making process.

Brief Description: Providing for county and city participation in the rule-making process.

Sponsors: Senator Kastama.

Brief History:

Committee Activity: Government Operations & Elections: 1/17/06, 1/26/06 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6266 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Fairley, Haugen, Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senator Mulliken.

Minority Report: That it be referred without recommendation.

Signed by Senators Roach, Ranking Minority Member and Benton.

Staff: Diane Smith (786-7410)

Background: The Administrative Procedure Act (APA) defines the term "person" to include governmental subdivisions or units thereof. The term "public" is not defined.

The small business economic impact statement may be dispensed with if specific provisions of the pilot rule project section are followed. The pilot rule project is a pre-adoption method for an agency to test the feasibility of complying with or administering a rule and for identifying simple, economical alternatives to the rule.

The regulatory fairness act, from which the small business economic impact statement derives, applies only to the disproportionate impact rules may have on small versus large businesses. It does not apply that concept to small versus large counties or cities to which a rule may apply.

Significant legislative rule making is an extensive analysis that is required for the rules of the following agencies: Ecology, Labor and Industries, Health, Revenue, Social and Health Services, Natural Resources, the Employment Security Department, the Forest Practices Board, the Office of Insurance Commissioner and to the legislative rules of the Department of Fish and Wildlife implementing the chapter of law concerning construction projects in state

waters. It requires, among other provisions, that an agency assess whether the proposed rule's probable benefits exceed its probable costs.

Significant legislative rule making also requires that a rule implementation plan be prepared before a rule is adopted. In addition, after a rule is adopted that regulates the same activity regulated by other federal and state entities, the agency must coordinate the implementation and enforcement of the rule. This coordination requires one or more of the following three activities: (a) deferring to the other entity; (b) designating a lead agency; or (c) entering into an agreement specifying how the agencies and entities will coordinate the implementation of the rule.

Summary of Substitute Bill: The term "public" is clarified to apply to counties and cities.

If the agency determines that a pilot rule project is appropriate, the agency must invite affected counties or cities to participate. If any invited county or city accepts the invitation to participate, the pilot rule shall be developed jointly between the agency and the county or city.

The analysis of probable costs versus benefits of a proposed rule in the significant legislative rule making analysis must be tailored to the counties' and cities' ability to afford to comply, with the decision whether the probable benefits of the rule exceed the probable costs remaining with the agency. The Office of Financial Management must prepare a biennial ranking of counties and cities able to afford the costs of regulation by taking various factors into consideration. The agency must consider that the less able a county or city is to afford to comply, the greater the cost to the county or city of compliance.

The rule implementation plan must describe all counties and cities included within the purview of the proposed rule. The agency must prepare the implementation plan in consultation with those counties and cities that are impacted by the proposed rule.

Counties and cities are included with state and federal entities under the requirement to coordinate implementation and enforcement of an adopted rule. In addition to the same activity or subject matter, geographic location is added as a reason to require coordinated implementation and enforcement of regulation by overlapping jurisdictions.

Substitute Bill Compared to Original Bill: The undertaking of pilot rule making is clarified to be at the discretion of the agency. Also clarified is that the determination of whether the probable benefits of the rule exceed the probable costs is made by the agency. The rule implementation plan is to be prepared in consultation with the agency and the included local governments, rather than "jointly."

Appropriation: None.

Fiscal Note: Requested on proposed substitute, January 26, 2006.

Committee/Commission/Task Force Created: No.

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

Testimony For: The financial impact and inclusion of cities and counties in rule making is important to consider. It is very important to systemize the participation of local jurisdictions in rule making that affects them.

Testimony Against: It is unclear if "cities" means the definition used in state law or if "cities" means what is printed on state maps as cities. There are concerns over the pilot rule provisions. The bill is overly broad because it includes fishing and hunting rules and subjects the Department of Fish and Wildlife to Equal Access to Justice Act challenges.

Who Testified: PRO: Eric Johnson, Washington Association of Counties; Dave Williams, Association of Washington Cities.

CON: Evan Jacoby, Department of Fish and Wildlife.