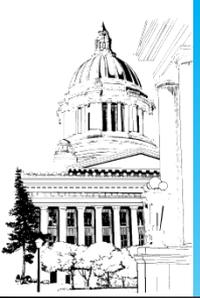




Joint Administrative Rules Review Committee

JARRC Overview

Prepared by Committee Staff, November 2013



Enabling Legislation

- ▶ In 1981, the Legislature created by statute the Joint Administrative Rules Review Committee (JARRC or Committee) in response to concerns about agency rule-making.
- ▶ JARRC statutes permit citizens to petition the Committee, subject to certain statutory requirements.
- ▶ The Committee's jurisdiction and its authority are codified within the Administrative Procedures Act (APA), chapter 34.05 RCW, 34.05.655-.681.



Administrative Procedures Act (APA)

Chapter 34.05 RCW

- ▶ General Purposes of the APA:
- ▶ To provide uniform standards for conducting formal rule-making by state agencies
- ▶ To require state agencies to keep the public informed of their organization, procedures, and rules
- ▶ To allow for public participation in the rule-making process

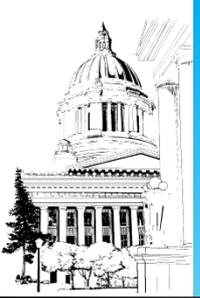


JARRC Organization

- ▶ **Joint House and Senate Committee**
 - Chair and Vice-Chair are selected by the President of the Senate or Speaker of the House.
 - Leadership rotates every two years, in even-numbered years.

- ▶ **8 Members plus 4 alternates**
 - 4 Senators, 4 Representatives
 - 2 from each caucus of each chamber
 - Members and alternates should be appointed in odd-numbered years

- ▶ **JARRC Staff**
 - Senate Committee Services
 - House Office of Program Research



JARRC Mission

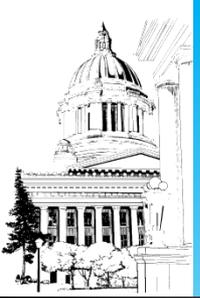
- ▶ To provide legislative oversight and agency accountability regarding proposed or existing executive state agency rules and the rule-making process.



JARRC Jurisdiction

By statute, JARRC may consider whether

- ▶ Proposed or existing rules* are consistent with legislative intent as expressed in the statute the rule purports to implement;
- ▶ Proposed or existing rules have been adopted in accordance with all procedural requirements of law, including the APA's established rule-making procedures;
- ▶ Agencies are using policy or interpretative statements as rules.
- ▶ * Includes emergency, proposed, and adopted rules



JARRC's Unique Features

▶ Selective Jurisdiction

- The Committee is not required to invoke its jurisdiction, even if there is a basis to do so.

▶ Quasi-judicial Hearings

- If JARRC decides an issue warrants a hearing, the state agency and petitioner are invited to speak to the allegations during a public hearing.
- After a hearing, any decision made by JARRC requires a quorum (5 minimum).

▶ Separation of Powers

- JARRC is the only legislative committee with oversight authority over executive branch agencies.
- The Committee's authority is limited by the Constitution's separation of powers doctrine, which prevents a legislative committee from directing an agency on how to execute the law.



JARRC Process: Rules Review

In general, the Committee receives concerns about rules or the rule-making process in one of three ways:

- ▶ By the Chair or Committee members
- ▶ By routine legislative staff review of proposed and adopted rules; and
- ▶ By citizen petition (See RCW 34.05.655).



JARRC Process: Staff Rules Review

- ▶ Over time, JARRC has adopted a number of informal procedures for conducting agency rule oversight, including routine review of proposed and adopted rules filed with the Office of the Code Reviser (CR Forms).
- ▶ The agency sends its CR forms to the Code Reviser who provides a copy to JARRC.
 - JARRC's committee assistant distributes the CR forms to the appropriate policy staff.
 - Policy staff advises JARRC staff of any concerns.
 - If necessary, JARRC staff conducts any additional research.
- ▶ JARRC staff prepares any necessary briefing materials for the Chair and provides an initial recommendation regarding whether JARRC has jurisdiction to review the proposed or adopted rules.



JARRC Process: Citizen-petition Requirements

- ▶ JARRC statutes allow citizens to petition the Committee to review proposed or existing rules, and proposed or existing policy or interpretative statements.
- ▶ By statute, a citizen may petition JARRC for review of an existing rule only if the citizen has first petitioned the agency for amendment or repeal of the rule, and the petition was denied.
- ▶ JARRC does not have jurisdiction over an agency's decision to not adopt a rule.



JARRC Process: Content of Citizen Petitions

A citizen petition must include the following information:

- ▶ The rule to be reviewed by JARRC;
- ▶ The statutory rule-making authority, the statute the rule interprets or implements, and the statute the agency is alleged to have not followed when adopting the rule, if appropriate;
- ▶ The reasons why the petitioner believes that the rule is not within the intent of the Legislature, that its adoption was not in accordance with the law, or that a policy or interpretive statement is being used in place of a rule;
- ▶ A copy of the agency's denial of a petition to amend or appeal the rule, if applicable; and
- ▶ Any judicial action taken.



JARRC Review Deadlines

Non-petition Rules Review

- ▶ There are no statutory deadlines for making final determinations on proposed or existing rules that are brought to the Committee outside the citizen-petition process.
- ▶ The routine review of proposed and adopted rules filed with the Code Reviser is a process informally adopted by the Committee, but there are no formal deadlines.

Citizen Petition Rules Review

- ▶ Within 30 days of receiving a petition, JARRC must send a letter to the petitioner acknowledging receipt. (RCW 34.05.655(1)).
- ▶ Within 90 days of receipt, JARRC must make a final determination. (RCW 34.05.655(5)).



JARRC Staff's Review of Petitions

- ▶ When JARRC staff receive a citizen petition, a response letter is drafted and approved by the Chair to meet the statutory deadline.
- ▶ JARRC staff undertake an extensive review of the petition and all accompanying documentation.
- ▶ When necessary, JARRC staff contact the appropriate policy counsel or agency staff to discuss any substantive law questions.
- ▶ JARRC staff draft a memo to the Chair that outlines the facts and issues, and analyzes whether the petition falls within JARRC's jurisdiction.
- ▶ The Chair decides whether to reject the petition or to hold a public hearing.
- ▶ A final determination on the petition must be made within 90 days of its receipt.



JARRC Review of Proposed Rules

- ▶ If, after a hearing, a majority of the Committee makes an adverse finding, it must give the affected agency written notice of the decision. Adverse findings include the following:
 - The proposed rule is not within the intent of the Legislature as expressed in the statute that the rule implements; or
 - The agency may not be adopting a proposed rule in accordance with the law.



JARRC Review of Existing Rules and Policy/Interpretive Statements

- ▶ All existing and emergency rules are subject to selective review by JARRC to determine whether they are within the intent of the Legislature and were adopted in accordance with the law.
- ▶ All agency policy and interpretive statements, guidelines, and documents are subject to selective review by JARRC to determine whether they are being used as a rule.
- ▶ If, after a hearing, a majority of the Committee makes an adverse finding, it must give the affected agency written notice of the decision.
- ▶ Within 30 days of receiving this notice, the agency must file a hearing notice with the Code Reviser, which must include JARRC's findings and must be published in the Washington State Register.



JARRC Authorities and Powers

- ▶ By statute, JARRC may
- ▶ Periodically make reports to the Legislature and public regarding any of its findings;
- ▶ Establish ad hoc advisory boards to assist in its rules review function;
- ▶ Examine and inspect all properties, equipment, facilities, files, records, and accounts of any state agency;
- ▶ Compel the attendance of witnesses and the production of any documents;
- ▶ Cause the deposition of any witness; or
- ▶ Direct the agency to conduct a small business economic impact statement under the Regulatory Fairness Act (proposed rules only).



JARRC Sanctions

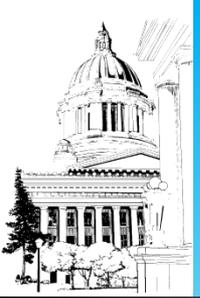
If, after a hearing, a majority of the Committee makes an adverse finding, JARRC has only two statutory sanctions available to it.

- ▶ If JARRC determines that the agency failed to amend or withdraw the rule after considering JARRC's written findings at the agency hearing, then JARRC may prepare a formal objection to the rule for publication in the next Washington Register and Washington Administrative Code.
- ▶ By a majority vote, JARRC may also recommend suspension of the rule.
 - The Governor must approve or disapprove of the suspension.
 - If approved, the suspension remains in effect until 90 days after the next legislative session.



JARRC's Informally Adopted Policies

- ▶ Except in rare instances, the Committee meets only during the legislative interim.
- ▶ Policy committee staff reviews proposed and adopted rules filed with the Code Reviser for consistency with legislative intent and authority.
- ▶ JARRC may refer any objections to rules based on substantive policy (rather than intent) to the appropriate standing policy committee for consideration.
- ▶ JARRC will not accept review of a matter if it has become the subject of a lawsuit.



Questions?

- ▶ Please call or email either committee staff with additional questions:
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