

GIVENS PURSLEY LLP

Recommendations for Administrative and Judicial Review Process

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Fairness is the Backbone of Public Procurement

“It is public policy that all firms should have an equal chance of obtaining government business. Competition is the cornerstone of the government procurement process.”

Michael Anser, “A Guide to *Public Procurement* for Elected Officials and Public Sector Managers (2009), pg. 7.

HJR 5 is All About Accountability

By Idaho Sen. Brent Hill R-Rexburg, Oct 19, 2016



“[G]overnment agencies promulgate rules and regulations having the effect of law, but with little or no accountability. Agencies consist of unelected government officials that often do not understand the impact of their rules and regulations on Idaho families, farmers, ranchers and small businesses.

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“To prevent state agencies from implementing burdensome and unnecessary rules, Idaho’s legislature reviews the rules and rejects those that are overreaching.

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America’s Founders envisioned a system of government with a balance of power within three branches. It was designed to prevent any person or group from gaining excessive power. When that balance of power blurs, it impacts all citizens.

http://www.idahopress.com/opinion/guest_opinions/hjr-is-all-about-accountability/article_3a3c6862-e28d-51a4-9216-9614cea03c4b.html

Reader Comment: Bedke: Vote for Constitutional Amendment



By Scott Bedke, Oct 19, 2016

“Our nation was founded on a system of government with three co-equal branches of government, each with its own role to play. The balance of power among these three branches helps guarantee that no single person or group can gain excessive power.”

http://magicvalley.com/news/opinion/columns/reader-comment-bedke-vote-for-constituional-amendment/article_3054aa86-1e9d-522e-9069-343fc5fe07d3.html

The Proposed Legislation

Standard of APA Review

67-5279(1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

Narrowly Tailored to Avoid Misuse

- A contested case is only available to contracts worth \$5 million or more. Narrowly tailored to limit the amount of contested cases the Department will get.
- A contested case is available only if requested by the Vendor. This makes a vendor analyze the pros and cons before asking for a contested case. Still have other non-contested case options.
- Attorney fees and costs are awarded to the prevailing party. This cuts down on frivolous requests for contested cases by vendors and visa-versa with the Department dismissing appeals without careful analysis.
- The draft incorporates the Department's request for extension of deadlines to accommodate public records requests.

Finally, the draft legislation provides for greater government accountability and fairness by encouraging checks and balances.