

HOUSE BILL REPORT

HB 1494

As Reported By House Committee On:
Trade, Economic Development & Housing

Title: An act relating to review of administrative rules.

Brief Description: Requiring review of administrative rules.

Sponsors: Representatives Wineberry, Sheldon, Springer, Morris, Schoesler, Chandler, Casada, Quall, Forner, Foreman, Hansen, Shin, Locke, Brough, Roland, Fuhrman, Miller, Ballasiotes, Edmondson, Van Luven, Silver, Cooke, Long, Dyer, Sheahan, Talcott, Lisk and Rayburn.

Brief History:

Reported by House Committee on:
Trade, Economic Development & Housing, March 3, 1993,
DPS.

HOUSE COMMITTEE ON TRADE, ECONOMIC DEVELOPMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Wineberry, Chair; Shin, Vice Chair; Forner, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Campbell; Casada; Morris; Quall; Schoesler; Sheldon; Springer; Valle; and Wood.

Minority Report: Do not pass. Signed by 1 member: Representative Conway.

Staff: Charlie Gavigan (786-7340).

Background: There are three primary statutory provisions that govern agency rule-making: (1) the Administrative Procedures Act; (2) the Regulatory Fairness Act; and (3) the statute creating the Joint Administrative Rules Review Committee.

The Administrative Procedures Act (APA) describes procedures that state agencies must follow as they carry out their duties. Part three of the APA establishes rule-making procedures. State agencies are encouraged to seek input from the public, including businesses, on a subject under consideration by the agency for possible rule-making activity. Each agency must designate a rules coordinator who has knowledge of proposed rules and can respond to

public inquiries. An agency must conduct a public hearing on all proposed rules.

The Regulatory Fairness Act provides that state agency rules affecting the business community must not place a proportionately higher burden on small businesses. When a proposed rule being considered for adoption by a state agency has an economic impact on more than 20 percent of all industries or more than 10 percent of any one industry, the adopting agency must reduce the economic impact of the rule on small businesses. The agency can accomplish this by simplifying compliance or reporting requirements for small businesses, establishing different timetables for small businesses, or exempting small businesses from some or all requirements of the rule.

The state agency must also prepare a small business economic impact statement and review its rules affecting small businesses. The small business economic impact statement analyzes the costs to small businesses of compliance with the proposed rule. The Business Assistance Center (BAC), in the Department of Trade and Economic Development, may help agencies prepare small business economic impact statements.

The Joint Administrative Rules Review Committee (JARRC) conducts legislative review of agency rules. JARRC is comprised of four senators and four representatives. The committee may review agency rules for compliance with legislative intent. If an agency fails to rectify a JARRC identified departure from legislative intent, the committee may recommend that the governor suspend the rule or that the Legislature repeal or amend authorizing legislation regarding the particular rule. The Joint Administrative Rules Review Committee may review any rule for compliance with the Regulatory Fairness Act. The committee may review small business economic impact statements required under the Regulatory Fairness Act.

Summary of Substitute Bill: All state agencies must, by July 1, 1996, review specified rules adopted before January 1, 1989, that impose requirements or costs on small businesses and: (1) repeal the rule; (2) amend the rule; or (3) complete a rule review. Some of the rules to be reviewed include those adopted by the Department of Ecology, the Department of Labor and Industries, the State Building Code Council, the Department of Corrections, the Employment Security Department, and the Department of Fisheries.

An administrative rule review statement, which must be filed with the code revisor for publication in the state register, must contain: (1) rationale for continuation of the rule; (2) a small business economic impact statement for the rule;

and (3) an economic impact mitigation statement for the rule. The agency must solicit public comment for at least 30 days following publication of the administrative rule review statement in the state register. The agency may hold a public hearing. Within 30 days of the public hearing, the agency must file a statement to be published in the state register of its intent to maintain or repeal the rule.

Failure of an agency to follow the administrative rule review process by July 1, 1996, makes applicable rules void and unenforceable.

A rule adopted after July 1, 1993, is invalid unless the rule contains a termination date not more than 60 months after the adoption of the rule. Agencies may readopt the rules, provided there is a 60 month termination date and a small business impact statement is prepared.

Any person may file a petition for declaratory judgment invalidating a rule under the Administrative Procedure Act if: (1) an agency has adopted a rule required by the federal government where the rule exceeds the minimum federal requirements and an administrative rule review has not been conducted; or (2) the agency does not substantially justify that the rule cannot be amended to lessen its economic impact on small businesses.

Substitute Bill Compared to Original Bill: The substitute bill makes clarifications regarding the use of existing small business economic impact statements. The rules that must be reviewed are somewhat narrowed by the substitute.

Fiscal Note: Requested.

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

Testimony For: State agencies are not complying with the Regulatory Fairness Act. There are many rules which negatively impact small businesses that should be repealed or amended to better address their impacts on small businesses. Agencies should regularly review rules to revise or eliminate them.

Testimony Against: There are many necessary rules that protect the health and safety of the public and the workforce. Resources should be spent on current issues rather than on a large effort to deal with a few existing inappropriate rules.

Witnesses: Julia Porter, Association of Washington Business (supports); Otto Herman, Jr., Rebound (opposes); Nancy Bratton, Seattle Chamber of Commerce (supports); Jim King, Washington State Building Trades Union (opposes); Bill Fosbre, Office of the Administrator for the Courts (supports); Gary Smith, Independent Business Association (supports); Carolyn Logue, National Federation of Independent Businesses (supports); and Jeff Johnson, Washington State Labor Council (opposes).