
State Government & Tribal Affairs
Committee

HB 1617

Brief Description: Reducing the regulatory burden for Washington businesses.

Sponsors: Representatives Smith, Chandler, Eddy, Orcutt, Pearson, Ross, Bailey, Seaquist, Johnson, Armstrong, Rodne, Herrera, Van De Wege, Warnick, Kelley, Kessler, Kristiansen and Morrell.

Brief Summary of Bill

- Requires the authority the Legislature delegates to agencies for rulemaking to be construed narrowly.
- Prohibits agencies from adopting rules unless they are derived from specific grants of legislative authority.
- Changes the burden of proof in actions challenging the validity of an agency action.
- Delays the effective date of significant legislative rules until after one legislative session has passed.

Hearing Date: 1/30/09

Staff: Marsha Reilly (786-7135)

Background:

Rulemaking in General

Agencies may only engage in rulemaking when delegated the authority to do so from the Legislature. An agency generally may not rely solely on the section of law stating a statute's intent or purpose, or on the enabling provisions establishing the agency for its statutory authority to adopt a rule.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Oversight of Agency Rulemaking

There are several ways agency rulemaking is overseen. For example, the Office of Regulatory Assistance within the Office of Financial Management operates a web site that contains information on federal, state, and local rulemaking requirements.

The Legislature exercises oversight over agency rulemaking through the Joint Administrative Rules Review Committee (JARRC). The JARRC is empowered to examine three main issues: whether a rule is consistent with the intent of the Legislature, whether a rule was adopted in accordance with the law, and whether an agency is using a policy or interpretive statement in place of a rule. The JARRC may also, by majority vote, order an agency to engage in the significant legislative rulemaking process or develop a small business economic impact statement.

If the JARRC issues an adverse finding on a rule, the agency in question is required to conduct a hearing on the committee's findings. If the JARRC is dissatisfied with the agency response to its findings, it may publish notice of its dissatisfaction in the State Register, recommend to the Governor that he or she suspend the rule, or refer the matter to a standing policy committee of the Legislature.

Judicial Review of Agency Rulemaking

A person may bring an action in Thurston County Superior Court challenging the validity of an agency action. In such a suit, the person challenging the agency action has the burden of proving the agency action was invalid.

Significant Legislative Rules

A significant legislative rule is a rule that:

- adopts substantive provisions of law that subject a violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts or amends a new policy or regulatory program.

The following agencies must engage in a special rulemaking process when adopting significant legislative rules: The Department of Ecology, the Department of Labor and Industries, the Department of Health, the Department of Revenue, the Department of Social and Health Services, the Department of Natural Resources, the Employment Security Department, the Forest Practices Board, the Office of the Insurance Commissioner, and the Department of Fish and Wildlife. The significant legislative rulemaking process imposes requirements in addition to the "regular" rule making process such as requiring the agency to determine that the rule is really needed in order to achieve the rule's goals and requiring the agency to perform a cost-benefit analysis.

An agency that is not required to follow this process for its significant legislative rules may do so on its own initiative.

Summary of Bill:

When delegating authority to an agency through legislation, the Legislature, unless it specifically states otherwise, limits its delegation to the minimum delegation necessary to administer the legislation's clear and unambiguous directives and the administration of circumstances and behaviors foreseeable at the time of the legislation's enactment. After August 1, 2009, agencies may only adopt rules derived from a specific grant of legislative authority. Agency rules must list the specific statutory section or sections from which the grant of authority is derived and may not rely solely on a section of law stating the statute's intent or purpose or the general enabling provisions establishing the agency. The agency bears the burden of demonstrating that an action was authorized by law.

Significant legislative rules must be adopted prior to December 1 of any year. Such rules may not take effect until the end of the regular legislative session in the following year.

Appropriation: None.

Fiscal Note: Requested on January 28, 2009.

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