

HOUSE BILL REPORT

HB 2748

As Reported By House Committee On:
Government Operations

Title: An act relating to regulatory reform.

Brief Description: Implementing regulatory reform.

Sponsors: Representatives Mastin, Reams, Silver and Johnson.

Brief History:

Committee Activity:

Government Operations: 1/23/96 [DPS].

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Hargrove; Honeyford; Hymes; Mulliken and D. Schmidt.

Minority Report: Do not pass. Signed by 4 members: Representatives Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Conway and R. Fisher.

Staff: Charlie Murphy (786-7135).

Background: During the 1994 and 1995 sessions, the Legislature passed legislation that made substantial changes to the state agency rule-making process and the legislative review of rules. The changes included a Regulatory Fairness Act and state agency technical assistance. The Governor vetoed a number of sections contained in this legislation.

Rule Adoption: ESHB 1010 as passed by the Legislature during the 1995 session prohibited the departments of Labor and Industries, Revenue, Ecology, Social and Health Services, Health, Licensing, Employment Security, and Agriculture, the Fish and Wildlife Commission, the Forest Practices Board, the Commissioner of Public Lands, and the Insurance Commissioner from relying solely upon the agency's enabling provisions and/or statement of intent as statutory authority to adopt a rule.

All other agencies were prohibited from adopting rules based solely on enabling provisions and/or statements of intent when implementing future statutes, except to interpret ambiguities in a statute. The Governor vetoed the sections pertaining to the Forest Practices Board, the Department of Labor and Industries, and the Insurance Commissioner.

When adopting significant legislative rules, the departments of Labor and Industries, Revenue, Ecology, Health, Employment Security, and Natural Resources, and the Forest Practices Board must make certain determinations and place sufficient documentation into the rule-making file. These determinations include whether the probable benefits exceed the probable costs, whether the rule conflicts with federal or state law, and other determinations. A rule-implementation plan must be filed before adopting a significant legislative rule. The Joint Administrative Rules Review Committee (JARRC) may also require that a state agency rule be subject to these determinations. Certain rules, including emergency rules, procedural rules, rules adopting federal or state laws by reference, and other types of rules are exempt from this determination process.

An agency may adopt emergency rules if for good cause it finds that either (1) the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that it would be contrary to the public interest to observe the time requirements for permanent rule adoption; or (2) state or federal law or a federal deadline for receipt of federal funds requires immediate adoption of a rule. The agency must include a statement of the reasons for the emergency in the rule adoption filed with the Code Reviser's Office. The emergency rule takes effect upon filing with the Code Reviser if no other date is specified. An emergency rule may not remain in effect for more than 120 days. A person may petition the Governor asking for immediate repeal of a rule adopted on an emergency basis.

Any person may petition an agency for adoption of an amendment or repeal of a rule. If an agency denies, the person may appeal to the Governor. The Governor has several alternatives, including directing certain agencies to commence rule-making or recommending that other certain agencies adopt, amend, or repeal the rule in question.

Challenges to Agency Actions: The burden of proof for demonstrating the validity of an agency action, including the validity of a rule, is on the person asserting its invalidity. Rule challenges must be commenced in court within two years of the rule's effective date.

A court is required to award fees and other expenses, including reasonable attorneys' fees, to a qualified party who prevails against a state agency in a challenge of an agency action unless the court finds that the agency action was substantially justified

or that circumstances would make an award unjust. The amount awarded may not exceed \$25,000. The court may reduce the award to the extent that a qualified party unduly or unreasonably protracted the final resolution of the matter. The law does not address the awarding of fees and other expenses if the agency appeals the superior court decision.

Summary of Substitute Bill: Rule Adoption: The "substance" of a significant legislative rule's is the object of coordination required with other federal, state and local laws relevant to the activity or subject matter. Local law ordinances are defined as those adopted by cities, towns, and counties. Information from the Municipal Research Council regarding local rules and ordinances is to be considered, if it is available. The council may also provide to the Business Assistance Center an annual list by general subject matter of available local ordinances.

The Joint Administrative Rules Review Committee has 60 days after receiving agency notice of proposed rule making to direct such rule be processed as a significant legislative rule. The Rules Review Committee, in addition to the Governor, may also receive petitions by persons seeking to have an agency adopt, amend, or repeal a rule.

Persons may request an agency adopt rules which change or replace one or more principals of law or policy used by the agency in particular cases. The agency must notify JARRC and adopt such rule when feasible and to the extent practicable.

Information submitted to an agency for development of a small business economic impact statement or significant legislative rule adoption proceeding is exempt from public inspection and copying.

Grants of Authority: Certain agencies are exempted from the provision of the 1995 Regulatory Reform law that declared agencies could not rely solely on statute and intent or enabling provisions or combinations for authority to adopt rules implementing statutes enacted after July 23, 1995. Agencies may use such laws to interpret ambiguities.

Judicial Review: Hearings boards are now expressly referenced in the law for administrative appeals. The proceedings will include the development of the record to be given the court.

Attorneys' fees and expenses in rule validity cases for a qualified party are limited to the maximum amounts awardable: Superior Court, \$25,000; courts of appeal and the Supreme Court, \$15,000. For other "agency action" cases, the maximum amount awardable in Superior Court is \$50,000; in courts of appeal and the Supreme Court \$15,000. These awards do apply to cases pending on the effective date of the 1995 Regulatory Reform law (July 23, 1995).

Substitute Bill Compared to Original Bill: The substitute bill contains several refinements to the significant legislative rule-making process. It adds references to hearings boards for administrative proceedings. It also increases the attorneys' fees and costs awardable to qualified parties challenging agency actions and the validity of rules.

Appropriation: None.

Fiscal Note: Requested on January 19, 1996.

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

Testimony For: (1) The provisions of the bill are a continuation of regulatory reform measures and help to clarify and control the rule adoption authority of state agencies. (2) The bill assists the Joint Administrative Rules Review Committee (JARRC) role in overseeing rule making. (3) The provisions regarding hearings boards are curative and clarify ambiguous provisions.

Testimony Against: Give HB 1010 a chance to work. These changes could have a chilling effect on updating rules. The costs could be prohibitive.

Testified: Representative Mastin, prime sponsor; Bruce Wishart, Sierra Club; and Wick Dufford, attorney.