

SENATE BILL REPORT

E2SHB 2221

As Reported By Senate Committee On:
Government Operations, February 23, 1996

Title: An act relating to regulatory reform.

Brief Description: Implementing regulatory reform.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Reams, Schoesler, Mastin, Koster, Campbell, Horn, L. Thomas, Sheahan, D. Schmidt, Elliot, Mitchell, Thompson, Stevens, Goldsmith, Backlund, Hargrove and McMahan).

Brief History:

Committee Activity: Government Operations: 2/22/96, 2/23/96 [DPA-WM].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Goings, Hale, Heavey and Winsley.

Staff: Jonathan Seib (786-7427)

Background: During the 1994 and 1995 sessions, the Legislature passed legislation that made substantial changes to the state agency rule-making process, the legislative review of rules, the Regulatory Fairness Act, and state agency technical assistance. The Governor vetoed a number of sections contained in this legislation. It is suggested that additional steps should be taken to limit the authority of agencies to adopt rules and to improve the rule making and rules review process.

Summary of Amended Bill: The Department of Labor and Industries, the Forest Practices Board and the Insurance Commissioner are prohibited from relying solely on a statement of intent and/or the agency's enabling provisions as statutory authority for adopting a rule after the effective date of the act. The Insurance Commissioner may use enabling/intent provisions to adopt procedural or interpretive rules.

The prohibition against the Department of Labor and Industries relying on enabling/intent provisions as statutory authority for adopting a rule does not apply to rules pertaining to prevailing wage.

The Insurance Commissioner's authority for making new rules about unfair methods of competition and unfair acts and practices is eliminated. The previously adopted rules on these subjects are retained, if otherwise valid, until repealed by the commissioner or through the enactment of new laws.

No board or commission established under Title 18 whose sole function is to perform regulatory or licensing functions with respect to a profession or occupation may adopt or enforce a rule that requires more than a bachelor's degree in order to be licensed, unless the additional education is required by statute. This prohibition does not apply to boards or commissions that regulate health-related professions.

The requirement that certain agencies coordinate the content and application of their rules, to the extent practicable, with other laws applicable to the same activity or subject matter is clarified.

The amount of time allowed for the Joint Administrative Rules Review Committee (JARRC) to request that an agency complete a small business economic impact statement or comply with a more demanding rulemaking process is increased from 45 to 60 days from the date the proposed rules are filed with the Code Reviser.

Each year, each agency must prepare a list of the major subjects of potential rule making anticipated for the ensuing fiscal year. The list must be prepared by June 30, be published in the Washington State Register, be made available to any person upon request, and be submitted to the Office of Financial Management and any other state agency reasonably expected to have an interest.

Any person can petition an agency for readoption of an existing rule. Within 60 days the agency must either deny the petition, giving reasons and alternative means to address concerns, or commence rule readoption. After an agency denial, JARRC can be asked to direct the agency to initiate readoption.

A person must petition the relevant agency to change a rule before a petition can be made to JARRC to review the rule. A majority vote of the whole committee is required for committee decisions. The elements of a sufficient petition are enumerated. The provision which allows JARRC jurisdiction to consider whether a policy statement is within the intent of the Legislature is removed. Various sections are edited for clarity. Redundancies and inconclusive language are eliminated. Four alternates must be appointed, one from each caucus of each house.

An agency must publish in the Washington State Register the subject matter of any new policy or interpretive statement. No agency interpretive or policy statement is admissible as evidence of the proper interpretation of state law in a lawsuit where the agency is not a party to the action.

Information gathered by agencies doing regulatory impact analysis which can be identified to a particular business is exempt from public inspection and copying.

The Employment Security Department is authorized to share with other agencies certain information necessary for regulatory impact analysis.

An administrative law judge is required for hearings under the insurance code, unless the person demanding the hearing agrees in writing to have an employee of the commissioner conduct the hearing.

Amended Bill Compared to Substitute Bill: The provisions in the striking amendment regarding limiting the rule making authority of the Department of Labor and Industries, the Insurance Commissioner, and the Forest Practices Board are identical to the provisions in E2SHB 2221.

The provisions in the striking amendment that require each agency to publish the subject matter of interpretive and policy statements in the Washington Register and prepare a fiscal year rule-making agenda are similar to provisions in E2SHB 2221.

The provision in the striking amendment that prohibits the use of interpretive or policy statements in certain judicial proceedings is similar to a provision in E2SHB 2221.

The remaining provisions of the striking amendment are not found in E2SHB 2221.

All other provisions of E2SHB 2221 are stricken, including those that would have limited agencies' emergency rulemaking authority, repealed the rules of certain agencies after seven years, required the Department of Social and Health Services to undertake a more demanding rulemaking process, shifted the burden of proof to the agency upon judicial review of a rule, required the payment of attorneys' fees upon appeal by an agency, and required the preparation of a regulatory impact note for any bill under consideration by the Legislature.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill continues the ongoing process of regulatory reform. It appropriately addresses the provisions vetoed last year by the Governor, and otherwise fills gaps that were not addressed in previous regulatory reform legislation.

Testimony Against: The regulatory reform legislation of previous years should be given an opportunity to work before additional changes are made. This bill goes too far to restrict the legitimate authority of certain agencies to protect the public. The bill would impose high costs on agencies with little benefit.

Testified: Rep. Mastin; Deborah Senn, Insurance Commissioner; Bill Richeson, Dept. of Transportation (con); Teresa Osinski, WUTC; Robby Stern, WSLC (con); Jim Boldt, WSCPA (con); Adele Bolson, WSCPA (con); Tim Boyd, WFPA (pro); Bruce Wishart, Sierra Club (con); Basil Badley, AIA (pro); Mel Sorensen, WA Physicians Service (pro); Carol Monohon, AWB (pro); Judith Freeman, WDFW; Jeff Cox, Jan Gee, WRA (pro); Art Stearns (con); Scott Merriman, WEC (con); Gary Smith, Ind. Bus. Assn. (pro); Carey Rader, State Board of Acct. (con); Carolyn Logue, NFIB (pro); Diane Michaler, Aviation West (pro); Charlie Brown, WNG/AWB (pro); Ed Danzer, Danzco (pro); Robert Wotton, Wotton's of Shelton (pro).