

FINAL BILL REPORT

E2SHB 2345

PARTIAL VETO

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Synopsis as Enacted

Brief Description: Revising administrative law.

Sponsors: House Committee on Appropriations (originally sponsored by Representative Reams).

House Committee on House Government Reform & Land Use
House Committee on Appropriations
Senate Committee on Government Operations
Senate Committee on Ways & Means

Background: In 1994 and 1995, as part of regulatory reform, the Legislature made substantial changes to agency rule-making and the legislative review of rules. Additional changes were adopted in 1997.

Rule-Making Requirements.

General provisions. The Administrative Procedure Act (APA) details procedures agencies must follow when adopting rules. Generally a "rule" is any agency order, directive, or regulation of general applicability that:

- (1) subjects a person to a sanction if violated; or
- (2) establishes or changes any procedure or qualification relating to:
 - agency hearings;
 - benefits or privileges conferred by law;
 - licenses to pursue any commercial activity, trade, or profession; or
 - standards for the sale or distribution of products or materials.

The rule-making procedures include publishing notice of the proposed rule in the state register, sending a copy of the notice to persons requesting it, and holding a hearing. For some types of rules, agencies must solicit comments and otherwise involve interested parties before publishing notice of a proposed rule. For each rule, an agency must maintain an official rule-making file that includes copies of all publications in the state register with respect to the rule.

Significant legislative rules. Before adopting a significant legislative rule, certain of the larger agencies must determine that the probable benefits of the rule exceed the probable costs and make other determinations. These agencies must also develop a

rule implementation plan for a significant legislative rule describing how the agency intends to implement and enforce the rule, inform and educate affected persons about the rule, promote and assist voluntary compliance with the rule, and evaluate the rule. Significant legislative rules are most rules other than emergency rules, procedural and interpretive rules, and fee-setting rules. The Joint Administrative Rules Review Committee (JARRC) may also require that any rule of any agency be made subject to the significant legislative rules requirements. The JARRC has 45 days after receiving notice of a proposed rule to make the requirements applicable.

Expedited process. An expedited repeal process allows agencies to repeal rules in an expedited manner if no one objects. Similarly, an expedited adoption process allows streamlined adoption of rules that have been the subject of a process involving substantial participation by interested parties before the development of the rule, rules which only correct typographical errors, and certain other types of rules. An agency may file for expedited adoption at any time, but is allowed only two filings (in April and October) of rules for expedited repeal.

Review of rules. Rules remain in effect until amended or repealed. The APA does not require agencies to review their rules. Under Executive Order 97-02, the Governor directed all executive agencies to review rules that have significant effects on businesses, labor, consumers, and the environment. The agencies must determine whether the rules should be retained, or amended or repealed, if they do not meet specified criteria. The criteria include whether the rule is necessary, whether it is providing the results that it was originally designed to achieve in a reasonable manner, whether it is clearly written, and whether the quantitative and qualitative benefits of the rule been considered in relation to its costs.

Under the executive order, an agency must also review its policy and interpretive statements and similar documents to determine whether they must be adopted as rules, and must review its reporting requirements.

Economic impact statements. Under the Regulatory Fairness Act, agencies must prepare a small business economic impact statement when adopting a rule that imposes more than minor costs on businesses in an industry or if requested to do so by the JARRC. Certain types of rules are exempt. The statement describes the reporting, record keeping, and other compliance requirements of the proposed rule, analyzes the costs of compliance, and addresses other matters. If the agency finds that the rule has a disproportionate impact on small businesses, the agency must reduce the costs on small businesses, where legal and feasible do to so.

Interpretive and Policy Statements and Other Documents. In addition to rules, agencies also issue other types of documents. An interpretive statement is a document titled "Interpretive Statement" that states an agency's interpretation of the meaning of a statute. A policy statement is a document titled "Policy Statement" that states an

agency's current approach to the implementation of a statute. Unlike rules, interpretive and policy statements are advisory only. Agencies are encouraged to issue interpretive and policy statements and to convert long standing interpretive and policy statements into rules.

Legislative Review. The JARRC selectively reviews rules and interpretive and policy statements. If the JARRC finds that a rule is not within the intent of the legislature or has not been adopted in accordance with all provisions of law, or that an agency is using an interpretive or policy statement in place of a rule, the JARRC notifies the agency. A process is established for the agency to respond to the JARRC's findings, and for the JARRC to take further action. Ultimately, the JARRC may recommend that the Governor suspend a rule.

The JARRC is composed of eight legislators (four senators and four representatives, with no more than two members from each house from the same political party). The President of the Senate and the Speaker of the House alternate appointing either the chair or vice chair for one year terms.

Adjudicative Proceedings. When a state agency conducts a hearing that is not presided over by officials who are to render the final decision, the hearing must be conducted by an administrative law judge.

Summary: Rule-Making Requirements. *General provisions.* A notification requirement for certain rules is added. Within 200 days of the effective date of a rule that imposes additional requirements on businesses that may subject a person to a sanction if violated, an agency must make a good faith effort to notify businesses affected by the rule of the requirements and how to obtain technical assistance. Good faith means the agency at least: (1) notifies businesses in the standard industrial classifications of businesses affected by the rule that are registered with the Department of Revenue; or (2) for rules imposing requirements only on persons or firms licensed, registered, or operating under a permit, the agency notifies the holders of the licenses, registrations, or permits. Inadvertent failure to notify a specific business does not invalidate a rule.

Significant legislative rules. Agencies are encouraged to convene a meeting of interested persons affected by a significant legislative rule at least 20 days before the effective date to identify and determine how to resolve ambiguities and problem areas in the rule. The rule implementation plan requirement is expanded to include the meeting, if one is convened, as well as training of agency personnel.

The time period for the JARRC to decide whether to impose the significant legislative rule requirements is extended from 45 to 75 days after receiving notice of the proposed rule.

Expedited process. Agencies may file proposals for the expedited repeal of rules at any time, instead of only twice a year. The contents of the rule-making file is limited so that only citations to the notices in the register are required and not copies of all the register publications with respect to a rule.

Review of rules. Beginning July 1, 2001, each state agency must review its rules on a seven-year cycle to determine if the rules should be retained, amended, or repealed. The rules reviewed and the criteria under which they are reviewed are the same as in Executive Order 97-02.

Consistent with the Executive Order, the agency must also review its policy and interpretive statements or similar documents to determine whether they must be adopted as rules, and must review its reporting requirements.

Beginning July 1, 2002, each agency must report annually to the JARRC on its progress in reviewing its rules, and must publish a summary of the report in the register. If the JARRC receives a written objection within 90 days after publication, the JARRC must determine whether the agency complied with the requirements. If the JARRC finds that the agency did not comply, the agency has 120 days to receive approval from the JARRC. If the agency fails to comply, the JARRC may recommend that the Governor suspend the rule. If the Governor disapproves the suspension recommendation, the agency must treat the decision as a petition to repeal the rule.

Economic impact statements. An agency must prepare a local government economic impact statement when adopting a rule that imposes costs on local government. Certain types of rules are exempt. The statement must describe the reporting, record keeping and compliance requirements of the proposed rule and analyze the costs of compliance for local government. The Department of Community, Trade, and Economic Development must develop a guide to help agencies prepare the statements. Annually, an agency must submit to the JARRC a list of rules for which it has prepared an economic impact statement and a summary of the costs.

Interpretive and Policy Statements and Other Documents. The legislative encouragement to agencies to use policy and interpretive statements is deleted. When a person requests a copy of a rule, an agency must identify any associated interpretive and policy statements, guidelines, documents of general applicability, or their equivalents and provide copies of the statements upon request.

A notification requirement for documents similar to the rules notification requirement is added. Within 200 days of issuing a policy or interpretive statement, guideline, document of general applicability, or its equivalent involving an issue the violation of which may result in a sanction, the agency must make a good faith effort to notify businesses. "Good faith" has the same meaning as for notification of rules.

Legislative Review. The terms of the JARRC chair and vice chair are modified. In January 1999, the President of the Senate appoints both the chair and vice chair for one-year terms. Beginning in 2000, the House and Senate alternate appointing both the chair and vice chair for two-year terms.

Adjudicative Proceedings. A hearing held by the Insurance Commissioner must be conducted by an administrative law judge unless the person demanding the hearing agrees in writing to have an employee of the commissioner conduct the hearing.

These provisions are made subject to funding in the omnibus appropriations act.

Votes on Final Passage:

House 64 32
Senate 31 17 (Senate amended)
House 83 15 (House concurred)

Effective: June 11, 1998

Partial Veto Summary: The Governor vetoed provisions requiring agencies to:

- provide copies of associated documents to persons requesting copies of rules;
- make good faith efforts to notify businesses and people affected by new rules and policies, statements or other documents;
- convene a meeting of interested persons affected by significant legislative rules; and
- prepare local government impact statements for any rules imposing costs on local government.

The Governor also vetoed provisions creating statutory rules review requirements and criteria. In addition, the Governor vetoed the provisions requiring the Insurance Commissioner to use administrative law judges for hearings and the null and void provision.