

# SENATE BILL REPORT

## E2SHB 2345

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As Reported By Senate Committee On:  
Government Operations, February 27, 1998  
Ways & Means, March 2, 1998

**Title:** An act relating to administrative law.

**Brief Description:** Revising administrative law.

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

**Brief History:**

**Committee Activity:** Government Operations: 2/24/98, 2/27/98 [DPA, DNPA].  
Ways & Means: 3/2/98 [DPA].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS

**Majority Report:** Do pass as amended.

Signed by Senators McCaslin, Chair; Hale, Vice Chair; Anderson, Horn and T. Sheldon.

**Minority Report:** Do not pass as amended.

Signed by Senator Patterson.

**Staff:** Diane Smith (786-7410)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Fraser, Hochstatter, Long, Loveland, McDonald, Roach, Rossi, Schow, Snyder, Swecker, Thibaudeau and Zarelli.

**Staff:** Maura Sullivan (786-7431)

**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 in E2SHB 1032.

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 which:

- (a) subjects a person to a sanction if violated; or
- (b) 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. 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.

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 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. In addition to rules, agencies also issue other types of documents. An interpretive statement is a document entitled "Interpretive Statement" that states an agency's interpretation of the meaning of a statute. A policy statement is a document entitled "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. JARRC selectively reviews rules and interpretive and policy statements. A person may also petition JARRC to review a rule or a policy or interpretive statement. If 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, JARRC notifies the agency. A process is established for the agency to respond to JARRC's findings, and for JARRC to take further action. Ultimately, JARRC may recommend that the Governor suspend a rule.

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 appoints the chair in even-numbered years and the Speaker of the House appoints the chair in odd-numbered years.

Adjudicative Proceedings. For most state agencies, except the office of Insurance Commissioner, 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 of Amended Bill:** Rule-Making Requirements. *General provisions.* A notification requirement for certain rules and policy statements is added. Within 200 days of the effective date of a rule or policy statement 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 notifies businesses in the standard industrial classifications of businesses affected by the rule that are registered with the Department of Revenue, or notifies affected holders of licenses, registrations or permits. Inadvertent failure to notify a specific business does not invalidate a rule.

*Significant legislative rules.* The rule implementation plan for significant legislative rules is expanded. The plan must describe how the agency will provide agency training. 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 time period for JARRC to decide whether to impose the significant legislative rule requirements is extended from 45 to 75 days.

*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, and on a seven-year cycle thereafter, each state agency must review its rules to determine if they 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.

Each agency must report annually to JARRC on its progress in reviewing its rules, and must publish a summary of the report in the Register. If JARRC receives a written objection within 90 days after publication, JARRC must determine whether the agency complied with the section's requirements. If JARRC finds that the agency did not comply, the agency has 120 days to receive approval from JARRC. If JARRC does not approve, it may recommend to the Governor that the rule be suspended.

*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 JARRC a list of rules for which it has prepared an economic impact statement and a summary of the costs.

Interpretive and Policy Statements. When a person requests a copy of a rule from an agency, the agency must identify any associated interpretive and policy statements or their equivalents (regardless of title), and provide copies of the statements upon request.

Legislative Review. Appointment of the JARRC chair and vice chair alternates between the House and Senate every even-numbered year.

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.

A null and void clause is included.

**Ways & Means Amended Bill Compared to Government Operations Amended Bill:**

Null and void language is added which makes final adoption of the legislation contingent on funding in the 1998 appropriations act.

**Government Operations Amended Bill Compared to Second Substitute Bill:**

Rules and policy statements are treated identically as far as the notification to businesses is concerned. The notification must be made within 200 days of the effective date (rather than at least 90

days prior thereto). The good faith– effort to notify businesses additionally includes notice to affected holders of licenses, registrations or permits.

The meeting with interested parties at least 20 days before the effective date of a significant legislative rule is made optional in the amendment where it was mandatory in the underlying bill.

The review of rules under the criteria in the Governor’s executive order is placed on a seven-year cycle. If JARRC finds an agency not to have come into compliance with the rules review section, the committee may recommend to the Governor that the rule be suspended. In the underlying bill, JARRC’s adverse decision invalidated the rule.

The chair and vice chair of JARRC are appointed alternately between the House and Senate every even-numbered year. The amendment does not add a ninth member; does not extend JARRC’s review to whether policy statements are within the intent of the Legislature; and does not create a rebuttable presumption in court when JARRC finds a rule outside of legislative intent or not adopted in accordance with all applicable provisions of law.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For (Government Operations):** We have now moved into looking at existing rules on a cooperative basis with the executive branch. The notification requirements are only fair « if you want compliance, you need to tell people what they are supposed to do. We hope to achieve better, understandable, more concise rules. We do not want to lose the momentum of the executive order. This is a reasonable approach to a thorny issue, with a balanced, common sense treatment. The Insurance Commission should be treated like every other state agency and have someone not beholding to the commissioner make evidentiary rulings, initial findings of fact and conclusions of law that form the basis of any appeal, on the record, to superior court.

**Testimony Against (Government Operations):** This bill creates the need to spend finite resources on additional, complex administrative requirements thus detracting from an agency’s ability to accomplish its policy mission. One-size-fits-all requirements create complications. The Governor’s executive order is all we need. The Insurance Commissioner provisions are duplicative and expensive to no good purpose. This bill makes a lot more than process changes. It also has quality requirements that can lead to litigation.

**Testified (Government Operations):** PRO: Gary Smith, Independent Business Association; Carolyn Logue, NFIB; Amber Balch, AWB; Mel Sorensen, NAI/Washington Physicians Service; Basil Badley, AIA/HIAA; CON: Fred Hellberg, Governor’s office; Gary Moore, L&I; George Taylor, office of Insurance Commissioner; Amy Bell, Department of Natural Resources.

**Testimony For (Ways & Means):** Hearings regarding the Office of the Insurance Commissioner should be held by an independent party, not an agency employee, for the sake

of fairness. It is important to communicate with businesses to achieve compliance with rules. The bill should decrease rule making and enforcement costs in the long run.

**Testimony Against (Ways & Means):** There will be fiscal impacts to the Office of the Insurance Commissioner because staff will have to study the cases and advise the Commissioner.

**Testified (Ways & Means):** PRO: Mel Sorensen, National Association of Independent Insurers and Washington Physicians Service; Basil Badley, AIA, HIAA, and ACLI; Clark Sitzes, Allstate Insurance Company; Rob Tee, SAFECO; Jean Leonard, State Farm, Washington Insurers, The Alliance; Carolyn Logue, NFIB; Gary Smith, IBA; Amber Balch, AWB; Jan Gee, Washington Food Industry and Washington Retail Association; Glen Hudson, Realtors; Rick Wickman, Blue Cross; Tom Parker, Surplus Line Association; Dana Childers, Greater Seattle Chamber of Commerce; Bryan Wahl, Realtors; CON: George Taylor, Office of the Insurance Commissioner; Bruce Wishart, People for Puget Sound; John Rosapepe, Sierra Club.