

State Government Committee

HB 1968

Brief Description: *Ensuring that agency rules do not exceed their statutory authorization.*

Sponsors: *Representatives McMorris, B. Chandler, Pflug, Dunn and Mulliken.*

Brief Summary of Bill

- *Delays the effective date of agency rules.*
- *Limits the Legislature's delegation of authority to executive agencies.*
- *Shifts the burden of proof in certain actions challenging the validity of agency actions from the person making the challenge to the agency.*
- *Allows petitions for declaratory judgments to be filed in any county.*

Hearing Date: *2/19/01*

Staff: *Jim Morishima (786-7191).*

Background:

I. Agency Rulemaking

The executive branch is responsible for implementing state laws. As part of this responsibility, the agencies in the executive branch pass administrative rules. In order to be valid, agency rules:

- *Must not exceed the amount of authority delegated to the agency by the Legislature;*
- *Must comply with both the federal and state constitutions;*
- *Must not be arbitrary and capricious; and*
- *Must have been adopted in accordance with the law.*

II. Legal Challenges to Agency Actions

A person may challenge the validity of an agency action in court (the term "agency actions" includes both the rulemaking and adjudicatory functions of the agency). A person making such a challenge bears the burden of proving the action's validity. A person wishing to challenge the validity of a rule in court may file a petition for declaratory judgment in Thurston County Superior Court.

Summary of Bill:

I. Agency Rulemaking

A. Delaying the Effective Date of Agency Rules.

An agency may not adopt a rule unless the Legislature has had the opportunity to consider the rule during at least one legislative session. For a proposed rule published on or before November 1, the rule may not go into effect until one regular session has passed. For a proposed rule published after November 1, the rule may not go into effect until two regular sessions have passed. These provisions do not apply to emergency rules, or rules establishing fishing and hunting seasons.

B. Limited Delegation of Authority.

It is clarified that in all legislation, the Legislature limits its delegation of authority to: 1) The minimum necessary to administer the legislation's clear and unambiguous directives, and 2) the administration of circumstances and behaviors foreseeable at the time of the legislation's enactment.

II. Legal Challenges to Agency Actions

In a court action to challenge whether an agency action was authorized by law, the agency bears the burden of proof. Petitions for declaratory judgments may be filed in any county. During a declaratory judgment proceeding, the court must consider the Legislature's limited delegation of authority.

Rulemaking Authority: *No express authority.*

Appropriation: *None.*

Fiscal Note: *Not Requested.*

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