

SENATE BILL REPORT

SB 5798

As Reported by Senate Committee On:
State Government, February 17, 2017

Title: An act relating to administrative procedures.

Brief Description: Changing rule-making requirements to require a yearly expiration.

Sponsors: Senators Braun, O'Ban, Brown, King, Short, Fortunato, Sheldon, Warnick, Angel, Becker, Schoesler, Zeiger and Wilson.

Brief History:

Committee Activity: State Government: 2/15/17, 2/17/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Requires that any agency rule must be within the power delegated to the agency as authorized by law, and any rule that conflicts with a statute is void.
- Provides that any agency rule or amendment adopted by November 1st will expire by June 1st of the following year unless the Legislature postpones the expiration or the agency adopting the rule has successfully completed an excellence assessment.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5798 be substituted therefor, and the substitute bill do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Pearson.

Minority Report: Do not pass.

Signed by Senators Hunt, Ranking Minority Member; Kuderer.

Staff: Melissa Van Gorkom (786-7491)

Background: Administrative Procedure Act (APA). Under the APA, state agencies and public institutions of higher education may engage in rulemaking to implement legislation. A

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

rule is an agency order, directive, or regulation that is issued under the authority of a legislatively enacted statute.

An agency must follow certain procedural requirements before a rule can be adopted. First, the agency must provide notice and solicit comments on the subject of its proposed rulemaking. Second, the agency must publish any proposed rule and conduct a hearing with an opportunity for public comment on a proposed rule. Finally, the final rule adopted must be published 30 days before it becomes effective.

A court may invalidate a rule that exceeds the statutory authority of the agency, was not adopted in accordance with statutory rule-making procedures, or is arbitrary or capricious. Generally, agency rules do not exceed statutory authority if they are written within the framework of the applicable statutes and are reasonably consistent with those statutes.

Joint Administrative Rules Review Committee (JARRC). JARRC is a legislative committee authorized to conduct selective review, initiated on its own or by petition, of agency rules and policies to determine whether:

- rules are consistent with legislative intent;
- rules are adopted consistent with the law; or
- agency policy or interpretive statements are being used in place of a rule.

If JARRC makes an adverse finding regarding a policy or interpretive statement, guideline, or document, JARRC must notify the agency of its decision. The agency must hold a hearing and notify JARRC of its intended actions. If JARRC finds, by majority vote, that the agency has not addressed the issue, the JARRC may file its objections with the Code Reviser for publication. JARRC may also, by a majority vote, recommend suspension of an existing rule, policy, or interpretive statement.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Any rule adopted by an agency must comply with the following terms:

- a rule may be adopted only if it is within the power delegated to the agency as authorized by law;
- a rule is not authorized by statute merely because it does not contradict specific provisions of a statute; and
- any adopted rule or amendment to an existing rule is void if it conflicts with a statute.

Beginning July 1, 2017, the following rules apply:

- any rule adopted or amended by November 1st of any year expires on June 1st of the following year unless:
 - the Legislature passes a bill to postpone the expiration of the rule or amendment; or
 - the agency adopting the rule has successfully completed an excellence assessment by an independent examiner;
- the legislative postponement of a rule expiration does not constitute approval of the rule and is not admissible in court as evidence of legislative intent; and

- any rule that expires due to the lack of legislative postponement may be readopted only with express statutory authority.

Excellence assessment is defined as an assessment of agency operational performance by a trained national or state examiner using an excellence framework published by the National Institutes of Standards and Technology.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT COMMITTEE (First Substitute): Rules adopted by agencies that have successfully completed an excellence assessment would not expire annually. Declares an emergency and establishes an effective date of July 1, 2017.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The bill asserts legislative power over the rulemaking process. The Legislature authorizes the executive branch to make rules, most of the time they do that well but sometimes they don't. There are thousands of rules that agencies issue each year, none of which have legislative oversight. This approach would help the rulemaking process and the legislative process by providing transparency and accountability to the rulemaking process. This approach is modeled after Colorado which has a similar process that works smoothly and approves rules annually each year through the Legislature.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Mike Ennis, Association of Washington Business; Mark Johnson, Washington Retail Association; Amber Carter, Amber Carter Government Relations LLC.

Persons Signed In To Testify But Not Testifying: No one.