
State Government Committee

SB 6396

Brief Description: Changing rule-making requirements to require preadoption review by the attorney general and a yearly expiration.

Sponsors: Senators Braun, Roach, Bailey, Rivers, Angel, Becker, Brown, Dammeier, Parlette, Sheldon, Schoesler, Honeyford, Warnick, Padden and Pearson.

Brief Summary of 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.
- Requires agencies to submit any rule or amendment to the Attorney General for an opinion on its legality before being adopted.
- Provides that any agency rule or amendment adopted by November 1 will expire by June 1 of the following year unless the Legislature postpones the expiration.

Hearing Date: 2/23/16

Staff: Sean Flynn (786-7124).

Background:

The Administrative Procedures Act - Rule-Making.

The Administrative Procedures Act (APA) requires agencies to follow certain procedural requirements when proposing and adopting rules of general applicability regarding licensing, regulations, and other agency actions. The rule-making requirements apply to any state department, board, commission, or officer with rule-making authority. The legislative and judicial branches are exempt from the APA requirements, as well as the Governor, and the Attorney General.

The types of rules that are subject to the formal rule-making process include general orders, directives, and regulations regarding: violations that impose sanctions; agency hearing procedures; qualifications and requirements for benefits or privileges; licensing qualifications

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and standards; and mandatory standards for products and materials for distribution or sale. A rule does not include: statements regarding internal management issues; declarations issued in response to public petitions; certain traffic restrictions; higher education rules regarding student admission, academics, employment relations, and fiscal processes; or certain rules by the Department of Revenue regarding excise taxes.

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.

The Joint Administrative Rules Review Committee.

The Joint Administrative Rules Review Committee (JARRC) is an eight member bipartisan legislative committee that provides review of proposed and existing agency rules. The JARRC may review whether:

- an agency rule fits within the legislative intent of the authorizing statute;
- a rule was adopted in accordance with the law; or
- a policy, guideline or interpretative statement is being applied by an agency as a rule.

The JARRC may recommend that the governor suspend a rule or that the Legislature repeal or amend the applicable authorizing statute if it finds that a rule is not in compliance with the law.

Summary of Bill:

Any rule adopted by an agency must comply with certain terms. First, a rule may be adopted only if it is within the power delegated to the agency as authorized by law. Second, a rule is not authorized by statute merely because it does not contradict specific provisions of a statute. Finally, any adopted rule or amendment to an existing rule is void if it conflicts with a statute.

Beginning July 1, 2016, the following rules apply:

- No agency rule may be adopted or amended unless it has been submitted to the Attorney General's office for an opinion as to the constitutionality and legality of the rule or amendment.
- Any rule or amendment that is adopted without submission to the Attorney General is void.
- Any rule adopted or amended by November 1 of any year expires on June 1 of the following year unless the Legislature passes a bill to postpone the expiration of the rule or amendment.
- 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.
- Any rule that expires due to the lack of legislative postponement may be readopted only with express statutory authority.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.