
**State Government, Elections &
Information Technology Committee**

SB 5798

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 Summary of Bill

- Requires any rule adopted before November 1 to expire by June 1 of the following year unless postponed by the Legislature.
- Provides that rules must be within the agency's delegated power and as authorized by law and that any rule conflicting with a statute is void.

Hearing Date: 3/22/17

Staff: Sean Flynn (786-7124).

Background:

The Administrative Procedures Act (APA) requires agencies to follow certain procedural requirements when proposing and adopting rules of general applicability. The rule-making requirements apply to any state department, board, commission, or officer with rule-making authority. The Office of the Governor, the Office of the Attorney General, and certain executive agency activities are exempt from the APA requirement.

Generally, rule-making is required for any agency order, directive, or regulation that subjects a person to a penalty or sanction; sets out agency procedures; determines a benefit of privilege; or involves regulating licensing or commercial activity. 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

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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 rule-making. 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. Rules are filed with the Office of the Code Reviser and published in the Washington State Register.

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 comply with statutory authority if they are within the framework of the applicable statutes and are reasonably consistent with those statutes.

Joint Administrative Rules Review Committee.

The Joint Administrative Rules Review Committee (JARRC) is a bipartisan legislative committee that reviews selected proposed and existing agency rules. The JARRC may review whether: a 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.

Any person may petition the JARRC for a review of a proposed or existing rule, a proposed or existing policy, or an interpretive statement of general applicability. If the JARRC issues an adverse finding on a rule, the agency in question is required to conduct a hearing on the committee's findings. 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:

Beginning July 1, 2017, any rule falling within the scope of the APA that is adopted before November 1st expires on June 1st of the following year unless the Legislature acts to postpone the expiration of the rule. Any rule that expires may not be readopted unless expressly authorized by statute.

No rule may be adopted except within the agency's delegated power and as authorized by law. A rule is not deemed authorized merely because the rule is not contrary to the specific provisions of a statute. Any rule that conflicts a statute is void.

Appropriation: None.

Fiscal Note: Available.

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