

# HOUSE BILL REPORT

## ESB 6242

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As Reported By House Committee On:  
State Government

**Title:** An act relating to implementation of the recommendations of the governor's task force on regulatory reform.

**Brief Description:** Implementing regulatory reform.

**Sponsors:** Senators Sheldon, Sellar, Moore, Anderson, Gaspard, Snyder, Quigley, Franklin, McAuliffe, Oke, Pelz, M. Rasmussen, Winsley, Drew and Ludwig; by request of Governor Lowry.

**Brief History:**

Reported by House Committee on:  
State Government, February 24, 1994, DPA.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Anderson, Chair; Veloria, Vice Chair; Conway; King and Pruitt.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Reams, Ranking Minority Member; L. Thomas, Assistant Ranking Minority Member; Campbell and Dyer.

**Staff:** Bonnie Austin (786-7135).

**Background:** In August of 1993, Governor Lowry established, by executive order, the Task Force on Regulatory Reform. The task force was directed to develop recommendations for statutory and administrative changes to achieve more reasonable, efficient, cost-effective, and coordinated regulatory actions. Although the work of the task force is scheduled to be completed by December 1, 1994, the task force has submitted interim recommendations to the Governor that address the Joint Administrative Rules Review Committee, state agency rule-making, small business impacts, standardized forms, and technical assistance.

JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE (JARRC): The Joint Administrative Rules Review Committee is authorized to recommend the suspension of an agency rule when it finds that the rule does not conform with the intent of the

Legislature. A suspension recommendation requires a two-thirds vote. The Governor is required to approve or disapprove the recommended suspension within 30 days. If the Governor approves the suspension, the suspension is effective until 90 days after the expiration of the next regular legislative session. The code reviser is required to publish JARRC's suspension recommendation and the Governor's approval or disapproval in the Washington State register and reference this entry in the next edition of the Washington Administrative Code. However, a JARRC suspension recommendation does not establish a presumption as to the legality or constitutionality of the rule in subsequent judicial proceedings.

AGENCY RULE-MAKING: Under the Administrative Procedures Act, an agency is required to maintain a rule-making file for each rule that it proposes or adopts. This file and the materials it incorporates must be available for public inspection. Among other items, the file must contain: all written comments received by the agency on the proposed rule adoption; a transcript or recording of presentations made during rule-making proceedings and any memorandum prepared summarizing the presentations; petitions for exceptions to, amendment of, or repeal or suspension of the rule; a concise explanatory statement identifying the agency's reasons for adopting a rule and a description of any differences between the proposed and adopted rule; and documents publicly cited by the agency in connection with its decision.

Any person may petition a state agency to adopt, amend, or repeal a rule. Within 60 days, the agency is required to either deny the petition and state the reasons for the denial, or initiate rule-making proceedings.

SMALL BUSINESS IMPACT: The Regulatory Fairness Act was adopted to minimize the proportionally higher impact of agency rules on small businesses. When a proposed rule will have an economic impact on more than 20 percent of all industries, or more than 10 percent of any one industry, the agency is required to: (1) reduce the economic impact of the rule on small businesses; and (2) prepare a small business economic impact statement.

Agencies may reduce the impact of rules by exempting small businesses from some or all of the requirements of the rule, simplifying compliance or reporting requirements for small businesses, establishing different timetables for small businesses, or establishing performance rather than design standards.

Small business economic impact statements analyze the cost of business compliance with the rule, including costs of

labor, supplies, equipment, and increased administrative costs. Small business compliance costs are compared with the costs of compliance for the largest businesses. Costs are analyzed in terms of cost per employee, cost per hour of labor, or cost per \$100 of sales. Statements also include a description of reporting, record keeping and other compliance requirements, and the kinds of professional services that a small business is likely to need to comply. Agencies are not required to prepare a small business economic impact statement if the rule will have a minor or negligible economic impact.

STATE AGENCY TECHNICAL ASSISTANCE: The Department of Labor and Industries operates a voluntary compliance program that provides on-site or other types of consultations to employers regarding their compliance with health and safety standards. These visits are not regarded as inspections, nor is any enforcement action taken unless a serious violation is found and the violation is not or cannot be satisfactorily abated by the employer.

Additionally, in 1992, the Department of Ecology was authorized to appoint technical assistance officers to provide on-site consultation to businesses to help them comply with environmental regulations. The technical assistance officer may report violations to enforcement personnel within the department, but may not take enforcement action unless persons or property are at risk of substantial harm.

**Summary of Amended Bill:**

JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE (JARRC) REVIEW: JARRC is authorized to recommend suspension of an existing rule by a majority vote, instead of the current two-thirds requirement. If the Governor disapproves JARRC's suspension recommendation, the agency is required to either state in writing why the rule was adopted within the scope of the agency's statutory authority, or commence rule repeal or amendment proceedings.

A JARRC suspension recommendation by a two-thirds vote establishes a rebuttable presumption in any proceeding challenging the validity of the rule that the rule was adopted outside the scope of the agency's authority.

AGENCY RULE-MAKING: Before adopting a rule, agencies are required to evaluate: (1) the need for the rule; (2) whether likely benefits of the rule justify its likely costs; (3) economic and environmental consequences; (4) alternatives that may achieve the same purpose at less cost; (5) whether conflict, duplication or overlap with other

state and federal laws are reasonably justified; (6) whether differences between the proposed rule and federal rules on the same subject are reasonably justified, the costs and benefits of differences, and statutory authority; and (7) whether differences in applicability to public and private entities are reasonably justified. Except for emergency rules, agency consideration of these factors must be in writing and must be part of the agency's rule-making file. Agencies are required to develop plans for evaluating the effectiveness of rules.

Agencies are required to produce a written summary of all comments received on a proposed rule and a substantive response to comments. Upon request, this statement must be provided to anyone who requests a copy or has commented on the rule.

If an agency headed by a non-elected official denies a petition to amend or repeal a rule, the petitioner may appeal the decision to the Governor within 30 days. Within 60 days of receipt, the Governor is required to either reject the appeal in writing, stating the reasons for the rejection, or order the agency to commence rule-making proceedings.

SMALL BUSINESS IMPACT: To reduce the impact of rules on small businesses, agencies are authorized to use mitigation techniques other than the ones currently authorized. Agencies are required to prepare small business economic impact statements before filing notice of a proposed rule. "Industry" is redefined to include any business in a four-digit standard industrial classification, except where confidentiality requirements would be violated. New data gathered by the agency must be used when analyzing the costs of compliance. Small business economic impact statements must include a summary of mitigation options considered and an explanation of each option not included in the rule. Agencies are encouraged to use committees when analyzing costs and identifying mitigation measures.

OTHER AGENCY REQUIREMENTS: The Department of Community, Trade, and Economic Development is required to develop a model standardized format for reporting information commonly required from the public for permits, licenses, approvals, and services. The format, and recommendations for implementation, must be submitted to the Legislature by December 31, 1994.

Where appropriate, the Governor will require state agencies to designate technical assistance representatives to coordinate voluntary compliance with the agency's requirements. Technical assistance employees may not issue

orders or assess penalties. If violations of the law are observed, the owner or operator will be informed of the violation, technical assistance concerning compliance will be provided, and agency enforcement personnel will be notified. The owner or operator will be given a reasonable period of time to correct observed violations. The enforcement exemption does not apply if the observed violation poses a likely risk of death, substantial bodily harm, significant environmental harm, or physical damage exceeding \$1,000. The state is not liable for actions that arise from technical assistance representatives performing their duties or from agency failure to supply technical assistance.

**Amended Bill Compared to Engrossed Bill:** Provisions that establish legislative duties in statute are deleted. HCR 4431 and HR 4693 place legislative duties into the Joint and House Rules.

A provision which allows any person to petition the Governor within seven days to repeal an emergency rule is deleted. Instead, the Governor and the Attorney General are to oversee compliance with emergency rule-making requirements.

Provisions which prohibit agencies from adopting certain types of rules that fail to meet specified criteria are deleted. Instead, agencies are required to evaluate specified criteria, and agency consideration of the criteria are subject to judicial review. A provision which requires agencies to place citations to all data relied on in the rule-making file is deleted.

Provisions which require agencies to adopt a plan to educate affected persons, promote voluntary compliance, and evaluate whether the rule achieves its purpose and avoids the taking of private property are deleted. Instead, agencies are required to have a plan to evaluate whether rules filed under each adopting order achieve their purpose. Provisions that require agencies to negotiate with federal, local, and other state agencies regarding enforcement of rules regulating the same subject matter are deleted. Also deleted are provisions which require agency reporting to the Legislature and notification to the small business assistance center.

Criteria which the Governor is required to consider when reviewing an appeal of the denial of a petition to amend or repeal a rule is deleted.

The provision which requires a two-thirds vote for a JARRC suspension recommendation is deleted. Instead, JARRC may recommend suspension by majority vote. Provisions that give

JARRC the authority to determine whether rules have been adopted in accordance with the new rule-making criteria and to request agency preparation of a small business economic impact statement are deleted.

For the purposes of small business economic impact statements, the definition of minor impact is changed from .1 percent of average yearly profits of an industry to less than .001 times the average profit of businesses affected by the rules.

A section is deleted that requires the business assistance center to develop agency guidelines for preparing statements, to review and comment on statements, to advise JARRC on whether an agency has reasonably assessed costs, and to establish and chair a state rules coordinating committee to develop education and voluntary compliance programs.

A section is deleted that prohibits certain agencies from issuing penalties against a business entity for certain first-time rule or law violations. Instead, the Governor will require the appointment of technical assistance officers to coordinate voluntary compliance.

Sections that allow certain businesses and individuals to be awarded fees and costs up to \$50,000 if an agency rule is declared invalid are deleted.

**Fiscal Note:** Requested February 22, 1994.

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

**Testimony For:** None.

**Testimony Against:** None.

**Witnesses:** None.