

FINAL BILL REPORT

E2SHB 2510

PARTIAL VETO

C 249 L 94

Brief Description: Implementing regulatory reform.

By House Committee on Appropriations (originally sponsored by Representatives R. Meyers, Reams, Brough, Dorn, Dunshee, Johanson, Pruitt, Shin, Zellinsky, Carlson, R. Johnson, J. Kohl, Karahalios, Basich, Jones, Bray, R. Fisher, Holm, Moak, Sheldon, Valle, Chappell, Eide, Wolfe, B. Thomas, Dyer, King, G. Fisher, L. Johnson, Dellwo, Ogden, Roland, Grant, Jacobsen, Quall, Rayburn, Morris, Romero, Rust, Kremen, Conway, Linville, Patterson, Forner, Long, Mielke, Springer, Cothorn, Kessler, H. Myers, Tate, Backlund, Cooke, Wood and Mastin; by request of Governor Lowry).

House Committee on State Government
House Committee on Appropriations
Senate Committee on Labor & Commerce

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 legislation, the Joint Administrative Rules Review Committee, state agency rule-making, small business impacts, 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.

STATE AGENCY RULE-MAKING: Under the Administrative Procedures Act, agencies are encouraged, but not required, to seek public comments regarding possible rule-making before beginning the formal rule-making process.

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 a rule's impact by exempting small businesses from some or all of the rule's requirements, 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, or if the rule is required by federal law.

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.

The Department of Ecology is also 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:

JOINT ADMINISTRATIVE RULES REVIEW COMMITTEE REVIEW: JARRC is authorized to review whether rules have been adopted in accordance with new rule-making requirements and other provisions of law. JARRC is authorized to recommend suspension of an existing rule by a majority vote. The suspension recommendation will be transmitted to the appropriate standing committees of the Legislature. 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 based on the grounds that the rule does not conform with legislative intent establishes a rebuttable presumption in any proceeding challenging the validity of the rule that the rule is invalid.

JARRC is authorized to require agency preparation of a small business economic impact statement prior to rule adoption.

STATE AGENCY RULE-MAKING:

Agencies must solicit comments from the public on a subject of possible rule-making prior to publishing a proposed rule adoption. Agencies are required to prepare, file with the code reviser, and send to interested parties a statement of

intent that identifies the need for and goals of the rule, as well as the process for participation by interested parties. Agencies are required to determine whether negotiated rule-making, pilot rule-making or another participation process is appropriate. If these processes are not used, the agency must place written justification in the rule-making file.

Any person may petition the Governor to repeal certain emergency rules within seven days of adoption. The Governor is required to respond to the petition within seven days. If the Governor repeals a rule, any sanction based on that rule is void. An agency adopting an emergency rule must either comply with new rule-making requirements or provide written justification for failing to do so.

Prior to adopting certain rules, agencies are required to determine that: (1) The rule is needed; (2) the likely benefits justify likely costs; (3) there are no reasonable alternatives that would be as effective but less burdensome; (4) any fee imposed will generate no more revenue than is necessary to achieve the objectives of the statute on which the rule is based; (5) the rule does not conflict with federal and other state laws; (6) any overlap or duplication is necessary to achieve the objectives of the statute on which the rule is based; (7) differences from the federal law are necessary to achieve the objectives of the statute on which the rule is based; and (8) differences in applicability to private and public entities are necessary to achieve the objectives of the statute on which the rule is based.

For certain rules, agencies are required to adopt rule implementation plans to inform and educate affected persons, promote voluntary compliance, and evaluate whether the rule achieves its purpose. Agencies must coordinate with federal and other state agencies regarding implementation and enforcement of rules that regulate the same activity or subject matter; agencies shall make every effort to designate a lead agency, enter into a coordination agreement, or defer to the other governmental entity. Agencies are also required to report to JARRC and the small business assistance center regarding conflict, overlap and duplication.

To the extent practicable, rules should be clearly and simply stated.

Agencies are required to produce a written summary of all comments received on a proposed rule and substantive responses to those comments. These must be placed in the rule-making file, and provided to anyone upon request or

from whom the agency received comment. The rule-making file must also contain citations to data and studies relied on in the rule-making process.

If an agency that is under the Governor's jurisdiction denies a petition to amend or repeal a rule, the petitioner may appeal that denial 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. Upon request, the Governor's Office is required to provide copies of the Governor's ruling. A person need not appeal a denial of a petition to amend or repeal a rule to the Governor in order to obtain judicial review.

SMALL BUSINESS IMPACT: 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. Agencies are required to consider input on lost sales or revenue. A small business economic impact statement must include a description of the process for small business input into rule development, and a list of industries that will be required to comply with the rule.

To reduce the impact of rules on small businesses, agencies are authorized to use other mitigation techniques. New mitigation measures include reducing or modifying fine schedules for noncompliance. In the small business economic impact statement, agencies are required to either provide a statement of the steps taken to reduce small business costs, or provide reasonable justification for not doing so.

If a small business economic impact statement is not being prepared because the rule is required by federal law, a statement must be filed with the code reviser citing the federal law and describing the consequences of not adopting the rule. Explanations for not preparing statements must be published in the state register.

The business assistance center is required to develop agency guidelines for preparing small business economic impact statements, review and comment on statements, advise JARRC on whether the agency has reasonably assessed costs, and establish and chair a state rules coordinating committee to develop education and voluntary compliance programs.

TECHNICAL ASSISTANCE: Certain agencies are prohibited from issuing penalties against a business entity when that business entity has submitted a written request for

technical assistance. The agency will instead issue a "statement of deficiency," and the business entity will be given a reasonable period of time to come into compliance with the law. The prohibition against issuing penalties does not apply: (1) if the business entity knowingly violated the law; (2) if the business entity has previously violated the same law; (3) to tax deficiencies greater than \$1,000; (4) to interest due on taxes; (5) to violations that place a person in danger of death or bodily harm; (6) to violations that are likely to cause more than minor environmental harm; (7) to violations that are likely to cause property damage in excess of \$1,000; and (8) to federally delegated programs, unless federal authorization is granted. The state is not liable for damages arising from the provision of, or failure to provide, technical assistance.

OTHER PROVISIONS: 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.

The name of the Growth Planning Hearings Board is changed to the Growth Management Hearings Board.

Cities and counties are required to make every effort to avoid conflict, overlap, and duplication with state and federal regulations.

Votes on Final Passage:

House	64	29	
Senate	28	20	(Senate amended)
House			(House refused to concur)

Conference Committee

Senate	26	22
House	62	34

Effective: June 9, 1994
July 1, 1994 (Section 10)

Partial Veto Summary: The veto deletes a section that established a rebuttable presumption of rule invalidity when JARRC, by a two-thirds vote, recommends certain rule suspensions.

Sections are vetoed that required agencies to make determinations regarding proposed rules, adopt rule implementation plans, and coordinate with other state and federal agencies when adopting rules regulating the same subject matter or activity. The veto also deletes a gubernatorial appeal procedure regarding the denial of a petition to amend or repeal a rule.

The veto deletes a requirement that agencies file a statement with the code reviser when the agency is not preparing a small business economic impact statement due to the fact that the rule is required by federal law.

A section is vetoed that prohibited certain agencies from immediately issuing penalties against a business entity for certain violations when that entity has submitted a written request for technical assistance.

Sections are vetoed that required cities and counties to take steps to avoid conflict, overlap, and duplication with state and federal regulations.