

HOUSE BILL REPORT

ESSB 5794

As Reported By House Committee On:
State Government

Title: An act relating to administrative law.

Brief Description: Revising administrative law.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Moore, Amondson and Jesernig).

Brief History:

Reported by House Committee on:
State Government, April 1, 1993, DPA.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Anderson, Chair; Veloria, Vice Chair; Reams, Ranking Minority Member; Vance, Assistant Ranking Minority Member; Campbell; Conway; Dyer; and Pruitt.

Staff: Bonnie Austin (786-7135).

Background: The state Administrative Procedure Act (APA) imposes certain procedural and substantive requirements on state agencies in their adoption of administrative rules. Procedurally, the APA requires public notice and participation and agency maintenance of a rule-making file. Substantively, a rule must not violate constitutional provisions, not exceed the statutory authority of the agency, and be conceivably the product of a rational decision-maker.

The Joint Administrative Rules Review Committee (JARRC) is authorized to review both proposed and existing rules. If a majority of JARRC's members find that a proposed rule is not within legislative intent, the committee is to provide the affected agency with notice of its decision, which the agency is required to consider. JARRC is authorized to review existing rules to determine whether they have been adopted in accordance with law and whether they are consistent with legislative intent. JARRC may also review rules to determine whether an agency has complied with the requirements of the Regulatory Fairness Act.

Summary of Amended Bill: If JARRC finds that a proposed rule is not within the intent of the Legislature, or that the agency may not be adopting the rule in accordance with all applicable provisions of law, the committee is to provide the governor and the affected agency with notice of its decision. JARRC may review existing rules to determine whether the statute the rule purports to implement has been repealed or ruled invalid by the courts.

If JARRC finds that an existing rule is not adopted in accordance with applicable provisions of law, it may file a notice of its objections with the code revisor. A majority vote is needed for a suspension recommendation. Notice of suspension recommendations will be sent to appropriate legislative standing committees.

Prior to or during rule-making, agencies are encouraged to survey other federal, state, and local entities that have jurisdiction over the subject matter of a proposed rule to determine whether conflict, overlap, or duplication exists. Agencies are encouraged to address these issues during the rule-making process and to mitigate the adverse impact of conflict, overlap, or duplication. Agencies are encouraged to place this information in the rule-making file.

Amended Bill Compared to Engrossed Substitute Bill: Provisions are deleted that would have created new rule-making requirements regarding evidence needed in the rule-making file, written plans, and prohibitions against exceeding federal law or conflicting with, overlapping, or duplicating other laws. Instead, agencies are encouraged to survey other federal, state, and local entities to determine whether conflict, overlap, or duplication exists and to take mitigation steps. The requirement that JARRC maintain a continuous review of all proposed rules is deleted. Other technical changes are made.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect July 1, 1994.

Testimony For: Regulatory reform is a top priority for businesses in the state. Conflicting regulations are impossible to comply with. Regulations have become too complex and many businesses do not have the resources or expertise to comply. In some cases, guidelines have been issued only days before rules went into effect, and businesses did not have enough time to understand what was required. This legislation will cut back the number of rules being adopted. It might cost the state more money, but it will save businesses money and therefore stimulate

the economy. This will dovetail with the Governor's Task Force on Regulatory Reform, which is supported by the business community. Regulated communities need to be involved in rule-making prior to the adoption process. A business survey found that 90 percent of the respondents feel that Washington is hostile to small businesses.

Testimony Against: These provisions create many new bases for challenging rules in court. Some of these provisions are conflicting or confusing and thus may lead to litigation. Many of these provisions were discussed and rejected in the 1988 rewrite of the Administrative Procedures Act. These requirements will result in a diversion of agency resources from customer service. Agencies do not have the staff to do the cost-benefit analysis or other requirements of the bill. Solutions to regulatory reform should be targeted to the specific complaints. The Governor's Task Force on Regulatory Reform should be the forum for addressing these issues. Emergency rules should be exempt from these requirements. This bill will paralyze the regulatory process.

Witnesses: (Pro): Senator Alex Deccio; Senator Ray Moore prime sponsor; Julia Porter, Association of Washington Business; David Gertz, C&D Propane Incorporation; Roy Weisman, Washington Public Ports Association; Casey McKinney, Governor's Small Business Improvement Council; Bill Bellman, Washington Oil Marketers Association; Mike Sciacca, Washington Oil Marketers Association; Eric Johnson, Washington Public Ports Association; Carolyn Logue, National Federation of Independent Business; Jim Zimmerman, Travel Lodge; and Tony Meinhard, Independent Business Association. (With Concerns): Fred Hellberg, Office of Financial Management; Suzanne Major, Department of Labor and Industries; Russ Brubaker, Department of Revenue; Terry Hussman, Department of Ecology; Eric Slagle, Department of Health; Ed Manary, Department of Fisheries; and Kathy Spong, Attorney General Office. (Con): Bruce Wishart, Sierra Club.