

SENATE BILL REPORT

SB 5506

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 24, 1993

Brief Description: Revising administrative rule making.

SPONSORS: Senators Moore, Anderson, Jesernig, Amondson, Haugen, Barr, Snyder, Cantu, Owen, Vognild, Deccio and Hochstatter

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5506 be substituted therefor, and the substitute bill do pass.

Signed by Senators Amondson, Barr, Cantu, McAuliffe, Newhouse, Pelz, Vognild, and Wojahn.

Staff: Jonathan Seib (786-7427)

Hearing Dates: February 12, 1993; February 24, 1993

BACKGROUND:

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

The effective date of nonemergency rules adopted pursuant to the APA is 30 days after the date the rules are filed with the Code Reviser. An earlier effective date is allowed in certain circumstances, including where there is imminent peril to the public health, safety and welfare.

One means established to encourage agency compliance with APA requirements is the Legislature's Joint Administrative Rules Review Committee (JARRC). The committee, consisting of two members from each legislative caucus, is authorized to review agency rules for consistency with legislative intent and compliance with proper rule-making procedures. It may vote to recommend to the Governor that a rule be suspended, but that vote does not serve to establish a presumption as to the validity of a rule upon judicial review.

SUMMARY:

Any nonemergency rule, the violation of which subjects a person to a penalty or administrative sanction, filed on or between January 1 and November 30 of a year takes effect at the end of the legislative session held the following year.

Those filed in December take effect at the end of the second subsequent legislative session.

Agencies are prohibited from adopting rules, the violation of which subjects a person to a penalty or administrative sanction, unless certain criteria are met. These include, among others things, clear and convincing evidence in the rule-making file that the rule is needed and that its benefits are greater than its costs. The rule must also be clearly written and may not conflict with, overlap, or duplicate any other provision of law.

The Joint Administrative Rules Review Committee (JARRC) is directed to also review for agency compliance with this list of criteria. An election by JARRC to recommend suspension of a rule, regardless of whether the suspension is approved by the Governor, establishes a presumption in any subsequent judicial review of the rule that it is invalid, with the burden of demonstrating the rule's validity on the adopting agency.

EFFECT OF PROPOSED SUBSTITUTE

Any nonemergency rule, the violation of which subjects a person to a penalty or administrative sanction, filed on or between January 1 and November 30 of a year takes effect at the end of the legislative session held the following year. Those filed in December take effect at the end of the second subsequent legislative session. These provisions do not apply to rules regulating the dates of hunting and fishing seasons.

Agencies are prohibited from adopting rules, the violation of which subjects a person to a penalty or administrative sanction, or any rules regarding licensing or product standards, unless certain criteria are met. These include, among others things, substantial evidence in the rule-making file that the rule is needed and that the agency considered its probable benefits and costs. The rule must also be clearly written and understandable.

Absent specific statutory authority, the rule may also not conflict with, overlap, or duplicate any other provision of law. If such authority is given, the agency must provide a list referencing the laws that the rule conflicts with, overlaps or duplicates; coordinate enforcement of the rule with the appropriate federal, state or local entities; and request legislation to further facilitate such coordination.

Neither may a rule, absent specific statutory authority, exceed any federal law. If such authority is given, the agency must coordinate enforcement with the appropriate federal entities.

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judicial review of the rule that it is invalid, with the burden of demonstrating the rule's validity on the adopting agency.

Appropriation: none

Revenue: none

Fiscal Note: requested February 4, 1993

TESTIMONY FOR:

The existing regulatory process is inefficient and lacks accountability. This bill would be one step towards making state agencies more accountable for what they do, and make them more considerate of the impact of their rules in conjunction with the laws of other jurisdictions. The cost of the bill should be considered against the current cost of inefficiency and overlap.

TESTIMONY AGAINST:

The bill would interfere with the ability of agencies to do their jobs, sacrificing public welfare just to save businesses money.

TESTIFIED: CON: Alan Darr, Operating Engineers; Bob Dilger, Washington State Building and Construction Trades Council; Ed Manary, Evan Jacoby, Department of Fisheries; PRO: Darrell Harting, S-Corp.; Julie Porter, Association of Washington Business; Rose Marie Lewis, Unique Impression; Ron Hansen, Association of Washington Business; Senator Anderson; Jim Rich; Louis Meissner, Washington Agri-Business Association; Mike Sciacca, Bill Bellman, Washington Oil Marketers Association; Hal Cutting, Kitsap Mental Health Center; Mel Knutson, Mel Knutson & Associates; Hal Schlomann, NMTA; Bill Huyette, Building Industry Association; Ron Rants, The Rants Group