

SENATE BILL REPORT

SB 6211

AS OF JANUARY 18, 1994

Brief Description: Increasing procedures for administrative rule making and review.

SPONSORS: Senators Moore, Anderson, Sheldon, Amondson, McAuliffe, Bauer, Winsley, Williams and Ludwig

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Jonathan Seib (786-7427); Blaine Gibson (786-7375)

Hearing Dates: January 19, 1994

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 act authorizes any person to petition an agency for the adoption, repeal or amendment of a rule. Rules adopted on an emergency basis are not required to comply with all of the APA's procedural requirements.

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.

SUMMARY:

Before the adoption of a final rule, an agency must prepare a written summary of comments received regarding the proposed rule, and a response to the comments by category, indicating how the rule reflects agency consideration of the comments, or why it fails to do so.

Where an agency denies a petition to repeal or amend a rule, the denial may be appealed to the Governor. If the Governor rejects the appeal, it must be done in writing, with consideration given to certain enumerated criteria.

The authority of agencies to determine the need for an emergency rule is removed and placed with the Governor. If

the Governor determines such a need exists, he or she may order the agency to adopt a rule on an emergency basis.

Agencies are prohibited from adopting rules, the violation of which subjects a person to a penalty or sanction, or any rules regarding licensing or product standard, unless certain criteria are met. These include substantial evidence in the rule-making file that the rule is needed, that the agency considered its probable benefits and costs, and that the agency had reasonable justification for not adopting less costly alternatives. The rule must be clearly written and understandable.

Absent specific statutory authority, the rule may 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.

A rule, absent specific statutory authority, may not exceed any federal law. If such authority is given, the agency must, to the extent practicable, coordinate enforcement with the appropriate federal entities.

JARRC is directed to review for agency compliance with this list of criteria.

Appropriation: none

Revenue: none

Fiscal Note: requested January 18, 1994