

HOUSE BILL REPORT

ESB 5744

As Passed House

April 11, 1997

Title: An act relating to legislative review of agency rules.

Brief Description: Extending the time for legislative review of agency rules.

Sponsors: Senators Hale, Anderson, Haugen, Deccio, West and Oke.

Brief History:

Committee Activity:

Government Reform & Land Use: 3/31/97 [DP].

Floor Activity:

Passed House: 4/11/97, 62-34.

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

Staff: Joan Elgee (786-7135).

Background: Under regulatory reform legislation enacted in 1995 (ESHB 1010), certain agencies are required to make specified determinations and follow other processes when adopting significant legislative rules. These requirements apply to the departments of Labor and Industries, Revenue, Ecology, Health, Employment Security, and Natural Resources, as well as the Forest Practices Board and the Office of the Insurance Commissioner. The Department of Fish and Wildlife must also follow these requirements when adopting certain hydraulics rules. Generally, a significant legislative rule is any rule other than an emergency rule or fee-setting rule.

The required determinations include that the rule is needed to achieve the goals and objectives of the statute it implements and that the rule is the least burdensome alternative. The agency must coordinate implementation and enforcement of the rule

with other federal and state entities that regulate the same activity or subject matter. The agency also must document its determinations in the rule-making file.

Any rule of any agency is also subject to the significant legislative rules processes if the Joint Administrative Rules Review Committee (JARRC), within 45 days of receiving the notice of proposed rule-making, subjects the rule to the processes by majority vote.

Summary of Bill: The time for the JARRC to decide to subject a rule to the significant legislative rules processes is extended. Instead of 45 days, the JARRC has 180 days from receipt of the notice of proposed rule-making to subject a rule to the processes.

Appropriation: None.

Fiscal Note: Requested on March 27, 1997.

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

Testimony For: The 45-day deadline discourages thoughtful review. The 180-day time period is a more realistic time for the regulated community to raise issues with the JARRC.

Testimony Against: This bill raises legal and logistical issues, and creates uncertainty. An agency may have to delay final adoption to avoid having to start over. What would be the effect if an agency had already adopted a rule before the JARRC directed it to re-adopt using significant rule-making processes? If it has the effect of giving the JARRC the authority to invalidate agency rules; constitutional issues may be raised.

Testified: Amber Balch, Association of Washington Business (pro); Carolyn Logue, National Federation of Independent Business (pro); Bruce Wishart, People for Puget Sound (concerns); and Fred Hellberg, Governor's office (con).