
Government Reform and Land Use Committee

BILL ANALYSIS HB 2345

Title of the Bill: Regulatory reform

What this Bill Does: Makes a number of changes to the administrative procedures act, including: expanding on the implementation plan for significant legislative rules, requiring review of rules at least every four years, and modifying the membership of the Joint Administrative Rules Review Committee and its authority.

Sponsors: Representative Reams

Hearing Date: January 15, 1998

Fiscal Note: Requested 1/7/98

Analysis Prepared By: Joan Elgee, 786-7135

BACKGROUND:

In 1994 and 1995, as part of regulatory reform, the Legislature made substantial changes to agency rule-making and the legislative review of rules. Additional changes were adopted in 1997 in E2SHB 1032.

Rule-Making Requirements.

General provisions. The state Administrative Procedure Act (APA) details procedures agencies must follow when adopting rules. Generally a "rule" is any agency order, directive, or regulation of general applicability which (a) subjects a person to a sanction if violated; or (b) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials. The rule-making procedures include publishing notice of the proposed rule in the state register and holding a hearing. For some types of rules, agencies must solicit comments and otherwise involve interested parties before publishing notice of a proposed rule. Agencies must maintain an

official rule-making file for each rule which includes copies of all publications in the state register with respect to the rule.

Significant legislative rules. Before adopting a significant legislative rule, certain of the larger agencies must determine that the probable benefits of the rule exceed the probable costs and make other determinations. These agencies must also develop a rule implementation plan for a significant legislative rule describing how the agency intends to implement and enforce the rule, inform and educate affected persons about the rule, promote and assist voluntary compliance with the rule, and evaluate the rule. Significant legislative rules are most rules other than emergency rules, procedural or interpretive rules, and fee-setting rules. The Joint Administrative Rules Review Committee may also require that any rule of any agency be made subject to the significant legislative rules requirements. JARRC has 45 days after receiving the notice of the proposed rule to make the requirements applicable.

Expedited process. An expedited repeal process allows agencies to repeal rules in an expedited manner if no one objects. Similarly, an expedited adoption process allows for streamlined adoption of rules which have been the subject of a process that involved substantial participation by interested parties before the development of the rule, rules which only correct typographical errors, and certain other types of rules. An agency may file for expedited adoption at any time, but is allowed only two filings (in April and October) of rules for expedited repeal.

Review of rules. Rules remain in effect until amended or repealed. The APA does not require state agencies to review their rules. Under Executive Order 97-02, the Governor directed all executive agencies to review rules that have significant effects on businesses, labor, consumers, and the environment. The agencies must determine whether the rules should be retained, or amended or repealed if they do not meet specified criteria.

Economic impact statements. Under the Regulatory Fairness Act, agencies must prepare a small business economic impact statement when adopting a rule that imposes more than minor costs on businesses in an industry or if requested to do so by JARRC. Certain types of rules are exempt. The statement describes the reporting, record keeping, and other compliance requirements of the proposed rule, analyzes the costs of compliance, and addresses other matters. If the agency finds that the rule has a disproportionate impact on small businesses, the agency must reduce the costs on small businesses, where legal and feasible do to so.

Interpretive and Policy Statements. In addition to rules, agencies also issue other types of documents. An interpretive statement is a document titled "Interpretive Statement" that states an agency's interpretation of the meaning of a statute. A Policy statement is a document titled "Policy Statement" that states an agency's current approach to the implementation of a statute. Unlike rules, interpretive and policy statements are advisory only. Agencies are encouraged to issue statements and to convert long standing interpretive and policy statements into rules.

Legislative Review. JARRC selectively reviews rules and interpretive and policy statements. A person may also petition JARRC to review a rule or a policy or interpretive statement. If JARRC finds that a rule is not within the intent of the legislature or has not been adopted in accordance with all provisions of law, or that an agency is using an interpretive or policy statement in place of a rule, JARRC notifies the agency. A process is established for the agency to respond to JARRC's findings, and for JARRC to take further action. Ultimately, JARRC may recommend that the Governor suspend a rule.

JARRC is composed of four senators and four representatives, with no more than two members from each house from the same political party. The president of the senate appoints the chair in even numbered years and the speaker of the house appoints the chair in odd-numbered years. A JARRC determination does not establish a presumption as to the legality or constitutionality of the rule in subsequent judicial proceedings.

Adjudicative Proceedings. When a state agency conducts a hearing which is not presided over by officials who are to render the final decision, the hearing must be conducted by an administrative law judge.

SUMMARY:

Rule-Making Requirements.

Expedited process. Agencies may file proposals for the expedited repeal of rules at any time, instead of only twice a year. The contents of the rule-making file is limited so that only citations to the notices in the register are required and not copies of all the register publication, with respect to a rule.

Significant legislative rules. For significant legislative rules, the rules implementation requirements are expanded. An agency must convene a meeting of persons affected by the rule at least 20 days before the effective date to identify ambiguities and problem areas in the rule; coordinate education and public relations efforts by all persons; obtain comments regarding agency training enforcement plans; and obtain comments regarding appropriate evaluation mechanisms to determine the effectiveness of the rule. Also, within 90 days of the effective date of a rule, an agency must make a good faith effort to notify persons affected by the rule.

The time period for JARRC to decide whether to impose the significant legislative rule requirements is extended from 45 to 75 days.

Review of rules. At least every four years, an agency must review a rule to evaluate whether the rule is:

- Necessary to comply with the authorizing statute;
- Providing the results that it was originally designed to achieve in a reasonable manner;
- Written and organized in a clear and concise manner;
- Consistent with the legislative intent of the authorizing statute;
- Coordinated with other agencies and governmental jurisdictions to eliminate or reduce duplication and inconsistency;
- Resulting in equitable treatment of those required to comply with it; and
- Achieving its goals in a cost-effective manner.

No rule is valid for more than four years unless the agency has substantially complied with these provisions.

Economic impact statements. An agency must prepare a local government economic impact

statement when adopting a rule that imposes more than minor costs on local government or if requested to do so by JARRC. Certain types of rules are exempt. The statement must describe the reporting, record keeping and compliance requirements of the proposed rule and the costs of compliance for local government. The Department of Community, Trade, and Economic Development is directed to help agencies prepare the statements.

Interpretive and Policy Statements. When a person contacts an agency regarding a rule, the agency must identify any associated interpretive and policy statements and provide copies of the statements upon request. An agency may not issue a citation or civil penalty related to a matter on which it has issued a policy or interpretive statement or other written document of general applicability unless the agency has provided copies of the documents to the responsible party.

Legislative Review. The membership of JARRC is expanded so that the majority party has three members from each house and the minority party has two members from each house. In addition to review of rules and policy and interpretive statements, JARRC may review guidelines, and issuances of general applicability, or their equivalents to determine whether an agency has failed to adopt a rule or whether they are within the intent of the legislature.

A JARRC suspension recommendation to the Governor that a rule be suspended because it does not conform with legislative intent or was not adopted in accordance with all applicable provisions of law establishes a rebuttable presumption in a proceeding challenging the validity of the rule that the rule is invalid. The burden of demonstrating the validity of the rule is then on the adopting agency.

A hearing held by the Insurance Commissioner must be conducted by an administrative law judge unless the person demanding the hearing agrees in writing to have an employee of the commissioner conduct the hearing.