

HOUSE BILL ANALYSIS

HB 2857

Title: AN ACT Relating to ensuring that agency rules do not exceed their statutory authorization.

Brief Description: Ensuring that agency rules do not exceed their statutory authorization.

Sponsor: Schoesler, Chandler, G.

BRIEF SUMMARY

- Requires the Legislature to have the opportunity to review proposed rules before they can be adopted.
- Limits legislative delegation of authority to an agency to the minimum necessary to achieve the legislation's clear and unambiguous directives.
- Shifts the burden of proof to the agency to show that the agency's action was authorized by law in proceedings challenging agency actions.

HOUSE STATE GOVERNMENT COMMITTEE

Staff: Jim Morishima (786-7191)

BACKGROUND:

State agencies adopt rules to implement legislation. Most rules must be adopted pursuant to the provisions of the Administrative Procedures Act. In most cases, an agency must obtain input from the public and must conduct hearings before adopting rules. In some instances, an agency may adopt emergency rules without following the regular rule making procedures; such rules may not take effect for more than 120 days. In other instances, the agency must follow the more complicated process for significant legislative rules.

The Joint Administrative Rules Review Committee (JARRC) is a bipartisan committee composed of four Representatives and four Senators. The JARRC may review proposed and existing agency rules in order to determine whether the rule is within the statutory intent of the Legislature. If the JARRC determines that the rule is not within the statutory intent of the Legislature, it may transmit its findings to the agency. If the agency does not conform to the JARRC's determination, the JARRC may recommend that the rule be suspended. The JARRC may also recommend to the Legislature that the agency's enabling legislation be amended or repealed.

If a person challenges an agency action, including the adoption of rules, the burden of demonstrating the invalidity of the agency action is on the person making the

challenge.

SUMMARY:

An agency may not adopt a proposed rule until the Legislature has had the opportunity to consider the rule during a regular or special legislative session. If the proposed rule is published before November 1, the agency must wait one regular or special session before adopting the rule. If the proposed rule is published after November 1, the agency must wait two regular or special sessions before adopting the rule. This requirement does not apply to emergency rules and rules adopted to establish fishing and hunting seasons.

A provision is added stating that when delegating authority to an agency through legislation, the Legislature limits its delegation to the minimum necessary to 1) administer the legislation's clear and unambiguous directives and 2) the administration of circumstances and behaviors foreseeable at the time of the legislation's enactment.

In proceedings challenging an agency action, the agency bears the burden of demonstrating that its action was authorized by law.

Rule Making Authority: No express authority.

Appropriation: None.

Fiscal Note: Requested January 31, 2000.

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