

# SENATE BILL REPORT

## EHB 1248

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As of May 11, 2011

**Title:** An act relating to authorizing emergency rule making when necessary to implement fiscal reductions.

**Brief Description:** Authorizing emergency rule making when necessary to implement fiscal reductions.

**Sponsors:** Representatives Hunter and Darneille; by request of Office of Financial Management.

**Brief History:** Passed House: 5/10/11, 91-4.

**Committee Activity:** Ways & Means: 5/11/11.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Steve Jones (786-7440)

**Background:** Rulemaking Procedures Under the Administrative Procedures Act. A rule or regulation is a written policy or procedure by a state agency that is generally applicable to a group of people, industries, activities, or circumstances. Agencies adopt rules under the procedural requirements established by the Administrative Procedures Act (APA).

The APA's procedural requirements for agency rulemaking include solicitation of comments on possible rulemaking prior to filing a notice of proposed rulemaking; preparation of a semi-annual agenda for rules under development; maintenance of a rulemaking docket containing a listing of each pending rulemaking proceeding; having copies of notices available for public inspection; notifying persons who have requested notification of proposed rulemaking; holding a rulemaking hearing; and accepting oral and written public comment.

An agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. An agency must file with the Code Reviser a certified copy of all rules it adopts.

Emergency Rules Under the APA. Under certain circumstances, an agency may adopt, amend, or repeal administrative rules without following the specified APA procedures. These emergency rules take effect upon filing with the Code Reviser unless a later date is specified in the order of adoption. An emergency rule may not remain in effect for longer than 120 days after it is filed.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

To adopt an emergency rule, an agency must find good cause that:

- immediate adoption of a rule is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;
- state or federal law, federal rule, or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or
- observing the time requirements of notice and opportunity to comment upon the adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency if the rule is needed to implement budget requirements or reductions for fiscal years 2009-2011.

An agency must incorporate its finding and a concise statement of the reasons for its finding in its order adopting the emergency rule.

**Summary of Bill:** The authorization to adopt emergency rules to address agency fiscal needs and requirements is extended. Agencies may adopt, amend, or repeal rules on an emergency basis to implement requirements or reductions in appropriations enacted in any budget for fiscal years 2012 and 2013.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: The budget and related policy bills currently pending before the Legislature will likely require a number of rule amendments to be adopted by state agencies as they implement these new laws. The Attorney General has advised us that emergency rule-making procedures will be needed to make timely changes to the administrative code. Before any of these rules become permanent, the Administrative Procedures Act will continue to require full rule-making procedures, including public notice and comment.

**Persons Testifying:** PRO: Marty Brown, Director of Financial Management.