

SENATE BILL REPORT

SB 5365

As Reported by Senate Committee On:
Government Operations & Security, February 19, 2015

Title: An act relating to abrogation of an administration rule by action of the governor or either house of the legislature.

Brief Description: Providing that an administrative rule may be abrogated by act of the governor or either house of the legislature.

Sponsors: Senators Honeyford and Pearson.

Brief History:

Committee Activity: Government Operations & Security: 2/02/15, 2/19/15 [DP, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Pearson, Vice Chair; Dandel.

Minority Report: Do not pass.

Signed by Senators Lias, Ranking Minority Member; Habib and McCoy.

Staff: Curt Gavigan (786-7437)

Background: Administrative Procedure Act (APA) Generally. The APA establishes the general procedures for agency rulemaking and adjudicatory proceedings.

Under the APA, a rule includes an agency order, directive, or regulation of general applicability that:

- could result in a penalty or sanction;
- establishes a process for agency hearings;
- addresses qualifications or requirements relating to benefits or privileges conferred by law; and
- addresses qualifications or standards for commercial activity or professional licenses professions.

Review of Agency Rules. The Joint Administrative Rules Review Committee (JARRC) is an eight-member legislative committee consisting of four senators and four representatives, with

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.

no more than two members from each house of the same political party. JARRC is authorized to conduct selective review, initiated on its own or by petition, of agency rules and policies to determine whether:

- rules are consistent with legislative intent;
- rules are adopted consistent with the law; or
- agency policies or interpretive statements are being used in place of a rule.

Additionally, a person may seek judicial review of an agency's rulemaking. In general, a court will consider whether the rule violates the constitution, exceeds the agency's statutory authority, was adopted without proper rulemaking procedures, or is arbitrary and capricious.

Summary of Bill: An agency rule is null and void if either of the following occur:

- the Governor declares the rule abrogated by executive order; or
- either house of the Legislature adopts a resolution declaring the rule abrogated.

In these circumstances, the abrogation takes effect immediately unless the executive order or resolution establish an earlier date.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This would provide something the Legislature lacks, which is the ability to act to annul an agency action which it sees as outside of its scope. Rule implementation drives a significant cost on people and businesses.

CON: This bill could impact health and safety protections. Agencies do take seriously the rulemaking process. This could create uncertainty around administrative frameworks and business investments.

Persons Testifying: PRO: Cindy Alia, Citizens Alliance for Property Rights; Gary Smith, Independent Business Assn.; Ed Moats, citizen.

CON: Kristin Peterson, WA State Dept. of Health; Ben Serrurier, Climate Solutions; Kevin Kuper, Sequential Pacific Biodiesel; Denise Clifford, Dept. of Ecology.