

SENATE BILL REPORT

SB 6032

As of February 19, 2015

Title: An act relating to procedures for petitions for adoption, amendment, or repeal of agency rules.

Brief Description: Revising procedures for petitions for adoption, amendment, or repeal of agency rules.

Sponsors: Senator Miloscia.

Brief History:

Committee Activity: Accountability & Reform: 2/18/15.

SENATE COMMITTEE ON ACCOUNTABILITY & REFORM

Staff: Tim Ford (786-7423)

Background: The Administrative Procedure Act (APA) establishes the procedures for agency rulemaking, agency administrative hearings, and judicial review of agency actions. Any person may petition an agency to adopt, amend, or repeal any rule. Within 60 days after submission of a petition, the agency must either deny the petition or initiate rulemaking proceedings. If an agency initiates rulemaking proceedings, the agency must publish notice of the rulemaking hearing at least 20 days prior. The notice must include basic information such as:

- a title and description of the rule's purpose;
- the statutory authority for adopting or implementing the rule;
- a short explanation of the rule and its effect;
- agency contact information;
- when, where, and how persons may comment on the proposed rule;
- the date on which the agency intends to adopt the rule; and
- any fiscal impact or economic impact statement.

The rulemaking hearing is open to the public and the agency must allow oral testimony on the proposed rule.

If an agency denies the petition, the denial must be in writing and state the reasons for the denial, specifically addressing the concerns raised by the petitioner and, where appropriate, any alternate means by which the agency will address the concerns of the petitioner. No

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hearing is required under the APA to summarily deny a petition for rulemaking, and the agency may choose not to allow oral testimony.

Denial of a petition for rulemaking may be appealed, within 30 days of the denial, to the Governor. Within 45 days after receiving the appeal, the Governor must either deny the petition, or direct or recommend an agency to initiate rulemaking proceedings. Judicial review is available of agency rulemaking.

Summary of Bill: Where an agency denies a petition for rulemaking, the agency must provide notice of the denial to the petitioner and state the reasons for the denial. The notice must advise the petitioner of the right to request a brief hearing to present testimony for reconsideration of the denial. The notice must provide the petitioner with information on how to request reconsideration. The petitioner must request reconsideration within ten days of receipt of the denial. Upon receipt of a timely filed request for reconsideration the agency must grant a brief hearing at a date agreed upon by the petitioner as soon as practical. A timely request for reconsideration tolls the period for appeal of the denial. After the brief hearing, the agency must either deny the request for reconsideration or initiate rulemaking procedures as established under the APA. A denial of the request for reconsideration is treated as a denial of the petition, and the petitioner has an additional 30 days for an appeal to the Governor.

Appropriation: None.

Fiscal Note: Requested on February 17, 2015.

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: The public has a right under the 1st amendment and 14th amendment to the U.S. Constitution of freedom of speech and to petition government. When you petition government for a rule change, they can deny the petition without letting the public speak to explain the need for the petition. This bill will correct that problem. The Fish and Wildlife Commission and Forest Practices Board are incrementally eroding our constitutional rights. The public does not exist to serve the state, but the state should serve the people.

OTHER: The Office of Financial Management prescribes by rule, the format for petitions for rulemaking to state agencies, the procedure for their submission, consideration, and disposition, and a standard form that may be used by agencies. If an agency denies a petition to repeal or amend a rule, the petitioner may appeal the denial to the Governor. The petitioner also has the option to appeal to the Joint Administrative Rules Review Committee (JARRC), if the petitioner believes the rule is not within the intent of the Legislature or was not adopted in accordance with all provisions of law. SB 6032 would create additional process before an appeal of an agency denial of a petition to either JARRC or the Governor. A petitioner would be entitled to a motion for reconsideration of an agency denial in the form of an administrative hearing. Scheduling an administrative hearing for reconsideration could drive considerable costs to agencies. Having already made a decision,

an administrative hearing on a motion for reconsideration before the same agency appears to add additional process and cost to the appeals process, rather than expediting a final decision for the petitioner.

Persons Testifying: PRO: Rob Kavanaugh, citizen.

OTHER: John Lane, Office of Financial Management.