

SENATE BILL REPORT

SB 6396

As Passed Senate, February 17, 2016

Title: An act relating to administrative procedures.

Brief Description: Changing rule-making requirements to require preadoption review by the attorney general and a yearly expiration.

Sponsors: Senators Braun, Roach, Bailey, Rivers, Angel, Becker, Brown, Dammeier, Parlette, Sheldon, Schoesler, Honeyford, Warnick, Padden and Pearson.

Brief History:

Committee Activity: Government Operations & Security: 1/28/16, 2/04/16 [DP, DNP].
Ways & Means: 2/08/16, 2/09/16 [DP, DNP, w/oRec].
Passed Senate: 2/17/16, 26-23.

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 Habib, McCoy and Takko.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Darneille, Hasegawa, Nelson, Pedersen and Rolfes.

Minority Report: That it be referred without recommendation.

Signed by Senator Hargrove, Ranking Member.

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.

Staff: Steve Jones (786-7440)

Background: The Administrative Procedure Act (APA). 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 licensed professions.

In order to adopt a rule, the APA generally requires that an agency:

- have the statutory authority to adopt the rule;
- provide public notice of the proposed rulemaking; and
- provide an opportunity for the public to comment on the proposed rules, both in writing and at a hearing.

Joint Administrative Rules Review Committee (JARRC). JARRC is an eight-member legislative committee consisting of four senators and four representatives, with 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 policy or interpretive statements are being used in place of a rule.

Any person may petition JARRC for a review of a proposed or existing rule, policy, or interpretive statement. JARRC must acknowledge receipt of a petition within 30 days and describe any initial action taken. If JARRC rejects the petition, a written statement of the reasons must be included. Within 90 days, JARRC must make a final decision on any petition for which review was not previously rejected.

The JARRC sanction process involves the following potential steps:

- JARRC may exercise its selective rule review authority;
- if JARRC finds, by a majority vote, that a rule is not consistent with legislative intent, was not adopted consistent with the law, or that policies or interpretive statements are being used in place of a rule, it must notify the relevant agency of its decision;
- the relevant agency must give notice and hold a hearing on the rule or policy, and consider written and in-person testimony;
- after its hearing, the agency must notify JARRC of its intended action on the rule or policy;
- if JARRC finds, by a majority vote, that the agency has not addressed the issue, it may file its objections with the Code Reviser for publication. The Code Reviser may only remove reference to the JARRC objections if a subsequent adjudicatory proceeding determines that rule meets legislative intent or was properly adopted; and
- in addition to filing objections with the Code Reviser, JARRC may also, by a majority vote, recommend suspension of an existing rule. If the Governor approves

this recommendation, the suspension remains in effect until 90 days after the next regular legislative session.

Summary of Bill: No rule may be adopted except within the power delegated to the agency and as authorized by law. A rule is not deemed to be within the statutory authority of an agency merely because the rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule adopted by any agency that conflicts with a statute is void.

Beginning July 1, 2016, an agency cannot adopt or amend a rule without first submitting the rule or amendment to the Attorney General for an opinion as to its constitutionality and legality. Any rule or amendment adopted by an agency without being submitted to the Attorney General is void. Additionally, beginning July 1, 2016, any rule adopted or amended before November 1st of any year expires on June 1st of the year following adoption unless the Legislature passes legislation to postpone the expiration. The postponement of the expiration of a rule does not constitute legislative approval of the rule nor is the postponement admissible in any court as evidence of legislative intent. If a rule expires, the agency cannot readopt the rule unless expressly authorized by statute.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Government Operations & Security): PRO: In the past decade, agency rulemaking has exploded and these rules have the force of law. This raises many significant public policy decisions possibly being made without the transparency, accountability, and the public input that occurs during the legislative process. This bill is designed to restore the balance and accountability to lawmaking by requiring new agency rules to expire after one year unless extended by the Legislature. The Legislature has given agencies the power to make rules and this bill allows the Legislature to exert authority over those rules. Washington's administrative code currently contains 22,000 pages and in the last ten years the code has increased by 6600 pages. The code deserves legislative oversight and legislative confirmation. Rulemaking does not have the same level of scrutiny that legislation does. Bureaucrats are not elected and they are not accountable to the people. This bill provides an important step towards regaining the balance and accountability that Washington's constitutional framers had in mind.

CON: There are concerns about the effectiveness of this bill. One of the responsibilities of the Department of Labor and Industries is to ensure that work places are safe and holding employers responsible for keeping those work places safe. The Department of Labor and Industries has a significant number of rules related to safety and health requirements. Employers need to know what the rules are and have certainty about what the rules and expectations are so that they can comply with the rules and keep their work places safe. This bill would require rules to be extended by the Legislature or to expire after one year.

Persons Testifying (Government Operations & Security): PRO: Senator Braun, prime sponsor.

CON: Tammy Fellin, Dept. Of Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This legislation represents the Legislature's assertion of its role in the law-making process. Every agency rule has the force of law on the citizens of the state. The Legislature should not abandon its responsibility to oversee state agencies. The process outlined in this bill has been implemented in the state of Colorado, where the effects have not been burdensome; the annual legislation in Colorado re-authorizing state agency rules typically is fewer than six pages.

Persons Testifying (Ways & Means): PRO: Sen. Braun, prime sponsor.

Persons Signed In To Testify But Not Testifying: No one.