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## Early Learning & Human Services Committee

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### HB 2069

**Brief Description:** Suspending certain rule-making activities of the department of early learning.

**Sponsors:** Representatives Dent, Pettigrew and Manweller.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Suspends certain rulemaking activities for the Department of Early Learning until July 1, 2019.</li></ul>
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**Hearing Date:** 2/15/17

**Staff:** Dawn Eychaner (786-7135).

**Background:**

Agency rulemaking under the Administrative Procedure Act.

The Administrative Procedure Act (APA) establishes procedures under which state agencies adopt rules and conduct adjudicative proceedings. The APA also sets out procedures for judicial and legislative review. Generally, a rule is any agency order, directive, or regulation of general applicability which: (1) subjects a person to a sanction if violated; or (2) establishes or changes any procedure or qualification relating to agency hearings, benefits or privileges conferred by law, licenses to pursue any commercial activity, trade, or profession, or standards for the sale or distribution of products or materials.

An agency may not adopt rules without a grant of authority by the Legislature. Such rule-making authority may be derived through a broad, general grant of authority in the enabling statutes pertaining to an agency, or it may be explicitly conferred by statute in order to enable an agency to implement a specific legislative provision.

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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.*

Before adopting a rule, an agency must follow specified procedures, including publishing notice in the state register and holding public hearings.

Emergency rules.

The APA designates certain types of rules as being "emergency rules," which may be adopted by an agency without following the specified APA procedures. Emergency rules take effect upon filing with the code reviser unless a later date is specified in the order of adoption and may not remain in effect longer than 120 days.

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

- immediate adoption of a rule is necessary for the preservation of public health, safety, or general welfare, and that observing the time requirements of public notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest; or
- state or federal law, federal rule, or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule and is actively undertaking the appropriate procedures to adopt the rule permanently.

**Summary of Bill:**

The Department of Early Learning may not adopt or amend rules until July 1, 2019 unless the rule is necessary to:

- implement a state law or federal law or rule enacted after January 1, 2017;
- comply with a collective bargaining agreement or employment contract entered into by the DEL; or
- preserve the immediate health or safety of children receiving the DEL services and adopted in accordance with provisions for emergency rules.

**Appropriation:** None.

**Fiscal Note:** Requested on February 9, 2017.

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