

FILE NUMBER: H.F. 1261
Version: First engrossment

DATE: March 16, 2015

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Subject: Rulemaking

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Overview

This bill makes a number of changes in laws governing the rulemaking process for executive branch state agencies.

Section

- 1 Substantial economic impact.** Defines when a rule has a “substantial economic impact”. This definition is used in later sections, including section 5, which requires a panel review of proposed rules with substantial economic impact, and which provides that rules with substantial economic impact do not take effect until approved by law.
- 2 Authority to adopt original rules restricted.** Provides that an agency may adopt, amend, suspend, or repeal its rules only pursuant to authority delegated by state or federal law.
- 3 Authority to modify proposed rules.** Under current law, an agency may not modify a proposed rule at the end of the rulemaking process so that it is substantially different from the rule that was proposed in the agency’s notice of intent to adopt the rules at the beginning of the process. This section provides that a modification makes a rule substantially different if it causes a rule that did not previously have a substantial economic impact to have a substantial economic impact.
- 4 Notice to legislature.** Requires that each agency annually must submit its rulemaking docket to the Legislative Coordinating Commission, in addition to the other legislative officials specified in current law. Requires each agency to post a link to its rulemaking docket on the agency Web site home page.

Section

- 5** **Legislative approval required.** Provides that before giving notice of intent to adopt a rule, the agency must determine if the proposed rule has a substantial economic impact.
- If the agency determines that the rule has a substantial economic impact, it must request the Legislative Auditor to convene a five-person advisory panel to conduct an impact analysis of the proposed rule. Requires the Legislative Auditor to convene a panel within 30 days, and requires the panel to report within 60 days of being convened. Requires the agency to receive the panel's report before it conducts a public hearing (or if no hearing is required, before the rule is submitted to the administrative law judge). Requires the panel's report to include findings on the extent to which the proposed rule: (1) is based on sound, reasonably available information or rationale; and (2) is more restrictive than federal law on the same subject matter.
- Requires the administrative law judge to review the agency's determination that a rule does not have a substantial economic impact. If the judge determines that a rule may have a substantial economic impact, the agency must go through the review panel process and must give new notice of intent to adopt the rule after receiving the advisory panel report.
- Provides that a rule that has a substantial economic impact does not take effect until approved by law.
- Language in current law relating to the effect of a rule on small businesses or small cities is stricken. The small business and small city concepts are incorporated into the definition of "substantial economic impact" in section 1. Strikes language that gives the governor authority to waive application of this section.
- 6** **Statement of need and reasonableness.** In the law governing agency statements of need and reasonableness (SONAR), refers to additional statutes under which notice of proposed rules is given to the public. Requires the SONAR to include the agency's findings and conclusions supporting its determination that the proposed rule does or does not have a substantial economic impact. Requires the SONAR to describe the information and rationale that supports the proposed rule.
- 7** **Notice.** Requires that an agency proposing to use the "good cause" exemption to adopt a rule give notice of this to the chairs and ranking minority members of legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, and to the Legislative Coordinating Commission.
- 8** **Notice and comment.** Requires that an agency proposing to use the expedited process to adopt a rule give notice of this to the chairs and ranking minority members of legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, and to the Legislative Coordinating Commission.
- 9** **Determination of validity of rule.** Authorizes a petitioner to seek Court of Appeals review of an agency guideline, bulletin or similar pronouncement that the petitioner believes should have been adopted as a "rule". Provides that the agency must cease enforcement of the pronouncement until the Court of Appeals rules on such a petition. Provides that the agency is liable for all costs associated with review of the decision. If the Court of Appeals rules in favor of the agency, the agency may recover all or a portion of the cost from the petitioner, with specified exceptions.

Section

10 **Rule declared invalid.** Authorizes the Court of Appeals to declare an agency pronouncement invalid if it was improperly implemented without complying with rulemaking procedures.