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Overview

This bill provides a number of miscellaneous and technical modifications to the Administrative Procedures Act.

Among the more substantial changes is an expanded authorization for legislative objection to rules, and increased opportunities to analyze the potential impact of rules, including a review of rules for a substantial economic impact. It also prohibits agencies from enforcing certain documents that meet the definition of a rule, if those documents were not adopted in the rulemaking process.

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- 1** **Objections to rules or proposed rules.** Modifies an existing authorization for the Legislative Coordinating Commission or the government operations committees in each body to object to rules, including expansion of the conditions under which an objection may be made (for either an adopted rule or proposed rule).
- Current law authorizes the LCC and government operations committees to object if a rule is beyond the procedural or substantive authority delegated to an agency. With this section, the LCC or government operations committee may object if a rule:
- (1) is beyond the procedural or substantive authority delegated to an agency;
 - (2) is inconsistent with the enabling statute;
 - (3) is unnecessary or redundant;
 - (4) has a substantial economic impact (defined later in the bill);

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(5) is not based on sound, reasonably available scientific, technical, economic, or other information;

(6) is not cost effective;

(7) is unduly burdensome; or

(8) is more restrictive than the standard, limitation, or requirement imposed by federal law on the same subject.

This section additionally prohibits agencies from adopting a proposed rule until after the legislative session that began after an objection is filed, if the legislature's objection is not withdrawn.

Other technical and procedural requirements related to the objection process are also included in this section.

- 2 **State regulatory policy.** Eliminates a “feasibility” test for determining whether a state agency must develop rules and regulatory programs that emphasize superior achievement in achieving an agency’s objectives and maximum flexibility for the regulated party and the agency in meeting those goals. Instead, this requirement would apply at all times.
- 3 **Substantial economic impact.** Defines when a rule has a “substantial economic impact”. This definition is used elsewhere in the bill, including a section 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.
- 4 **Authority to adopt original rules restricted.** Updates cross-references related to the general authority for an agency to adopt rules in specific circumstances, which are contained elsewhere in chapter 14 (rulemaking to allow variances for rules; rulemaking using the good cause exemption; rulemaking using the expedited process; and rulemaking to repeal obsolete rules)
- 5 **Limitation regarding certain policies, guidelines, and other interpretive statements.** Prohibits agencies from implementing or enforcing a policy, guideline, or interpretive statement that meets the definition of a rule, if it has not been adopted as a rule. Solid waste policy plan revisions are explicitly cited as an example of these types of statements.
Procedures for review of an agency’s compliance with this section are provided.
- 6 **Authority to modify proposed rule.** Current law prohibits agencies from modifying a proposed rule in a way that makes it substantially different from the proposed rule as contained in the notice of intent to adopt rules.
This section provides that a proposed rule becomes substantially different if a modification causes the rule to have a substantial economic impact.
- 7 **Review and repeal of rules.** Recodifies an existing mandatory agency report related to obsolete rules. Instead of an annual report, agencies would be required to submit the report biannually.
- 8 **Review and repeal of environmental assessment worksheets and impact statements.** Establishes a new biennial report, requiring the Environmental Quality Board, the Pollution Control Agency, the Department of Natural Resources, and the Department of Transportation

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to submit a list, in consultation with political subdivisions, of mandatory environmental assessment worksheets or mandatory environmental impact statements. Certain details related to the use, cost, and justification for these documents is required to be included in the report.

- 9 Veto of adopted rules.** Updates a cross-reference to reflect organizational changes made later in the bill.
- 10 Electronic documents permitted.** Permits agencies to send notices and other required rulemaking documents electronically, provided that a paper copy must be provided if requested.
- 11 Required notice.** Exempts the expedited rulemaking process from an existing requirement related to solicitation of general public comments on the subject matter of a possible rulemaking proceeding.
- 12 Rule notification.** Requires agencies to maintain a list of all persons who have registered their interest in receiving notice of rulemaking proceedings. Standards for how a person may register are provided.

In addition to notifying registrants, this section also requires agencies to make reasonable efforts to notify other persons who may be significantly affected by a rule. An agency's efforts to notify these additional persons must be documented and submitted to the administrative law judge overseeing the rulemaking proceeding.

- 13 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.

This section eliminates an existing requirement that the agency attempt to notify all sitting legislators who were chief authors of the bill or amendment granting the agency's rulemaking authority.

- 14 Time limit on authority to adopt, amend, or repeal rules.** Modifies what happens when an agency's time limit for rulemaking runs out. Instead of an automatic expiration of a rulemaking authority after 18 months of the effective date of the law granting the authority, the agency would instead be required to report to the LCC, relevant legislative committees, and the governor about its failure to meet that time limit.

- 15 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. The Legislative Auditor must convene a panel within 30 days, and requires the panel to report within 60 days of being convened. The agency must 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). The panel's report must include findings on the extent to which the proposed rule: (1) is based on sound, reasonably available

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information or rationale; and (2) is more restrictive than federal law on the same subject matter.

This section also 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.

Finally, this section 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, but the small business and small city concepts are incorporated into the definition of "substantial economic impact". Language that gives the governor authority to waive application of this section is eliminated.

- 16 **Impact analysis of proposed rule.** Permits a standing committee with jurisdiction over the subject matter of a proposed rule to request the legislative auditor to conduct an impact analysis of the proposed rule. The procedures are somewhat similar to those described for review of a proposed rule for a substantial economic impact, and include review of the proposed rule by a five-person panel. After receipt of the panel's report, the legislative committee must make either a positive or negative declaration on the rule. If it issues a negative declaration, the agency may not adopt the rule until the legislature adjourns its annual session that began after the issuance of the declaration.
- 17 **Statement of need and reasonableness.** Reorganizes and modifies the content required in an agency's statement of need and reasonableness on a proposed rule. Among other items, the statement must include a description, with reasonable particularity, of the scientific, technical, and economic information that supports the proposed rule.
- 18 **Notice of rule hearing.** Modifies various standards relating to providing public notice when a hearing will be held on a proposed rule. Portions of this section are recodified into a new section contained earlier in the bill.
- 19 **Hearing procedure.** When a hearing is held on a proposed rule, requires an agency to submit to the administrative law judge all public comments and requests for hearing received. These documents become part of the official rulemaking record.
- 20 **Deadline to complete rulemaking.** Eliminates language related to the legislative approval of rules, to reflect changes made earlier in the bill.
- 21 **Contents.** Provides miscellaneous modifications to the content and organization of an agency's notice that it intends to adopt rules without a public hearing.
- 22 **Statement of need and reasonableness.** Provides miscellaneous technical modifications related to statements of need and reasonableness when rules are adopted without a public hearing. These changes largely reflect substantive changes made elsewhere in the bill.
- 23 **Requests for hearing.** Provides modifications to the content standards in a member of the public's request for a public hearing on a proposed rule, if the agency does not otherwise schedule one.

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- 24 Adoption of proposed rule; submission to administrative law judge.** Reorganizes the existing law related to the procedure for review of a proposed rule by the administrative law judge (ALJ), including a new requirement that the ALJ disregard “harmless errors” in the process.
- 25 Official rulemaking record.** Updates a cross-reference and provides other conforming changes to the list of items included in the official rulemaking record, to reflect changes made elsewhere in the bill.
- 26 Costs.** Eliminates an authorization for an ALJ to require a petitioner to submit a bond or deposit in a challenge alleging an agency is enforcing unadopted rules.
- 27 Requirements.** Provides that rules adopted under the good cause exemption do not automatically expire after two years, if the rules were adopted to conform to the requirements of a court order.
- 28 Notice.** Requires agencies to give notice to the legislature when proposing a rulemaking proceeding using the good cause exemption.
- 29 Determination of validity of rule.** Authorizes judicial review of agency documents a petitioner believes should be a rule, even if the agency has not adopted the document as such. The process would be similar to the judicial review of rules.
- 30 Rule declared invalid.** Provides conforming changes related to the expanded judicial review allowance contained earlier in the bill.
- 31 Procedural rules.** Updates a list of cross-references to include a reference to expedited rulemaking, in the section requiring the office of administrative hearings to adopt its own procedural rules to govern the rulemaking process.
- 32 State administrative rulemaking task force.** Establishes a task force to review existing rulemaking procedures. The task force may develop proposals for rulemaking reform, with certain limitations. A task force report is due February 15, 2018.
- 33 Repealer.** Repeals an existing subdivision related to agency obsolete rules reports. This subdivision is recodified, with modifications, earlier in the bill.
- 34 Effective date; application.** Provides an effective date for the bill and clarifies its applicability.