

HCS HB 1641 -- ADMINISTRATIVE RULES

SPONSOR: Overcast

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Government Efficiency by a vote of 12 to 1 with 4 members voting present. Voted "Do Pass" by the Standing Committee on Rules-Legislative by a vote of 9 to 2 with 1 member voting present.

The following is a summary of the House Committee Substitute for HB 1641.

This bill adds additional duties and responsibilities to the Joint Committee on Administrative Rules. The Committee may:

- (1) Review and evaluate any rule, regulation, guidance document, program manual, policy, specification, or directive by any state agency or department, whether it is currently in effect or not, so long as it affects individuals or entities outside the issuing agency;
- (2) Determine whether the action is a "rule" under Chapter 536, RSMo or exceeds statutory authority;
- (3) Require agencies to produce necessary documents, data, or witnesses for the Committee's review and issue subpoenas to produce those documents, data, or witnesses within its jurisdiction;
- (4) Swear in witnesses appearing before the Committee; and
- (5) Refer noncompliance, obstruction, or false testimony to the appropriate prosecuting authority and the ethics commissions of the House of Representatives and the Senate.

The Committee may initiate a review on its own motion, at the request of a member of the General Assembly, or at the request of an affected person or entity. The Committee may determine the validity, intent, consistency, and impacts of agency actions and conduct audits or investigations to determine whether the actions exceed the agency's authority, conflict with the legislature's intent, or create unauthorized burdens.

The Committee may issue agencies with notices of noncompliance by a majority vote when rules, policies, or directives exceed statutory authority, should have followed the rulemaking

procedures in Chapter 536, or have unapproved fiscal impacts exceeding \$250,000. The adopting agency will have 30 days to respond in writing to indicate corrective action or justify the original rule, policy, or directive.

Each state department must file notice with the Committee within 10 days of issuing any guidance document, directive, specification, or policy of general applicability not adopted under the rulemaking procedures in Chapter 536.

The Committee may employ counsel, investigators, and technical staff to carry out its duties.

The Committee must submit an annual report to the General Assembly listing:

- (1) Each rule or policy reviewed;
- (2) Findings of compliance or noncompliance;
- (3) Agency responses; and
- (4) Any corrective actions taken.

Reports issued by the Committee and an agency's compliance with the Committee's reviews and investigations must be considered by all standing committees of the House of Representatives and the Senate during the appropriations process and when acting on any legislative matters relating to the agency.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPONENTS: Supporters say that this bill will restore the constitutional balance of power between the three branches. When agencies create rules and regulations, JCAR reviews them and issues recommendations. However, there is other oversight of the rules and regulations that is more informal in nature, which allows such rules and regulations to avoid notice, fiscal scrutiny, and oversight. Supporters say that this bill closes that loophole and allows JCAR to investigate, make a determination as to whether any action should have been taken in the first place, and issue notices of non-compliance. This bill will also ensure that agencies are not created in a way that allows them to avoid scrutiny.

Testifying in person for the bill were Representative Overcast; and Arnie Dienoff.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say currently, agencies have the authority to create rules because the General Assembly supplies them with the authority to do so, but they are under strict guidelines as to how they can proceed. The concern with this bill is that although the intentions are good, the language could result in agency overreach.

Testifying in person on the bill was Armorvine.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under Testimony on the bill page on the House website.