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Background

Partial Extension of Emergency Rules (1997 AB 254)

Explanation of the Issue

By operation of statute, many state agencies are empowered with the ability to establish regulations by administrative rule. This system was established to free the Legislature from the burden of micromanaging by statute those areas of regulatory necessity which are subject to frequent change, are administrative in nature, or are highly technical and best understood by experts in the subject area of the regulation.

Chapter 227 of the statutes sets forth a system for the promulgation of new or modified administrative rules. This system, which typically takes six to nine months to navigate, is designed to assure the proper level of public notice, public input, and legislative oversight. However, the Legislature recognizes that events may occur which necessitate the establishment of new or modified administrative rules in a much more expedient manner. Toward that end, s. 227.24, stats., provides for the promulgation of emergency rules, bypassing the normal pathways of legislative and public notice and review.

Emergency rules are limited to a total effective lifetime of 270 days. The initial emergency rulemaking order may be promulgated for a time period of up to 150 days. Thereafter, the promulgating agency may petition the Joint Committee for Review of Administrative Rules (JCRAR) for any number of extensions. Each individual extension request may not exceed 60 days, and the total of all extensions granted may not exceed 120 days.

Currently, the JCRAR may approve or deny requests for the extension of emergency rules *in whole*. As a result, the JCRAR may find it necessary to *deny extension* to an entire rule, much of which might be good and useful, because of a small portion which it finds objectionable for some reason.

What The Bill Will Do

The legislation will do the following:

- *Allow JCRAR to grant emergency rule extension requests in part.* This enhances legislative oversight of emergency rulemaking on the part of agencies. Emergency rulemaking is a largely unregulated activity on the part of agencies. The public, via their legislators, have a right to greater representation and input on emergency rulemaking orders.
- *Require agencies to make extension requests no less than 30 days before rule expiration:* In the past, the JCRAR has frequently found itself in the position of re-issuing hearing notices at the last minute as late extension requests filter in. This is counterproductive to the purposes of contemplative and thoughtful committee votes and public notice. This provision will repair that problem permanently.
- *Require agencies to submit a copy of their extension requests to the presiding officer of each house and to the standing committees in each house as determined by the presiding officer:* This enters the emergency rule extension procedure into the larger legislative process. It enhances public access to this whole system, which is currently very difficult to track.
- *Requires the presiding officer of each house to enter emergency rule extension requests into the journal of his or her respective house.*
- *Requires the JCRAR, upon granting an emergency rule extension request, to file notice of that extension with the presiding officer of each house and the appropriate standing committees, as described above. Each presiding officer must then enter the notice of that action into the journal of his or her respective house.*
- *Requires that agencies promulgating new emergency rules file copies of those new emergency rules to the residing officer of each house:* The above all serves to enhance notice to the Legislature and to the public of rulemaking activities, making everyone more cognizant of the largely-invisible emergency rulemaking process.

History of the Bill

Assembly Bill 254 was introduced on April 9, 1997 by the unanimous vote of the members of the Joint Committee for Review of Administrative Rules. It was subsequently referred to the JCRAR on April 9 for committee review. On September 3, 1997, the JCRAR held a public hearing on Assembly Bill 254. Senator Richard Grobschmidt appeared in favor of the bill. There were no other persons appearing or registering for or against the legislation. The JCRAR unanimously recommended the bill for passage on that same day. On September 16, the bill was referred to the Assembly Committee on Government Operations, where it will receive a public hearing on October 8, 1997.

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