§8072. Legislative review of major substantive rules

As provided in section 8071, major substantive rules are subject to an increased level of rule-making requirements. The rule-making requirements of subchapter II for routine technical rules apply to the adoption of major substantive rules, except that the 120-day period for adoption and the 150-day period for approval as to form and legality under section 8052, subsection 7, paragraphs A and B apply to provisional adoption of major substantive rules, not final adoption. In addition to the other rule-making requirements, every major substantive rule is also subject to legislative review as provided in this section. [PL 1995, c. 463, §2 (NEW).]

1. Preliminary adoption of major substantive rules. An agency proposing a major substantive rule other than an emergency rule, after filing the notice of proposed rulemaking required by section 8052, shall proceed with rule-making procedures to the point of, but not including, final adoption. At that point, known in this section as "provisional adoption," the agency shall file the provisionally adopted rule and related materials with the Secretary of State as provided in section 8056, subsection 1, paragraph B and submit the rule to the Legislature for review and authorization for final adoption as provided in this section. The rule has legal effect only after review by the Legislature followed by final adoption by the agency.
[PL 1997, c. 196, §2 (AMD).]

2. Submission of materials. At the time an agency provisionally adopts a rule, the agency shall submit to the Executive Director of the Legislative Council 20 copies of:

A. The full text of the rule provisionally adopted by the agency with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; [PL 1995, c. 463, §2 (NEW).]

B. A concise summary of the content of the rule and a description and a copy of any existing rule the agency proposes to amend or repeal; [PL 1995, c. 463, §2 (NEW).]

C. A statement of the circumstances that require the rule; [PL 1995, c. 463, §2 (NEW).]

D. A statement of the economic impact of the rule on the State and its residents; and [PL 1995, c. 463, §2 (NEW).]

E. Any other information required by law. [PL 1995, c. 463, §2 (NEW).]
[PL 1995, c. 463, §2 (NEW).]

3. Legislative review; legislative instrument prepared. If the required copies of the provisionally adopted rule and related information are received by the Executive Director of the Legislative Council during the legislative rule acceptance period, the Executive Director shall notify the Revisor of Statutes, who shall draft an appropriate legislative instrument to allow for legislative review and action upon the provisionally adopted rule during the legislative review session. The Secretary of the Senate and the Clerk of the House shall place the legislative instrument on the Advance Journal and Calendar. The secretary and clerk shall jointly suggest reference of the legislative instrument to a joint standing committee of the Legislature that has jurisdiction over the subject matter of the proposed rule and shall provide for publication of that suggestion in the Advance Journal and Calendar first in the Senate and then in the House of Representatives no later than the next legislative day following receipt of the legislative instrument. After floor action on referral of the legislative instrument to committee is completed, the Secretary of the Senate and the Clerk of the House of Representatives shall send copies of the rule and related information to each member of that committee. Each rule submitted for legislative review during the legislative rule acceptance period must be reviewed by the appropriate joint standing committee at a meeting called for that purpose in accordance with legislative rules. A committee may review more than one rule and the rules of more than one agency at a meeting. The committee shall notify the affected agency of the meeting on its proposed rules.

[PL 2011, c. 244, §4 (AMD).]

4. Committee review. The committee shall review each provisionally adopted rule and, in its discretion, may hold public hearings on that rule. A public hearing under this subsection must be advertised in the same manner as required by legislative rules then in effect for advertisement of public hearings on proposed legislation. The committee's review must include, but is not limited to, a determination of:

A. Whether the agency has exceeded the scope of its statutory authority in approving the provisionally adopted rule; [PL 1995, c. 463, §2 (NEW).]

B. Whether the provisionally adopted rule is in conformity with the legislative intent of the statute the rule is intended to implement, extend, apply, interpret or make specific; [PL 1995, c. 463, §2 (NEW).]

C. Whether the provisionally adopted rule conflicts with any other provision of law or with any other rule adopted by the same or a different agency; [PL 1995, c. 463, §2 (NEW).]

D. Whether the provisionally adopted rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed; [PL 1995, c. 463, §2 (NEW).]

E. Whether the provisionally adopted rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it; [PL 1995, c. 463, §2 (NEW).]

F. Whether the provisionally adopted rule could be made less complex or more readily understandable for the general public; [PL 1995, c. 537, §7 (AMD).]

G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law; and [PL 1995, c. 537, §7 (AMD).]

H. For a rule that is reasonably expected to result in a significant reduction in property values, whether sufficient variance provisions exist in law or in the rule to avoid an unconstitutional taking, and whether, as a matter of policy, the expected reduction is necessary or appropriate for the protection of the public health, safety and welfare advanced by the rule. [PL 1995, c. 537, §8 (NEW).]

[PL 1995, c. 537, §§7, 8 (AMD).]

5. Committee recommendation. After reviewing a rule referred to it by the Legislature, the committee shall recommend:

A. That the Legislature authorize the final adoption of the rule; [PL 1995, c. 463, §2 (NEW).]

B. That the Legislature authorize the final adoption of a specified part of the rule; [PL 1995, c. 463, §2 (NEW).]

C. That the Legislature authorize the final adoption of the rule with certain specified amendments; or [PL 1995, c. 463, §2 (NEW).]

D. That the final adoption of the rule be disapproved by the Legislature. [PL 1995, c. 463, §2 (NEW).]

The committee shall notify the agency proposing the rule of its recommendation. When the committee makes a recommendation under paragraph B, C or D, the notice must contain a statement of the reasons for that recommendation.

[PL 2011, c. 244, §5 (AMD).]

6. Draft legislation.

[PL 2011, c. 244, §6 (RP).]

7. Report to the Legislature. Unless otherwise provided by the Legislature, each joint standing committee of the Legislature that receives a rule submitted during the legislative rule acceptance period shall report to the Legislature its recommendations concerning final adoption of the rule no later than 30 days before statutory adjournment of the legislative review session as provided in Title 3, section 2. [PL 2011, c. 244, §7 (AMD).]

8. Final adoption; effective date. Unless otherwise provided by law, final adoption of a rule or part of a rule by an agency must occur within 60 days of the effective date of the legislation approving that rule or part of that rule or of the adjournment of the session in which the Legislature failed to act on the rule or part of the rule as specified in subsection 11. Finally adopted rules must be filed with the Secretary of State as provided in section 8056, subsection 1, paragraph B and notice must be posted as provided in section 8056, subsection 3. Except as otherwise specified by law, the rules become effective 30 days after filing with the Secretary of State or at a later date specified by the agency. [PL 2025, c. 384, §22 (AMD).]

9. Consideration at special session. If appropriate, the committee recommendation regarding an agency rule or rules may be submitted to and considered by a special session of the Legislature. [PL 1995, c. 463, §2 (NEW).]

10. Rules submitted outside legislative rule acceptance period. The Legislature may act or decline to act upon any rules submitted outside the legislative rule acceptance period. [PL 2011, c. 244, §9 (NEW).]

11. Prohibited final adoption. A provisionally adopted rule or part of a provisionally adopted rule may not be finally adopted by an agency unless:

A. Legislation authorizing adoption of the rule or part of the rule is enacted into law; or [PL 2011, c. 244, §10 (NEW).]

B. The agency submits the rule or part of the rule in accordance with this section during the legislative rule acceptance period and the Legislature fails to act on the rule or part of the rule. [PL 2011, c. 244, §10 (NEW).]

For purposes of this subsection, the Legislature fails to act on a rule or part of a rule if the Legislature fails to enact legislation authorizing adoption or disapproving adoption of the rule or part of the rule during the legislative review session or during any subsequent session to which a legislative instrument expressly providing for approval or disapproval of the rule or part of the rule is carried over. Nothing in this section requires the Legislature to use the legislative instrument produced pursuant to subsection 3 to approve or disapprove of a rule or part of a rule. [PL 2011, c. 244, §10 (NEW).]

SECTION HISTORY

PL 1995, c. 463, §2 (NEW). PL 1995, c. 537, §§7,8 (AMD). PL 1995, c. 574, §2 (AMD). PL 1997, c. 196, §2 (AMD). PL 2005, c. 586, §1 (AMD). PL 2011, c. 244, §§4-10 (AMD). PL 2025, c. 384, §22 (AMD).

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