

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 23, 2024

Bill: HB-124

Sponsor: Representatives Randall R. Pettigrew, James G. Townsend, Jared Hembree, and Candy Spence Ezzell

Short Title: Admin Rule Oversight Interim Committee

Description: This bill would create a new legislative committee called the “Interim Administrative Rule Oversight Committee” with members from the house and senate. This committee will be required to review all rules proposed by an executive agency. Committee staff will be required to do an analysis of the rules and the fiscal impact of the rules. The committee may endorse legislation as is necessary to amend or repeal a statute that authorizes an agency to promulgate rules. The committee will provide public comments to the agency, the attorney general, and the governor during the public comment period, except for emergency rules.

The committee can request an analysis of the fiscal impact from the agency. Agencies will be required to include an estimate of the cost of implementing the proposed rule and the fiscal impact of the rule change if the cost is estimated to be greater than \$1 million in the notice for hearing of a proposed regulation change. Section 6 of this bill outlines the process required for the fiscal impact statement.

This bill includes as appropriation of \$2 million from the general fund to the legislative council service for expenditures in the fiscal year 2025 to staff the committee.

Effective Date: Add effective date or Not specified; 90 days following adjournment (May 15, 2024).

Taxation and Revenue Department Analyst: Lucinda Sydow

Appropriation*		R or NR**	Fund(s) Affected
FY2024	FY2025		
--	(\$2,000)	NR	General Fund
--	\$2,000	NR	Legislative Council Service

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: None.

Policy Issues: More input from all parties improves the quality of final regulations. That said, lawmakers and legislative staff are already able to receive notification of proposed rulemaking, and to submit public comments thereon. Further, this bill may violate the constitutional separation of powers between these branches of government if it is interpreted that the new interim committee’s recommendation are in any way binding upon executive agencies and their independent determinations to promulgate rules.

The bill provides no consequences or enforcement mechanisms if the interim committee’s recommendations are not accepted in whole or in part.

The proposed interim committee will be made up evenly of members from majority and minority parties. This membership will not be representative of the legislature as a whole, and may often result in tied votes. It is assumed if a vote on a recommendation fails due to a tie, then no recommendation will emerge

from the committee. It may be preferable for an odd number of committee members, and for the majority party's number of members to reflect its majority share of each chamber.

The bill allows the new interim committee to hire staff, but reviewing and making recommendations on rules can be very subject-matter specific. It may be difficult to hire staff who are prepared to assist the interim committee on making recommendations on the wide range of topics on which executive agencies necessarily promulgate rules. Legislators appointed to the committee may face a similar dilemma.

Technical Issues: Section 2: Page 3, lines 14-15 allow the legislative oversight committee to make recommendations regarding the rule, and to recommend changes to the related statute authorizing the rule to clarify legislative intent. There is a risk that any recommendations or changes are not consistent with the statute – leading to confusion or litigation - or would make administration of the rule impossible. The bill is silent as to what an executive agency is allowed or required to do in this situation. For Tax & Rev this could have far reaching consequences on a taxpayer's reliance on the rule changes and impacts on Tax & Rev's presumption of correctness.

Section 4: Page 4, line 12, the bill allows the legislative oversight committee to consider the “necessity of the proposed rule.” The statute does not address the impact if the committee determines the rule is not necessary. This ambiguity should be clarified.

Page 5, lines 10-18, as similarly noted above under Section 2, it is unclear what actions Tax & Rev is required to take with recommendation submitted by the interim committee during the public comment period. An executive agency cannot under any circumstances be bound by recommendations that conflict with federal or state law.

Page 7, lines 22 through page 8, line 4. Tax & Rev regulations are often made due to legislative changes. Then, the fiscal impact of the bill is determined when the Legislature passes the bill, not when Tax & Rev promulgates necessary rules. The bill should clarify this issue.

Other Issues: None.

Administrative & Compliance Impact: This bill will require an additional step of producing fiscal impact statements for regulation preparation and hearings in the Tax & Rev's Office of the Secretary (OOS). This will add additional time in the process. The OOS will absorb this impact with current staffing and resources.