



Summary: *This model policy provides a legislative check on agency rulemaking powers. Agencies typically enjoy broad authority to write, interpret, and enforce their own rules, but unlike legislators, agency officials aren't accountable to the public. This model requires the legislature, which does have that power, to ratify any agency rule that will significantly impact the economy, commerce, or social and cultural relations among citizens. It also creates a Legislative Economic Analysis Unit to report on the projected costs of new rulemakings. Finally, this policy enables the courts to review whether rules have been enacted consistent with this legislation.*

Targeted Legislative Review Act

Whereas, administrative agencies with insufficient democratic controls do more than fill in tiny gaps left by the legislature in regulatory schemes, but instead, often write detailed rules with the force of law that have sweeping social and economic consequences, including imposing significant civil or even criminal penalties on businesses and individuals.

Whereas, writing law and setting broad social and economic policy is the duty of the Legislature.

Whereas, to improve democratic accountability for agency major rules, legislators need more effective mechanisms to ensure agencies stay within the bounds of their delegated authority and that agencies don't issue burdensome rules that would not pass the legislative process.

Therefore, be it enacted:

Section 1. Creation and Function of a Legislative Economic Analysis Unit¹

- (a) A Legislative Economic Analysis Unit (LEAU) shall be created within the Legislature to provide independent and reliable economic analysis and other information relevant to the conduct of the Legislature's oversight and legislative duties.
 - (1) The LEAU shall be headed by a Chief Economist, who is appointed jointly by President of the Senate [Upper Chamber] and Speaker of the House [Lower Chamber] and serves at their pleasure. If there is no agreement by the President and Speaker on the appointment or continued tenure of a Chief Economist, the office shall remain vacant, but the work of other employees of the LEAU may continue.
 - (2) The LEAU shall be staffed by such other career professionals as the Chief Economist deems necessary and appropriate, subject to the appropriations, other rules, and limitations established by the Legislature.
 - (3) In determining the LEAU's annual appropriation, the appropriations

¹ If such unit already exists, this section may either be unnecessary or shall serve to augment that unit's function.



committees in each chamber shall use as a baseline a one- to two-percent contribution from the budget of each regulatory agency—to the end that regulatory agencies are properly incorporating the cost of an independent analysis and legislative review of their rules.

- (b) In addition to other tasks the President of the Senate and Speaker of the House may assign to the LEAU, it shall produce:
- (1) Determinations whether a rule or proposed rule that is required to be submitted to the Legislature under this rule is a major rule, whenever such determination is requested by the President of the Senate, Speaker of the House, or the chair or ranking minority member of any committee with jurisdiction over the subject matter of the rule,
 - (2) Regulatory Impact Analyses (RIAs) as specified in section 2 of major rules or major proposed rules within 15 legislative/session days of submission by an agency as a major rule or within 15 legislative/session days of LEAU's determination that any other rule is a major rule,
 - (3) RIAs of existing rules and regulations, as specified in section 2(b), and Impact analysis of significant grants received from the federal government or from other sources external to state government, when requested by the President of the Senate, Speaker of the House, or any chair or ranking minority member of any committee with jurisdiction over the relevant subject matter of the grant.
- (c) The LEAU's determination that a rule or proposed rule submitted to the Legislature is a major rule shall be made public to provide notice that such rule might not be in effect without 60-day legislative consideration or approval. Courts shall have jurisdiction to conduct de novo review of whether a given rule is a major rule and what affect that has on its effective date if not approved by the Legislature, but no such determination precludes the Legislature from using the procedures of this or other act to approve, disapprove, or enact other legislation regarding a rule at any time.

Section 2: Grant and Regulatory Impact Analysis

- (a) Whenever reasonably practicable, the major rule RIA or impact analysis conducted by the LEAU shall include:
- (1) Statement of need;
 - (2) Legal basis for the rule or grant;
 - (3) Examination of alternatives (for new rules or grants);
 - (4) Evaluation of costs and benefits (for each alternative for new rules or grants), including:
 - (A) Estimated primary or direct benefits,
 - (B) Estimated cost savings or financial benefits to society,
 - (C) Estimated compliance costs for regulated entities,
 - (D) Estimated secondary or indirect costs,
 - (E) Estimated effect on state revenue,
 - (F) Estimated effect on state expenditures, including estimated administrative expenses, and
 - (G) Estimated opportunity cost. The analysis must identify the



opportunity cost of compliance, as a result of the removal of private capital from the market;

- (5) Sources consulted; and
- (6) Key assumptions and sources of uncertainty.
- (b) To the extent resources are available, the LEAU shall also evaluate or conduct the analysis specified in subsection(a) of specified existing rules and nonmajor rules when requested by a chair or ranking minority member of a committee of either chamber relating to matters within the committee's jurisdiction. The LEAU shall undertake such a review in the order requested unless, in a given session, the Senate President and Speaker of the House direct otherwise.
- (c) Upon completion, analysis of each rule, grant, or other matter shall be made publicly available. At the end of each calendar year, the Chief Economist shall provide the [Upper Chamber] President and the Speaker of the [Lower Chamber] a report summarizing the matters evaluated that year.

Section 3. Legislative Review of Major and Nonmajor Rules

- (a) (1) (A) Within one month of enactment, each chamber of the Legislature shall specify an email or other electronic means for the delivery of rules and other information pursuant to this act, including during times when the Legislature is not in normal session. Thereafter, before any agency rule may take effect, the state agency promulgating a covered rule shall publish in the [State Register] and shall submit to each chamber of the Legislature and to the [the Chief Economist/head of the LEAU/or equivalent officer] a report containing—
 - (i) a copy of the rule;
 - (ii) a concise general statement relating to the rule;
 - (iii) a classification of the rule as a major or nonmajor rule, as defined in this act, including an explanation of why it presumptively is or is not a major rule;
 - (iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and
 - (v) the proposed effective date of the rule.
- (B) On the date of the submission of the report under subparagraph (A), the state agency promulgating the rule shall submit to the [LEAU] and make available to each chamber of the Legislature—
 - (i) a complete copy of the cost-benefit analysis of the rule, if any, including an analysis of any jobs added or lost, differentiating between public and private sector jobs; and
 - (ii) any other relevant information or requirements under any other Act and any relevant Executive orders.
- (2) (A) The [LEAU] shall provide a report on each major rule to the committees of jurisdiction by the end of the of 15th session day after its submission or publication date, whichever is later. The report of the [LEAU] shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B), an assessment of whether the major rule imposes any new limits or mandates on private-sector activity, and its RIA.



PACIFIC LEGAL FOUNDATION

- (B) State agencies shall cooperate with the [LEAU] by providing information relevant to the [LEAU]'s report under subparagraph (A).
- (b) Subject to the exceptions in this section, a major rule shall not take effect before the Legislature enacts a law ratifying the rule or the expiration of 60 legislative/session days after submission to the Legislature without a final vote in both chambers on the rule. A major rule may go into effect later than 60 legislative/session days after submission to the Legislature, if so specified in the proposed rule and such rule was not disapproved by the Legislature before its specified effective date.
- (c) If the Governor believes a major rule must go in effect before the passage of 60 legislative days, including when the Legislature is not in session or near the end of a session, it is the sense of the Legislature that the Governor should call the Legislature into special session (or extend its session) for the sole purpose of voting to approve or disapprove the proposed major rule. In such cases, each chamber of the Legislature shall work in good faith to schedule the vote promptly as the situation requires, and such debate and vote on the proposed major rule may be by such virtual means as are specified in the chamber's rules, or in the absence of such rules, as specified by the presiding officer of each chamber.
- (d) (1) Nothing in this act expands or extends the emergency powers of the governor or other executive or administrative officials in the state. Consistent with the limitations on emergency powers, a major rule may go into effect for purposes of this act earlier than specified in subsection (b) if the Governor publishes a statement with the rule:
 - (i) explaining why an emergency exists that requires an earlier effective date for the rule, or why a federal requirement or federal funding requires an earlier effective date,
 - (ii) if the Legislature is not in session or near the end of its session, explaining why the Legislature cannot be called back into session specially to consider and vote on the major rule, and
 - (iii) explaining why the issuance of the major rule otherwise complies with emergency powers statutes and limitations or is required by federal law or for federal funding.
- (2) Nothing in this Act permits emergency rules to remain in effect longer than otherwise under emergency powers statutes or other limitations, and nothing prevents the Legislature from voting to disapprove of it under this Act.
- (3) State courts shall have jurisdiction to hear challenges by regulated or other affected parties that the exception cited by the Governor for an earlier effective date for a major rule was invalid, and if so, whether or when the major rule did or may take effect.
- (e) A nonmajor rule may take effect after submission to the Legislature under subsection (a)(1) and publication, unless its stated effective date is later. If a rule is misclassified as nonmajor, regulated parties may challenge an effective date that is not consistent with that for a major rule.



Section 4. Definitions

- (a) For purposes of this act:
 - (1) The term ‘major rule’ means any rule of any kind that fits the definition of a rule in paragraph (3), including an emergency rule or an interim final rule, that will result in or is likely to result in:
 - (A) an annual effect on the economy of \$XX million or more;
 - (B) significant adverse effects on competition, employment, investment, productivity, innovation, including significant adverse effects on individual industries or regions; or
 - (C) significant changes in social and cultural relations among citizens, including significant impacts on religious, ethnic, racial, or gender populations.
 - (2) The term ‘nonmajor rule’ means any rule that is not a major rule.
 - (3) The term ‘rule’ means any agency statement of general applicability and future effect that is binding on the public or that more than nominally affects private rights, privileges, or other obligations, whether it is a rule issued after public notice and comment or not. A covered rule under this act does not include individual agency adjudications, permits for individual entities, or other rules of individual applicability, or matters of internal agency management that have no substantial effect on non-government parties.

Section 5. Judicial review

- (a) The Legislative procedure leading to and including a final vote on a bill under this act shall not be subject to judicial review, but courts may give effect to bills enacted pursuant to this act.
- (b) Notwithstanding subsection (a), a court may determine whether a State agency or the Legislature has completed the necessary requirements under this act for a rule to take effect, including de novo review of whether a rule is a major rule that requires delayed legislative consideration or approval by the Legislature before it takes effect.
- (c) The enactment of legislation under section 3(b) shall not be interpreted to serve as a grant or modification of statutory authority by the Legislature for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.