

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

March 8, 2025

Bill: SB-423

Sponsor: Senators Larry R. Scott, James G. Townsend, David M. Gallegos,
and Jay C. Block

Short Title: Review and Approval of Rules

Description: This bill changes the procedures for how state agencies develop and have regulations authorized, amending and enacting new sections of the State Rules Act. The bill provides that the legislative finance committee (LFC) be required to determine if a new rule is a “major rule” and then conduct a rule impact analysis of all major rules. The bill requires that all rules promulgated by a state agency be subject to approval of the governor. Procedures for judicial review of rules are provided, and changes are made to notice requirements. The bill provides for the automatic expiration of rules five years after the adoption date.

Effective Date: Not specified; 90 days following adjournment (June 20, 2025). All existing rules adopted by state agencies pursuant to the State Rules Act shall be considered adopted on the effective date of this act.

Taxation and Revenue Department Analyst: Mark Chaiken / Pedro Clavijo

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
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* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: The proposed changes in rulemaking process do not affect any revenue sources directly. The effects will mostly be seen in increased processing times and administrative costs for putting rules and regulations into place, adding delay and cost to what is already a time-consuming and often expensive process.

Policy Issues: Laws governing adoption of regulations already allow for significant public input, including input from legislators and other executive agencies. Similarly, legislators already have the power to amend statutes in response to regulations, including clarifying the intent of statutes authorizing regulations. The bill adds unnecessary layers of additional legislative review, as such review already occurs under current law. The bill further blurs the line between legislative and executive functions, potentially violating the separation of powers, by requiring the legislature to authorize major rules, as defined in the bill, before they take effect. The bill will also substantially increase the amount of rulemaking required by agencies, as major rules automatically expire after five years, and must be reenacted, or reauthorized by the legislature rather than the agency, further blurring the line between executive and legislative functions.

Technical Issues: [Section 1]: Subsection F allows the chair or ranking minority member of any committee “with jurisdiction over the subject matter of the rule” to ask the LFC to determine whether a rule is a “major” rule requiring additional LFC review and analysis. It is not clear who determines whether a rule is within the jurisdiction of a committee, or whether an agency may object to such a request on the ground that the rule is not, in fact, within a particular committee’s jurisdiction. Including the chairs and ranking members of the committees has the potential to substantially increase the

administrative rulemaking burden and may result in overlapping claims to jurisdiction.

Subsection F does not state a time within which such request must be made by a designated legislator to the LFC. A rule could potentially have gone into effect before such a request is made, creating a conflict with Section 3(B), which states that a major rule cannot take effect before the legislature authorizes it by law. A determination that a rule is a “major” rule might therefore occur after the rule has already taken effect.

Subsection F also potentially conflicts with Section 6(A)(8), which requires the rulemaking agency to make its own determination as to whether a rule is major or not. An agency could determine its rule is not major, and the rule could be implemented, before LFC makes its own separate determination. There is no method for resolving a dispute between LFC and an agency as to whether a bill is a major bill or not.

[Section 2]: Subsection (E)(1) defines a major rule as one that results in “an annual effect on the state of ten million dollars” or more. The phrase “effect on the state” is unclear. It could mean a negative (or even positive) effect on the state budget, or on the state economy overall. The bill should clarify the nature and type of effect “on the state” that would cause a rule to be a major rule. Subsection (E)(3) adds as a factor whether the rule would result in “significant adverse effects” on competition, employment, investment, productivity, innovation or individual industries or regions. The bill gives no guidance as to what should be deemed “significant”, and this subsection is likely void for vagueness; agencies would have no standards, and standards could differ between agencies, leading to inconsistent enforcement. Similarly, Subsection (E)(4) requires the agency to determine whether the rule would result in “significant changes” in social or cultural relations among citizens including “significant impact” on religions and ethnic, racial or gender populations. The undefined use of the word “significant” raises the same problems as use of the word in Subsection (E)(3) and will lead to inconsistent application of the law. Finally, requiring review of the factors listed in Subsection E overall will drastically increase the scope of regulatory review, adding delay to the rulemaking process and requiring additional resources for each agency to perform its analysis.

Furthermore, the economic impact of a rule may be hard to predict with any accuracy, and therefore it may not be possible to determine whether a rule is a major rule according to the listed criteria. This is especially problematic given that all three branches of government are potentially involved in the determination of whether a rule is a major rule, and may reach differing conclusions, without any standards to guide their interpretation of the significant effects of a proposed rule.

[Section 4]: This section now inserts the judiciary, in addition to the executive and legislative branches, into the rulemaking procedure, resulting in additional cost and delay. The judicial branch may already hear challenges to rules under the Administrative Procedures Act and other laws, and this section unnecessarily adds another layer of review, as well as blurring the lines between the responsibilities of the different branches of government.

[Section 5]: The definition of “major rule” in this section has the same issues as those identified with respect to Section 2, above.

[Section 7]: This section of the bill automatically repeals all rules, not just major rules, five years after their effective date, unless reauthorized by the legislature. The involvement of the legislature likely also violates the separation of powers. Furthermore, given the current volume of necessary regulations in place within the Tax Code, the number of regulations that will need to be reviewed every five years would be overwhelming, and even with additional resources it would likely be impossible to review and reenact all the necessary regulations in a timely fashion. Each time rules are repealed and replaced, users of rules also lose the benefit of annotations and case law associated with the repealed rule.

Other Issues: Preparing the quantity of information required will impose additional burdens on rulemaking agencies and puts every rule at risk of non-approval for reasons of simple bureaucracy.

Allowing LFC, the legislature, or the judiciary to overrule an agency discards the expertise and historical knowledge of the agencies administering the relevant laws, who are best placed to know the utility and necessity of a rule. Certain rules are put into place in response to nationwide initiatives. For example, Tax & Rev sometimes adopts rules recommended by the Multistate Tax Commission, especially to achieve national conformity with respect to uniform laws. If such a rule is overturned by the legislature, the goal of multistate uniformity will be diminished, and businesses may be reluctant to engage in business in a state that does not conform to uniform standards.

Administrative & Compliance Impact: Complying with this bill will require a minimum of 2 additional FTE within the Tax Administration and Policy Office at a pay band 70.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2025	FY2026	FY2027	3 Year Total Cost		
\$35.5	\$71	\$71	\$177.5	R	OOS - FTE

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