

Hi. This is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an Adjunct Professor at McGeorge School of Law in its Capital Lawyering Program.

Today's podcast concerns the unique role of the Legislature in the rulemaking process. I don't know if you're aware but the State of California has over 200 agencies, departments, boards, and commissions that can make public policy via their authority to adopt regulations.

This of course is when rulemaking bodies act in a quasi-legislative manner, that is, they engage in their rulemaking authority. There's a link they list of state agencies that have adopted regulations and you can find that on the website of California's Office of Administrative Law, www.oal.ca.gov.

OAL's website also provides access to California Code of Regulations, which contains 28 titles and all of California's current regulations. There are a number of ways in which the California Legislature can influence the rulemaking activities of these executive branch entities, primarily through lawmaking and the budget.

For example, the Legislature can adopt statutory changes to expand or limit a specific state agency's authority to adopt regulations. The Legislature of course can utilize the power of the purse strings through the annual budget process to influence a state agency's rulemaking activities.

Today, we're going to look at California law that provides a unique role for the Legislature to influence the quasi-legislative efforts of executive branch agencies.

Now, keep in mind the Administrative Procedure Act. The state APA is found in California's Government Code and is based largely on the Federal Administrative Procedure Act.

Generally speaking, the authority of California's agencies and departments to adopt policy through its rulemaking activities is both defined and restricted by state statute. Of course, it's an established principle of administrative law that a state agency cannot exceed its legally prescribed authority to regulate.

Now, keep in mind that the underlying statute confers either broad or limited powers to the state agencies. Some of the broad rulemaking authority is vested in state agencies such as the Department of Motor Vehicles, the Air Resources Board, and the Department of Fair Employment and Housing.

Now, there is a legislative review of regulations under the joint rules of the California Legislature. The California Joint Legislative Rules Committee, as well as the respective rules committees of both the Assembly and the Senate, can approve any request from a legislator to give priority review of a regulation.

This power is conferred under Government Code Section 11349.7. If such a request is approved, then the joint rules committee must submit any approved request to the Office of Administrative Law.

In addition, under these joint rules, any member of the Senate may request the Senate Committee on Rules, and any member of the Assembly may request the Speaker of the Assembly to direct any standing policy committee in their respective houses or the Assembly Office of Research or the Senate Office of Research to study any proposed or existing regulation or group of related regulations.

Now, upon receipt of such a study request from a legislator, the Senate Committee on Rules or the Speaker of the Assembly will determine whether a study will be made of the regulation or regulations requested.

In reviewing such a request, the Senate Committee on Rules or the Speaker of the Assembly must determine, number one, the cost of making that study. Two, the potential public benefits that would be derived from the study. And three, the scope of such a study.

Now, under the joint rules, the study may consider among other things seven different items:

- Do the proposed or existing regulations exceed their agency statutory authority?
- Does it fail to conform to the legislative intent of the enabling statute?
- Does it contradict or duplicate other regulations adopted by federal, state, or local agencies?
- Does it involve an excessive delegation of regulatory authority to a particular state agency?
- Does it unfairly burden particular elements of the public?
- Does it impose social or economic costs that outweigh its intended benefits to the public? And,
- Does it impose unreasonable penalties for violation?

Now, as you can imagine this review must be done in a timely manner and any concerns must be transmitted forthwith to the Senate Committee on Rules or the Speaker of the Assembly, as well as the relevant state agency that is promulgating the regulation.

In the event that a state agency takes a regulatory action that the reviewing entity finds to be unacceptable, then the entity must file a report for publication in the Assembly Daily Journal or the Senate Daily Journal, indicating the specific reasons why the regulatory action should not have been taken.

This report may include a recommendation that the legislature adopt a concurrent resolution that request the state agency to reconsider its action or that the Legislature enact a new statute to restrict the regulatory powers of the state agency taking this action.

I hope you've enjoyed this basic review of legislative oversight in the rulemaking process.