

HOUSE BILL ANALYSIS

ESSB 5105

- Title:** An act relating to administrative rule making.
- Brief Description:** Larger agencies required to have specific statutory authority to maintain rules that overlap or duplicate other federal or state laws or that differ from federal law.
- Sponsors:** Senators Deccio, McCaslin, Hale, Goings, Johnson, Haugen, West, Winsley, Oke, Schow and Roach
- Hearing Date:** March 27, 1997

Background: Under regulatory reform legislation enacted in 1995 (ESHB 1010), certain agencies are required to make specified determinations and follow other procedures when adopting significant legislative rules. These requirements apply to the departments of Labor and Industries, Revenue, Ecology, Health, Employment Security, and Natural Resources, as well as the Forest Practices Board and the Insurance Commissioner. The Department of Fish and Wildlife must also follow these requirements when adopting certain hydraulics rules. Generally, a significant legislative rule is any rule other than an emergency rule or fee-setting rule.

The required determinations include that the rule is needed to achieve the goals and objectives of the statute it implements and that the rule is the least burdensome alternative. The agency is also required to determine that if the rule differs from any applicable federal regulation or statute, that the difference is justified either by an explicit state statute or by substantial evidence that the difference is necessary to achieve the goals and objectives of the statute the rule implements. The agency must document its determinations in the rule-making file.

After adopting rules which regulate the same activity or subject matter as another provision of federal or state law, an agency must coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter. If the agency cannot achieve coordination, it must report to the Joint Administrative Rules Review Committee and make recommendations for any legislation to eliminate or mitigate any adverse effects of overlapping, duplicative, or different laws.

The Washington Industrial Safety and Health Act (WISHA - RCW chapter 49.17) governs workplace health and safety. The Department of Labor & Industries must adopt rules implementing the act which are at least as effective as those adopted under the federal Occupational Safety and Health Act.

Summary: Proposed significant legislative rules which differ from any applicable federal regulation or statute can no longer be justified on the basis that the difference is necessary to achieve the goals and objectives of the statute the rule implements. The agency must make a determination that a state statute explicitly allows the agency to differ from federal standards. Rules adopted under WISHA are exempt from the requirement to justify the difference from federal standards.

With respect to existing rules, if an agency is unable to coordinate implementation with other federal and state entities by July 1, 1998, it must report to the Joint Administrative Rules Review Committee and make recommendations for any legislation to eliminate or mitigate any adverse effects of overlapping, duplicative, or different laws. For rules adopted under WISHA, the date is July 1, 2000.

By July 1, 1999, an agency must have specific statutory authority for any rule which overlaps or duplicates other federal or state laws or differs from federal law, or the rule expires. This provision does not apply to rules adopted under WISHA.

It is explicitly stated that only those significant legislative rules which are determined to meet all requirements for significant legislative rules may be adopted.

Fiscal Note: Available.