

---

**State Government, Elections &  
Information Technology Committee**

---

**HB 1005**

**Brief Description:** Creating accountability in agency rule-making authority.

**Sponsors:** Representatives Taylor, Orcutt, Shea, J. Walsh, Haler, Condotta, Young, McCaslin, Griffey, Van Werven, Dent, Short, Manweller, Hargrove, Holy, Rodne, Buys, Pike, Koster, Barkis and Schmick.

**Brief Summary of Bill**

- Eliminates agency rulemaking authority, except for limited purposes related to emergencies or fish and wildlife management.
- Expires all existing agency rules unless extended or enacted into law by the Legislature.

**Hearing Date:**

**Staff:** Sean Flynn (786-7124).

**Background:**

The Administrative Procedures Act (APA) requires agencies to follow certain procedural requirements when proposing and adopting rules of general applicability. The rule-making requirements apply to any state department, board, commission, or officer with rule-making authority. The Governor's office, the Attorney General, and certain executive agency activities are exempt from the APA requirement.

Generally, rule-making is required for any agency order, directive, or regulation that subjects a person to a penalty or sanction, sets out agency procedures; determines a benefit of privilege; or involves regulating licensing or commercial activity. A rule does not include: statements regarding internal management issues; declarations issued in response to public petitions; certain traffic restrictions; higher education rules regarding student admission, academics, employment

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

relations, and fiscal processes; or certain rules by the Department of Revenue regarding excise taxes.

An agency must follow certain procedural requirements before a rule can be adopted. First, the agency must provide notice and solicit comments on the subject of its proposed rule-making. Second, the agency must publish any proposed rule and conduct a hearing with an opportunity for public comment on a proposed rule. Finally, the final rule adopted must be published 30 days before it becomes effective. Rules are filed with the Office of the Code Reviser and published in the Washington State Register.

A court may invalidate a rule that exceeds the statutory authority of the agency, was not adopted in accordance with statutory rule-making procedures, or is arbitrary or capricious. Generally, agency rules comply with statutory authority if they are within the framework of the applicable statutes and are reasonably consistent with those statutes.

#### Joint Administrative Rules Review Committee.

The Joint Administrative Rules Review Committee (JARRC) is a bipartisan legislative committee that reviews selected proposed and existing agency rules. The JARRC may review whether: a rule fits within the legislative intent of the authorizing statute; a rule was adopted in accordance with the law; or a policy, guideline or interpretative statement is being applied by an agency as a rule.

Any person may petition the JARRC for a review of a proposed or existing rule, a proposed or existing policy, or an interpretive statement of general applicability. If the JARRC issues an adverse finding on a rule, the agency in question is required to conduct a hearing on the committee's findings. The JARRC may recommend that the Governor suspend a rule or that the Legislature repeal or amend the applicable authorizing statute if it finds that a rule is not in compliance with the law.

#### **Summary of Bill:**

Agency rulemaking authority is eliminated, except when necessary for the implementation of a governor-declared emergency, in response to a public health emergency, or setting regulation for the taking of wildlife, fish, or shellfish. By December 31, 2017, all agencies must submit any existing rule to the Legislature to be extended or enacted into law. All rules not submitted to Legislature automatically expire by August 1, 2018.

The Legislature may review any rule during the 2018 legislative session to determine which rules should be enacted into law, including any rules necessary to meet requirements for receiving federal funds. Any rule submitted to the Legislature for review must expire by December 1, 2018, unless extended or enacted by the Legislature.

Beginning in 2018, any rule adopted or amended, within one of the permissive purposes, must be submitted to the Legislature by the end of the year in which they were adopted. All such rules expire by July 1 of the following year unless they are submitted to the Legislature for review. Any rule submitted to Legislature must expire by December 1 of the following year, unless extended or enacted into law by the Legislature.

**Appropriation:** None.

**Fiscal Note:** Requested on February 10, 2017.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.