

HOUSE BILL REPORT

ESSB 5105

As Reported By House Committee On:
Government Reform & Land Use

Title: An act relating to administrative rule making.

Brief Description: Tightening requirements for administrative rule making.

Sponsors: Senate Committee on Government Operations (originally sponsored by Senators Deccio, McCaslin, Hale, Goings, Johnson, Haugen, West, Winsley, Oke, Schow and Roach).

Brief History:

Committee Activity:

Government Reform & Land Use: 3/27/97, 3/31/97 [DPA].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass as amended. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

Staff: Joan Elgee (786-7135).

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 Office of 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 (JARRC) 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 and 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 of Amended Bill: 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 significant legislative rules, if an agency is unable to coordinate implementation and enforcement by July 1, 1998 with other federal and state entities regulating the same activity or subject matter, the agency must report to the JARRC. The report must include 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.

An agency must have specific statutory authority for any rule which overlaps or duplicates other federal or state laws or differs from federal law, with respect to rules regulating the same activity or subject matter as another provision of federal or state law. If the agency does not have specific authority by July 1, 1999, the rule expires. This provision does not apply to rules adopted under WISHA.

It is explicitly stated that only those significant legislative rules which an agency determines meet all requirements for significant legislative rules may be adopted.

Amended Bill Compared to Engrossed Substitute Bill: The amendments clarify: 1) that the review of existing rules includes rules regulating the same activity or subject matter as other federal or state rules, in addition to statutes; and 2) that rules which

expire because no specific statute allows the rules to overlap or duplicate other federal or state laws or to differ from federal law are only those significant legislative rules which regulate the same activity or subject matter as federal law.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: We will be taking a giant step forward if we can keep agencies from exceeding federal law. Differing federal and state rules cause much confusion. JARRC has become toothless. We need this oversight of agencies. This bill will help give authority to establish policy back to the Legislature.

Testimony Against: This is an abdication of states' rights to the federal government. It will eliminate many public health and environmental safeguards. Rules regarding surface water, auto emissions, sulfite agents and others would be jeopardized. Rules regarding oil and gas drilling would have to be made more onerous because the federal rules are more stringent. (Some comments apply to bill before it was amended.)

Testified: Senator Deccio, prime sponsor (pro); Kris Van Gorkom, Department of Health (con); Fred Hellberg, Governor's office (con); Claire Hesselholt, Department of Revenue (con); Jerry Thielen, Department of Ecology (con); Laura Hitchcock, Sierra Club (con); Art Stearns Department of Natural Resources (con); Bruce Wishart, People for Puget Sound (con); Evan Jacoby, Department of Fish and Wildlife (con); Amber Balch, Association of Washington Business (pro); Gary Smith, Independent Business Association (pro); Charlie Brown, Association of Washington Business (pro); Carolyn Logue, National Federation of Independent Business (pro); and Jeff Johnson, Washington State Labor Council, AFL-CIO (con).