
State Government Committee

SSB 5053

Brief Description: Prohibiting agencies from adopting rules that exceed federal standards without legislative authority.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hale, McCaslin, Schmidt, Honeyford, Parlette, T. Sheldon, Hewitt, Johnson and Oke).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Requires state agencies to have specific legislative authority before adopting rules that exceed federal standards or policies.
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Hearing Date: 2/26/04

Staff: Matt Kuehn (786-7291).

Background:

Agency rules are addressed in RCW 34.05.310 through RCW 34.05.395. Public comment and participation is invited, a rule-making agenda and docket are kept, and a hearing with public notice is held.

Rules that adopt substantive portions of law, change qualifications for permits or licenses, or amend or create policies or regulations are significant legislative rules. The departments of Ecology, Labor and Industry, Health, Revenue, Social and Health Services, Natural Resources, Fish & Wildlife, and Employment Security, the Forest Practices Board, and the Insurance Commissioner are required to analyze a rule to determine if it is a significant legislative rule.

If the rule is a significant legislative rule, the agency must determine that the rule does not require a federal law be violated.

The agency must also justify any difference in the rule from a federal statute or regulation. To do so, the agency must be able to point to either a state statute that explicitly allows for the deviation from federal standards or substantial evidence that the difference is necessary to achieve the goals of the underlying state statute.

Summary of Bill:

State agencies cannot adopt a rule that exceeds federal standards or policies without specific authority from the Legislature. The agency's request must include a reasoned justification and a cost-benefit analysis.

The bill pertains to standards and policies. Policies and standards are not equivalent to statutes and regulations. Statutes and regulations are already addressed in existing law in the significant legislative rule statute. The rule adoption requirements of the bill cannot apply to statutes or regulations without being in conflict with RCW 34.05.328.

Consequently, federal statutes and regulations would continue to be addressed by the existing significant legislative rule statute, RCW 34.05.328. In situations where a rule exceeded federal statute or regulation, those agencies mandated to analyze rules under the significant legislative rule analysis could justify the rule by pointing to explicit legislative authority or to substantial evidence that the difference is necessary to achieve the goals of the statute.

For rules that exceed federal policies and standards, justification may only be made through specific authorization by the legislature. Unlike statute and regulation rule analysis, the policy and standard rule analysis applies to all agencies.

Appropriation: None.

Fiscal Note: Not requested.

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