

# SENATE BILL REPORT

## ESSB 5105

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As Passed Senate, March 13, 1997

**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 Operations: 1/28/97, 2/20/97 [DPS, DNP].  
Passed Senate, 3/13/97, 29-19.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS

**Majority Report:** That Substitute Senate Bill No. 5105 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Hale, Vice Chair; Anderson, Haugen and Horn.

**Minority Report:** Do not pass.

Signed by Senators Patterson and Swanson.

**Staff:** Diane Smith (786-7410)

**Background:** Before adopting a significant legislative rule, the significant legislative rule-making analysis requires that certain agencies determine that the rule does not require violation of other state or federal law; that if the rule does differ from state or federal law, to justify the difference either by an explicit state statute or by determining that difference is necessary; and to coordinate the rule as much as possible with federal, state and local law applicable to the same activity or subject matter.

After adopting significant legislative rules that regulate the same activity or subject matter as other federal or state law, the agency must list the other federal and state laws and coordinate the enforcement of the rule with the other entities.

If the agency cannot achieve coordination, it must report the situation to the Joint Administrative Rules Review Committee (JARRC) and recommend legislation to correct the problem.

The rules adopted by the Department of Labor and Industries (L&I) under Chapter 49.17 RCW concern worker health and safety. The statutory mandate is to equal or exceed federal Occupational Safety and Health Act protections with rules at least as effective.

**Summary of Bill:** The authority of a significant legislative rule-making agency to determine that it is necessary for a rule to differ from federal law is removed. For significant legislative rules now on the books that regulate the same activity or subject matter as other federal or state law, all significant legislative rule-making agencies, except L&I for rules adopted under Chapter 49.17 RCW, have until July 1, 1998 to coordinate implementation of the rule. If coordination of implementation cannot be achieved by July 1, 1998, the agency, except L&I under Chapter 49.17 RCW, must so report to JARRC with suggestions for corrective legislation. The significant legislative rules of L&I adopted under Chapter 49.17 RCW for which coordination of implementation cannot be achieved must be reported to the Legislature by July 1, 2000. On July 1, 1999, any rule that does not have specific statutory authority to overlap or duplicate other federal or state laws or to differ from federal law expires, with the exception of rules adopted by L&I under Chapter 49.17 RCW, which do not expire under any circumstances.

Proposed significant legislative rules that regulate the same activity or subject matter as another federal or state law are subject to the requirements already in statute, including coordination with other federal, state and local laws to the maximum extent practicable; determination that the rule does not require violation of another federal or state law; and, if the rule differs from federal regulation or statute, to justify the difference by citation to an explicit state statute. The rules of L&I adopted under Chapter 49.17 RCW are exempt from the latter-most requirement, namely, justification of any difference from federal law by citation to an explicit state statute.

Only those proposed rules which do meet all the applicable pre-adoption requirements may be adopted.

**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 1997.

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

**Testimony For:** This bill streamlines the regulatory system.

**Testimony Against:** Our safety standards often exceed federal standards and our standards save lives. This bill violates federalism. The differs– criterion throws out all the WAC.

**Testified:** Pat Young; Mike Sciacca, Oil Marketers Association (pro); Robert Dilger, WA State Bldg. Trades (con); Lyle Quasim, DSHS (con); Amber Balch, AWB (pro); Robert Stein, WSLC AFL/CIO (con); Heather Hansen Rainey, WA State Grange (pro); Gary Smith, Ind. Business Association (pro).

**House Amendment(s):** The amendments are clarifying and add a null and void clause.