

Legislative Objectives



Regulatory Reform

Background

In 2015, executive branch agencies filed 15,727 pages of administrative rules and amended 5,305 different sections of the Washington Administrative Code (WAC). In 2015 alone, executive branch agencies proposed or adopted 1,535 rules.

The sheer volume of agency rulemaking creates constant uncertainty for the regulated community. Compliance costs are rising as more companies are forced to hire dedicated employees to monitor, engage, and implement state regulations. In the 2014 Manufacturing and Distribution Monitor, nearly 80% of Washington companies cited government regulations as a top contributing factor to limiting growth.

Another rising concern is the abuse of rulemaking authority through agency implementation of policies that fail to pass during a legislative session. If the Legislature does not agree with a policy proposal from the executive branch, the governor has ordered agencies to adopt the policies on their own through rulemaking. This action effectively side-steps the Legislature and rules are adopted with little to no legislative oversight. Regardless of which party controls the executive or legislative bodies in Olympia, separation of powers is a fundamental constitutional principle. Abusing the rulemaking process by implementing policies that fail to win approval in the legislature is a loophole that needs to be corrected.

Without legislative oversight, the only other recourse is litigation, which can cost industry and taxpayers millions of dollars.

Agencies also possess an implied authority when a rule is challenged in court, regardless of whether the legislature expressly sanctioned rulemaking or not. Under this presumption, the regulated community starts in a hole and is never able to get out of it. Businesses need a more level playing field.

Objectives

AWB supports legislation to:

- Restructure the agency rulemaking process to include additional legislative oversight on new or amended rules; implement an annual rule review process including mandatory JARRC reviews for all significant rules
- Improve objectivity and further define significant rulemaking criteria; require independent analysis for small business impact statements and cost/benefit analyses; add more specific performance criteria to the list of triggers for a cost benefit analysis, like unemployment rates, costs, or general fund impact.
- Increase transparency and certainty in regulatory process by tightening up the delegation of authority; RCW's should not reference rules and the legislature needs to be more precise in writing laws; apart from emergency rules, agencies should only make rules if they are expressly authorized to do so.
- Require agencies to demonstrate rulemaking authority, rather than the current presumption of lawfulness.
- Strengthen the oversight role of the Joint Administrative Rules Review Committee (JARRC).

For questions, please contact AWB's Mike Ennis at 1-800-521-9325 or mikee@awb.org