

# HOUSE BILL REPORT

## ESSB 5671

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### As Passed House-Amended:

April 14, 1997

**Title:** An act relating to issuances by administrative agencies.

**Brief Description:** Requiring adoption of de facto rules.

**Sponsors:** Senate Committee on Government Operations (originally sponsored by Senator McCaslin).

### Brief History:

#### Committee Activity:

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

#### Floor Activity:

Passed House-Amended: 4/14/97, 57-37.

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### 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 the Administrative Procedure Act (APA), state agencies must give notice, hold a hearing, and follow other procedures before adopting a rule. Generally, a rule is any agency order, directive, or regulation of general applicability which (a) subjects a person to a sanction if violated; or (b) establishes or changes any procedure or qualification relating to agency hearings; benefits or privileges conferred by law; licenses to pursue any commercial activity, trade, or profession; or standards for the sale or distribution of products or materials.

The first stage in rule-making requires an agency to solicit comments on a subject of a possible rule. The agency must publish notice in the state register and notify any person who has requested to be on a mailing list. At the next state, when an agency proposes to adopt a rule, it must give notice of the proposed rule and the hearing. The agency

must also notify the Joint Administrative Rules Committee (JARRC), and persons who have requested to be on a mailing list.

Agency rules which are within statutory intent and enacted in accordance with the APA have the force and effect of law. Agency issuances that are being used as rules but that have not been adopted in accordance with the APA are invalid.

In addition to rules, agencies also issue other types of documents. An "interpretive statement" is a document entitled "Interpretive Statement" that states an agency's interpretation of the meaning of a statute. A "policy statement" is a document entitled "Policy Statement" that states an agency's current approach to the implementation of a statute. Interpretive and policy statements are advisory only.

The JARRC may review rules to determine if they are within the intent of the legislature and have been adopted in accordance with all applicable provisions of law. In addition, the JARRC may examine policy and interpretive statements to determine if they are being used in place of rules.

**Summary of Bill:** New definitions are created under the APA.

An "issuance" is a document of general applicability issued by an agency. The term includes rules, policy and interpretive statements, and other documents. Adjudicative orders are excluded. An issuance is advisory only unless it has been adopted under the APA rule-making process.

A "de facto rule" is an issuance not adopted under the APA rule-making process but which an agency uses as a rule. "Rules" are redefined as issuances which have been adopted under the APA rule-making process.

The JARRC may review any issuance to determine if it is a de facto rule. Other provisions are amended to conform to the new definitions.

When an agency solicits comments on a subject of possible rule-making, it must send notice to the chair of the appropriate standing committees and the majority and minority leaders of the house and senate for comment on the legislative intent of the statute that the rule implements.

**Appropriation:** None.

**Fiscal Note:** Requested on March 24, 1997.

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

**Testimony For:** This is strong legislation to restrict the abuse of using non-rule documents like rules. It will also allow JARRC to look at issuances other than policy and interpretive statements. Businesses shouldn't have to worry about an interpretive memo or bulletin. This will help get all the information in one spot.

**Testimony Against:** We agree there are issues regarding whether or not certain documents should be adopted as rules. In some cases, however, rules are not the best way for reasons of cost, timeliness, and the number of decisions. There may be unintended negative effects. The Governor's executive order addresses this issue and, therefore, the bill is unnecessary.

**Testified:** Fred Hellberg, Governor's office (con); Don Westfall, Department of Employment Security (con on bill as it came from Senate); Amber Balch, Association of Washington Business (pro); Jerry Thielen, Department of Ecology (con); Gary Smith, Independent Business Association (pro); Carolyn Logue, National Federation of Independent Business (pro); and Bruce Wishart, People for Puget Sound (con).