

SENATE BILL REPORT

ESSB 5671

As Passed Senate, March 19, 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 Operations: 2/20/97, 3/4/97 [DPS, DNP].
Passed Senate, 3/19/97, 39-10.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 5671 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Swanson.

Staff: Diane Smith (786-7410)

Background: Policy statements, guidelines, interpretive statements and other state agency issuances which have not undergone the statutory rule-making process do not have the force or effect of law. Agency rules which are within statutory intent and enacted in accordance with the Administrative Procedure Act (APA) do have the force and effect of law.

The regulatory reform debate articulates a perception that the distinction between rules and nonrules is blurred both within state agencies and among the public. This confusion is alleged to result in agencies enforcing nonrules as if they had the force and effect of law and the public's tacit acceptance thereof. This contributes toward the public's perception that agencies act arbitrarily.

The definition of a rule in the APA includes both rules adopted through the statutory rule-making process and agency issuances which have not undergone the statutory rule-making process but which are nevertheless used as rules are used.

Summary of Bill: Agency issuances are defined to include rules and any other written document that is of general applicability and available to the public. Issuances are advisory only, unless they are adopted as rules under the APA or exempt under the definition of de facto rule. The term de facto rule is created to mean issuances which have not undergone

the rule-making process but which are used as if they were rules. Rules are defined as issuances which have been adopted pursuant to the statutory rule-making process.

The APA is amended to conform to this definitional clarification. Other statutory references are corrected.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This is as strong, necessary legislation which addresses the abuses of the past. Rules must be created in the rule-making process. This solves the apparent gap in JARRC jurisdiction.

Testimony Against: There is a drafting error in defining the term issuance.–

Testified: Amber Balch, AWB (pro); Jan Gee, WA Food Industry, WRA/Safeway (pro); Bruce Wishart, People for Puget Sound (con); Glenn Hudson, WA Association Realtors (pro); Gary Smith, Independent Business Association (pro); Carolyn Logue NFIB (pro).

House Amendment(s): One amendment requires that the statement of inquiry be sent to the chairs of the appropriate standing committees and to caucus leadership for comment on the legislative intent of the statute which the rule implements. The other amendment clarifies that final agency orders issued after adjudicative proceedings are not within the definition of the term issuance.–