

5671-S

Sponsor(s): Senate Committee on Government Operations (originally sponsored by Senator McCaslin)

Brief Title: Requiring adoption of de facto rules.

SB 5671-S.E - DIGEST

(DIGEST AS PASSED LEGISLATURE)

Declares that a "de facto rule" means an issuance of general applicability that the agency uses to: (1) Subject a person to a penalty or administrative sanction;

(2) establish, alter, or revoke a procedure, practice, or requirement relating to agency hearings;

(3) establish, alter, or revoke a qualification or requirement relating to the enjoyment of a benefit or privilege conferred by law;

(4) establish, alter, or revoke a qualification or standard for the issuance, suspension, or revocation of a license to pursue a commercial activity, trade, or profession; or

(5) establish, alter, or revoke mandatory standards for a product or material that must be met before distribution or sale.

Declares that an "issuance" means a written document of general applicability issued by an agency that is available to the public. It includes, but is not limited to, an agency order of adoption, directive, policy statement, interpretive statement, guideline, letter, memorandum, rule, or de facto rule. "Issuance" does not include final agency orders issued following an adjudicative proceeding.

Provides that the statement of inquiry shall also be sent 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. Any comments submitted by the chairs or leaders shall become part of the record of any subsequent rule making hearing.

VETO MESSAGE ON SB 5671-S

May 19, 1997

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval, Engrossed Substitute Senate Bill No. 5671 entitled:

"AN ACT Relating to issuances by administrative agencies;"

Engrossed Substitute Senate Bill No. 5671 would amend the Administrative Procedure Act (APA) by restructuring the definition of "rule" to cover any generally applicable document issued by an agency, such as a letter, guideline, memorandum, or policy statement, unless the document is advisory only. The bill is an attempt to address a serious regulatory issue -- whether or not certain documents issued by agencies, that may be perceived as binding on the public, should be adopted as rules.

I share the concern over this issue and understand the aggravation of business owners who may be subject to sanctions for violation of standards that have not undergone formal rule making. That is unfair and not acceptable.

While I agree with these concerns, I believe that government should work to address the problem without making even more rules. Additional rule making does not always make sense from the standpoint of cost and the sheer number of decisions that need to be made in some programs on very short notice. To put all of these decisions into rules would be costly, time-consuming, and could jeopardize the health and safety of citizens.

My Executive Order 97-02, relating to regulatory improvement, addresses this concern by directing agencies to review their policy and interpretive statements or similar documents to determine if they should be adopted as rules. Agencies will consult with the Attorney General's office in this review and will modify their practices, if necessary, either administratively or through future legislation. Agencies are also directed to work with the business community and other constituent groups to identify and resolve specific problems. I firmly believe that it is wiser to address these concerns by concentrating on identifiable problem areas within each agency before embracing broader statutory change that may have unintended consequences.

For these reasons, I have vetoed Engrossed Substitute Senate Bill No. 5671 in its entirety.

Respectfully submitted,
Gary Locke
Governor