

# FINAL BILL REPORT

## ESSB 5671

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### FULL VETO

As Passed Legislature

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

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

**Senate Committee on Government Operations**

**House Committee on Government Reform & Land Use**

**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:** Agency issuances are defined to include rules and any other written document that is of general applicability and available to the public, with certain exceptions. 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.

### **Votes on Final Passage:**

|        |    |                       |
|--------|----|-----------------------|
| Senate | 39 | 10                    |
| House  | 57 | 37 (House amended)    |
| Senate | 35 | 11 (Senate concurred) |