

SENATE BILL REPORT

SB 5671

As Reported By Senate Committee On:
Government Operations, March 4, 1997

Title: An act relating to issuances by administrative agencies.

Brief Description: Requiring adoption of de facto rules.

Sponsors: Senator McCaslin.

Brief History:

Committee Activity: Government Operations: 2/20/97, 3/4/97 [DPS, DNP].

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 rulemaking 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 rulemaking process and agency issuances which have not undergone the statutory rulemaking process but which are nevertheless used as rules are used.

Summary of Substitute Bill: Agency issuances are defined to include rules and any other written document that is of general applicability and available to the public. The term de facto rule is created to mean issuances which have not undergone the rulemaking process but which are used as if they were rules. Rules are defined as issuances which have been adopted pursuant to the statutory rulemaking process.

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

Substitute Bill Compared to Original Bill: The definition issuance– is refined to clarify that issuances must be of general applicability. Duplicative language encouraging agencies to adopt precedential adjudicative decisions as rules is removed.

Appropriation: None.

Fiscal Note: Requested on March 4, 1997.

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 rulemaking 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).