

# SENATE BILL REPORT

## ESB 5255

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As Passed Senate, February 12, 2004

**Title:** An act relating to the rule-making authority of various governmental entities.

**Brief Description:** Limiting the rule-making authority of certain entities to those instances where there is a specific grant of legislative authority.

**Sponsors:** Senators Roach, Hale, Stevens, Mulliken, T. Sheldon, Hewitt, Parlette, Horn, Rossi, Benton, Schmidt, Johnson and Esser.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/22/03, 1/23/03 [DP, DNP].  
Passed Senate: 2/11/03, 33-16; 2/12/04, 31-17.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** Do pass.

Signed by Senators Roach, Chair; Stevens, Vice Chair; Horn, McCaslin and Reardon.

**Minority Report:** Do not pass.

Signed by Senators Fairley and Kastama.

**Staff:** Diane Smith (786-7410)

**Background:** The Washington Administrative Procedure Act requires that all rules implementing statutes enacted after July 23, 1995 not rely solely on sections of law stating a statute's intent or purpose, or on an agency's enabling statute, or any combination thereof, for the statutory authority to adopt them.

**Summary of Bill:** The individual statutes for 35 various state agencies and departments, including the Superintendent of Public Instruction, the Department of Fish and Wildlife, the Utilities and Transportation Commission, and the Transportation Commission, are each amended to prohibit the adoption of rules after July 1, 2003 that rely solely on a section of law stating a statute's intent or purpose or on the agency's or department's enabling statute. An exception is made for emergency rules that address life, health, property or the public peace as required by the circumstances of a Governor's proclamation of emergency.

The rules must be derived from and include the specific statutory grant of authority for the rule's adoption.

The same requirements are made of all directors of each department of the executive branch.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Agency staff should not create rules that implement some policy that the Legislature has not set in the laws it passes. Agencies should not bypass the Washington Legislature and make their own laws.

**Testimony Against:** If agencies had to wait for specific authority from the Legislature, that would make Washington a dangerous place because, for instance, the Department of Financial Institutions could not implement federal Securities and Exchange Commission policies right away.

**Testified:** PRO: Dan Fazio, Amber Balch, Farm Bureau; Brent Milne, McDougall & Sons, WA Hort. Assn.; Susan M. Hahn; Steven R. Stillwell, Bracy & Thomas, P.S. Corp.; Carolyn Logue, Hahn Stilwell, NFIB; CON: Carol Jolly, Governor's Office; Bruce Wishart, People For Puget Sound.