

SENATE BILL REPORT

SSB 5152

As Passed Senate, March 7, 2009

Title: An act relating to statutory construction.

Brief Description: Creating a legislative task force on statutory construction.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Rockefeller, McDermott and Kohl-Welles).

Brief History:

Committee Activity: Judiciary: 2/03/09, 2/06/09 [DPS].

Passed Senate: 3/07/09, 44-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5152 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Roach and Tom.

Staff: Juliana Roe (786-7438)

Background: There is some concern that a disconnect exists between the Legislature and the courts in determining legislative intent. In Washington State, there are three main canons of construction, maxims of interpretation originally developed in common law. The first are those codified by statute under RCW 1.12. Next include the Superior Court Civil and Criminal Rules (CR 81 and CrR 1.1) which take precedence over statutes regarding procedural matters and special proceedings under the civil rules. Last are those in case law which are the primary source of canons of interpretation. However, these canons are vague and inconsistent. Within case law, the courts take either a textualist or literalist approach. The textualist approach adopts the "plain meaning" of the words as the Legislature stated them. If the statute is ambiguous, however, the court may take the literalist approach which evaluates the "spirit" or "purpose" of the statute. This allows the court to refer to sources outside of the text to ascertain legislative intent.

Summary of Substitute Bill: A task force is created to determine whether the rules of statutory construction should be codified, the methods by which the rules should be codified, and the benefits or drawbacks of codification.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony: PRO: A tension exists between two branches of government regarding who makes the rules. It is the Legislature's right to tell the courts how its work should be interpreted. Case law is only case law. It is not codified. This bill sets up a comprehensive work group to look at the rules of statutory construction. The best thing that can be done regarding statutory construction is to create clear laws. Many cases are argued over ambiguous statutory language resulting in a waste of the government time and money.

Persons Testifying: PRO: Arthur West, citizen; Tom McBride, Washington Association of Prosecuting Attorneys.