

HOUSE BILL REPORT

HB 2262

As Reported by House Committee On:
Environment

Title: An act relating to the use of science to support significant agency actions.

Brief Description: Concerning the use of science to support significant agency actions.

Sponsors: Representatives Short, Fagan and Magendanz.

Brief History:

Committee Activity:

Environment: 1/21/14, 1/28/14 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Ecology to categorize on its website the sources of information relied upon in support of significant agency actions.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Farrell, Fey, Harris, Kagi, Morris, Nealey, Ortiz-Self, Overstreet and Tharinger.

Staff: Jacob Lipson (786-7196).

Background:

The Department of Ecology (DOE) is divided into 10 environmental management programs, each covering a different subject area: air quality; environmental assessment; hazardous waste and toxics reduction; nuclear waste; shorelands and environmental assistance; spill prevention, preparedness, and response; toxics cleanup; waste to resources; water quality; and water resources. Programs within the Shorelands and Environmental Assistance Program include programs targeted to coastal zone management, federal permitting, floods and floodplain management, the Office of Regulatory Assistance, the State Environmental Policy Act, watersheds, and wetlands. Programs within the Water Quality Program include

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programs targeted to the administration of water quality grants and loans, ground and surface water quality, non-point pollution, permitting of point source pollution, stormwater, wastewater treatment, and water quality assessment.

The state Administrative Procedure Act (chapter 34.05 RCW) establishes the rule-making process for state agencies and also outlines the procedural requirements for appealing an agency action. The state Public Records Act (PRA) (chapter 42.56 RCW) establishes requirements for agency maintenance of public records, and for the provision of those records for public inspection. The PRA requires that certain public records, including records invoked by an agency, be indexed and made available to the public. The records that must be indexed include interpretive statements, policy statements, certain declaratory orders, and orders issued in adjudicative proceedings.

In 2013 the Legislature passed House Bill 1113, which requires that before taking a significant agency action within its Water Quality or Shorelands and Environmental Assistance programs, the DOE must identify peer-reviewed science, scientific literature, and other sources relied upon for the significant agency action. On its website, the DOE must also provide the index, required by the PRA, of public records invoked or relied upon in support of a proposed significant agency action. The 2013 law defined the term "significant agency action" as an act of the DOE that: (1) by rule, adopts, under delegated legislative authority, substantive requirements with penalties for noncompliance; (2) by rule, establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; (3) by rule amendment or adoption, results in significant amendments to an existing policy or program; or (4) results in the development of technical guidance, assessments, or documents used to implement a state rule or statute.

Summary of Substitute Bill:

On its website, the DOE must identify and categorize, in the form of a bibliography or citation list, the sources of information that it relies upon to support significant agency actions. Each source of information relied upon must be designated by the DOE as belonging to one of the following categories:

- independently peer-reviewed by a third party;
- internally peer-reviewed by DOE staff;
- externally peer-reviewed by DOE-selected persons;
- openly-reviewed documents whose review was not limited to invited organizations or individuals;
- legal and policy documents;
- data from primary research or monitoring activities that has not been otherwise peer-reviewed;
- records of the best professional judgment of DOE employees and other individuals;
- and
- other sources of information.

The categories are declared to not imply or infer a hierarchy or a level of quality of the source of information.

The reference to a specific subsection of the PRA governing the use of indexed records by government agencies is replaced with a reference to the entire section which establishes indexing requirements for state and local agencies.

Substitute Bill Compared to Original Bill:

One category of information that the DOE must identify is changed from the "professional opinion" to the "best professional judgment" of DOE employees and other individuals.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill helps the public gain a better understanding of what the DOE does, and how it uses science in order to make decisions. It supplements a couple of bills that passed last year, and improves the bibliography of sources of information that the agency uses when it makes decisions. The DOE is already required to post some information about the scientific sources of information that they use on a website, and the new categories of information that this bill adds to the existing website will mesh nicely. The regulated community also appreciates efforts at transparency, and knowing that agency decisions are driven by science.

(In support with concerns) The costs of implementing this bill will not be large. We appreciate the collaborative approach that the sponsor has taken in drafting this bill. The agency is also fully in support of transparency in decision-making, and already goes to great effort to make the agency accessible and understandable to the public.

(Opposed) None.

Persons Testifying: (In support) Representative Short, prime sponsor; John Stuhlmiller, Washington Farm Bureau; Jim Potts, Cattle Producers of Washington, Rural Counties of Washington; and Jack Field, Washington Cattleman's Association.

(In support with concerns) Jessica Archer, Washington Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.