

SENATE BILL REPORT

SB 5655

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 27, 2003

Title: An act relating to ensuring the consistent application of principles of the regulatory reform act of 1995 to natural resource agency rules, policies, and permits.

Brief Description: Regarding rule-making of natural resources agencies.

Sponsors: Senators Morton, Hale, Hargrove, West, Honeyford, T. Sheldon and Benton.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/19/03, 2/27/03 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5655 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Hale, Hargrove, Honeyford and Oke.

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Genevieve Pisarski (786-7488)

Background: The Regulatory Reform Act of 1995 established a number of requirements governing adoption and enforcement of administrative rules, according to the principle that substantial policy decisions be made by the Legislature and state agencies not use administrative authority to create or amend regulatory programs. Regarding significant legislative rules, defined as those that adopt substantive provisions of law and carry penalties or affect the issuance of permits, the act required justification for any divergence from federal regulations applicable to the same subject matter, in the form of an express statutory authorization or substantial evidence of necessity for achieving the goals and objectives of the governing statute.

Summary of Substitute Bill: The powers and duties of the Department of Ecology and the Department of Fish and Wildlife are each amended to require that regulatory activities that implement federal law delegated to the state or are specifically required by state law must not exceed applicable standards established in federal law, unless the Legislature specifically directs the department. Actions include permits, conditions, orders, guidelines, policy or interpretive statements, rules, and agreements or contracts for implementation of federal law that is either delegated to the state or being implemented by the state.

Substitute Bill Compared to Original Bill: Requirements for the Department of Natural Resources are removed. Requirements for the Departments of Ecology and Fish and

Wildlife are limited to regulatory activities that implement a federal law or regulation delegated to the state or specifically required by state law. These regulatory activities must not exceed, rather than not differ from, federal standards that are applicable to the same activity or subject matter.

Appropriation: None.

Fiscal Note: Requested on February 27, 2003.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: State law already requires justification, if significant state legislative rules would differ from applicable federal standards. The same requirement should apply to other rules, policies, and guidelines; these are used to establish requirements that are more expensive and burdensome than necessary. State and federal regulations should harmonize.

Testimony Against: Any and all state operations would be governed by federal standards, not just regulatory activities. This is too vague and abrogates state authority. Some state regulations are less restrictive than the federal ones. Some state regulations are tailored to local conditions, while the federal ones are general. The amount of specific legislative direction that would be required is unrealistic and could not always be timely. The bill could result in a conflict with laws requiring agencies to be responsive to public comments. The Coastal Zone Management Act requires federal actions to be consistent with state regulations; this is very important to protect local resources adequately. Promoting good communication and interaction between agencies and stakeholders would be a better approach.

Testified: Bruce Mackey, DNR (concerns); Jim Halstrom, WA Horticultural Assn. (con); Jerry Thielen, Dept. of Ecology (concerns); Lembit Ratassepp, Fish and Wildlife (concerns); Kristen Sawin, AWB (pro w/amendment); Willy O'Mart, AGC (pro); Bruce Wishart, People for Puget Sound (con).