

HOUSE BILL REPORT

HB 1307

As Reported by House Committee On:
Environment

Title: An act relating to standards for the use of science to support public policy.

Brief Description: Concerning standards for the use of science to support public policy.

Sponsors: Representatives Short, Upthegrove and McCune.

Brief History:

Committee Activity:

Environment: 2/4/11, 2/8/11, 2/10/11 [DPS].

Brief Summary of Substitute Bill

- Requires the departments of Agriculture, Natural Resources, Ecology, and Fish and Wildlife to demonstrate the use of peer-reviewed science prior to, or simultaneously with, taking a significant agency action.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Jacks, Morris, Moscoso, Nealey, Pearson, Takko, Taylor and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon and Jinkins.

Staff: Jason Callahan (786-7117).

Background:

A variety of state agencies have regulatory, proprietary, and technical assistance roles in managing the state's environment, natural resources, and land use management. These include: the Department of Ecology (DOE); the Department of Natural Resources (DNR);

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the Washington Department of Fish and Wildlife (WDFW); the Washington State Department of Agriculture (WSDA); and the Department of Commerce (Commerce).

Of the agencies involved with the management of programs affecting the environment, only the Commerce has outlined, in rule, guidelines for identifying best available science. This guidance is provided to local governments to assist them with the best available science requirements of the Growth Management Act (GMA).

Summary of Substitute Bill:

The WSDA, the DNR, the DOE, and the WDFW are required to demonstrate the use of peer-reviewed science prior to, or simultaneously with, taking an agency action which affects a state-issued license, significantly amends an existing agency policy, or could potentially result in a penalty or other sanction for a non-state actor. The actions that trigger the requirement to demonstrate peer-reviewed science are defined as significant agency actions. In emergency situations that imminently threaten public safety or critical public infrastructure, the affected agencies may proceed with interim actions without documenting peer-reviewed science even if there is a lack of science available on which to rely.

Agencies must demonstrate the use of peer-reviewed science through the maintenance of a public record that identifies the scientific literature and other sources relied upon. The record must also contain any scientific information reviewed by the agency that does not meet the standard definition of peer-reviewed science and a narrative explanation of why that information was or was not included.

The information used as peer-reviewed science must satisfy certain requirements. These include the following:

- The information is provided by a qualified, scientific professional with issue-appropriate expertise based on the professional's credentials.
- The information has been subjected to independent peer review by at least three qualified, independent reviewers.
- The methods used to obtain the information is clearly stated, standardized for the pertinent scientific discipline, and those methods are able to be replicated.
- The conclusions underlying the information are based on reasonable and logical assumptions supported by other studies and consistent with the data presented.
- The data underlying the information have been analyzed using the appropriate statistical or quantitative methods.
- The information has been placed in a proper context and is appropriately supported by the prevailing body of pertinent scientific knowledge.
- The information is based on assumptions, analytical techniques, and conclusions that are clearly stated and well-referenced to credible literature.

Substitute Bill Compared to Original Bill:

The original bill required the reliance on disclosed peer-reviewed scientific information for all environment-related actions of all agencies. The substitute bill limits this scope to significant actions by four agencies. They are: the WSDA, the DNR, the DOE and the WDFW.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 10, 2011.

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) The public often is not made aware of the scientific basis of many government decisions. State statutes do not provide the agencies with guidance as to how science should be used and what science should be considered. This can lead to a perception that agencies use science that is not rigorously tested or that is selected only to justify the agency decision. These perceptions damage public perception of the government. Relying on sound, transparent science would lead to a better understanding of agency decisions and a reduction in regulatory appeals and legal costs for the state. The transition from internal review of agency actions to external review is a significant paradigm shift that may be painful for the agencies but is critical if agencies are going to rely on science that is not flawed.

Having science undergo peer review is not expensive, and although it may take a little time, there is plenty of time in an already lengthy rulemaking process to fit the peer review into the process. Using the correct terminology is critical, as is ensuring monitoring of ongoing programs. Citizens, who are at the bottom of the regulatory food chain, need the protections provided by good science. The rules regarding science use in implementing the GMA create a useful linkage to this sensible piece of legislation.

(In support with concerns) Transparency is a good thing, but the bill has a practical application that is too broad.

(Opposed) There is a need for peer-reviewed science in an appropriate forum, but the mandate cannot be too broad. There should be more state funding of peer-reviewed science, but tying all agency actions to science could lead to paralysis by analysis.

Persons Testifying: (In support) Representative Short, prime sponsor; Jeannette McKague, Washington State Nursery and Landscape Association; Barbara Schultz and Dennis Schultz, Olympic Stewardship Organization; Gilbert Pauley and Martin Nizlek, Washington Sensible Shorlines Association; Wes McCart, Stevens County Farm Bureau; Vic J. Kaufman, Kaufman Brothers Construction; Dick Bergeron, Chimacum Grange; Noman MacLeod, Greatwolf Consulting; Roger Short; Bob Benze; and Bruce Palm.

(In support with concerns) Heather Hanson, Washington Friends of Farms and Forest.

(Opposed) Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.