

SENATE BILL REPORT

ESHB 2335

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 23, 2012

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: House Committee on Environment (originally sponsored by Representatives Short, Upthegrove and Springer).

Brief History: Passed House: 2/09/12, 97-0.

Committee Activity: Government Operations, Tribal Relations & Elections: 2/20/12, 2/23/12 [DPA-WM].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase and Nelson.

Staff: Sam Thompson (786-7413)

Background: Several state agencies, including the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW), have regulatory authority over state natural resources. The state Administrative Procedure Act sets a rulemaking process for state agencies and specifies procedural requirements for appealing an agency action.

Peer review is a documented review process for scientific and technical work, independent of organizations performing the work. Individuals or organizations conducting the review may analyze material supporting the work and assumptions, calculations, methodologies, and conclusions reached. Peer review often occurs during the final stages of work to ensure technical soundness.

Summary of Bill (Recommended Amendments): Before taking a significant agency action, DOE and DFW must identify sources of information they have reviewed and relied upon in preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used.

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.

DOE and DFW must make available on their websites the index of records relied upon or invoked in support of a proposal for significant agency action. Records relied upon or invoked by the agency in developing a significant agency action must be made available at the outset of any comment period.

Significant agency action is defined as an act of DFW or DOE that results in development of a significant legislative rule; technical guidance, technical assessments, or technical documents used to directly support implementation of a state rule or state statute; or fish and wildlife recovery and management plans. Significant agency action does not include DFW rulemaking associated with fishing and hunting regulations.

Provisions are not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Amendments): Clarifies that a significant agency action is an act of DFW or DOE that results in development of: a significant legislative rule; technical guidance, technical assessments, or technical documents used to directly support implementation of a state rule or state statute; or fish and wildlife recovery and management plans. Significant agency action does not include DFW rulemaking associated with fishing and hunting regulations.

Clarifies that provisions are not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 15, 2012.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony as Heard in Committee: PRO: This bill promotes transparency. It will make it easier for parties affected by significant agency actions to locate information that agencies relied upon in taking those actions. It is best to consolidate this information in indexes published on agency websites.

OTHER: While supporting the intent, DOE cannot support the bill because of its unfunded fiscal impact. DOE currently has a qualitative review process for agency scientific analysis. DFW also supports the intent, but has concerns regarding the bill's scope. The bill could affect many DFW actions, including setting of fishing and hunting bag limits. DFW faces a fiscal impact similar to the impact upon DOE.

Persons Testifying: PRO: Mark Johnson, WA Retail Assn.; Norman MacLeod, Gaelic Wolf Consulting.

OTHER: Rob Duff, DOE; Timothy Quinn, DFW.