

HOUSE BILL REPORT

HB 2261

As Reported by House Committee On:
Agriculture & Natural Resources

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:

Agriculture & Natural Resources: 1/24/14, 1/31/14 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Dunshee, Haigh, Kretz, Orcutt, Schmick, Stanford, Van De Wege and Warnick.

Staff: Jacob Lipson (786-7196).

Background:

The Washington Department of Fish and Wildlife (WDFW) is charged with maximizing fishing, hunting, and outdoor recreation activities for people, while maintaining healthy and diverse fish and wildlife populations. In conjunction with these duties, the WDFW is responsible for adopting rules for the management of hunting and fishing. The WDFW is also involved in the development of recovery plans for threatened and endangered fish and wildlife species under state law and the federal Endangered Species Act.

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.

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 1112, which requires that before taking a significant agency action, the WDFW must identify peer-reviewed science, scientific literature, and other sources relied upon for the significant agency action. On its website, the WDFW 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 defines the term "significant agency action" as an act of the WDFW 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; (4) results in the development of fish and wildlife recovery plans; or (5) results in the development of technical guidance, assessments, or documents used to implement a state rule or statute. Significant agency actions do not include any rule-making by the WDFW associated with fishing or hunting rules.

Summary of Substitute Bill:

On its website, the WDFW 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 WDFW as belonging to one of the following categories:

- independently peer-reviewed by a third party;
- internally peer-reviewed by the WDFW staff;
- externally peer-reviewed by WDFW-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 WDFW 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 WDFW must identify is changed from the "professional opinion" to the "best professional judgment" of WDFW 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 will allow the public to review the information that the WDFW uses in their decision making. This bill will allow the public to better understand how the WDFW reviews science before it becomes the basis for policy decisions. This bill will allow counties and the regulated community to fact-check that the WDFW is using real science when they say that they need to set aside county land for preservation or place restrictions on businesses. This bill will also make sure that the WDFW uses valid science when they take actions which would restrict low-impact prospecting on federal mining claims in Washington waters.

(In support with concerns) Agency decision making can be a complex process, and this bill will help make agency activities more accessible to the public. This bill has been a collaborative process with the WDFW.

(Opposed) None.

Persons Testifying: (In support) Representative Short, prime sponsor; Ray Campbell, Okanogan County Commissioners; Bruce Beatty, Prospector; Jim Potts, Cattle Producers of Washington and Rural Counties; Jack Field, Washington Cattlemen's Association; and Tom Davis, Washington Farm Bureau.

(In support with concerns) Tim Quinn, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.