

SENATE BILL REPORT

SHB 2262

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 25, 2014

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: House Committee on Environment (originally sponsored by Representatives Short, Fagan and Magendanz).

Brief History: Passed House: 2/12/14, 98-0.

Committee Activity: Energy, Environment & Telecommunications: 2/19/14, 2/25/14 [DP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; McCoy, Ranking Member; Billig, Brown, Chase, Honeyford, Litzow and Ranker.

Staff: Jan Odano (786-7486)

Background: Under the Administrative Procedure Act, a significant legislative rule is defined as a rule that adopts a substantive provision of law, the violation of which results in a penalty or sanction; establishes or revises permit or license requirements; or results in a significant change to a policy or regulatory program. When developing significant legislative rules, certain agencies must determine the costs and benefits; the least burdensome alternatives; coordinate regulations with the requirements of state and federal law; and develop an implementation, evaluation, and education plan.

The Public Records Act requires agencies to make documents available for public inspection and copying including adopted policies and interpretative statements, administrative staff manuals and instructions that affect the public, planning policies, and goals; and factual staff and consultant reports and studies, scientific reports, and correspondence relating to any regulatory responsibilities of the agency. Agencies must maintain an index of these documents. An agency may rely on, cite as precedent, or invoke a public record that is indexed and available to the public; or when affected parties have been notified in a timely manner.

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 Department of Ecology (Ecology) is organized into ten environmental management programs. The Shorelands and Environmental Assistance Program, in part, assists with state and local responsibilities for administering the state Water Pollution Control Act and the Shoreline Management Act. In addition, the program activities include providing assistance to communities with watershed planning, floods and floodplain management, the State Environmental Policy Act, the Padilla Bay National Estuarine Research Reserve, and the Washington Conservation Corps.

Ecology's Water Quality Program addresses ground and surface water quality, non-point pollution, permitting of point source pollution, stormwater, wastewater treatment, and water quality assessment. This program is responsible for implementing state and federal water pollution control laws. Wastewater permits specify discharge limits, conditions, and requirements. The Water Quality Program duties also include administration of water quality grants and loans, aquatic plant management, and water quality assessment.

In 2013 legislation was enacted requiring Ecology to identify peer-reviewed science, scientific literature, and other sources relied upon for preparing a significant agency action before taking a significant agency action within its Water Quality or Shorelands and Environmental Assistance programs. Ecology must also make available on its website the index of records, as required by the Public Records Act, of public records invoked or relied upon in support of a proposed significant agency action.

Summary of Bill: Ecology 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 on its website. Each source of information relied upon must be designated by Ecology as belonging to one of the following categories:

- independently peer-reviewed by a third party;
- internally peer-reviewed by Ecology staff;
- externally peer-reviewed by Ecology-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 Ecology 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 Public Records Act governing the use of indexed records is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This builds upon last year's work to differentiate the types of information used by Ecology. We want to make sure the process and how the process works is transparent. This is a reasoned approach. Regulatory compliance is the chief cost to clients and this will help to understand the process. This will enhance transparency for the regulated by the regulator. It gives greater understanding of rules. Washington residents deserve to know that rules are grounded in credible peer-reviewed science. This will provide further guidance to Ecology on rules that will have impacts to Washington landowners.

Persons Testifying: PRO: Representative Short; Jack Field, WA Cattlemen's Assn.; Tom Davis, WA Farm Bureau; Mark Johnson, WA Retail Assn.