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**SUBSTITUTE SENATE BILL 5622**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Sheldon, Miloscia, Angel, Becker, Warnick, and Pearson)

AN ACT Relating to the use of empirical science to support agency actions affecting land use; and amending RCW 34.05.271 and 34.05.272.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 34.05.271 and 2014 c 21 s 1 are each amended to read as follows:

(1)(a) Before taking a significant agency action, the department of fish and wildlife must identify the sources of information reviewed and relied upon by the agency in the course of 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. The department of fish and wildlife shall make available on the agency's web site the index of records required under RCW 42.56.070 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of fish and wildlife must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of fish and wildlife;

(iii) External peer review: Review by persons that are external to and selected by the department of fish and wildlife;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of fish and wildlife employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(2)((~~(a) For the purposes of this section,~~)) Where a significant agency action will change, supersede, or invalidate a local land use policy or will directly or indirectly diminish the allowed uses of a private property, the department of fish and wildlife must include in the list of sources required under this section all empirical science relied upon by the agency in the course of preparing to take the significant agency action.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Empirical science" means knowledge gained by using direct or indirect observation and experimentation.

(b)(i) "Significant agency action" means an act of the department of fish and wildlife that:

((~~(i)~~)) (A) Results in the development of a significant legislative rule as defined in RCW 34.05.328;

((~~(ii)~~)) (B) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute; or

((~~(iii)~~)) (C) Results in the development of fish and wildlife recovery plans.

((~~(b)~~)) (ii) "Significant agency action" does not include rule making by the department of fish and wildlife associated with fishing and hunting rules.

((~~(3)~~)) (4) This section is 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.

**Sec.**  RCW 34.05.272 and 2014 c 22 s 1 are each amended to read as follows:

(1) This section applies only to the water quality and shorelands and environmental assistance programs within the department of ecology.

(2)(a) Before taking a significant agency action, the department of ecology must identify the sources of information reviewed and relied upon by the agency in the course of 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. The department of ecology shall make available on the agency's web site the index of records required under RCW 42.56.070 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of ecology must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of ecology;

(iii) External peer review: Review by persons that are external to and selected by the department of ecology;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of ecology employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(3) ((~~For the purposes of this section,~~)) Where a significant agency action will change, supersede, or invalidate a local land use policy or will directly or indirectly diminish the allowed uses of a private property, the department of ecology must include in the list of sources required under this section all empirical science relied upon by the agency in the course of preparing to take the significant agency action.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Empirical science" means knowledge gained by using direct or indirect observation and experimentation.

(b) "Significant agency action" means an act of the department of ecology that:

((~~(a)~~)) (i) Results in the development of a significant legislative rule as defined in RCW 34.05.328; or

((~~(b)~~)) (ii) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute.

((~~(4)~~)) (5) This section is 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.

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