

SENATE BILL REPORT

SB 5197

As Reported by Senate Committee On:
Accountability & Reform, January 28, 2015
Ways & Means, February 26, 2015

Title: An act relating to establishing consistent standards for agency decision making.

Brief Description: Establishing consistent standards for agency decision making.

Sponsors: Senator Benton.

Brief History:

Committee Activity: Accountability & Reform: 1/21/15, 1/28/15 [DP-WM, DNP].
Ways & Means: 2/24/15, 2/26/15 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON ACCOUNTABILITY & REFORM

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Miloscia, Chair; Padden, Vice Chair; Dandel.

Minority Report: Do not pass.
Signed by Senator Fraser.

Staff: Tim Ford (786-7423)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5197 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.
Signed by Senators Ranker, Ranking Minority Member, Operating; Conway, Fraser, Hasegawa and Kohl-Welles.

Minority Report: That it be referred without recommendation.
Signed by Senators Hargrove, Ranking Member; Billig, Hatfield, Keiser and Rolfes.

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.

Staff: Sherry McNamara (786-7402)

Background: Applications for permits, registrations, variances, licenses, or exemptions must be made to state or local agencies for a number of actions that may have an impact on the environment or to public health and safety.

Examples of State Agency Permitting Activities. The Department of Ecology (Ecology), Department of Fish and Wildlife (DFW), Department of Agriculture (WSDA), Department of Natural Resources (DNR), and Department of Health (DOH) each administer various permitting programs:

- Ecology administers permits including for burning and other discharges of air, water pollution control, underground storage tanks, water well construction, floodplain management structures, solid waste, dairy nutrient management, bio-solids, dam construction, reservoirs, and water rights;
- DFW administers permits including for hydraulic projects and registrations of aquatic farms;
- WSDA administers permits including for pesticides, fertilizers, and public livestock markets;
- DNR administers permits including for forest practices and surface mining reclamation; and
- DOH administers permits including for sanitary control of shellfish, Group A public water systems, and large on-site sewage systems.

Applicants denied a permit, registration, variance, license, or exemption may appeal the decision in accordance with the Administrative Procedure Act through the appropriate hearings board.

Summary of Bill (Recommended Substitute): State and local government decisions pertaining to applications for permits, variances, licenses, determinations, and designations must be complete and the applicant must be notified of the decision within 90 days of the time the application is submitted. If the 90-day deadline for the decision is not satisfied, the applicant may file a motion in the appropriate superior court requesting court approval of the application. If the application is denied, the applicant may file a motion in the appropriate superior court requesting the court to overturn the decision. The appeal process is an alternative to any other provision of law establishing appeal procedures. Applicants choosing to utilize this appeal process are deemed to have satisfied all administrative remedies.

These provisions apply to applications for:

- permits under the Washington Clean Air Act;
- variances related to the quality, nature, duration, or extent of discharges of air;
- determination of classes of forest practices under the Forest Practices Act;
- waste disposal permits under the provisions of law regarding water pollution control;
- permits for hydraulic projects related to construction projects in state waters;
- permits for underground storage tanks;
- reclamation permits for surface mining;
- licenses related to water well construction;
- designs and plans of structures built or rebuilt on floodplains;

- exemptions from solid waste permitting for waste-derived soil under solid waste management laws;
- use of waste-derived fertilizers or the micronutrient fertilizers;
- environmental impact statements;
- registration of aquatic farms;
- licenses or certificates of approval required for the sanitary control of shellfish;
- dairy nutrient management plans;
- registration of pesticides distributed or transported within the state;
- commercial pesticide applicator licenses;
- public livestock market licenses;
- permits for the use or disposal of bio-solids;
- operating permits pertaining to Group A public water systems;
- construction or modification of a dam or controlling works for water storage;
- reservoir permits;
- development permits on shorelines;
- operating permits for large on-site sewage disposal systems; and
- permits for the withdrawal of public waters for irrigation purposes.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): Adds a null and void clause. If specific funding referencing this bill is not provided by June 30, 2015, in the omnibus appropriations act, this act is null and void.

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 on Original Bill (Accountability & Reform): CON: On large projects, federal law may require consultation with tribes, and local, state, and federal agencies. The consultation and review may take up to 120 days in some cases. The bill's 90-day deadline may jeopardize Ecology's federal delegation of duties. It is not clear when the 90-day period begins for an agency to provide a decision. Some applications are incomplete and it takes additional time for the applicant to complete the application. The bill does not clarify whether a submittal means an initial submittal or a complete submittal. Agency resources are prioritized for new applications over renewal applications. Renewal applications are processed differently and may be put on hold. With a 90-day requirement, renewal applications must be prioritized the same as new applications which may slow down the processing of new applications on limited resources. Courts should not be policymakers.

Persons Testifying (Accountability & Reform): CON: Bryce Yadon, Futurewise; Denise Clifford, Ecology.

Staff Summary of Public Testimony on Original Bill (Ways & Means): None.

Persons Testifying (Ways & Means): No one.