

SENATE BILL REPORT

SB 5622

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 18, 2015

Title: An act relating to requiring that the departments of fish and wildlife and ecology use empirical science to support agency actions affecting land use.

Brief Description: Requiring that the departments of fish and wildlife and ecology use empirical science to support agency actions affecting land use. [**Revised for 1st Substitute:** Concerning the use of empirical science to support agency actions affecting land use.]

Sponsors: Senators Sheldon, Miloscia, Angel, Becker, Warnick and Pearson.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/10/15, 2/18/15 [DPS, DNP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5622 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown and Honeyford.

Minority Report: Do not pass.

Signed by Senators McCoy, Ranking Minority Member; Cleveland.

Staff: Jan Odano (786-7486)

Background: The Washington Department of Fish and Wildlife (WDFW) is responsible for establishing policy and direction for fish and wildlife species and their habitats, as well as establishing basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

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

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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.

The Administrative Procedure Act details requirements that must be satisfied in order for an agency to adopt a significant legislative rule. A significant legislative rule is one that:

- adopts substantive provisions of law, the violation of which subjects the violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts a new policy or regulatory program, or makes significant amendments to a policy or regulatory program.

Requirements for adoption of a significant legislative rule include a cost-benefit analysis, a determination of whether the rule imposes more stringent requirements on private entities than on public entities, and a determination of whether the rule differs from federal regulations and law.

Before taking a significant agency action, the Water Quality program and Shorelands and Environmental Assistance program within Ecology and WDFW must identify peer-reviewed science, scientific literature, and other sources relied upon for preparing a significant agency action. Both agencies must 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 (Recommended Substitute): The Water Quality program and Shorelands and Environmental Assistance program within Ecology and WDFW must list on their websites public records, all empirical science relied upon when taking an action that would change, supersede, or invalidate a local land use policy or permit, or directly or indirectly diminish the allowed uses of a private property.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): Removes the provisions requiring that all significant agency actions be supported with empirical science; and cite three separate sources of empirical science prior to taking actions that impact local land use policies. Requires the agencies to list on their websites empirical science relied upon when taking an action that would impact local land use policies.

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: PRO: It is in the best interest of the citizens of this state that high quality scientific information is used to inform public policy. The state benefits from transparency of the process. This is a good faith effort to use empirical science. It is problematic when science is modified for political purposes to reach management goals. Most landowners have trouble with loss of use of land because science is being used in the field to make determinations. The Department of Health should also be included in these requirements.

CON: This recognizes only one type of science to support rules. The underlying statute recognizes 12 categories. The application of this will limit work and is too narrow and inconsistent with best available science used in the state. This references experimental, controlled science. Observational science informs many decisions. The underlying statute should be allowed to work for a while to see results. This should be used where applicable and when possible. Many significant agency actions are not based on this type of science review, such as engineering designs. Requiring three scientific studies seems to be an arbitrary number.

Persons Testifying: PRO: Cindy Alia, Citizens Alliance for Property Rights; Stewart Hartman, Hartman Logging Company; Ken Morse, Tea Party; Dave Mastin, Mylan; Glen Morgan, citizen.

CON: Timothy Quinn, WDFW; Jessica Archer, Ecology; Bruce Wishart, Sound Action; Jeff Parsons, Puget Sound Partnership.