

# HOUSE BILL REPORT

## ESHB 2335

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**As Passed House:**  
February 9, 2012

**Title:** An act relating to standards for the use of science to support public policy.

**Brief Description:** Concerning standards for the use of science to support public policy.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Short, Upthegrove and Springer).

**Brief History:**

**Committee Activity:**

Environment: 1/23/12, 1/27/12, 1/31/12 [DPS].

**Floor Activity:**

Passed House: 2/9/12, 97-0.

**Brief Summary of Engrossed Substitute Bill**

- Requires the Department of Ecology and the Department of Fish and Wildlife to identify the peer-reviewed literature, scientific literature, and other sources of information being relied upon before taking any significant agency action.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Fitzgibbon, Hansen, Jinkins, Morris, Moscoso, Nealey, Pearson, Pollet, Shea, Takko, Taylor and Wylie.

**Staff:** Kara Durbin (786-7133).

**Background:**

Numerous state agencies, including the Department of Ecology and the Department of Fish and Wildlife, exercise regulatory oversight over portions of the state's natural resources. The state Administrative Procedure Act, chapter 34.05 RCW, establishes the rulemaking process

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for state agencies and also outlines the procedural requirements for appealing an agency action.

Peer review is a documented review process of a specific scientific and/or technical work product by qualified individuals or organizations that are independent of those who performed the work. The individuals or organizations conducting the review may analyze the documentation supporting the work product, including the assumptions, calculations, methodologies used, and the conclusions reached. Peer review often occurs during the final stages of the project to ensure that the final product is technically sound.

**Summary of Engrossed Substitute Bill:**

Before taking a significant agency action, the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW) must identify the sources 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 DOE and the DFW must make available on the agency's website the index of records relied upon or invoked in support of a proposal for significant agency action. Any records relied upon or invoked by the agency in the development of a significant agency action must be made available at the outset of any comment period.

"Significant agency action" is defined as an act of the DOE or the DFW that results in the development of: (1) a significant legislative rule; or (2) policies, guidelines, or guidance documents that are designed to implement a rule or statute.

The term "peer-reviewed literature" is also defined.

**Appropriation:** None.

**Fiscal Note:** Requested on January 31, 2012.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) If an agency is pursuing a major rule, or agency guidance, they have to show their work, in other words, show the scientific information being reviewed and relied upon. It is important that we be able to rely on the information agencies use in making policy decisions. Independent scientific documents will be given more weight if this bill is passed. Small agricultural businesses are suffering as part of agency rulemakings. This bill is a good step in the right direction.

(With concerns) While the Administrative Procedure Act does have a citation requirement, we are open to making that clearer. The definitions of "significant agency action" and "peer-review" should be tightened up. This bill should result in greater transparency.

(Opposed) It is not necessary to codify the scientific basis for decisions in statute. Not all agencies rely on peer reviewed science in making decisions; there are other standards that are adopted.

**Persons Testifying:** (In support) Representative Short, prime sponsor; Brad Tower, Arrow Launch Service and Schnitzer Steel Industries; and Dick Bergeron, Washington Small Agriculture Producer Coalition.

(With concerns) Robert Duff, Washington State Department of Ecology.

(Opposed) Steve Robinson, Umatilla Tribe; and Bruce Wishart, People for Puget Sound.

**Persons Signed In To Testify But Not Testifying:** None.