
SUBSTITUTE SENATE BILL 5622

State of Washington

64th Legislature

2015 Regular Session

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

READ FIRST TIME 02/19/15.

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

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

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

6 (1)(a) Before taking a significant agency action, the department
7 of fish and wildlife must identify the sources of information
8 reviewed and relied upon by the agency in the course of preparing to
9 take significant agency action. Peer-reviewed literature, if
10 applicable, must be identified, as well as any scientific literature
11 or other sources of information used. The department of fish and
12 wildlife shall make available on the agency's web site the index of
13 records required under RCW 42.56.070 that are relied upon, or
14 invoked, in support of a proposal for significant agency action.

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

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

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

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

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

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

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

15 (A) Federal and state statutes;

16 (B) Court and hearings board decisions;

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (~~(3)~~) (4) This section is not intended to affect agency action
12 regarding individual permitting, compliance and enforcement
13 decisions, or guidance provided by an agency to a local government on
14 a case-by-case basis.

15 **Sec. 2.** RCW 34.05.272 and 2014 c 22 s 1 are each amended to read
16 as follows:

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

20 (2)(a) Before taking a significant agency action, the department
21 of ecology must identify the sources of information reviewed and
22 relied upon by the agency in the course of preparing to take
23 significant agency action. Peer-reviewed literature, if applicable,
24 must be identified, as well as any scientific literature or other
25 sources of information used. The department of ecology shall make
26 available on the agency's web site the index of records required
27 under RCW 42.56.070 that are relied upon, or invoked, in support of a
28 proposal for significant agency action.

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

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

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

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

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

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

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

10 (A) Federal and state statutes;

11 (B) Court and hearings board decisions;

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

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

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

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

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

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

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

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

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

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

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

1 (~~(4)~~) (5) This section is not intended to affect agency action
2 regarding individual permitting, compliance and enforcement
3 decisions, or guidance provided by an agency to a local government on
4 a case-by-case basis.

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