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SENATE BILL 5622

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Sheldon, Miloscia, Angel, Becker, Warnick, and Pearson

Read first time 01/26/15.            Referred to Committee on Energy,  
Environment & Telecommunications.

1            AN ACT Relating to requiring that the departments of fish and  
2 wildlife and ecology use empirical science to support agency actions  
3 affecting land use; and amending RCW 34.05.271 and 34.05.272.

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

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

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

16            (b) All significant agency actions must be supported with  
17 empirical science acquired through proper use of the scientific  
18 method, peer review, reproduction of results, and journal  
19 publication. Prior to taking a significant agency action that would  
20 change, supersede, or invalidate a local land use policy or permit or  
21 that would directly or indirectly diminish the allowed uses of a

1 private property, the department of fish and wildlife must cite three  
2 separate sources of empirical science in support of the significant  
3 agency action.

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

9 ~~((e))~~ (d) The bibliography, citation list, or similar list of  
10 sources must categorize the sources of information as belonging to  
11 one or more of the following categories:

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

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

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

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

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

23 (A) Federal and state statutes;

24 (B) Court and hearings board decisions;

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

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

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

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

33 (viii) Other: Sources of information that do not fit into one of  
34 the categories identified in this subsection (1)~~((e))~~ (d).

35 (2)~~((a) For the purposes of this section,)~~ The definitions in  
36 this subsection apply throughout this section unless the context  
37 clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

31       (b) All significant agency actions must be supported with  
32 empirical science acquired through proper use of the scientific  
33 method, peer review, reproduction of results, and journal  
34 publication. Prior to taking a significant agency action that would  
35 change, supersede, or invalidate a local land use policy or permit or  
36 that would directly or indirectly diminish the allowed uses of a  
37 private property, the department of ecology must cite three separate  
38 sources of empirical science in support of the significant agency  
39 action.

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

6       ~~((e))~~ (d) The bibliography, citation list, or similar list of  
7 sources must categorize the sources of information as belonging to  
8 one or more of the following categories:

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

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

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

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

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

20       (A) Federal and state statutes;

21       (B) Court and hearings board decisions;

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

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

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

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

30       (viii) Other: Sources of information that do not fit into one of  
31 the categories identified in this subsection (1)~~((e))~~ (d).

32       (3) ~~((For the purposes of this section,))~~ The definitions in this  
33 subsection apply throughout this section unless the context clearly  
34 requires otherwise.

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

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

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

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

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

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