

SENATE BILL REPORT

SB 5958

As of January 16, 2018

Title: An act relating to expanding the operable intent of RCW 34.05.271 and 34.05.272 to the significant agency actions of the department of natural resources.

Brief Description: Expanding the operable intent of RCW 34.05.271 and 34.05.272 to the significant agency actions of the department of natural resources.

Sponsors: Senators Short, Takko, Pearson, Hobbs, Warnick, Cleveland, Brown, Mullet and Ericksen.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/15/18.

Brief Summary of Bill

- Requires the Department of Natural Resources (DNR) to identify sources of information reviewed and relied on before taking significant agency action.
- Requires DNR to post the index of records relied upon or invoked in support of a proposal for significant agency action on the agency's website.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Department of Natural Resources. DNR manages a number of different categories of land, including approximately 3 million acres of federally-granted lands and state forest lands. DNR also approves applications for conducting forest practices, including tree thinning, chemical application, forest road building, and tree harvesting. Additionally, DNR has direct charge and responsibility over all matters pertaining to forest fire services in the state.

Public Records Index. State agencies must maintain a system of indexing certain records including orders that contain analysis of importance to the agency's duties and interpretative

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.

or policy statements. An agency may rely on or invoke a public record only if it has been indexed as available to the public or if the agency provides notice to affected parties.

In general, the term public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function.

Significant Legislative Rules. The Administrative Procedure Act (APA) 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.

Examples of the 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.

HB 1112 (2013). In 2013 the Legislature enacted HB 1112 which directs the Department of Fish and Wildlife to identify the sources of information reviewed and relied on before taking a significant agency action. It was the intent of the Legislature that, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, those sources of scientific information reviewed and relied on by agencies be identified in a clear and transparent way.

Summary of Bill: DNR must identify the sources of information reviewed and relied on before taking a significant agency action. This includes identification of any peer-reviewed literature, as well as scientific literature or other sources of information used. DNR must make available on its website the index of records, as required by the Public Records Act, that DNR relied upon or invoked in support of a proposal for significant agency action. DNR must identify or categorize each source of information that is relied on in the form of a bibliography, citation list, or similar list of sources and post this on its website.

This requirement does not apply to purely proprietary decisions of DNR and is not intended to affect agency action regarding:

- individual permitting, leasing, or sales of valuable materials;
- compliance and enforcement decisions; or
- guidance provided by the agency to a local government on a case-by-case basis.

The term significant agency action, that serves to trigger this requirement, means an act of DNR that results in:

- a significant legislative rule under the APA;
- technical guidance, assessments, or documents used to support implementation of a rule or statute; or
- the development of natural resource recovery plans.

The intent section from HB 1112 is reaffirmed and those same findings are extended to this act.

Appropriation: None.

Fiscal Note: Requested on January 10, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill establishes similar requirements that DFW and Ecology has when they rely on scientific information to DNR. This bill is not designed to address day-to-day operations. The current forest and fish adaptive management program reflects a robust scientific process that supports the world's most protective forest practices rules. This bill allows stakeholders to work backwards through the decision-making process and to review the science that was considered when decisions were made. This bill mirrors existing policies at DFW and Ecology. This bill provides needed transparency to the process by which rules are adopted that affect the operations of land managers. Small landowners need to be able to trust how these rules come about and businesses need to understand what went into the rules that regulate their business.

CON: DNR is opposed to the bill as currently drafted because the bill is largely duplicative to what is currently required under the APA and the Open Public Meetings Act. The board, a separate rulemaking body under DNR, is already required to be open and transparent. The board goes through an intensive process, adaptive management, that involves all stakeholders and includes a science and policy review of potential changes to rules associated with aquatic resources. Including development of technical guidance in the definition of significant agency action blurs an important distinction between administrative rules and technical guidance and that distinction is currently in litigation. There needs to be clarity in direction and process.

Persons Testifying: PRO: Senator Shelly Short, Prime Sponsor; Jason Callahan, Washington Forest Protection Association; Jenny Knoth, Washington State Society of American Foresters.

CON: Dave Warren, DNR; Stephen Bernath, DNR.

Persons Signed In To Testify But Not Testifying: No one.