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**SENATE BILL 5314**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senator Short

AN ACT Relating to standing and science under the growth management act; amending RCW 36.70A.280 and 36.70A.172; and creating a new section.

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

NEW SECTION. **Sec.**  The growth management act was initially established in 1990. Since its inception, various elements of the act have been highly litigated. The costs of litigation have become burdensome on cities and counties and have had a chilling effect on growth and development especially in rural counties. In order to relieve this burden, the legislature finds that it is time to make the growth management hearings board consistent with other land use appeals.

**Sec.**  RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by:

(a) The state, or a county or city that plans under this chapter;

(b) ((~~a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a~~)) A person qualified pursuant to RCW 34.05.530; or

(c) Any person who:

(i) Owns property within the boundaries of the city or county planning under this chapter;

(ii) Is prejudiced or likely to be prejudiced by the action of the city or county planning under this chapter; and

(iii) Will suffer actual injury if the contested action is upheld.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) ((~~To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.~~

~~(5)~~)) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

**Sec.**  RCW 36.70A.172 and 2010 c 211 s 3 are each amended to read as follows:

(1) For the purposes of this section, "best available science" means findings of peer-reviewed scientific studies or data collected using methods and processes widely accepted and utilized within the scientific community including but not limited to scientific studies or data recommended by the departments of commerce, ecology, or fish and wildlife.

(2)(a) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science ((~~in developing~~)) used to develop policies and development regulations ((~~to~~)) that protect the various functions and values of critical areas. ((~~In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.~~

~~(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.~~))

(b) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities may develop a written record addressing each of the following:

(i) How the adopted policies and development regulations protect the designated critical areas required by this chapter;

(ii) The relevant sources of best available scientific information considered in the designation of critical areas;

(iii) Any nonscientific information, including legal, social, cultural, economic, and political information, used as a basis for designation of critical areas and development of critical areas policies and regulations that differ from agency guidance.

(3) In designating fish and wildlife habitat conservation areas, counties and cities must designate areas for species proven by best available science, including population benchmarks and other relevant data, to exist or species that could reasonably be expected to exist during the planning period set out in RCW 36.70A.130 within that jurisdiction. The designated areas may be reviewed as part of the comprehensive plan review to determine if any additional areas qualify for designation.

(a) Each jurisdiction shall specifically address what, if any, conservation or protection measures are necessary within that jurisdiction to preserve or enhance anadromous fisheries as determined by an examination of reasonably available scientific and nonscientific data.

(b) All area designations that deviate from agency recommendations shall be supported by a showing of a thorough consideration of all reasonably available scientific and nonscientific data.

(4) To assist in reviewing a petition under RCW 36.70A.290 that involves critical areas, the growth management hearings board must allow the planning jurisdiction to retain and examine scientific experts or other expert witnesses to aid the board in understanding or determining facts in issue regarding policies or regulations. The board and any other party may retain and examine its own expert witnesses. All scientific or other expert witnesses must be established as experts by testifying to their knowledge, skill, experience, training, or education as established by the Washington rules of evidence pertaining to expert witnesses.

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