

SENATE BILL REPORT

SB 5314

As of January 27, 2021

Title: An act relating to standing and science under the growth management act.

Brief Description: Concerning standing and science under the growth management act.

Sponsors: Senator Short.

Brief History:

Committee Activity: Housing & Local Government: 1/27/21.

Brief Summary of Bill

- Provides a definition for best available science and modifies the best available science to be used and considerations to be made in designating and protecting critical areas.
- Allows planning jurisdictions to develop a written record to demonstrate that the best available science has been included and allows planning jurisdictions to retain an expert witness in reviews before the Growth Management Hearings Board (GMHB).
- Adds a new method to establish GMHB standing for a person who (1) owns property within the boundaries of the relevant Growth Management Act (GMA) planning jurisdiction, (2) is or is likely to be prejudiced by the contested action, and (3) will suffer actual injury if the action is upheld.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Bonnie Kim (786-7316)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA:

- the county legislative authority must adopt a countywide planning policy;
- the county, and the cities within the county, must designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and
- the county must designate and take other actions related to urban growth areas.

GMA—Critical Areas. All cities and counties in Washington are required to adopt critical areas regulations by the GMA. As defined by the GMA, critical areas include the following areas and ecosystems: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas. All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule.

Growth Management Hearings Board. A seven-member board established under the Growth Management Act (GMA) is charged with hearing and determining petitions alleging noncompliance with the GMA by state agencies, counties, or cities.

A petition may be filed only by:

- the state or a GMA planning jurisdiction;
- a person who has participated before the county or city regarding the matter under review;
- a person certified by the governor within 60 days of filing a petition with the Growth Management Hearings Board (GMHB); or
- a person with standing under the Administrative Procedures Act.

To establish participation standing, a person must show that their participation was reasonably related to the issue presented to the GMHB.

Petitions that relate to whether an adopted comprehensive plan or development regulation complies with the GMA must be filed within 60 days after publication of the action. For counties, the date of publication is the date the county publishes a notice that it has adopted the comprehensive plan or development regulations. For cities, the date of publication is the date the city publishes the ordinance adopting the comprehensive plan or development regulations.

The GMHB must issue its final decision and order within 180 days, with limited exceptions. In the final order, the GMHB must either find the agency, county, or city in compliance or not in compliance. If found not in compliance, the matter is remanded back to the agency, county, or city and it has 180 days to come into compliance.

Summary of Bill: "Best available science" is defined as 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 & Wildlife.

In designating and protecting critical areas, counties and cities must include the best available science used to develop policies and development regulations that protect the various functions and values of critical areas, as opposed to including the best available science in developing policies and development regulations to protect the functions and values of critical areas.

Instead of requiring counties and cities to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries, each jurisdiction must 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.

Counties and cities may now develop a written record to demonstrate that the best available science has been included in the development of critical areas policies and regulations. The written record may include:

- how the adopted policies and development regulations protect the designated critical areas;
- the relevant sources of best available scientific information considered in the designation of critical areas; and
- 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.

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 eight-year planning period for comprehensive plans. The designation areas may be reviewed as part of the comprehensive plan review to determine if any additional areas qualify for designation.

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

In reviews before the GMHB, the 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 other parties may retain and examine their own expert witnesses.

Standing. Participation standing and certification by the Governor are removed as methods to establish standing before the GMHB. A new method to establish standing is added as follows: the petitioner must be a person who (1) owns property within the boundaries of the relevant GMA planning jurisdiction; (2) is, or is likely to be, prejudiced by the contested action; and (3) will suffer actual injury if the action is upheld.

Appropriation: None.

Fiscal Note: Not requested.

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 attempts to grow the conversation around the GMA and the challenges associated with it. We need to figure out how to balance new challenges with how local communities can have more control in their planning. The GMA may be the only place in Washington law where actual harm is not required for standing. Counties are in strong support of changing the standing requirements. The hidden cost of the GMA are the millions of dollars spent defending against GMA appeals. Uncertainty through appeals is harmful to our long-term plans. We can address equity concerns by changing the new standing qualifications from "and" to "or".

CON: Under GMA, the state does not give final approval of comprehensive plans. Oversight under the GMA falls to individuals rather than the state. The definition of best available science would not allow the use of evolving or developing scientific methods.

Persons Testifying: PRO: Senator Shelly Short, Prime Sponsor; Jan Himebaugh, Building Industry Association of Washington; Paul Jewell, Washington State Association of Counties.

CON: Bryce Yadon, Futurewise.

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