

SENATE BILL REPORT

SB 5245

As of January 25, 2019

Title: An act relating to clarifying what science may be used by cities and counties to designate critical areas.

Brief Description: Clarifying what science may be used by cities and counties to designate critical areas.

Sponsors: Senators Short, Sheldon and Wilson, L..

Brief History:

Committee Activity: Local Government: 1/24/19.

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.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Greg Vogel (786-7413)

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

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.

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.

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 polices 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 Growth Management Hearings Board, 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.

Appropriation: None.

Fiscal Note: Requested on January 16, 2019.

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: The biggest piece on this is allowing local governments to bring science forward in the hearings board process to bring different pieces of science to show their concerns. There has been work over the past several months on both sides of the aisle on taking different tacks in terms of land use. The thing heard repeatedly is the challenges local jurisdictions are having. The issues did not happen overnight. The bill adds toward the effort of creating tools and understanding that jurisdictions all have unique needs. The land use requirements have become very rigid due to interpretation of the GMA over time. The framework should be maintained, but there is need to adjust it in the twenty-first century, with growing population concerns. There needs to be a look at how to develop better tools for jurisdictions in terms of being able to use science at the local level.

CON: Creating a definition for best available science seems like a good idea, but there are other issues to consider. There is no review process to ensure that data collection is done correctly. The bill actually allows data beyond best available science to be included in designation of certain areas, and the allowance for scientific experts or other experts could be experts for anything. There needs to be a connection to best available science. It would be preferred if best available science is held by Ecology and other state agencies for maintaining critical areas, so that across the state, local governments are following the same rules, leading to the same outcomes.

OTHER: The Department of Fish and Wildlife shares the desire to make growth management work for all parties. However, this bill would add substantial responsibilities for WDFW. Additionally, the bill introduces different standards for science, which could lead to inconsistency in conserving fish and wildlife. Further, scientific findings alone do not provide the detail necessary for the creation of local policies and regulations. It is important for experts to interpret these findings.

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

CON: Bryce Yadon, Futurewise.

OTHER: Timothy Quinn, Washington State Department of Fish and Wildlife; Carl Schroeder, Association of Washinton Cities.

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