

SENATE BILL REPORT

SSB 5658

As Passed Senate, March 19, 2003

Title: An act relating to the use of best available science in developing critical areas policies and regulations.

Brief Description: Clarifying requirements for the use of best available science in developing critical areas policies and regulations.

Sponsors: Senate Committee on Land Use & Planning (originally sponsored by Senators Mulliken, Haugen, T. Sheldon, Morton and Rasmussen).

Brief History:

Committee Activity: Land Use & Planning: 2/17/03, 2/24/03 [DPS, DNP].

Passed Senate: 3/19/03, 34-14.

SENATE COMMITTEE ON LAND USE & PLANNING

Majority Report: That Substitute Senate Bill No. 5658 be substituted therefor, and the substitute bill do pass.

Signed by Senators Mulliken, Chair; McCaslin, Morton and T. Sheldon.

Minority Report: Do not pass.

Signed by Senator Kline.

Staff: Tim Watterson (786-7441)

Background: Under the Growth Management Act (GMA), as amended in 1995, all counties and cities must "include" the best available science in developing policies and development regulations to protect the functions and values of critical areas. Critical areas are defined in the GMA as wetlands, aquifer recharge areas, fish and wildlife habitat areas, flood plains, and geologically hazardous areas. Counties and cities must also give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

Summary of Bill: The Legislature finds that there is a need to clarify its intent in enacting the requirement that best available science be included in developing policies and development regulations to protect critical areas. It is clarified that the use of best available science is a procedural requirement and not a substantive requirement for adopted plans and regulations. Counties and cities must "consider" the best available science in developing policies and development regulations to protect critical areas.

In developing their policies and regulations for critical areas, counties and cities (a) must consider only the science applicable to each type of critical area, (b) may consider science from a different physical context from that of the critical area context at issue, (c) are not obligated to consider science from a different physical context if a county or city determines

that such science is not applicable, (d) are not restricted to a precautionary or no-risk approach where there is an absence of science applicable to a specific critical area, (e) may consider the criteria for best available science adopted as rules by the Department of Community, Trade, and Economic Development, and (f) may consider the cost-effectiveness of each alternative for protecting each type of critical area.

Growth management hearings boards in their review of the use of best available science by counties and cities must give deference to the county and city findings and conclusions in developing critical areas plans and regulations if their adoption procedures complied with GMA requirements.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill clarifies original legislative intent to require consideration of best available science but not to require local governments to use a particular approach. Best available science requirement should be procedural, not substantive for plans and regulations. Local governments need the ability to apply good science but not be obligated to use a particular science from different physical contexts. Cities need legislative clarification concerning how to find and apply appropriate scientific approaches to critical areas.

Testimony Against: The term "consider" is not strong enough as a duty for local governments. The best available science should not be solely a procedural requirement; it must be substantive. Removing the obligation to use science from a different physical context worsens the applicability of best available science.

Testified: Senator Mulliken, prime sponsor (pro); Larry Stout, Washington Association of Realtors (pro); Kristen Sawin, Association of Washington Business (pro); Dave Williams, Association of Washington Cities (pro); Genesee Adkins, 1000 Friends of Washington (con).