

SHB 2815 - S COMM AMD

By Committee on Government Operations & Elections

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 36.70A.172 and 1995 c 347 s 105 are each amended to  
4 read as follows:

5 (1) In designating and protecting critical areas under this  
6 chapter, counties and cities shall include the best available science  
7 in developing policies and development regulations to protect the  
8 functions and values of critical areas. In addition, counties and  
9 cities shall give special consideration to conservation or protection  
10 measures necessary to preserve or enhance anadromous fisheries.

11 (2) If it determines that advice from scientific or other experts  
12 is necessary or will be of substantial assistance in reaching its  
13 decision, a growth management hearings board may retain scientific or  
14 other expert advice to assist in reviewing a petition under RCW  
15 36.70A.290 that involves critical areas. The growth management  
16 hearings boards are directed to adopt procedures and criteria in  
17 consultation with cities and counties for retaining scientific or other  
18 experts under this section and RCW 36.70A.270.

19 (3) In the development of critical areas policies and development  
20 regulations, counties and cities must address each of the following on  
21 the record:

22 (a) To demonstrate that the best available science was included:

23 (i) The specific policies and development regulations adopted to  
24 protect the functions and values of critical areas; and

25 (ii) The sources of best available scientific information included  
26 in the decision making; and

27 (b) Any other information, including legal, social, cultural,  
28 economic, and political information, and other programs that may have  
29 been included in developing critical areas policies and regulations.

1       (4)(a) The department, in collaboration with other state agencies  
2 with jurisdiction and expertise, may adopt written management  
3 recommendations for optional use by cities and counties in protecting  
4 the functions and values of one or more critical areas listed in RCW  
5 36.70A.030(5).

6       (b) State agencies must demonstrate on the record, as provided in  
7 subsection (3) of this section, that the best available science was  
8 included in developing management recommendations for protecting the  
9 functions and values of critical areas, with consideration of regional  
10 differences among critical areas and the appropriate application of the  
11 management recommendations to protect critical areas.

12       (c) Management recommendations for cities and counties proposed by  
13 the department in collaboration with other state agencies under this  
14 subsection must be approved through the following process:

15       (i) The proposed management recommendations shall be submitted for  
16 technical review by scientists and other professionals with expertise  
17 in the relevant scientific and professional disciplines. Any proposed  
18 management recommendation shall be submitted for meaningful scientific  
19 peer review, in accordance with federal guidance contained in the Final  
20 Information Quality Bulletin of the federal Office of Management and  
21 Budget, issued in consultation with the Office of Science and  
22 Technology Policy and published in the Federal Register/Vol. 70, No.  
23 10/Friday, January 14, 2005. This federal guidance shall be adapted to  
24 the state context to the maximum extent practicable to achieve  
25 meaningful, transparent, and unbiased scientific peer review. The  
26 reviewing scientists and other professionals with expertise shall be  
27 from organizations including but not limited to academic institutions;  
28 federal, state, local, and tribal governments; and the private sector.  
29 The results of this technical review must be summarized in writing and  
30 made available on the department's web site;

31       (ii) Following completion of the technical review process in (c)(i)  
32 of this subsection, notice of the proposed management recommendations  
33 must be published in the state register, and the department must  
34 maintain the full text of the proposed management recommendations on  
35 its web site and accept public comment for a minimum of sixty days from  
36 the date of publication. Comments received during this public review  
37 period must be made available on the department's web site, and will be

1 considered by the department, in collaboration with other state  
2 agencies with jurisdiction and expertise. Summaries may be provided in  
3 lieu of voluminous or repetitive comments;

4 (iii) At the close of the technical review process and the public  
5 review period, the department may adopt the management recommendations  
6 by causing a notice of proposed management recommendations for  
7 protecting the functions and values of critical areas to be published  
8 in the state register and on the department's web site. Notice shall  
9 also be provided to persons submitting comments on the proposed  
10 management recommendations during the public review period; and

11 (iv) At the end of sixty days from the date the notice of proposed  
12 management recommendations for protecting the functions and values of  
13 critical areas is published in the state register, if no petition for  
14 review of the management recommendation has been filed under RCW  
15 36.70A.290, the department shall cause a notice of adoption of final  
16 management recommendations for protecting the functions and values of  
17 critical areas to be published in the state register and on the  
18 department's web site. If a petition for review is filed within sixty  
19 days, the publication of a notice of final management recommendations  
20 for protecting the functions and values of critical areas shall be  
21 delayed until the petition is finally resolved and the management  
22 recommendations are found to comply with this chapter. The filing of  
23 a petition for review shall not affect the use of the management  
24 recommendations for purposes other than under this subsection.

25 (d) At least once every five years, the department, in  
26 collaboration with other state agencies with jurisdiction and  
27 expertise, shall review and, if necessary to incorporate best available  
28 science that has become available or otherwise to comply with this  
29 chapter, update the management recommendations adopted under this  
30 subsection. The department shall cause a notice of proposed update of  
31 management recommendations for protecting the functions and values of  
32 critical areas or a notice of a decision not to update management  
33 recommendations for protecting the functions and values of critical  
34 areas to be published in the state register and on the department's web  
35 site.

36 (i) Following publication of a notice of proposed update of  
37 management recommendations, amendments to the management

1 recommendations shall be adopted through the process set forth in (c)  
2 of this subsection and shall be appealable in the same manner and to  
3 the same extent as the initial management recommendations.

4 (ii) Following publication of a notice of a decision not to update  
5 management recommendations, any interested person may file a petition  
6 for review of the department's decision within the time provided in RCW  
7 36.70A.290(3). The sole issue before the growth management hearings  
8 board shall be whether the department's decision not to update  
9 management recommendations under (d) of this subsection was clearly  
10 erroneous.

11 (e) Where a county or city states specifically that it has chosen  
12 to develop and adopt all or a portion of its critical areas policies  
13 and regulations through application of final management recommendations  
14 adopted under this subsection, the growth management hearings board or  
15 a reviewing court shall review the county or city policies and  
16 regulations only for consistency with those portions of the final  
17 management recommendations specified by the county or city. The board  
18 or court shall review all other portions of critical areas policies and  
19 regulations for compliance with subsections (1) and (3) of this  
20 section.

21 (f) Where a county or city chooses not to apply final management  
22 recommendations adopted under this section when developing its critical  
23 areas policies and regulations, the growth management hearings board or  
24 a reviewing court shall review the policies and regulations for  
25 compliance with subsections (1) and (3) of this section.

26 (g) A growth management hearings board or a reviewing court shall  
27 not consider final management recommendations adopted under this  
28 subsection to be the only means of complying with this chapter's  
29 critical areas protection requirements and best available science  
30 requirements, nor shall a board or court consider final management  
31 recommendations to establish a minimum standard for identifying the  
32 best available science or protecting the functions and values of  
33 critical areas.

34 (h) This subsection does not alter the requirements in RCW  
35 36.70A.106.

36 **Sec. 2.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read  
37 as follows:

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

3 (a) That a state agency, county, or city planning under this  
4 chapter is not in compliance with the requirements of this chapter,  
5 chapter 90.58 RCW as it relates to the adoption of shoreline master  
6 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
7 plans, development regulations, or amendments, adopted under RCW  
8 36.70A.040 or chapter 90.58 RCW; ~~((or))~~

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

12 (c) That the department was clearly erroneous in adopting  
13 management recommendations under RCW 36.70A.172(4) that do not comply  
14 with the requirements of RCW 36.70A.172(4), or that the department's  
15 decision not to update management recommendations under RCW  
16 36.70A.172(4)(d) is clearly erroneous. Any appeal under this  
17 subsection (1)(c) must be heard by a panel comprised of at least two  
18 members from each of the three growth management hearings boards.

19 (2) Except for petitions filed under subsection (1)(c) of this  
20 section, a petition may be filed only by: (a) The state, or a county  
21 or city that plans under this chapter; (b) a person who has  
22 participated orally or in writing before the county or city regarding  
23 the matter on which a review is being requested; (c) a person who is  
24 certified by the governor within sixty days of filing the request with  
25 the board; or (d) a person qualified pursuant to RCW 34.05.530. A  
26 petition may be filed under subsection (1)(c) of this section only by  
27 a person who has submitted comments during the public review period  
28 specified in RCW 36.70A.172(4)(c)(ii).

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

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

37 (5) When considering a possible adjustment to a growth management

1 planning population projection prepared by the office of financial  
2 management, a board shall consider the implications of any such  
3 adjustment to the population forecast for the entire state.

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

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

14 **Sec. 3.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to  
15 read as follows:

16 (1) All requests for review to a growth management hearings board  
17 shall be initiated by filing a petition that includes a detailed  
18 statement of issues presented for resolution by the board. The board  
19 shall render written decisions articulating the basis for its holdings.  
20 The board shall not issue advisory opinions on issues not presented to  
21 the board in the statement of issues, as modified by any prehearing  
22 order.

23 (2) All petitions relating to whether or not an adopted  
24 comprehensive plan, development regulation, or permanent amendment  
25 thereto, is in compliance with the goals and requirements of this  
26 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days  
27 after publication by the legislative bodies of the county or city.

28 (a) Except as provided in (c) of this subsection, the date of  
29 publication for a city shall be the date the city publishes the  
30 ordinance, or summary of the ordinance, adopting the comprehensive plan  
31 or development regulations, or amendment thereto, as is required to be  
32 published.

33 (b) Promptly after adoption, a county shall publish a notice that  
34 it has adopted the comprehensive plan or development regulations, or  
35 amendment thereto.

36 Except as provided in (c) of this subsection, for purposes of this

1 section the date of publication for a county shall be the date the  
2 county publishes the notice that it has adopted the comprehensive plan  
3 or development regulations, or amendment thereto.

4 (c) For local governments planning under RCW 36.70A.040, promptly  
5 after approval or disapproval of a local government's shoreline master  
6 program or amendment thereto by the department of ecology as provided  
7 in RCW 90.58.090, the local government shall publish a notice that the  
8 shoreline master program or amendment thereto has been approved or  
9 disapproved by the department of ecology. For purposes of this  
10 section, the date of publication for the adoption or amendment of a  
11 shoreline master program is the date the local government publishes  
12 notice that the shoreline master program or amendment thereto has been  
13 approved or disapproved by the department of ecology.

14 (3) All petitions relating to whether management recommendations  
15 adopted by the department under RCW 36.70A.172(4) comply with the  
16 requirements of RCW 36.70A.172(4) must be filed within sixty days after  
17 the notice of proposed management recommendations for protecting the  
18 functions and values of critical areas is published in the state  
19 register pursuant to RCW 36.70A.172(4)(c)(iii).

20 (4) Unless the board dismisses the petition as frivolous or finds  
21 that the person filing the petition lacks standing, or the parties have  
22 filed an agreement to have the case heard in superior court as provided  
23 in RCW 36.70A.295, the board shall, within ten days of receipt of the  
24 petition, set a time for hearing the matter.

25 ((+4)) (5) The board shall base its decision on the record  
26 developed by the city, county, or the state and supplemented with  
27 additional evidence if the board determines that such additional  
28 evidence would be necessary or of substantial assistance to the board  
29 in reaching its decision.

30 ((+5)) (6) The board, shall consolidate, when appropriate, all  
31 petitions involving the review of the same comprehensive plan or the  
32 same development regulation or regulations.

33 **Sec. 4.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
34 read as follows:

35 (1) The board shall issue a final order that shall be based  
36 exclusively on whether or not a state agency, county, or city is in  
37 compliance with the requirements of this chapter, chapter 90.58 RCW as

1 it relates to adoption or amendment of shoreline master programs, or  
2 chapter 43.21C RCW as it relates to adoption of plans, development  
3 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
4 90.58 RCW.

5 (2)(a) Except as provided in (b) and (c) of this subsection, the  
6 final order shall be issued within one hundred eighty days of receipt  
7 of the petition for review, or, if multiple petitions are filed, within  
8 one hundred eighty days of receipt of the last petition that is  
9 consolidated.

10 (b) The board may extend the period of time for issuing a decision  
11 to enable the parties to settle the dispute if additional time is  
12 necessary to achieve a settlement, and (i) an extension is requested by  
13 all parties, or (ii) an extension is requested by the petitioner and  
14 respondent and the board determines that a negotiated settlement  
15 between the remaining parties could resolve significant issues in  
16 dispute. The request must be filed with the board not later than seven  
17 days before the date scheduled for the hearing on the merits of the  
18 petition. The board may authorize one or more extensions for up to  
19 ninety days each, subject to the requirements of this section.

20 (c) In a review under RCW 36.70A.280(1)(c), the board shall issue  
21 a final order within two hundred seventy days of receipt of the  
22 petition for review, or, if multiple petitions are filed, within one  
23 hundred eighty days of receipt of the last petition that is  
24 consolidated. The board may extend this deadline as provided in (b) of  
25 this subsection.

26 (3) In the final order, the board shall either:

27 (a) Find that the state agency, county, or city is in compliance  
28 with the requirements of this chapter, chapter 90.58 RCW as it relates  
29 to the adoption or amendment of shoreline master programs, or chapter  
30 43.21C RCW as it relates to adoption of plans, development regulations,  
31 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

32 (b) Find that the state agency, county, or city is not in  
33 compliance with the requirements of this chapter, chapter 90.58 RCW as  
34 it relates to the adoption or amendment of shoreline master programs,  
35 or chapter 43.21C RCW as it relates to adoption of plans, development  
36 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
37 90.58 RCW, in which case the board shall remand the matter to the  
38 affected state agency, county, or city. The board shall specify a



1 reasonable time not in excess of one hundred eighty days, or such  
2 longer period as determined by the board in cases of unusual scope or  
3 complexity, within which the state agency, county, or city shall comply  
4 with the requirements of this chapter. The board may require periodic  
5 reports to the board on the progress the jurisdiction is making towards  
6 compliance.

7 (4) Unless the board makes a determination of invalidity as  
8 provided in RCW 36.70A.302, a finding of noncompliance and an order of  
9 remand shall not affect the validity of comprehensive plans and  
10 development regulations during the period of remand.

11 (5) Any party aggrieved by a final decision of the hearings board  
12 may appeal the decision to superior court as provided in RCW 34.05.514  
13 or 36.01.050 within thirty days of the final order of the board.

14 **Sec. 5.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read  
15 as follows:

16 (1)(a) Except as provided in RCW 36.70A.1701, each county that is  
17 required or chooses to plan under RCW 36.70A.040, and each city within  
18 such county, shall adopt development regulations on or before September  
19 1, 1991, to assure the conservation of agricultural, forest, and  
20 mineral resource lands designated under RCW 36.70A.170. Regulations  
21 adopted under this subsection may not prohibit uses legally existing on  
22 any parcel prior to their adoption and shall remain in effect until the  
23 county or city adopts development regulations pursuant to RCW  
24 36.70A.040. Such regulations shall assure that the use of lands  
25 adjacent to agricultural, forest, or mineral resource lands shall not  
26 interfere with the continued use, in the accustomed manner and in  
27 accordance with best management practices, of these designated lands  
28 for the production of food, agricultural products, or timber, or for  
29 the extraction of minerals.

30 (b) Counties and cities shall require that all plats, short plats,  
31 development permits, and building permits issued for development  
32 activities on, or within five hundred feet of, lands designated as  
33 agricultural lands, forest lands, or mineral resource lands, contain a  
34 notice that the subject property is within or near designated  
35 agricultural lands, forest lands, or mineral resource lands on which a  
36 variety of commercial activities may occur that are not compatible with  
37 residential development for certain periods of limited duration. The

1 notice for mineral resource lands shall also inform that an application  
2 might be made for mining-related activities, including mining,  
3 extraction, washing, crushing, stockpiling, blasting, transporting, and  
4 recycling of minerals.

5 (2)(a) Each county and city shall adopt development regulations  
6 that protect critical areas that are required to be designated under  
7 RCW 36.70A.170. For counties and cities that are required or choose to  
8 plan under RCW 36.70A.040, such development regulations shall be  
9 adopted on or before September 1, 1991. For the remainder of the  
10 counties and cities, such development regulations shall be adopted on  
11 or before March 1, 1992.

12 (b) Regulations adopted under this subsection, may not prohibit  
13 uses legally existing on any parcel prior to their adoption. For  
14 legally existing uses, regulations adopted under this subsection must  
15 comply with the goals and requirements of this chapter by means of  
16 voluntary measures, incentives, and educational programs, to the  
17 greatest extent to which these can be effective, by incorporating by  
18 reference applicable regulatory measures not authorized by this  
19 chapter.

20 (3) Such counties and cities shall review these designations and  
21 development regulations when adopting their comprehensive plans under  
22 RCW 36.70A.040 and implementing development regulations under RCW  
23 36.70A.120 and may alter such designations and development regulations  
24 to insure consistency.

25 (4) Forest land and agricultural land located within urban growth  
26 areas shall not be designated by a county or city as forest land or  
27 agricultural land of long-term commercial significance under RCW  
28 36.70A.170 unless the city or county has enacted a program authorizing  
29 transfer or purchase of development rights."

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30 On page 1, line 2 of the title, after "areas;" strike the remainder

1 of the title and insert "and amending RCW 36.70A.172, 36.70A.280,  
2 36.70A.290, 36.70A.300, and 36.70A.060."

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