
SENATE BILL 6562

State of Washington

59th Legislature

2006 Regular Session

By Senator Swecker

Read first time 01/16/2006. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to critical areas safe harbor agreements; and
2 amending RCW 36.70A.172 and 36.70A.060.

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

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

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

12 (2) If it determines that advice from scientific or other experts
13 is necessary or will be of substantial assistance in reaching its
14 decision, a growth management hearings board may retain scientific or
15 other expert advice to assist in reviewing a petition under RCW
16 36.70A.290 that involves critical areas.

17 (3) At any point, whether prior to or following designation or
18 adoption actions required under this chapter, a county or city may
19 submit to the department a notice of intent to seek approval of a

1 critical areas safe harbor agreement that will result in equivalent or
2 better critical area functions and values in the applicable
3 jurisdiction, or in one or more of the critical areas listed in RCW
4 36.70A.030(5). Approval of a proposed critical areas safe harbor
5 agreement under subsection (8)(a) of this section constitutes full
6 compliance with the critical areas requirements of this chapter,
7 including requirements under subsection (1) of this section and RCW
8 36.70A.060 (2) and (3).

9 (4) A critical areas safe harbor development process initiated
10 under this section must be collaborative in nature and must seek
11 creative and locally appropriate solutions based on voluntary
12 participation in federal, state, or local programs that offer financial
13 incentives or other assistance to landowners and that encourage
14 voluntary legal commitments to actions that will protect or enhance
15 critical area functions and values.

16 (5) A city or county seeking to develop a critical areas safe
17 harbor agreement for approval must make efforts to invite participation
18 from the following:

19 (a) Local stakeholders and property owners;

20 (b) The department, the department of ecology, and the department
21 of fish and wildlife; and

22 (c) Any federal, state, or local agency, or any tribal authority,
23 with direct regulatory jurisdiction over subject matters related to the
24 functions and values of critical areas in the jurisdiction, including
25 agencies responsible for the regulatory protection of fish life,
26 wildlife, aquatic resources, wetlands, water quantity, and water
27 quality on private lands.

28 (6) A proposed critical areas safe harbor agreement must include
29 detailed descriptions of at least the following components:

30 (a) Goals set for the enhancement of critical area functions and
31 values, such as miles of riparian areas protected, acres enrolled in
32 conservation programs, or acres committed to particular land use
33 practices;

34 (b) Pertinent information relating to social and cultural issues,
35 economic concerns, or traditional land uses to be balanced when
36 considering locally appropriate implementation of the goals and
37 requirements of this chapter;

1 (c) Binding legal commitments to voluntary projects or actions,
2 whether currently in place or to be commenced by approval of a critical
3 areas safe harbor agreement under subsection (8)(a) of this section,
4 that will protect or enhance the functions and values of critical
5 areas. These projects may include, but are not limited to: Riparian
6 buffers; dedication of natural areas; conservation easements; purchase
7 or transfer of development rights; landscape management plans; best
8 management practices; and adaptive management strategies;

9 (d) State and local programs that foster creative and locally
10 appropriate solutions to protect or enhance the net functions and
11 values of critical areas in the jurisdiction, including but not limited
12 to: Clustering; mitigation banking; progress monitoring; and public
13 sector investments;

14 (e) Compliance with current legal requirements or permits that
15 protect or enhance fish life, wildlife, aquatic resources, wetlands,
16 water resources, or water quality; and

17 (f) Pertinent agencies consulted, and regulatory and permit review
18 processes involved, including but not limited to:

19 (i) Federal review of actions under the endangered species act (16
20 U.S.C. Sec. 1531 et seq.);

21 (ii) Federal permits required under section 404 of the federal
22 water pollution control act (33 U.S.C. Sec. 1251 et seq.);

23 (iii) State or federal review of projects under section 401 of the
24 federal water pollution control act (33 U.S.C. Sec. 1251 et seq.); and

25 (iv) Review and regulation of projects or activities related to:
26 Water quality under chapter 90.48 RCW; shorelines under chapter 90.58
27 RCW; and hydraulic project approval under chapter 77.55 RCW.

28 (7)(a) A city or county seeking approval of a proposed safe harbor
29 agreement for critical areas shall send the proposed agreement to the
30 department. Upon receipt, the department shall immediately transmit
31 the proposed agreement to the department of ecology and the department
32 of fish and wildlife.

33 (b) Within fifteen days of receiving the proposed agreement from a
34 city or county, the department shall publish the proposed agreement in
35 the Washington State Register and post the agreement on its web site,
36 and must accept public comments for sixty days from the date of
37 publication. Comments must be considered by the department of ecology
38 and the department of fish and wildlife, and responses from those two

1 departments must be published on the department's web site no more than
2 fifteen days after the closure of the public comment period. Summary
3 responses may be provided in lieu of voluminous or repetitive comments.

4 (c) The department of ecology and the department of fish and
5 wildlife have thirty days after the close of the sixty-day public
6 comment period to approve or deny the safe harbor agreement for
7 critical areas as proposed by the city or county. Failure to approve
8 or deny the agreement within the thirty-day period is deemed approval
9 of the agreement by the department that fails to respond in a timely
10 manner.

11 (8)(a) Approval of a critical areas safe harbor agreement by both
12 the department of fish and wildlife and the department of ecology
13 constitutes full compliance with the critical areas requirements of
14 this chapter. Upon approval, the department shall post the approved
15 critical areas safe harbor agreement on its web site, and cause a
16 notice of adoption of the approved agreement to be published in the
17 Washington State Register.

18 (b) If the request for approval of the critical areas safe harbor
19 agreement is denied by one or both departments, the department or
20 departments denying the request have an additional sixty days to
21 provide the city or county specific reasons why the proposed agreement
22 will not provide equivalent or better protection of critical area
23 functions and values, and must provide recommendations in writing
24 detailing changes that would result in approval. A city or county may
25 then resubmit an amended critical areas safe harbor agreement under the
26 procedures established in subsections (7) through (9) of this section.

27 (9) A person aggrieved by a final decision to approve or deny a
28 proposed critical areas safe harbor agreement under subsections (7) and
29 (8) of this section has thirty days to appeal the decision to the
30 superior court in which property or critical areas affected by the
31 decision are located. The sole issue before the superior court is
32 whether the decision to approve or deny the proposed agreement was
33 clearly erroneous.

34 **Sec. 2.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read
35 as follows:

36 (1)(a) Except as provided in RCW 36.70A.1701, each county that is
37 required or chooses to plan under RCW 36.70A.040, and each city within

1 such county, shall adopt development regulations on or before September
2 1, 1991, to assure the conservation of agricultural, forest, and
3 mineral resource lands designated under RCW 36.70A.170. Regulations
4 adopted under this subsection may not prohibit uses legally existing on
5 any parcel prior to their adoption and shall remain in effect until the
6 county or city adopts development regulations pursuant to RCW
7 36.70A.040. Such regulations shall assure that the use of lands
8 adjacent to agricultural, forest, or mineral resource lands shall not
9 interfere with the continued use, in the accustomed manner and in
10 accordance with best management practices, of these designated lands
11 for the production of food, agricultural products, or timber, or for
12 the extraction of minerals.

13 (b) Counties and cities shall require that all plats, short plats,
14 development permits, and building permits issued for development
15 activities on, or within five hundred feet of, lands designated as
16 agricultural lands, forest lands, or mineral resource lands, contain a
17 notice that the subject property is within or near designated
18 agricultural lands, forest lands, or mineral resource lands on which a
19 variety of commercial activities may occur that are not compatible with
20 residential development for certain periods of limited duration. The
21 notice for mineral resource lands shall also inform that an application
22 might be made for mining-related activities, including mining,
23 extraction, washing, crushing, stockpiling, blasting, transporting, and
24 recycling of minerals.

25 (2) Each county and city shall adopt development regulations that
26 protect critical areas that are required to be designated under RCW
27 36.70A.170. For counties and cities that are required or choose to
28 plan under RCW 36.70A.040, such development regulations shall be
29 adopted on or before September 1, 1991. For the remainder of the
30 counties and cities, such development regulations shall be adopted on
31 or before March 1, 1992.

32 (3) Such counties and cities shall review these designations and
33 development regulations when adopting their comprehensive plans under
34 RCW 36.70A.040 and implementing development regulations under RCW
35 36.70A.120 and may alter such designations and development regulations
36 to insure consistency.

37 (4) Approval by the department of ecology and the department of

1 fish and wildlife of a city or county safe harbor agreement for
2 critical areas under RCW 36.70A.172(8) constitutes compliance with the
3 critical areas requirements of this chapter.

4 (5) Forest land and agricultural land located within urban growth
5 areas shall not be designated by a county or city as forest land or
6 agricultural land of long-term commercial significance under RCW
7 36.70A.170 unless the city or county has enacted a program authorizing
8 transfer or purchase of development rights.

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