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**SENATE BILL 5245**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Short, Sheldon, and Wilson, L.

AN ACT Relating to clarifying what science may be used by cities and counties to designate critical areas; and amending RCW 36.70A.172.

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

**Sec.**  RCW 36.70A.172 and 2010 c 211 s 3 are each amended to read as follows:

(1) For the purposes of this section, "best available science" means 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 and wildlife.

(2)(a) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science ((~~in developing~~)) used to develop policies and development regulations ((~~to~~)) that protect the various functions and values of critical areas. ((~~In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.~~

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

(b) To demonstrate that the best available science has been included in the development of critical areas policies and regulations, counties and cities may develop a written record addressing each of the following:

(i) How the adopted policies and development regulations protect the designated critical areas required by this chapter;

(ii) The relevant sources of best available scientific information considered in the designation of critical areas;

(iii) 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.

(3) 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 planning period set out in RCW 36.70A.130 within that jurisdiction. The designated areas may be reviewed as part of the comprehensive plan review to determine if any additional areas qualify for designation.

(a) Each jurisdiction shall 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.

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

(4) To assist in reviewing a petition under RCW 36.70A.290 that involves critical areas, the growth management hearings 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 any other party may retain and examine its own expert witnesses. All scientific or other expert witnesses must be established as experts by testifying to their knowledge, skill, experience, training, or education as established by the Washington rules of evidence pertaining to expert witnesses.

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