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**SENATE BILL 5306**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Salomon, Lovelett, Van De Wege, Wellman, and Wilson, C.

AN ACT Relating to local salmon habitat recovery planning in critical areas; amending RCW 36.70A.050 and 36.70A.172; reenacting and amending RCW 36.70A.130; adding a new section to chapter 36.70A RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that salmon recovery efforts have been instrumental in helping some species turn the corner towards recovery and have slowed the decline of several other species. However, while great progress has been made in implementing critical salmon recovery projects, more work is needed at the state, but also, local level in order to further protect and restore habitat.

The legislature further finds that the state's population has continued to grow at a dramatic pace, growing by 1.6 million people since 1999, when the statewide salmon recovery strategy was adopted. A growing population needs housing, drinkable water, and other resources, which can put a strain on habitat critical to salmon. Development along shorelines can erode coastal areas, leaving beaches inhospitable to salmon and the fish they eat. Development of land along streams often removes the trees and bushes that provide shade, filter pollution, and create beneficial salmon habitat with discarded leaves and branches. Land development also increases paving and impervious surfaces, which in turn increases the amount of pollution and contaminated stormwater entering waterways. Finally, population growth increases the need for water for drinking, for use in homes and businesses, and for irrigation. More demand for water often impacts the quality and the amount of water left in streams to support salmon.

Moreover, since much of growth planning occurs at the local level, the legislature finds that statewide salmon recovery and conservation efforts could benefit further through strengthened policies and regulations adopted by counties and cities. Therefore, the legislature intends to enact guidelines for the preservation and enhancement of anadromous fisheries in order to assist counties and cities with the development of planning initiatives beneficial to local and statewide salmon recovery.

**Sec.**  RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each amended to read as follows:

(1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forestlands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forestlands and mineral resource lands, ((~~and~~)) the department of ecology regarding critical areas, and the department of fish and wildlife regarding conservation and protection of anadromous fisheries in critical areas, utilizing the guidelines developed in RCW 36.70A.172.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forestlands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental and conservation organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forestlands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forestlands shall not be inconsistent with guidelines adopted by the department of natural resources.

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

(1)(a) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

(b)(i) In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(ii) The department of fish and wildlife must adopt conservation and restoration guidelines in order to assist counties and cities in the preservation and enhancement of anadromous fisheries.

(iii) The guidelines must identify:

(A) Priority marine nearshore as well as stream segments and riparian habitat that represent the most important habitat areas to preserve through public acquisition or other conservation measures, including core spawning areas as well as migratory and rearing corridors for salmon species;

(B) Incompatible land uses with salmon recovery and habitat preservation; and

(C) Methods for improving and preserving salmon habitat.

(iv) The department of fish and wildlife must consult with tribal fisheries restoration experts and other interested parties as required under RCW 36.70A.050(2) in developing the guidelines under this subsection.

(v) The department of fish and wildlife and the department may exclude a county or city from elements of the guidelines if the county or city has no or minimal areas of critical habitat for salmon stocks listed under the federal endangered species act.

(vi) The department of fish and wildlife must complete the guidelines by January 1, 2022, in order to allow cities and counties to update critical areas policies and development regulations as part of their next periodic review required under RCW 36.70A.130.

(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.

**Sec.**  RCW 36.70A.130 and 2020 c 113 s 1 and 2020 c 20 s 1026 are each reenacted and amended to read as follows:

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.440, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5)(a) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

((~~(a)~~)) (i) On or before June 30, 2024, and every eight years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;

((~~(b)~~)) (ii) On or before June 30, 2025, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

((~~(c)~~)) (iii) On or before June 30, 2026, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and

((~~(d)~~)) (iv) On or before June 30, 2027, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.

(b)(i) Following the adoption of department of fish and wildlife guidelines for the preservation and enhancement of anadromous fisheries under RCW 36.70A.172, counties and cities must review and update critical areas policies and development regulations in order to implement the guidelines.

(ii) Counties and cities may adopt land use regulations, acquire critical habitat lands, enact incentives, and establish other measures and policies in order to implement the guidelines.

(iii) Counties and cities within those counties under (a)(i) and (ii) of this subsection must begin implementing the guidelines on January 1, 2022, in order to include the update of critical areas policies and development regulations as part of the next required review and revision of comprehensive plans and development regulations under this subsection.

(iv) All other counties and cities within those counties must implement the guidelines by June 30, 2026.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) ((~~[(b) through (d)]~~)) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) ((~~[(b) through (d)]~~)) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(e) A county that is subject to a deadline established in subsection (5)(a)(ii) through (iv) of this section and meets the following criteria may comply with the requirements of this section at any time within the 24 months following the deadline established in subsection (5) of this section: The county has a population of less than 50,000 and has had its population increase by no more than 17 percent in the 10 years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(a)(ii) through (iv) of this section and meets the following criteria may comply with the requirements of this section at any time within the 24 months following the deadline established in subsection (5) of this section: The city has a population of no more than 5,000 and has had its population increase by the greater of either no more than 100 persons or no more than 17 percent in the 10 years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW:

(i) Complying with the deadlines in this section; or

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

By December 1, 2023, the department of fish and wildlife and the department must review and report on county and city adoption of critical areas policies and development regulations that implement the guidelines for the preservation and enhancement of anadromous fisheries, under RCW 36.70A.172.

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