
SENATE BILL 5245

State of Washington

66th Legislature

2019 Regular Session

By Senator Short

1 AN ACT Relating to clarifying what science may be used by cities
2 and counties to designate critical areas; and amending RCW
3 36.70A.172.

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

5 **Sec. 1.** RCW 36.70A.172 and 2010 c 211 s 3 are each amended to
6 read as follows:

7 (1) For the purposes of this section, "best available science"
8 means findings of peer-reviewed scientific studies or data collected
9 using methods and processes widely accepted and utilized within the
10 scientific community including but not limited to scientific studies
11 or data recommended by the departments of commerce, ecology, or fish
12 and wildlife.

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

20 ~~(2) If it determines that advice from scientific or other experts~~
21 ~~is necessary or will be of substantial assistance in reaching its~~

1 ~~decision, the growth management hearings board may retain scientific~~
2 ~~or other expert advice to assist in reviewing a petition under RCW~~
3 ~~36.70A.290 that involves critical areas.))~~

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

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

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

12 (iii) Any nonscientific information, including legal, social,
13 cultural, economic, and political information, used as a basis for
14 designation of critical areas and development of critical areas
15 policies and regulations that differ from agency guidance.

16 (3) In designating fish and wildlife habitat conservation areas,
17 counties and cities must designate areas for species proven by best
18 available science, including population benchmarks and other relevant
19 data, to exist or species that could reasonably be expected to exist
20 during the planning period set out in RCW 36.70A.130 within that
21 jurisdiction. The designated areas may be reviewed as part of the
22 comprehensive plan review to determine if any additional areas
23 qualify for designation.

24 (a) Each jurisdiction shall specifically address what, if any,
25 conservation or protection measures are necessary within that
26 jurisdiction to preserve or enhance anadromous fisheries as
27 determined by an examination of reasonably available scientific and
28 nonscientific data.

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

33 (4) To assist in reviewing a petition under RCW 36.70A.290 that
34 involves critical areas, the growth management hearings board must
35 allow the planning jurisdiction to retain and examine scientific
36 experts or other expert witnesses to aid the board in understanding
37 or determining facts in issue regarding policies or regulations. The
38 board and any other party may retain and examine its own expert
39 witnesses. All scientific or other expert witnesses must be
40 established as experts by testifying to their knowledge, skill,

1 experience, training, or education as established by the Washington
2 rules of evidence pertaining to expert witnesses.

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