HOUSE BILL REPORT
HB 2207

As Reported by House Committee On:
Local Government

Title: An act relating to clarifying the best available science requirement.

Brief Description: Clarifying the best available science requirement.

Sponsors: Representatives Simpson and Springer.

Brief History:
Committee Activity:
Local Government: 2/28/05, 3/2/05 [DP].

Brief Summary of Bill

- Requires that counties and cities bear the burden of demonstrating that best available science standards have been considered in the process of developing the policies and regulations regarding critical areas.
- Requires counties and cities to produce records justifying a decision to depart from best available science standards in developing the policies and regulations regarding critical areas.
- Requires counties and cities to take steps to minimize environmental risks and to monitor the status of a critical area if the best available science standard was not utilized in the development of the policies and regulations pertaining to the critical area.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 4 members: Representatives Simpson, Chair; Clibborn, Vice Chair; B. Sullivan and Takko.

Minority Report: Do not pass. Signed by 3 members: Representatives Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Woods.

Staff: Thamas Osborn (786-7129).

Background:

Growth Management Act Planning Requirements.

The Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Twenty-nine of 39 counties, and the cities within those 29 counties, are required or have chosen to comply with the major requirements of the GMA.

Critical Areas and Best Available Science.
In addition to other GMA requirements, all local governments must designate and protect critical areas. Critical areas are defined by statute to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Each county and city must include the "best available science" in developing policies and development regulations to protect the functions and values of critical areas. The GMA does not define "best available science."

Summary of Bill:

Counties and cities bear the burden of demonstrating that the best available science has been considered in the process of developing the policies and regulations regarding critical areas. Accordingly, the record of this process must contain:
- the specific policies and development regulations adopted to protect the critical areas;
- the sources of the scientific information considered in the decision-making process; and
- the nature of any "non-scientific" information (e.g., information pertaining to legal, social, cultural, economic, or political considerations) that played a part in the development of critical areas policies and regulations.

In the event a critical area policy or regulation is adopted that is not entirely consistent with the best available science, but which was deemed necessary in order to meet another GMA goal or requirement, the county or city must:
- produce the information forming the basis of its decision to depart from a purely science-based standard;
- explain the rationale underlying this decision;
- identify the potential risks to the preservation of the critical area that may result from basing the policy or regulation on non-scientific factors; and
- identify any measures put in place in order to limit such risks.

When a local government fails to strictly adhere to the best available science requirement in order to serve another GMA goal or requirement during the process of adopting critical area policies and regulations, the local government must:
- take those steps necessary to minimize environmental risks and to monitor the status of the critical area;
- employ monitoring techniques to determine whether the policies and regulations are adequately protecting the functions and values of the critical area; and

- adjust the approach as necessary to ensure the protection of the critical area functions and values.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The passage of this bill is necessary in order to provide some guidance to local jurisdictions regarding the process for implementing the "best available science" (BAS) standard. The bill is essentially a codification of the section of the Washington Administrative Code pertaining to the BAS standard. The BAS presents a significant public policy problem, because it has not yet been defined and presents an economic burden on small jurisdictions. This bill makes some progress in making BAS a workable standard. However, BAS still needs to be defined in statute, although some believe it may not be possible to precisely define what the phrase means. Nevertheless, even in the absence of a definition, the bill creates some good, workable procedural rules. The bill moves the discussion in the right direction, but still needs some revisions.

Testimony Against: None.

Persons Testifying: Genesee Adkins, Futurewise; Eric Johnson, Washington Public Ports Association; Tom Clingman, Department of Ecology; Kristen Sawin, Association of Washington Business; Andy Cook, Building Industry Association of Washington; Dan Wood, Washington Farm Bureau; and Paul Parker, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.