

---

## Local Government Committee

---

### HB 2815

**Brief Description:** Clarifying the best available science requirements to protect critical areas.

**Sponsors:** Representatives Simpson, Jarrett, Springer and Lantz; by request of Department of Community, Trade, and Economic Development.

#### Brief Summary of Bill

- Requires a Growth Management Hearings Board (Board) to adopt procedures and requirements for retaining scientific and other experts for the purpose of reviewing Growth Management Act (GMA) petitions relating to critical areas.
- Requires that in the development of critical areas policies and regulations local governments must consider the best available science and create a record showing other specified factors underlying the policies and regulations adopted.
- Authorizes the Department of Community Trade and Economic Development (Department) to collaborate with other state agencies in order to create written management recommendations that may be used by cities and counties in protecting critical areas.
- Requires that the critical areas management recommendations adopted by the Department be approved through a specified process that includes technical review, public notice, public comment, official publication, and the opportunity to petition for review by the Board.
- Authorizes a Board to hear certain petitions alleging that the critical area management recommendations developed by the Department do not comply with pertinent GMA regulations.

**Hearing Date:** 1/26/06

**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."

### **Growth Management Hearings Boards**

The GMA established three regional Growth Management Hearings Boards to review compliance with statutory deadlines, and the sufficiency of plans and development regulations adopted by cities and counties pursuant to the Act. The Boards are limited to hearing only those petitions alleging that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act, and the State Environmental Policy Act.

### **Public participation in the GMA Process**

The statutory provisions controlling the GMA planning process contain many public notice provisions and explicitly require that GMA planning jurisdictions encourage public participation in the planning process. One of the key GMA planning goals is to ensure citizen participation. The act explicitly requires that each participating county and city "...broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans."

### **Summary of Bill:**

#### **Consultation of scientific experts by the Board**

The Boards are directed to adopt procedures and requirements for retaining scientific and other experts for the purpose of reviewing GMA petitions relating to critical areas.

#### **Formal record of the critical areas ordinance development process**

In the development of critical areas policies and regulations, cities and counties must create a record showing that the best available science was considered and identify the sources of scientific information underlying the decision making process. The record must also include any other information considered during the process of developing the policies and regulations.

#### **Development and adoption of critical areas management recommendations**

The Department of Community, Trade and Economic Development (Department) is authorized to collaborate with other pertinent state agencies to create written management recommendations that *may* be used by cities and counties in protecting designated critical areas. In developing these management recommendations, the Department and participating state agencies must include the best available science and must consider regional differences among critical areas.

Before they may be adopted by the Department, the management recommendations must be approved through a formal process that includes:

- Technical review by scientists and other qualified professionals with relevant expertise and which results in a written report that is made available to the public;
- Public notice of the proposed management recommendations, including public access to the complete text;
- A public comment period that lasts for at least sixty days following the publication of the proposed management recommendations;
- Formal consideration by the Department of the public comments prior to its preliminary adoption of the proposed management recommendations;
- Publication of the proposed management recommendations following the technical review, the public comment period, and the preliminary adoption of the recommendations by the Department;
- An opportunity for individuals to challenge the proposed management recommendations through a petition filed with the Board, in which case the final adoption of the proposed regulations is delayed until the petition is resolved.

The Department is required to review its management recommendations at least once every five years and, if necessary, update the recommendations by incorporating newly developed best available science. Such updates are subject to procedural requirements analogous to those required for the adoption of the original management recommendations.

**Standard of review and the utilization of the Department's management recommendations**

A county or city that formally adopts the Department's management recommendations in the development of its critical areas policies and regulations is subject to a special standard of review if such policies or regulations are subject to legal challenge before a Board or a court. In such a case, the only issue considered by the Board or reviewing court is whether the policies and regulations are consistent with the management recommendations. If so, the Board or court must affirm the validity of the policy or regulation at issue.

However, a city or county need not adopt the Department's management recommendations in order to meet the requisite legal standards regarding critical areas protection and best available science. A county or city that chooses to not adopt these management recommendations is subject to review under general GMA standards regarding the use of best available science and the protection of critical areas.

**Board review of the Department's management recommendations**

The Board is granted the authority to hear petitions challenging the legal validity of management recommendations adopted by the Department. This authority allows the Board to hear petitions alleging either: 1) that the development of the recommendations fails to meet specified substantive and procedural requirements; or 2) that the failure of the Department to update the recommendations is "clearly erroneous."

Only those persons who formally submitted comments during the public review period preceding the adoption of the management recommendations have standing to file a petition challenging the validity of the Department's management recommendations.

The Board's review of petitions relating to the management recommendations adopted by the Department is governed by specific procedural requirements. These procedures include provisions relating to: 1) time limitations on the filing of petitions; and 2) requirements regarding the issuance of final orders by the Board.

**Appropriation:** None.

**Fiscal Note:** Available.

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