

SENATE BILL REPORT

SB 5954

As of March 14, 2005

Title: An act relating to example critical areas policies or regulations.

Brief Description: Allowing for the adoption of example critical areas policies or regulations.

Sponsors: Senators Kastama and Berkey.

Brief History:

Committee Activity: Government Operations & Elections: 2/24/05.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Staff: Genevieve Pisarski (786-7488)

Background: Under the Growth Management Act (GMA), as amended in 1995, all counties and cities must "include" the best available science in developing policies and development regulations to protect the functions and values of critical areas. Critical areas are defined as wetlands, aquifer recharge areas, fish and wildlife habitat areas, flood plains, and geologically hazardous areas. Special consideration must also be given to measures that preserve or enhance anadromous fisheries.

Summary of Bill: In fulfilling GMA requirements to designate and protect critical areas, cities and counties may adopt example policies or regulations prepared by the Department of Community, Trade, and Economic Development, the Department of Fish and Wildlife, or the Department of Ecology, provided that these example policies or regulations comply with the relevant GMA goals and critical areas requirements.

Preparation and approval of the example policies and regulations must involve the public and interested groups and organizations, in a way equivalent to the public involvement requirements of the GMA. There must be peer review by scientists and experts in the field, including some who are not employees of the originating state agency. This review must be summarized in writing and published on the web.

Upon adoption of the example policies and regulations, notice must be published in the state register and on the web that includes the dates of approval and publication and how to obtain a copy. Notice must also be provided within five days to anyone who requests a copy, by either postal or electronic mail.

The state agencies may re-approve or re-adopt example policies or regulations that were approved previously, subject to the procedural requirements for adoption of new example policies or regulations.

Example policies or regulations must be reviewed at least every seven years, if necessary to incorporate best available science that has since become available. The same procedural

requirements apply to these updates. If there is no update, notice must be published in the state register and on the web.

A policy or regulation is not considered best available science solely because it is included in an example policy or regulation.

Example policies or regulations can be appealed to the Western Washington Growth Management Hearings Board within ninety days of publication of notice. If adopted at least ninety days after publication of notice and not appealed, or if found in compliance with the example policy or regulation requirements, a city or county's adoption of an example policy or regulation may only be appealed to determine the city or county's compliance with GMA public participation and comprehensive plan update requirements.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Example policies and regulations are already available from these agencies and will now be formalized. Local governments will have a choice about using them and get some protection from appeals. Small and medium jurisdictions will have an inexpensive, quick, and easy alternative. It should be specific to smaller cities and towns. There should be a provision that the state will actually defend local governments against challenges.

Testimony Against: This is not a safe harbor and doesn't guarantee that best available science requirements are met. This still doesn't clarify what including best available science means. Peer review requirements discourage experimental and innovative measures. It's a one-size-fits-all approach and might prevent site specific technical assistance that is currently offered. There isn't really a choice; local governments will be forced to adopt these in order to avoid challenges. Critical areas ordinances appear to be singled-out over other goals. Need for rule-making and agency liability are both unclear.

Who Testified: PRO: Tim Trohimovich, Futurewise.

CON: Larry Stout, AWR; Andy Cook, BIAW; Leonard Bauer, CTED; Millard Deusen, WDFW.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Bradley J. Collins, American Planning Association.

CON: Dave Williams, AWC.