

SENATE BILL REPORT

SB 6562

As Reported By Senate Committee On:
Government Operations & Elections, February 2, 2006

Title: An act relating to critical areas safe harbor agreements.

Brief Description: Authorizing critical areas safe harbor agreements.

Sponsors: Senator Swecker.

Brief History:

Committee Activity: Government Operations & Elections: 1/24/06, 2/2/06 [DPS-WM, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6562 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Benton, Fairley, Haugen, Kline, McCaslin and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach, Ranking Minority Member.

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 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 Substitute Bill: The Department of Community, Trade, and Economic Development (CTED) will conduct a pilot project to study and develop recommendations for alternative statutory requirements, to be known as a "safe harbor agreement," that cities and counties could use to protect critical areas under the GMA. The pilot will be conducted in conjunction with the Department of Ecology (Ecology) and the Department of Fish and Wildlife (DFW). It will be on a basin scale at a location in Kittitas County and one in either Lewis or Thurston County, completed by Decemer 1, 2008, and is subject to an appropriation for this purpose in the 2006 budget.

The elements of a safe harbor agreement to be addressed by the pilot project will include the following: It will be developed collaboratively and will seek creative and locally appropriate solutions based on voluntary participation in government programs that offer financial incentives or other assistance and encourage voluntary legal commitments that protect or

enhance critical areas. Local stakeholders, property owners, and federal, state, or tribal authorities with jurisdiction over critical areas will be invited to participate in it. It will incorporate detailed components, including the goals it establishes, information it uses to balance with GMA goals and requirements in order to achieve locally appropriate implementation, binding legal commitments for voluntary projects or actions, state and local programs, legal requirements and permits, state and federal agencies and processes that are consulted, and appropriate administrative procedures for implementation and enforcement.

Substitute Bill Compared to Original Bill: The proposal to adopt a safe harbor agreement is replaced by the pilot project to study it and develop recommendations.

Appropriation: None.

Fiscal Note: Requested on January 23, 2006.

Committee/Commission/Task Force Created: No.

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

Testimony For: The safe harbor agreement can be an alternative or a complement to regulations. It is intended to result in the same protection as regulations. It can be either comprehensive or focused. The state agencies will have to approve it and be at the table to develop it. Enforcement will be through contractual obligations. It will provide flexibility and improve protection by causing planning and action to occur earlier on.

Testimony Against: The results will be the opposite of "safe harbor," because this will result in challenges and lawsuits over ambiguous provisions. It's unclear who the contractual parties will be.

Testimony Other: This is a good idea in concept but needs work.

Who Testified: PRO: Sen. Swecker, Prime Sponsor; Dave Williams, AWC.

CON: Clayton Hill, BIAW.

OTHER: Jack Field, Washington Cattlemen's Association; Tom Clingman, Department of Ecology.