

SENATE BILL REPORT

SB 6569

As Reported By Senate Committee On:
Government Operations & Elections, February 2, 2006
Ways & Means, February 7, 2006

Title: An act relating to clarifying the best available science requirements to protect critical areas.

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

Sponsors: Senators Kastama and Swecker; by request of Department of Community, Trade, and Economic Development.

Brief History:

Committee Activity: Government Operations & Elections: 1/24/06, 2/2/06 [DPS, DNP].
Ways & Means: 2/7/06 [DPS(GO), DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6569 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton and Mulliken.

Staff: Genevieve Pisarski (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6569 as recommended by Committee on Government Operations & Elections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Parlette, Pflug, Roach and Schoesler.

Staff: Kirstan Arestad (786-7708)

Background: Under the Growth Management Act (GMA), as amended in 1995, all counties and cities must "include" the best available science in adopting 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: GMA requirements to designate and protect critical areas will apply to potential impacts of future development. In fulfilling these requirements, cities and counties will show on the record that best available science was included by indicating the specific policies and regulations and the sources of scientific information and will also show what other information was included. Cities and counties will have the option of using management recommendations adopted by the Department of Community, Trade, and Economic Development (CTED), together with other state agencies, using the best available science, and considering regional differences.

If a city or county uses all or part of these management recommendations, the use will be subject to review by a Growth Management Hearings Board (Board) or court only for consistency with the corresponding portion of the recommendations. The recommendations will not be treated as the only means for complying with requirements to protect critical areas or as a minimum standard.

Management recommendations developed by CTED and state agencies will receive technical review by scientists and other experts with the results summarized and published on CTED's website. Notice will then be published both in the state register and on the web and remain available for review and comment for 60 days. Comments will be considered and will be posted as well. After that, notice of adoption will be posted. If no petition for review is filed at the end of 60 days, a notice of final adoption will be published. If a petition is filed, final adoption will be delayed until the petition is resolved.

The management recommendations will be updated at least every 5 years to incorporate best available science that has become available or otherwise comply with the GMA. Notice of a proposed update or decision not to update will be published in the state register and on the web. The same procedures for adoption and appeal as apply to initial management recommendations will apply to updates. A decision not to update will be appealable only on the grounds that it is clearly erroneous.

Appeals of management recommendations or updates will be filed only by those who have submitted comments. Appeals will be heard by a panel that includes at least 2 members of each of the 3 boards. A final order will be issued within 270 days of the appeal or, in the case of multiple appeals, within 180 days of the last one to be consolidated, subject to existing provisions for extension. The boards will adopt procedures and criteria for their use of scientific and other experts in consultation with cities and counties.

Substitute Bill Compared to Original Bill: GMA requirements to designate and protect critical areas are limited to potential impacts of future development.

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: Local programs to protect critical areas are very important, as illustrated by all the flooding and landslides this winter. This proposal will help local governments demonstrate that they have used best available science and give them options. Cities have asked for the management recommendations; they don't have the expertise or the funds to do this. It's also important that the state agencies will work together to eliminate inconsistencies in their positions. The GMA was intended to deal with changes to existing conditions, and this needs to be clarified. Some clarification should be added that appeals of management recommendations won't prevent the information from being used for other purposes, clearly erroneous, and that the standard of review is the one used elsewhere in the GMA.

Testimony Against: The management recommendations introduce a "top down" approach that is contrary to the scheme of the GMA. Although they are optional, they will be treated as the standard, just like the CTED model ordinances are now. Land is taken out of productive economic use.

Testimony Other: Although their purpose is a good one, the management recommendations raise concerns about their legal significance and their potential for generating disagreement.

Who Testified: PRO: Dave Williams, AWC; Leonard Bauer, CTED.

CON: Timothy Harris, BIAW; Chris McCabe, AWB; Dan Wood, Farm Bureau.

OTHER: Eric D. Johnson, WA Public Ports Assoc.

Signed in, Unable to Testify & Submitted Written Testimony: Kaleen Cottingham, Futurewise.