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HOUSE BILL 2077

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State of Washington                      59th Legislature                      2005 Regular Session

By Representative Simpson

Read first time 02/16/2005. Referred to Committee on Local Government.

1            AN ACT Relating to example critical areas policies or regulations;  
2 and amending RCW 36.70A.172, 36.70A.280, and 36.70A.290.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to  
5 read as follows:

6            (1) In designating and protecting critical areas under this  
7 chapter, counties and cities shall include the best available science  
8 in developing policies and development regulations to protect the  
9 functions and values of critical areas. In addition, counties and  
10 cities shall give special consideration to conservation or protection  
11 measures necessary to preserve or enhance anadromous fisheries.

12            (2) In fulfilling some or all of the requirements of this section  
13 and RCW 36.70A.060, a city or county may adopt example critical areas  
14 policies or regulations prepared by the department of community, trade,  
15 and economic development, the department of fish and wildlife, or the  
16 department of ecology, or their successor state agencies, that comply  
17 with the requirements of this section.

18            (a) The example policies or regulations must comply with this  
19 section and RCW 36.70A.020 (8) through (11) and 36.70A.060.

1       (b) In preparing and approving the example policies or regulations,  
2 the state agency shall broadly involve the public and interested groups  
3 and organizations. The public involvement must be equivalent to that  
4 required by RCW 36.70A.020(11), 36.70A.035, 36.70A.130, and 36.70A.140.  
5 Opportunities for public involvement must be provided for state  
6 agencies with expertise, federal agencies with expertise, and Indian  
7 tribes and nations.

8       (c) The proposed example policies or regulations must be peer  
9 reviewed by scientists and other professionals with expertise in the  
10 fields covered by the policies or regulations. Some of the scientists  
11 or professionals conducting the peer review may not be employees of the  
12 department proposing the example policies or regulations. The results  
13 of the peer review must be summarized in writing and be distributed  
14 through the state agency's web site.

15       (d) After the state agency gives final approval to the example  
16 policies or regulations, the state agency shall publish a notice of  
17 adoption in the state register and on the state agency's web site. The  
18 notice must include the date the example policy or regulation was given  
19 final approval by the state agency, how to obtain a copy, and the date  
20 of publication, and may include other information as the agency decides  
21 to include. A copy of this notice must be mailed to any person or  
22 organization who requested a copy of the notice within five days of the  
23 publication of the notice in the state register. With the approval of  
24 the person or agency who requested a copy, the notice may be delivered  
25 by electronic mail.

26       (e) Example policies or regulations that otherwise comply with this  
27 section but were given final approval before the effective date of this  
28 section, may be reapproved by the state agency and the notice required  
29 in (d) of this subsection given. Alternatively, the state agency may  
30 readopt the example policies or regulations following the full  
31 requirements of this subsection (2).

32       (f) At least once every seven years, the state agency that gave  
33 final approval to example policies or regulations shall review and, if  
34 necessary to incorporate best available science that became available  
35 after it prepared the example policies or requirements or to otherwise  
36 comply with this section, update them. If the state agency decides to  
37 update the example policies or regulations, it shall comply with this  
38 subsection (2) including giving the notice required by (d) of this

1 subsection. The state agency shall publish a notice of its decision  
2 not to update the example policies or regulations in the state register  
3 and on the agency web site. The notice must include the date the  
4 example policy or regulation was given final approval by the state  
5 agency, how to obtain a copy, and the date of publication, and may  
6 include other information as the agency decides to include. A copy of  
7 this notice must be mailed to any person or organization who requested  
8 a copy of the notice when the policy or regulation was last adopted  
9 within five days of the publication of the notice in the state  
10 register. With the approval of the person or agency who requested a  
11 copy, the notice may be delivered by electronic mail.

12 (g) A policy or regulation is not considered best available science  
13 solely because it is included in a policy or regulation adopted under  
14 this subsection (2).

15 (3) If it determines that advice from scientific or other experts  
16 is necessary or will be of substantial assistance in reaching its  
17 decision, a growth management hearings board may retain scientific or  
18 other expert advice to assist in reviewing a petition under RCW  
19 36.70A.290 that involves critical areas.

20 **Sec. 2.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read  
21 as follows:

22 (1) A growth management hearings board shall hear and determine  
23 only those petitions alleging either:

24 (a) Except as provided in subsection (6) of this section, that a  
25 state agency, county, or city planning under this chapter is not in  
26 compliance with the requirements of this chapter, chapter 90.58 RCW as  
27 it relates to the adoption of shoreline master programs or amendments  
28 thereto, or chapter 43.21C RCW as it relates to plans, development  
29 regulations, or amendments, adopted under RCW 36.70A.040 or chapter  
30 90.58 RCW; ((~~or~~))

31 (b) That the twenty-year growth management planning population  
32 projections adopted by the office of financial management pursuant to  
33 RCW 43.62.035 should be adjusted; or

34 (c) That an example policy or regulation given final approval by a  
35 state agency under RCW 36.70A.172(2) complies with RCW 36.70A.172(2) or  
36 chapter 43.21C RCW. Any appeal under this subsection (1)(c) must be

1 filed with the growth management hearings board that has jurisdiction  
2 over Thurston county.

3 (2) A petition may be filed only by: (a) The state, or a county or  
4 city that plans under this chapter; (b) a person who has participated  
5 orally or in writing before the county or city regarding the matter on  
6 which a review is being requested; (c) a person who is certified by the  
7 governor within sixty days of filing the request with the board; or (d)  
8 a person qualified pursuant to RCW 34.05.530.

9 (3) For purposes of this section "person" means any individual,  
10 partnership, corporation, association, state agency, governmental  
11 subdivision or unit thereof, or public or private organization or  
12 entity of any character.

13 (4) To establish participation standing under subsection (2)(b) of  
14 this section, a person must show that his or her participation before  
15 the county or city was reasonably related to the person's issue as  
16 presented to the board.

17 (5) When considering a possible adjustment to a growth management  
18 planning population projection prepared by the office of financial  
19 management, a board shall consider the implications of any such  
20 adjustment to the population forecast for the entire state.

21 The rationale for any adjustment that is adopted by a board must be  
22 documented and filed with the office of financial management within ten  
23 working days after adoption.

24 If adjusted by a board, a county growth management planning  
25 population projection shall only be used for the planning purposes set  
26 forth in this chapter and shall be known as a "board adjusted  
27 population projection". None of these changes shall affect the  
28 official state and county population forecasts prepared by the office  
29 of financial management, which shall continue to be used for state  
30 budget and planning purposes.

31 (6) If adopted more than ninety days after the state agency gives  
32 notice as required by RCW 36.70A.172(2) and no appeals are filed or  
33 after a growth management hearings board, either originally or on  
34 remand from the highest court to which it is appealed, decides the  
35 example policy or regulation complies with RCW 36.70A.172(2) and  
36 chapter 43.21C RCW, whichever date is later, then the adoption by a  
37 city or county of an example policy or regulation given final approval

1 by a state agency under RCW 36.70A.172(2) may only be appealed to  
2 determine compliance by the city or county with RCW 36.70A.020(11),  
3 36.70A.035, 36.70A.130, and 36.70A.140.

4 **Sec. 3.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to  
5 read as follows:

6 (1) All requests for review to a growth management hearings board  
7 shall be initiated by filing a petition that includes a detailed  
8 statement of issues presented for resolution by the board. The board  
9 shall render written decisions articulating the basis for its holdings.  
10 The board shall not issue advisory opinions on issues not presented to  
11 the board in the statement of issues, as modified by any prehearing  
12 order.

13 (2) All petitions relating to whether or not an adopted  
14 comprehensive plan, development regulation, or permanent amendment  
15 thereto, is in compliance with the goals and requirements of this  
16 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days  
17 after publication by the legislative bodies of the county or city.

18 (a) Except as provided in (c) of this subsection, the date of  
19 publication for a city shall be the date the city publishes the  
20 ordinance, or summary of the ordinance, adopting the comprehensive plan  
21 or development regulations, or amendment thereto, as is required to be  
22 published.

23 (b) Promptly after adoption, a county shall publish a notice that  
24 it has adopted the comprehensive plan or development regulations, or  
25 amendment thereto.

26 Except as provided in (c) of this subsection, for purposes of this  
27 section the date of publication for a county shall be the date the  
28 county publishes the notice that it has adopted the comprehensive plan  
29 or development regulations, or amendment thereto.

30 (c) For local governments planning under RCW 36.70A.040, promptly  
31 after approval or disapproval of a local government's shoreline master  
32 program or amendment thereto by the department of ecology as provided  
33 in RCW 90.58.090, the local government shall publish a notice that the  
34 shoreline master program or amendment thereto has been approved or  
35 disapproved by the department of ecology. For purposes of this  
36 section, the date of publication for the adoption or amendment of a

1 shoreline master program is the date the local government publishes  
2 notice that the shoreline master program or amendment thereto has been  
3 approved or disapproved by the department of ecology.

4 (3) Unless the board dismisses the petition as frivolous or finds  
5 that the person filing the petition lacks standing, or the parties have  
6 filed an agreement to have the case heard in superior court as provided  
7 in RCW 36.70A.295, the board shall, within ten days of receipt of the  
8 petition, set a time for hearing the matter.

9 (4) The board shall base its decision on the record developed by  
10 the city, county, or the state and supplemented with additional  
11 evidence if the board determines that such additional evidence would be  
12 necessary or of substantial assistance to the board in reaching its  
13 decision.

14 (5) The board, shall consolidate, when appropriate, all petitions  
15 involving the review of the same comprehensive plan or the same  
16 development regulation or regulations.

17 (6) All petitions relating to whether or not an example policy or  
18 regulation adopted by a state agency complies with RCW 36.70A.172(2) or  
19 chapter 90.58 or 43.21C RCW must be filed within ninety days after  
20 publication of the public notice required by RCW 36.70A.172(2) (d)  
21 through (f).

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