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**SUBSTITUTE SENATE BILL 6569**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama and Swecker; by request of Department of Community, Trade, and Economic Development)

READ FIRST TIME 02/03/06.

1       AN ACT Relating to clarifying the best available science  
2 requirements to protect critical areas; and amending RCW 36.70A.172,  
3 36.70A.280, 36.70A.290, and 36.70A.300.

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

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

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

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

1 consultation with cities and counties planning under this chapter for  
2 retaining scientific or other experts under this section and RCW  
3 36.70A.270.

4 (3) In the development of critical areas policies and development  
5 regulations considered for adoption to protect the functions and values  
6 of critical areas as potentially impacted by future development  
7 activities, counties and cities must address each of the following on  
8 the record:

9 (a) To demonstrate that the best available science was included:

10 (i) The specific policies and development regulations adopted to  
11 protect the functions and values of critical areas as potentially  
12 impacted by future development activities; and

13 (ii) The sources of best available scientific information included  
14 in the decision making; and

15 (b) Any other information, including legal, social, cultural,  
16 economic, and political information, and other programs that may have  
17 been included in developing critical areas policies and regulations.

18 (4)(a) The department, in collaboration with other state agencies  
19 with jurisdiction and expertise, may adopt written management  
20 recommendations for optional use by cities and counties in protecting  
21 the functions and values of one or more critical areas as potentially  
22 impacted by future development activities listed in RCW 36.70A.030(5).

23 (b) State agencies must include the best available science in  
24 developing management recommendations for protecting the functions and  
25 values of critical areas as potentially impacted by future development  
26 activities, with consideration of regional differences among critical  
27 areas.

28 (c) Management recommendations for cities and counties proposed by  
29 the department in collaboration with other state agencies under this  
30 subsection must be approved through the following process:

31 (i) The proposed management recommendations shall be submitted for  
32 technical review by scientists and other professionals with expertise  
33 in the relevant scientific and professional disciplines. The reviewing  
34 scientists and other professionals with expertise shall be from  
35 organizations including but not limited to academic institutions;  
36 federal, state, local, and tribal governments; and the private sector.  
37 The results of this technical review must be summarized in writing and  
38 made available on the department's web site;

1        (ii) Following completion of the technical review process in (c)(i)  
2 of this subsection, notice of the proposed management recommendations  
3 must be published in the state register, and the department must  
4 maintain the full text of the proposed management recommendations on  
5 its web site and accept public comment for a minimum of sixty days from  
6 the date of publication. Comments received during this public review  
7 period must be made available on the department's web site, and will be  
8 considered by the department, in collaboration with other state  
9 agencies with jurisdiction and expertise. Summaries may be provided in  
10 lieu of voluminous or repetitive comments;

11        (iii) At the close of the technical review process and the public  
12 review period, the department may adopt the management recommendations  
13 by causing a notice of proposed management recommendations for  
14 protecting the functions and values of critical areas as potentially  
15 impacted by future development activities to be published in the state  
16 register and on the department's web site. Notice shall also be  
17 provided to persons submitting comments on the proposed management  
18 recommendations during the public review period; and

19        (iv) At the end of sixty days from the date the notice of proposed  
20 management recommendations for protecting the functions and values of  
21 critical areas as potentially impacted by future development activities  
22 is published in the state register, if no petition for review of the  
23 management recommendation has been filed under RCW 36.70A.290, the  
24 department shall cause a notice of adoption of final management  
25 recommendations for protecting the functions and values of critical  
26 areas as potentially impacted by future development activities to be  
27 published in the state register and on the department's web site. If  
28 a petition for review is filed within sixty days, the publication of a  
29 notice of final management recommendations for protecting the functions  
30 and values of critical areas as potentially impacted by future  
31 development activities shall be delayed until the petition is finally  
32 resolved and the management recommendations are found to comply with  
33 this chapter.

34        (d) At least once every five years, the department, in  
35 collaboration with other state agencies with jurisdiction and  
36 expertise, shall review and, if necessary to incorporate best available  
37 science that has become available or otherwise to comply with this  
38 chapter, update the management recommendations adopted under this

1 subsection. The department shall cause a notice of proposed update of  
2 management recommendations for protecting the functions and values of  
3 critical areas as potentially impacted by future development activities  
4 or a notice of a decision not to update management recommendations for  
5 protecting the functions and values of critical areas as potentially  
6 impacted by future development activities to be published in the state  
7 register and on the department's web site.

8 (i) Following publication of a notice of proposed update of  
9 management recommendations, amendments to the management  
10 recommendations shall be adopted through the process set forth in (c)  
11 of this subsection and shall be appealable in the same manner and to  
12 the same extent as the initial management recommendations.

13 (ii) Following publication of a notice of a decision not to update  
14 management recommendations, any interested person may file a petition  
15 for review of the department's decision within the time provided in RCW  
16 36.70A.290(3). The sole issue before the growth management hearings  
17 board shall be whether the department's decision not to update  
18 management recommendations under (d) of this subsection was clearly  
19 erroneous.

20 (e) Where a county or city states specifically that it has chosen  
21 to develop and adopt all or a portion of its critical areas policies  
22 and regulations through application of final management recommendations  
23 adopted under this subsection, the growth management hearings board or  
24 a reviewing court shall review the county or city policies and  
25 regulations only for consistency with those portions of the final  
26 management recommendations specified by the county or city. The board  
27 or court shall review all other portions of critical areas policies and  
28 regulations for compliance with subsections (1) and (3) of this  
29 section.

30 (f) Where a county or city chooses not to apply final management  
31 recommendations adopted under this section when developing its critical  
32 areas policies and regulations, the growth management hearings board or  
33 a reviewing court shall review the policies and regulations for  
34 compliance with subsections (1) and (3) of this section.

35 (g) A growth management hearings board or a reviewing court shall  
36 not consider final management recommendations adopted under this  
37 subsection to be the only means of complying with this chapter's  
38 critical areas protection requirements and best available science

1 requirements, nor shall a board or court consider final management  
2 recommendations to establish a minimum standard for identifying the  
3 best available science or protecting the functions and values of  
4 critical areas as potentially impacted by future development  
5 activities.

6 (h) This subsection does not alter the requirements in RCW  
7 36.70A.106.

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

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

12 (a) That a state agency, county, or city planning under this  
13 chapter is not in compliance with the requirements of this chapter,  
14 chapter 90.58 RCW as it relates to the adoption of shoreline master  
15 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
16 plans, development regulations, or amendments, adopted under RCW  
17 36.70A.040 or chapter 90.58 RCW; ~~((or))~~

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

21 (c) That management recommendations adopted by the department under  
22 RCW 36.70A.172(4) do not comply with the requirements of RCW  
23 36.70A.172(4), or that the department's decision not to update  
24 management recommendations under RCW 36.70A.172(4)(d) is clearly  
25 erroneous. Any appeal under this subsection (1)(c) must be heard by a  
26 panel comprised of at least two members from each of the three growth  
27 management hearings boards.

28 (2) Except for petitions filed under subsection (1)(c) of this  
29 section, a petition may be filed only by: (a) The state, or a county  
30 or city that plans under this chapter; (b) a person who has  
31 participated orally or in writing before the county or city regarding  
32 the matter on which a review is being requested; (c) a person who is  
33 certified by the governor within sixty days of filing the request with  
34 the board; or (d) a person qualified pursuant to RCW 34.05.530. A  
35 petition may be filed under subsection (1)(c) of this section only by  
36 a person who has submitted comments during the public review period  
37 specified in RCW 36.70A.172(4)(c)(ii).

1 (3) For purposes of this section "person" means any individual,  
2 partnership, corporation, association, state agency, governmental  
3 subdivision or unit thereof, Indian tribe, or public or private  
4 organization or entity of any character.

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

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

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

16 If adjusted by a board, a county growth management planning  
17 population projection shall only be used for the planning purposes set  
18 forth in this chapter and shall be known as a "board adjusted  
19 population projection". None of these changes shall affect the  
20 official state and county population forecasts prepared by the office  
21 of financial management, which shall continue to be used for state  
22 budget and planning purposes.

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

25 (1) All requests for review to a growth management hearings board  
26 shall be initiated by filing a petition that includes a detailed  
27 statement of issues presented for resolution by the board. The board  
28 shall render written decisions articulating the basis for its holdings.  
29 The board shall not issue advisory opinions on issues not presented to  
30 the board in the statement of issues, as modified by any prehearing  
31 order.

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

1 (a) Except as provided in (c) of this subsection, the date of  
2 publication for a city shall be the date the city publishes the  
3 ordinance, or summary of the ordinance, adopting the comprehensive plan  
4 or development regulations, or amendment thereto, as is required to be  
5 published.

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

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

13 (c) For local governments planning under RCW 36.70A.040, promptly  
14 after approval or disapproval of a local government's shoreline master  
15 program or amendment thereto by the department of ecology as provided  
16 in RCW 90.58.090, the local government shall publish a notice that the  
17 shoreline master program or amendment thereto has been approved or  
18 disapproved by the department of ecology. For purposes of this  
19 section, the date of publication for the adoption or amendment of a  
20 shoreline master program is the date the local government publishes  
21 notice that the shoreline master program or amendment thereto has been  
22 approved or disapproved by the department of ecology.

23 (3) All petitions relating to whether management recommendations  
24 adopted by the department under RCW 36.70A.172(4) comply with the  
25 requirements of RCW 36.70A.172(4) must be filed within sixty days after  
26 the notice of proposed management recommendations for protecting the  
27 functions and values of critical areas as potentially impacted by  
28 future development activities is published in the state register  
29 pursuant to RCW 36.70A.172(4)(c)(iii).

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

35 ~~((4))~~ (5) The board shall base its decision on the record  
36 developed by the city, county, or the state and supplemented with  
37 additional evidence if the board determines that such additional

1 evidence would be necessary or of substantial assistance to the board  
2 in reaching its decision.

3 ~~((+5))~~ (6) The board, shall consolidate, when appropriate, all  
4 petitions involving the review of the same comprehensive plan or the  
5 same development regulation or regulations.

6 **Sec. 4.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
7 read as follows:

8 (1) The board shall issue a final order that shall be based  
9 exclusively on whether or not a state agency, county, or city is in  
10 compliance with the requirements of this chapter, chapter 90.58 RCW as  
11 it relates to adoption or amendment of shoreline master programs, or  
12 chapter 43.21C RCW as it relates to adoption of plans, development  
13 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
14 90.58 RCW.

15 (2)(a) Except as provided in (b) and (c) of this subsection, the  
16 final order shall be issued within one hundred eighty days of receipt  
17 of the petition for review, or, if multiple petitions are filed, within  
18 one hundred eighty days of receipt of the last petition that is  
19 consolidated.

20 (b) The board may extend the period of time for issuing a decision  
21 to enable the parties to settle the dispute if additional time is  
22 necessary to achieve a settlement, and (i) an extension is requested by  
23 all parties, or (ii) an extension is requested by the petitioner and  
24 respondent and the board determines that a negotiated settlement  
25 between the remaining parties could resolve significant issues in  
26 dispute. The request must be filed with the board not later than seven  
27 days before the date scheduled for the hearing on the merits of the  
28 petition. The board may authorize one or more extensions for up to  
29 ninety days each, subject to the requirements of this section.

30 (c) In a review under RCW 36.70A.280(1)(c), the board shall issue  
31 a final order within two hundred seventy days of receipt of the  
32 petition for review, or, if multiple petitions are filed, within one  
33 hundred eighty days of receipt of the last petition that is  
34 consolidated. The board may extend this deadline as provided in (b) of  
35 this subsection.

36 (3) In the final order, the board shall either:



1 (a) Find that the state agency, county, or city is in compliance  
2 with the requirements of this chapter, chapter 90.58 RCW as it relates  
3 to the adoption or amendment of shoreline master programs, or chapter  
4 43.21C RCW as it relates to adoption of plans, development regulations,  
5 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

6 (b) Find that the state agency, county, or city is not in  
7 compliance with the requirements of this chapter, chapter 90.58 RCW as  
8 it relates to the adoption or amendment of shoreline master programs,  
9 or chapter 43.21C RCW as it relates to adoption of plans, development  
10 regulations, and amendments thereto, under RCW 36.70A.040 or chapter  
11 90.58 RCW, in which case the board shall remand the matter to the  
12 affected state agency, county, or city. The board shall specify a  
13 reasonable time not in excess of one hundred eighty days, or such  
14 longer period as determined by the board in cases of unusual scope or  
15 complexity, within which the state agency, county, or city shall comply  
16 with the requirements of this chapter. The board may require periodic  
17 reports to the board on the progress the jurisdiction is making towards  
18 compliance.

19 (4) Unless the board makes a determination of invalidity as  
20 provided in RCW 36.70A.302, a finding of noncompliance and an order of  
21 remand shall not affect the validity of comprehensive plans and  
22 development regulations during the period of remand.

23 (5) Any party aggrieved by a final decision of the hearings board  
24 may appeal the decision to superior court as provided in RCW 34.05.514  
25 or 36.01.050 within thirty days of the final order of the board.

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