Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Local Government Committee

HB 2046

Brief Description: Requiring the use of the scientific method when regulating for the protection of environmentally critical areas.

Sponsors: Representatives Schindler and Springer.

Brief Summary of Bill

- Eliminates "best available science" as the standard for the development of policies and regulations to protect critical areas under the Growth Management Act and adopts a new standard based on the scientific methodology required for the creation of Shoreline Management Act master programs.
- Specifies that the scientific methods required under the act are satisfied if buffers required in a critical areas ordinance are within the range of those regulations previously adopted by any local government based on best available science for the same category or type of critical area.

Hearing Date: 2/15/07

Staff: Thamas Osborn (786-7129).

Background:

Growth Management Act Planning Requirements

The Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Twenty-nine of 39 counties, and the cities within those 29 counties, are required or have chosen to comply with the major requirements of the GMA.

Critical Areas and Best Available Science

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In addition to other GMA requirements, all local governments must designate and protect critical areas. Critical areas are defined by statute to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Each county and city must include the "best available science" in developing policies and development regulations to protect the functions and values of critical areas. The GMA does not define "best available science."

Shoreline Master Programs and the Requisite Scientific Methodology

The Shoreline Management Act (SMA) encompasses the statutory scheme governing the use of state shorelines and provides for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and enjoyment and creates preference criteria listed in prioritized order that must be used by state and local governments in regulating shoreline uses.

The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines are required to adopt master programs that regulate land use activities in shoreline areas. These programs must be consistent with guidelines developed by the Department of Ecology (DOE) and are subject to approval by the DOE.

Local governments and the DOE are required to follow a prescribed scientific methodology in preparing master programs and must, "to the extent feasible":

- Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;
- Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;
- Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;
- Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;
- Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;
- Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

Buffers for the Protection of Critical Areas

Buffer areas are commonly used to protect riparian habitats and other natural areas vulnerable to the effects of erosion, devegetation, and runoff containing toxic substances that can degrade water quality and/or animal habitat. Typically, a buffer consists of a defined area of specified width adjacent to a riparian zone or environmentally critical area, in which native vegetation is preserved or restored, and is protected from either development or agricultural uses such as livestock grazing. The creation, restoration, and maintenance of buffers are encouraged by state and federal agencies as a means of restoring and preserving sensitive environmental areas. Although not explicitly required by the Growth Management Act, buffer requirements are often included in local ordinances for the protection of critical environmental areas.

Summary of Bill:

The GMA requirement that the "best available science" be used in developing the policies and regulations to protect the "functions and values" of critical areas is replaced by a different scientific standard. Under this new standard, counties and cities must utilize the scientific methodology required for the creation of Shorelines Management Act master programs to develop policies and development regulations for the protection of critical areas. These policies and development regulations must assure "no net loss" of the functions and values of critical areas as they existed at the time of their designation pursuant to GMA requirements.

The scientific methods required under the act are satisfied if buffers required in a critical areas ordinance are within the range of those regulations previously adopted by any local government based on best available science for the same category or type of critical area.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.