
SENATE BILL 5547

State of Washington

63rd Legislature

2013 Regular Session

By Senators Ranker, Litzow, Shin, and Kline

Read first time 02/04/13. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to addressing ocean acidification by taking action
2 on the recommendations of the governor's blue ribbon panel on ocean
3 acidification; amending RCW 36.70A.110; adding a new chapter to Title
4 43 RCW; and recodifying RCW 43.143.005, 43.143.010, 43.143.020,
5 43.143.030, 43.143.900, 43.143.901, and 43.143.902.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the levels of
8 acidification in ocean waters, including Washington's coastal and Puget
9 Sound waters, are increasing at an alarming rate, and that the increase
10 in acidity in ocean waters is primarily human caused. Ocean
11 acidification is caused both by increased absorption by seawater of
12 carbon dioxide from the atmosphere and coastal and estuarine waters may
13 be additionally affected by pollutants in runoff from land-based
14 activities. Ocean acidification harms a broad spectrum of the marine
15 ecosystem and is particularly harmful to organisms such as shellfish
16 that are "calcifiers" and unable to form durable shells and other hard
17 body parts in corrosive acidic water conditions. Mitigating ocean
18 acidification is vital to maintaining the state's strong shellfish

1 industry, which generates an estimated three thousand direct and
2 indirect jobs and two hundred seventy million dollars annually to the
3 state's economy.

4 The legislature finds that the blue ribbon panel on ocean
5 acidification, convened by governor Gregoire in 2012, has issued a
6 report entitled "Ocean Acidification: From Knowledge to Action," which
7 outlines several recommendations for strengthening the scientific
8 monitoring, research, and analysis regarding the causes and trends in
9 ocean acidification, and for taking action to confront this challenge.
10 The purpose of this act is to ensure effective coordination of the
11 programs and scientific research regarding ocean acidification and to
12 provide policies and response tools to respond to the adverse impacts
13 to the state's waters from localized sources of pollutant discharges.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Council" means the Washington marine resources protection
17 council created in section 3 of this act.

18 (2) "Ocean and Puget Sound" means all salt waters lying within the
19 state to the ordinary high water mark. For the purposes of
20 consultation and to the extent permissible under federal law, the term
21 also includes those marine waters adjacent to the state and within the
22 exclusive economic zone under the jurisdiction of the United States
23 government.

24 (3) "Panel" and "ocean acidification panel" means the ocean
25 acidification blue ribbon panel commissioned by the governor, whose
26 report and recommendations were provided to the governor in November
27 2012.

28 NEW SECTION. **Sec. 3.** (1) The Washington marine resources
29 protection council is created within the office of the governor.

30 (2) The council shall be composed of:

31 (a) The governor, or the governor's designee, who shall serve as
32 the chair of the council;

33 (b) The commissioner of public lands, or the commissioner's
34 designee;

35 (c) Two members of the senate, appointed by the president of the
36 senate;

1 (d) Two members of the house of representatives, appointed by the
2 speaker of the house of representatives;

3 (e) One representative of federally recognized Indian tribes with
4 reservations lying within or partially within counties bordering the
5 outer coast, if selected by action of all of the governing bodies of
6 all federally recognized Indian tribes in such an area;

7 (f) One representative of federally recognized Indian tribes with
8 reservations lying within or partially within counties bordering Puget
9 Sound, if selected by action of all of the governing bodies of all
10 federally recognized Indian tribes in such an area;

11 (g) One representative of ports marine navigation and
12 transportation interests, appointed by the governor upon consultation
13 with the Washington public ports association;

14 (h) One representative of coastal counties and one representative
15 of Puget Sound counties, appointed by the governor upon consultation
16 with the Washington state association of counties;

17 (i) One representative of coastal cities and one representative of
18 Puget Sound cities, appointed by the governor upon consultation with
19 the association of Washington cities;

20 (j) One representative of marine commerce, appointed by the
21 governor;

22 (k) One representative of commercial fishing, appointed by the
23 governor;

24 (l) One representative of recreational fishing, appointed by the
25 governor;

26 (m) One representative of marine recreation and tourism, other than
27 fishing, appointed by the governor;

28 (n) The chair of the Washington coastal marine advisory committee
29 established by the department of ecology;

30 (o) The chair of the leadership council of the Puget Sound
31 partnership;

32 (p) The director of the department of ecology;

33 (q) The director of the department of fish and wildlife; and

34 (r) The chair of the Northwest Straits commission.

35 (3) The governor shall make the initial appointments of the members
36 under subsection (2)(g) through (m) of this section by September 1,
37 2013. The initial members appointed under subsection (2)(g) through
38 (m) of this section must be appointed as follows:

1 (a) Two of the members must be appointed for a term of two years;

2 (b) Two of the members must be appointed for a term of three years;

3 and

4 (c) Three of the members must be appointed for a term of four
5 years.

6 (4) With the exception of the terms of the initial members, each
7 member must be appointed for terms of four years, except that a person
8 chosen to fill a vacancy must be appointed only for the unexpired term
9 of the vacant position.

10 (5) Any member appointed by the governor may be removed by the
11 governor for cause.

12 (6) Members whose terms expire continue to serve until reappointed
13 or replaced by a new member.

14 (7) A majority of the voting members of the council constitutes a
15 quorum for the transaction of business.

16 (8) Council decisions and actions require majority vote approval of
17 all public members appointed under subsection (3) of this section.

18 NEW SECTION. **Sec. 4.** (1) The council may enter interagency
19 agreements with any state agency for the assignment of state employees
20 on a temporary basis to assist the council in the performance of its
21 functions.

22 (2) The members of the council appointed pursuant to section 3(3)
23 of this act may be reimbursed for expenses as a class one group
24 pursuant to RCW 43.03.220.

25 (3) The chair of the council shall schedule meetings and establish
26 the agenda. The first meeting of the council must be scheduled by
27 November 1, 2013. The council shall meet at least twice per calendar
28 year. At each meeting the council shall afford an opportunity to the
29 public to comment upon agenda items and other matters relating to the
30 protection and conservation of the state's ocean resources.

31 NEW SECTION. **Sec. 5.** The council shall have the following powers
32 and duties:

33 (1) To advise the governor on the adoption, implementation, and
34 revision of policies relating to the protection and conservation of
35 ocean resources;

1 (2) To coordinate the implementation of measures to mitigate the
2 impacts of ocean acidification pursuant to this act;

3 (3) To advance the state's ocean and Puget Sound resources policies
4 in national, regional, and west coast multistate forums;

5 (4) To provide a forum for the public discussion of ocean and Puget
6 Sound resources policies and programs; and

7 (5) To perform other functions relating to the protection of ocean
8 and Puget Sound resources as the governor or legislature may assign to
9 the council.

10 NEW SECTION. **Sec. 6.** The council may form such technical or
11 scientific committees as it finds appropriate to aid the council in the
12 performance of its powers and duties.

13 NEW SECTION. **Sec. 7.** (1) The council shall coordinate actions
14 among state agencies and local governments to implement the
15 recommendations of the ocean acidification panel and other actions
16 necessary to mitigate the impacts of increasing acidification in the
17 state's ocean and Puget Sound waters.

18 (2) Each state agency shall use its existing authorities to
19 implement the panel's recommendations to the maximum extent
20 practicable.

21 **Sec. 8.** RCW 36.70A.110 and 2010 c 211 s 1 are each amended to read
22 as follows:

23 (1) Each county that is required or chooses to plan under RCW
24 36.70A.040 shall designate an urban growth area or areas within which
25 urban growth shall be encouraged and outside of which growth can occur
26 only if it is not urban in nature. Each city that is located in such
27 a county shall be included within an urban growth area. An urban
28 growth area may include more than a single city. An urban growth area
29 may include territory that is located outside of a city only if such
30 territory already is characterized by urban growth whether or not the
31 urban growth area includes a city, or is adjacent to territory already
32 characterized by urban growth, or is a designated new fully contained
33 community as defined by RCW 36.70A.350.

34 (2) Based upon the growth management population projection made for
35 the county by the office of financial management, the county and each

1 city within the county shall include areas and densities sufficient to
2 permit the urban growth that is projected to occur in the county or
3 city for the succeeding twenty-year period, except for those urban
4 growth areas contained totally within a national historical reserve.
5 As part of this planning process, each city within the county must
6 include areas sufficient to accommodate the broad range of needs and
7 uses that will accompany the projected urban growth including, as
8 appropriate, medical, governmental, institutional, commercial, service,
9 retail, and other nonresidential uses.

10 Each urban growth area shall permit urban densities and shall
11 include greenbelt and open space areas. In the case of urban growth
12 areas contained totally within a national historical reserve, the city
13 may restrict densities, intensities, and forms of urban growth as
14 determined to be necessary and appropriate to protect the physical,
15 cultural, or historic integrity of the reserve. An urban growth area
16 determination may include a reasonable land market supply factor and
17 shall permit a range of urban densities and uses. In determining this
18 market factor, cities and counties may consider local circumstances.
19 Cities and counties have discretion in their comprehensive plans to
20 make many choices about accommodating growth.

21 Within one year of July 1, 1990, each county that as of June 1,
22 1991, was required or chose to plan under RCW 36.70A.040, shall begin
23 consulting with each city located within its boundaries and each city
24 shall propose the location of an urban growth area. Within sixty days
25 of the date the county legislative authority of a county adopts its
26 resolution of intention or of certification by the office of financial
27 management, all other counties that are required or choose to plan
28 under RCW 36.70A.040 shall begin this consultation with each city
29 located within its boundaries. The county shall attempt to reach
30 agreement with each city on the location of an urban growth area within
31 which the city is located. If such an agreement is not reached with
32 each city located within the urban growth area, the county shall
33 justify in writing why it so designated the area an urban growth area.
34 A city may object formally with the department over the designation of
35 the urban growth area within which it is located. Where appropriate,
36 the department shall attempt to resolve the conflicts, including the
37 use of mediation services.

1 (3) Urban growth should be located first in areas already
2 characterized by urban growth that have adequate existing public
3 facility and service capacities to serve such development, second in
4 areas already characterized by urban growth that will be served
5 adequately by a combination of both existing public facilities and
6 services and any additional needed public facilities and services that
7 are provided by either public or private sources, and third in the
8 remaining portions of the urban growth areas. Urban growth may also be
9 located in designated new fully contained communities as defined by RCW
10 36.70A.350.

11 (4) In general, cities are the units of local government most
12 appropriate to provide urban governmental services. In general, it is
13 not appropriate that urban governmental services be extended to or
14 expanded in rural areas except in those limited circumstances:

15 (a) Shown to be necessary to protect basic public health and safety
16 and the environment, including the reduction of acidifying runoff to
17 marine waters when recommended by the department of ecology in
18 consultation with the Washington marine resources protection council as
19 a measure necessary to address the localized impacts to marine waters
20 of ocean acidification; and

21 (b) When such services are financially supportable at rural
22 densities and do not permit urban development.

23 (5) On or before October 1, 1993, each county that was initially
24 required to plan under RCW 36.70A.040(1) shall adopt development
25 regulations designating interim urban growth areas under this chapter.
26 Within three years and three months of the date the county legislative
27 authority of a county adopts its resolution of intention or of
28 certification by the office of financial management, all other counties
29 that are required or choose to plan under RCW 36.70A.040 shall adopt
30 development regulations designating interim urban growth areas under
31 this chapter. Adoption of the interim urban growth areas may only
32 occur after public notice; public hearing; and compliance with the
33 state environmental policy act, chapter 43.21C RCW, and under this
34 section. Such action may be appealed to the growth management hearings
35 board under RCW 36.70A.280. Final urban growth areas shall be adopted
36 at the time of comprehensive plan adoption under this chapter.

37 (6) Each county shall include designations of urban growth areas in
38 its comprehensive plan.

1 (7) An urban growth area designated in accordance with this section
2 may include within its boundaries urban service areas or potential
3 annexation areas designated for specific cities or towns within the
4 county.

5 (8)(a) Except as provided in (b) of this subsection, the expansion
6 of an urban growth area is prohibited into the one hundred year
7 floodplain of any river or river segment that: (i) Is located west of
8 the crest of the Cascade mountains; and (ii) has a mean annual flow of
9 one thousand or more cubic feet per second as determined by the
10 department of ecology.

11 (b) Subsection (8)(a) of this section does not apply to:

12 (i) Urban growth areas that are fully contained within a floodplain
13 and lack adjacent buildable areas outside the floodplain;

14 (ii) Urban growth areas where expansions are precluded outside
15 floodplains because:

16 (A) Urban governmental services cannot be physically provided to
17 serve areas outside the floodplain; or

18 (B) Expansions outside the floodplain would require a river or
19 estuary crossing to access the expansion; or

20 (iii) Urban growth area expansions where:

21 (A) Public facilities already exist within the floodplain and the
22 expansion of an existing public facility is only possible on the land
23 to be included in the urban growth area and located within the
24 floodplain; or

25 (B) Urban development already exists within a floodplain as of July
26 26, 2009, and is adjacent to, but outside of, the urban growth area,
27 and the expansion of the urban growth area is necessary to include such
28 urban development within the urban growth area; or

29 (C) The land is owned by a jurisdiction planning under this chapter
30 or the rights to the development of the land have been permanently
31 extinguished, and the following criteria are met:

32 (I) The permissible use of the land is limited to one of the
33 following: Outdoor recreation; environmentally beneficial projects,
34 including but not limited to habitat enhancement or environmental
35 restoration; storm water facilities; flood control facilities; or
36 underground conveyances; and

37 (II) The development and use of such facilities or projects will

1 not decrease flood storage, increase storm water runoff, discharge
2 pollutants to fresh or salt waters during normal operations or floods,
3 or increase hazards to people and property.

4 (c) For the purposes of this subsection (8), "one hundred year
5 floodplain" means the same as "special flood hazard area" as set forth
6 in WAC 173-158-040 as it exists on July 26, 2009.

7 NEW SECTION. **Sec. 9.** The council shall collaborate with the
8 department of ecology in reviewing whether the state's surface water
9 quality standards should be revised to include numeric standards for
10 pollutants or parameters associated with ocean acidification. The
11 council and the department of ecology may invite appropriate federal
12 agencies, tribes and academic institutions to form a scientific work
13 group to conduct the review and to pilot test the applicability of
14 proposed standards.

15 NEW SECTION. **Sec. 10.** Sections 1 through 7 and 9 of this act
16 constitute a new chapter in Title 43 RCW.

17 NEW SECTION. **Sec. 11.** RCW 43.143.005, 43.143.010, 43.143.020,
18 43.143.030, 43.143.900, 43.143.901, and 43.143.902 are each recodified
19 as sections in the new chapter created in section 10 of this act.

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