

# SENATE BILL REPORT

## SB 6328

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As of January 28, 2018

**Title:** An act relating to defining best available science for the purposes of designating fish and wildlife habitat conservation areas.

**Brief Description:** Defining best available science for the purposes of designating fish and wildlife habitat conservation areas.

**Sponsors:** Senators Angel and Wagoner.

**Brief History:**

**Committee Activity:** Local Government: 1/25/18.

**Brief Summary of Bill**

- Defines best available science for purposes of designating and protecting critical areas under the Growth Management Act (GMA).

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### SENATE COMMITTEE ON LOCAL GOVERNMENT

**Staff:** Greg Vogel (786-7413)

**Background:** GMA. The GMA is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA:

- the county legislative authority must adopt a countywide planning policy;
- the county, and the cities within the county, must designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and
- the county must designate and take other actions related to urban growth areas.

GMA - Critical areas. All cities and counties in Washington are required to adopt critical areas regulations by the GMA. As defined by the GMA, critical areas include the following areas and ecosystems: (1) wetlands; (2) areas with a critical recharging effect on aquifers used for potable water; (3) fish and wildlife habitat conservation areas; (4) frequently flooded areas; and (5) geologically hazardous areas. Counties and cities are required to include the best available science in developing policies and development regulations to protect the

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functions and values of critical areas. All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule.

**Summary of Bill:** Best available science is defined as the findings of peer-reviewed scientific studies or data collected using methods and processes widely accepted and utilized within the scientific community. The definition includes the following in order of priority:

- findings and data collected within or proximate to the county or city within the state of Washington; and
- findings and data collected in a location equivalent or similar to the county or city in elevation, latitude, topography, flora, fauna, soils, and climactic conditions.

The definition does not include findings and data collected and studied in other nonsimilar regions of the world or in other states within the continental United States.

In designating fish and wildlife habitat conservation areas, counties and cities may designate areas for species proven by best available science, including population benchmarks and other relevant data, to exist within that jurisdiction.

If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the Growth Management Hearings Board may retain or may allow the parties to retain and examine scientific or other expert advice to assist in reviewing a petition that involves critical areas.

The new definition is prospective in effect and applies only to upcoming comprehensive plan reviews by counties and cities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: What this bill does is very simple. Currently, there is not a definition for best available science in statute. There is a lot of confusion for planners and citizens on what it means. This bill gives a definition pertaining to best available science meeting peer-reviewed standards and being applicable to the local area. There is science from the East Coast being looked at, which has no similarity to science on the West Coast. The Growth Management Hearings Board does not allow parties to bring in scientific experts for their area. This would allow the parties to do so as long as they meet the requirements for the rules of evidence. The best available science should be able to provide guidelines, but how can that be done when a cookie cutter approach is being applied for the entire area, when really each area is quite different.

Going through the materials prepared for the current buffer rule, there is no proven science to be found for requiring such wide buffers. What does impact the streams is toxic highway

runoff. The impact from private property is negligible, so there is no benefit to be seen from the regulations currently in place.

CON: There are some concerns with this bill. A lot of the work with critical areas ordinances is to prevent the loss of habitat or prevent potential habit from being lost for future fisheries or wildlife. Best available science changes over time, so defining it is a nervous proposition, because it is something that would certainly have to be reexamined as better information comes in.

The main concern with providing a definition for best available science is that a rule has already been developed for an outline of the scientific process. Changing the definition changes the rules for weighing evidence. A change will require local governments to go back and review their entire critical areas ordinance before their next update. This bill would open up what is considered a settled standard.

**Persons Testifying:** PRO: Senator Jan Angel, Prime Sponsor; Rob Daugherty, Kitsap Alliance of Property Owners; Michael Gustavson, Kitsap Alliance of Property Owners; Marianne Gustavson, Kitsap Alliance of Property Owners; Laura Berg, Washington State Association of Counties.

CON: Bryce Yadon, Futurewise; Dave Andersen, Washington Department of Commerce.

**Persons Signed In To Testify But Not Testifying:** No one.