
SENATE BILL 5306

State of Washington

67th Legislature

2021 Regular Session

By Senators Salomon, Lovelett, Van De Wege, Wellman, and Wilson, C.

Read first time 01/20/21. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to local salmon habitat recovery planning in
2 critical areas; amending RCW 36.70A.050 and 36.70A.172; reenacting
3 and amending RCW 36.70A.130; adding a new section to chapter 36.70A
4 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that salmon recovery
7 efforts have been instrumental in helping some species turn the
8 corner towards recovery and have slowed the decline of several other
9 species. However, while great progress has been made in implementing
10 critical salmon recovery projects, more work is needed at the state,
11 but also, local level in order to further protect and restore
12 habitat.

13 The legislature further finds that the state's population has
14 continued to grow at a dramatic pace, growing by 1.6 million people
15 since 1999, when the statewide salmon recovery strategy was adopted.
16 A growing population needs housing, drinkable water, and other
17 resources, which can put a strain on habitat critical to salmon.
18 Development along shorelines can erode coastal areas, leaving beaches
19 inhospitable to salmon and the fish they eat. Development of land
20 along streams often removes the trees and bushes that provide shade,
21 filter pollution, and create beneficial salmon habitat with discarded

1 leaves and branches. Land development also increases paving and
2 impervious surfaces, which in turn increases the amount of pollution
3 and contaminated stormwater entering waterways. Finally, population
4 growth increases the need for water for drinking, for use in homes
5 and businesses, and for irrigation. More demand for water often
6 impacts the quality and the amount of water left in streams to
7 support salmon.

8 Moreover, since much of growth planning occurs at the local
9 level, the legislature finds that statewide salmon recovery and
10 conservation efforts could benefit further through strengthened
11 policies and regulations adopted by counties and cities. Therefore,
12 the legislature intends to enact guidelines for the preservation and
13 enhancement of anadromous fisheries in order to assist counties and
14 cities with the development of planning initiatives beneficial to
15 local and statewide salmon recovery.

16 **Sec. 2.** RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each
17 amended to read as follows:

18 (1) Subject to the definitions provided in RCW 36.70A.030, the
19 department shall adopt guidelines, under chapter 34.05 RCW, no later
20 than September 1, 1990, to guide the classification of: (a)
21 Agricultural lands; (b) forestlands; (c) mineral resource lands; and
22 (d) critical areas. The department shall consult with the department
23 of agriculture regarding guidelines for agricultural lands, the
24 department of natural resources regarding forestlands and mineral
25 resource lands, ~~((and))~~ the department of ecology regarding critical
26 areas, and the department of fish and wildlife regarding conservation
27 and protection of anadromous fisheries in critical areas, utilizing
28 the guidelines developed in RCW 36.70A.172.

29 (2) In carrying out its duties under this section, the department
30 shall consult with interested parties, including but not limited to:
31 (a) Representatives of cities; (b) representatives of counties; (c)
32 representatives of developers; (d) representatives of builders; (e)
33 representatives of owners of agricultural lands, forestlands, and
34 mining lands; (f) representatives of local economic development
35 officials; (g) representatives of environmental and conservation
36 organizations; (h) representatives of special districts; (i)
37 representatives of the governor's office and federal and state
38 agencies; and (j) representatives of Indian tribes. In addition to
39 the consultation required under this subsection, the department shall

1 conduct public hearings in the various regions of the state. The
2 department shall consider the public input obtained at such public
3 hearings when adopting the guidelines.

4 (3) The guidelines under subsection (1) of this section shall be
5 minimum guidelines that apply to all jurisdictions, but also shall
6 allow for regional differences that exist in Washington state. The
7 intent of these guidelines is to assist counties and cities in
8 designating the classification of agricultural lands, forestlands,
9 mineral resource lands, and critical areas under RCW 36.70A.170.

10 (4) The guidelines established by the department under this
11 section regarding classification of forestlands shall not be
12 inconsistent with guidelines adopted by the department of natural
13 resources.

14 **Sec. 3.** RCW 36.70A.172 and 2010 c 211 s 3 are each amended to
15 read as follows:

16 (1) (a) In designating and protecting critical areas under this
17 chapter, counties and cities shall include the best available science
18 in developing policies and development regulations to protect the
19 functions and values of critical areas.

20 (b) (i) In addition, counties and cities shall give special
21 consideration to conservation or protection measures necessary to
22 preserve or enhance anadromous fisheries.

23 (ii) The department of fish and wildlife must adopt conservation
24 and restoration guidelines in order to assist counties and cities in
25 the preservation and enhancement of anadromous fisheries.

26 (iii) The guidelines must identify:

27 (A) Priority marine nearshore as well as stream segments and
28 riparian habitat that represent the most important habitat areas to
29 preserve through public acquisition or other conservation measures,
30 including core spawning areas as well as migratory and rearing
31 corridors for salmon species;

32 (B) Incompatible land uses with salmon recovery and habitat
33 preservation; and

34 (C) Methods for improving and preserving salmon habitat.

35 (iv) The department of fish and wildlife must consult with tribal
36 fisheries restoration experts and other interested parties as
37 required under RCW 36.70A.050(2) in developing the guidelines under
38 this subsection.

1 (v) The department of fish and wildlife and the department may
2 exclude a county or city from elements of the guidelines if the
3 county or city has no or minimal areas of critical habitat for salmon
4 stocks listed under the federal endangered species act.

5 (vi) The department of fish and wildlife must complete the
6 guidelines by January 1, 2022, in order to allow cities and counties
7 to update critical areas policies and development regulations as part
8 of their next periodic review required under RCW 36.70A.130.

9 (2) If it determines that advice from scientific or other experts
10 is necessary or will be of substantial assistance in reaching its
11 decision, the growth management hearings board may retain scientific
12 or other expert advice to assist in reviewing a petition under RCW
13 36.70A.290 that involves critical areas.

14 **Sec. 4.** RCW 36.70A.130 and 2020 c 113 s 1 and 2020 c 20 s 1026
15 are each reenacted and amended to read as follows:

16 (1)(a) Each comprehensive land use plan and development
17 regulations shall be subject to continuing review and evaluation by
18 the county or city that adopted them. Except as otherwise provided, a
19 county or city shall take legislative action to review and, if
20 needed, revise its comprehensive land use plan and development
21 regulations to ensure the plan and regulations comply with the
22 requirements of this chapter according to the deadlines in
23 subsections (4) and (5) of this section.

24 (b) Except as otherwise provided, a county or city not planning
25 under RCW 36.70A.040 shall take action to review and, if needed,
26 revise its policies and development regulations regarding critical
27 areas and natural resource lands adopted according to this chapter to
28 ensure these policies and regulations comply with the requirements of
29 this chapter according to the deadlines in subsections (4) and (5) of
30 this section. Legislative action means the adoption of a resolution
31 or ordinance following notice and a public hearing indicating at a
32 minimum, a finding that a review and evaluation has occurred and
33 identifying the revisions made, or that a revision was not needed and
34 the reasons therefor.

35 (c) The review and evaluation required by this subsection shall
36 include, but is not limited to, consideration of critical area
37 ordinances and, if planning under RCW 36.70A.040, an analysis of the
38 population allocated to a city or county from the most recent ten-
39 year population forecast by the office of financial management.

1 (d) Any amendment of or revision to a comprehensive land use plan
2 shall conform to this chapter. Any amendment of or revision to
3 development regulations shall be consistent with and implement the
4 comprehensive plan.

5 (2)(a) Each county and city shall establish and broadly
6 disseminate to the public a public participation program consistent
7 with RCW 36.70A.035 and 36.70A.140 that identifies procedures and
8 schedules whereby updates, proposed amendments, or revisions of the
9 comprehensive plan are considered by the governing body of the county
10 or city no more frequently than once every year. "Updates" means to
11 review and revise, if needed, according to subsection (1) of this
12 section, and the deadlines in subsections (4) and (5) of this section
13 or in accordance with the provisions of subsection (6) of this
14 section. Amendments may be considered more frequently than once per
15 year under the following circumstances:

16 (i) The initial adoption of a subarea plan. Subarea plans adopted
17 under this subsection (2)(a)(i) must clarify, supplement, or
18 implement jurisdiction-wide comprehensive plan policies, and may only
19 be adopted if the cumulative impacts of the proposed plan are
20 addressed by appropriate environmental review under chapter 43.21C
21 RCW;

22 (ii) The development of an initial subarea plan for economic
23 development located outside of the one hundred year floodplain in a
24 county that has completed a state-funded pilot project that is based
25 on watershed characterization and local habitat assessment;

26 (iii) The adoption or amendment of a shoreline master program
27 under the procedures set forth in chapter 90.58 RCW;

28 (iv) The amendment of the capital facilities element of a
29 comprehensive plan that occurs concurrently with the adoption or
30 amendment of a county or city budget; or

31 (v) The adoption of comprehensive plan amendments necessary to
32 enact a planned action under RCW 43.21C.440, provided that amendments
33 are considered in accordance with the public participation program
34 established by the county or city under this subsection (2)(a) and
35 all persons who have requested notice of a comprehensive plan update
36 are given notice of the amendments and an opportunity to comment.

37 (b) Except as otherwise provided in (a) of this subsection, all
38 proposals shall be considered by the governing body concurrently so
39 the cumulative effect of the various proposals can be ascertained.
40 However, after appropriate public participation a county or city may

1 adopt amendments or revisions to its comprehensive plan that conform
2 with this chapter whenever an emergency exists or to resolve an
3 appeal of a comprehensive plan filed with the growth management
4 hearings board or with the court.

5 (3) (a) Each county that designates urban growth areas under RCW
6 36.70A.110 shall review, according to the schedules established in
7 subsections (4) and (5) of this section, its designated urban growth
8 area or areas, and the densities permitted within both the
9 incorporated and unincorporated portions of each urban growth area.
10 In conjunction with this review by the county, each city located
11 within an urban growth area shall review the densities permitted
12 within its boundaries, and the extent to which the urban growth
13 occurring within the county has located within each city and the
14 unincorporated portions of the urban growth areas.

15 (b) The county comprehensive plan designating urban growth areas,
16 and the densities permitted in the urban growth areas by the
17 comprehensive plans of the county and each city located within the
18 urban growth areas, shall be revised to accommodate the urban growth
19 projected to occur in the county for the succeeding twenty-year
20 period. The review required by this subsection may be combined with
21 the review and evaluation required by RCW 36.70A.215.

22 (4) Except as otherwise provided in subsections (6) and (8) of
23 this section, counties and cities shall take action to review and, if
24 needed, revise their comprehensive plans and development regulations
25 to ensure the plan and regulations comply with the requirements of
26 this chapter as follows:

27 (a) On or before June 30, 2015, for King, Pierce, and Snohomish
28 counties and the cities within those counties;

29 (b) On or before June 30, 2016, for Clallam, Clark, Island,
30 Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom
31 counties and the cities within those counties;

32 (c) On or before June 30, 2017, for Benton, Chelan, Cowlitz,
33 Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and
34 the cities within those counties; and

35 (d) On or before June 30, 2018, for Adams, Asotin, Columbia,
36 Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln,
37 Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and
38 Whitman counties and the cities within those counties.

39 (5) (a) Except as otherwise provided in subsections (6) and (8) of
40 this section, following the review of comprehensive plans and

1 development regulations required by subsection (4) of this section,
2 counties and cities shall take action to review and, if needed,
3 revise their comprehensive plans and development regulations to
4 ensure the plan and regulations comply with the requirements of this
5 chapter as follows:

6 ~~((a))~~ (i) On or before June 30, 2024, and every eight years
7 thereafter, for King, Kitsap, Pierce, and Snohomish counties and the
8 cities within those counties;

9 ~~((b))~~ (ii) On or before June 30, 2025, and every eight years
10 thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San
11 Juan, Skagit, Thurston, and Whatcom counties and the cities within
12 those counties;

13 ~~((c))~~ (iii) On or before June 30, 2026, and every eight years
14 thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas,
15 Skamania, Spokane, Walla Walla, and Yakima counties and the cities
16 within those counties; and

17 ~~((d))~~ (iv) On or before June 30, 2027, and every eight years
18 thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant,
19 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,
20 Stevens, Wahkiakum, and Whitman counties and the cities within those
21 counties.

22 (b) (i) Following the adoption of department of fish and wildlife
23 guidelines for the preservation and enhancement of anadromous
24 fisheries under RCW 36.70A.172, counties and cities must review and
25 update critical areas policies and development regulations in order
26 to implement the guidelines.

27 (ii) Counties and cities may adopt land use regulations, acquire
28 critical habitat lands, enact incentives, and establish other
29 measures and policies in order to implement the guidelines.

30 (iii) Counties and cities within those counties under (a) (i) and
31 (ii) of this subsection must begin implementing the guidelines on
32 January 1, 2022, in order to include the update of critical areas
33 policies and development regulations as part of the next required
34 review and revision of comprehensive plans and development
35 regulations under this subsection.

36 (iv) All other counties and cities within those counties must
37 implement the guidelines by June 30, 2026.

38 (6) (a) Nothing in this section precludes a county or city from
39 conducting the review and evaluation required by this section before
40 the deadlines established in subsections (4) and (5) of this section.

1 Counties and cities may begin this process early and may be eligible
2 for grants from the department, subject to available funding, if they
3 elect to do so.

4 (b) A county that is subject to a deadline established in
5 subsection (5)(a)(ii) through (iv) (~~((b) through (d))~~) of this
6 section and meets the following criteria may comply with the
7 requirements of this section at any time within the twenty-four
8 months following the deadline established in subsection (5) of this
9 section: The county has a population of less than fifty thousand and
10 has had its population increase by no more than seventeen percent in
11 the ten years preceding the deadline established in subsection (5) of
12 this section as of that date.

13 (c) A city that is subject to a deadline established in
14 subsection (5)(a)(ii) through (iv) (~~((b) through (d))~~) of this
15 section and meets the following criteria may comply with the
16 requirements of this section at any time within the twenty-four
17 months following the deadline established in subsection (5) of this
18 section: The city has a population of no more than five thousand and
19 has had its population increase by the greater of either no more than
20 one hundred persons or no more than seventeen percent in the ten
21 years preceding the deadline established in subsection (5) of this
22 section as of that date.

23 (d) State agencies are encouraged to provide technical assistance
24 to the counties and cities in the review of critical area ordinances,
25 comprehensive plans, and development regulations.

26 (e) A county that is subject to a deadline established in
27 subsection (5)(a)(ii) through (iv) of this section and meets the
28 following criteria may comply with the requirements of this section
29 at any time within the 24 months following the deadline established
30 in subsection (5) of this section: The county has a population of
31 less than 50,000 and has had its population increase by no more than
32 17 percent in the 10 years preceding the deadline established in
33 subsection (5) of this section as of that date.

34 (f) A city that is subject to a deadline established in
35 subsection (5)(a)(ii) through (iv) of this section and meets the
36 following criteria may comply with the requirements of this section
37 at any time within the 24 months following the deadline established
38 in subsection (5) of this section: The city has a population of no
39 more than 5,000 and has had its population increase by the greater of
40 either no more than 100 persons or no more than 17 percent in the 10

1 years preceding the deadline established in subsection (5) of this
2 section as of that date.

3 (g) State agencies are encouraged to provide technical assistance
4 to the counties and cities in the review of critical area ordinances,
5 comprehensive plans, and development regulations.

6 (7) (a) The requirements imposed on counties and cities under this
7 section shall be considered "requirements of this chapter" under the
8 terms of RCW 36.70A.040(1). Only those counties and cities that meet
9 the following criteria may receive grants, loans, pledges, or
10 financial guarantees under chapter 43.155 or 70A.135 RCW:

11 (i) Complying with the deadlines in this section; or

12 (ii) Demonstrating substantial progress towards compliance with
13 the schedules in this section for development regulations that
14 protect critical areas.

15 (b) A county or city that is fewer than twelve months out of
16 compliance with the schedules in this section for development
17 regulations that protect critical areas is making substantial
18 progress towards compliance. Only those counties and cities in
19 compliance with the schedules in this section may receive preference
20 for grants or loans subject to the provisions of RCW 43.17.250.

21 (8) (a) Except as otherwise provided in (c) of this subsection, if
22 a participating watershed is achieving benchmarks and goals for the
23 protection of critical areas functions and values, the county is not
24 required to update development regulations to protect critical areas
25 as they specifically apply to agricultural activities in that
26 watershed.

27 (b) A county that has made the election under RCW 36.70A.710(1)
28 may only adopt or amend development regulations to protect critical
29 areas as they specifically apply to agricultural activities in a
30 participating watershed if:

31 (i) A work plan has been approved for that watershed in
32 accordance with RCW 36.70A.725;

33 (ii) The local watershed group for that watershed has requested
34 the county to adopt or amend development regulations as part of a
35 work plan developed under RCW 36.70A.720;

36 (iii) The adoption or amendment of the development regulations is
37 necessary to enable the county to respond to an order of the growth
38 management hearings board or court;

39 (iv) The adoption or amendment of development regulations is
40 necessary to address a threat to human health or safety; or

1 (v) Three or more years have elapsed since the receipt of
2 funding.

3 (c) Beginning ten years from the date of receipt of funding, a
4 county that has made the election under RCW 36.70A.710(1) must review
5 and, if necessary, revise development regulations to protect critical
6 areas as they specifically apply to agricultural activities in a
7 participating watershed in accordance with the review and revision
8 requirements and timeline in subsection (5) of this section. This
9 subsection (8)(c) does not apply to a participating watershed that
10 has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's
11 goals and benchmarks for protection have been met.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A
13 RCW to read as follows:

14 By December 1, 2023, the department of fish and wildlife and the
15 department must review and report on county and city adoption of
16 critical areas policies and development regulations that implement
17 the guidelines for the preservation and enhancement of anadromous
18 fisheries, under RCW 36.70A.172.

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