
SENATE BILL 5314

State of Washington

67th Legislature

2021 Regular Session

By Senator Short

1 AN ACT Relating to standing and science under the growth
2 management act; amending RCW 36.70A.280 and 36.70A.172; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The growth management act was initially
6 established in 1990. Since its inception, various elements of the act
7 have been highly litigated. The costs of litigation have become
8 burdensome on cities and counties and have had a chilling effect on
9 growth and development especially in rural counties. In order to
10 relieve this burden, the legislature finds that it is time to make
11 the growth management hearings board consistent with other land use
12 appeals.

13 **Sec. 2.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to
14 read as follows:

15 (1) The growth management hearings board shall hear and determine
16 only those petitions alleging either:

17 (a) That, except as provided otherwise by this subsection, a
18 state agency, county, or city planning under this chapter is not in
19 compliance with the requirements of this chapter, chapter 90.58 RCW
20 as it relates to the adoption of shoreline master programs or

1 amendments thereto, or chapter 43.21C RCW as it relates to plans,
2 development regulations, or amendments, adopted under RCW 36.70A.040
3 or chapter 90.58 RCW. Nothing in this subsection authorizes the board
4 to hear petitions alleging noncompliance with RCW 36.70A.5801;

5 (b) That the twenty-year growth management planning population
6 projections adopted by the office of financial management pursuant to
7 RCW 43.62.035 should be adjusted;

8 (c) That the approval of a work plan adopted under RCW
9 36.70A.735(1)(a) is not in compliance with the requirements of the
10 program established under RCW 36.70A.710;

11 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not
12 regionally applicable and cannot be adopted, wholly or partially, by
13 another jurisdiction; or

14 (e) That a department certification under RCW 36.70A.735(1)(c) is
15 erroneous.

16 (2) A petition may be filed only by:

17 (a) The state, or a county or city that plans under this chapter;

18 ~~(b) ((a person who has participated orally or in writing before
19 the county or city regarding the matter on which a review is being
20 requested; (c) a person who is certified by the governor within sixty
21 days of filing the request with the board; or (d) a)~~ A person
22 qualified pursuant to RCW 34.05.530; or

23 (c) Any person who:

24 (i) Owns property within the boundaries of the city or county
25 planning under this chapter;

26 (ii) Is prejudiced or likely to be prejudiced by the action of
27 the city or county planning under this chapter; and

28 (iii) Will suffer actual injury if the contested action is
29 upheld.

30 (3) For purposes of this section "person" means any individual,
31 partnership, corporation, association, state agency, governmental
32 subdivision or unit thereof, or public or private organization or
33 entity of any character.

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

38 ~~(5))~~ When considering a possible adjustment to a growth
39 management planning population projection prepared by the office of

1 financial management, the board shall consider the implications of
2 any such adjustment to the population forecast for the entire state.

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

6 If adjusted by the board, a county growth management planning
7 population projection shall only be used for the planning purposes
8 set forth in this chapter and shall be known as the "board adjusted
9 population projection." None of these changes shall affect the
10 official state and county population forecasts prepared by the office
11 of financial management, which shall continue to be used for state
12 budget and planning purposes.

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

15 (1) For the purposes of this section, "best available science"
16 means findings of peer-reviewed scientific studies or data collected
17 using methods and processes widely accepted and utilized within the
18 scientific community including but not limited to scientific studies
19 or data recommended by the departments of commerce, ecology, or fish
20 and wildlife.

21 (2)(a) In designating and protecting critical areas under this
22 chapter, counties and cities shall include the best available science
23 (~~(in developing)~~) used to develop policies and development
24 regulations (~~(to)~~) that protect the various functions and values of
25 critical areas. (~~In addition, counties and cities shall give special~~
26 ~~consideration to conservation or protection measures necessary to~~
27 ~~preserve or enhance anadromous fisheries.~~

28 ~~(2) If it determines that advice from scientific or other experts~~
29 ~~is necessary or will be of substantial assistance in reaching its~~
30 ~~decision, the growth management hearings board may retain scientific~~
31 ~~or other expert advice to assist in reviewing a petition under RCW~~
32 ~~36.70A.290 that involves critical areas.)~~

33 (b) To demonstrate that the best available science has been
34 included in the development of critical areas policies and
35 regulations, counties and cities may develop a written record
36 addressing each of the following:

37 (i) How the adopted policies and development regulations protect
38 the designated critical areas required by this chapter;

1 (ii) The relevant sources of best available scientific
2 information considered in the designation of critical areas;

3 (iii) Any nonscientific information, including legal, social,
4 cultural, economic, and political information, used as a basis for
5 designation of critical areas and development of critical areas
6 policies and regulations that differ from agency guidance.

7 (3) In designating fish and wildlife habitat conservation areas,
8 counties and cities must designate areas for species proven by best
9 available science, including population benchmarks and other relevant
10 data, to exist or species that could reasonably be expected to exist
11 during the planning period set out in RCW 36.70A.130 within that
12 jurisdiction. The designated areas may be reviewed as part of the
13 comprehensive plan review to determine if any additional areas
14 qualify for designation.

15 (a) Each jurisdiction shall specifically address what, if any,
16 conservation or protection measures are necessary within that
17 jurisdiction to preserve or enhance anadromous fisheries as
18 determined by an examination of reasonably available scientific and
19 nonscientific data.

20 (b) All area designations that deviate from agency
21 recommendations shall be supported by a showing of a thorough
22 consideration of all reasonably available scientific and
23 nonscientific data.

24 (4) To assist in reviewing a petition under RCW 36.70A.290 that
25 involves critical areas, the growth management hearings board must
26 allow the planning jurisdiction to retain and examine scientific
27 experts or other expert witnesses to aid the board in understanding
28 or determining facts in issue regarding policies or regulations. The
29 board and any other party may retain and examine its own expert
30 witnesses. All scientific or other expert witnesses must be
31 established as experts by testifying to their knowledge, skill,
32 experience, training, or education as established by the Washington
33 rules of evidence pertaining to expert witnesses.

--- END ---