

# SENATE BILL REPORT

## SB 5726

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As of February 12, 2009

**Title:** An act relating to clarifying the integration of shoreline management act policies with the growth management act.

**Brief Description:** Clarifying the integration of shoreline management act policies with the growth management act.

**Sponsors:** Senators Kline and Swecker; by request of Department of Ecology and Department of Community, Trade and Economic Development.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/11/09.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** The Shoreline Management Act (SMA), enacted in 1971, governs uses of state shorelines. SMA includes specific legislative findings that pressures on shoreline uses and the impacts of unrestricted development on public and private shoreline property create the need to coordinate planning for shoreline development activities. SMA also finds these pressures create the need to protect private property rights consistent with the public interest.

SMA applies to all "shorelines of the state," which include both "shorelines" and "shorelines of state-wide significance." SMA applies to all marine water areas of the state, together with the lands underlying them, to the western boundary of the state in the Pacific Ocean, to streams with a mean annual flow of 20 cubic feet per second or more, to lakes larger than 20 acres in area, and to reservoirs.

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 of the state are required to adopt master programs which regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions.

The Growth Management Act (GMA) is the comprehensive land-use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA

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establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, fully plan under the GMA.

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.

In 2003 the Legislature adopted Engrossed Substitute House Bill 1933 which established that "shorelines of the state" must not be considered critical areas under the GMA except to the extent that specific areas within the shorelines of the state qualify for designation and have been designated as such by a local government.

**Summary of Bill:** The GMA provides that shoreline master programs must provide a level of protection to wetlands and fish and wildlife habitat conservation areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

Under the SMA, the Department of Ecology must approve the segment of a master program relating to wetlands and fish and wildlife habitat conservation areas if the master program segment is consistent with shoreline guidelines and if the segment provides a level of protection of wetlands and fish and wildlife habitat conservation areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The protection of wetlands and fish and wildlife habitat conservation areas located within shorelines of the state may be accomplished only through the local government's shoreline master program.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 2009.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill corrects a recent Supreme Court decision in *Anacortes v. Futurewise*. This is a confusing decision in which the court upheld a decision from the Growth Management Hearings Board; however, the plurality disagrees with the decision. The issue is whether GMA or SMA govern over sensitive areas within shorelines. This bill clarifies this decision of the Supreme Court and establishes that critical areas would be governed under the SMA.

It is extraordinarily important to ensure that critical area regulations apply in the shoreline area. The effect of the Supreme Court decision is that it has put a legal cloud on 170 existing critical area ordinances across the state. There was complete agreement about how

integration of SMA and GMA should occur in 2003, and this bill is designed to reflect what the stakeholders agreed to in ESHB 1933 in 2003.

CON: There needs to a safe harbor that would prevent the application of nonperforming use that would be created during this time. The result will be that property owners and the building community will be subject to critical areas ordinances that have been or are currently being adopted without considerations of the safeguards afforded in the SMA. The Supreme Court decision clearly established "critical areas within the jurisdiction of the SMA are governed only by the SMA."

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Tom Clingman, Department of Ecology; Tim Gates, Department of Community, Trade, and Economic Development; Bruce Wishart, People for Puget Sound; Michael Shaw, American Planners Association; Brynn Brady, Pierce County; April Putney, Futurewise.

CON: Julie Nichols, Building Industry Association of Washington; Van Collins, Associated General Contractors and Association of Washington Business.