

HOUSE BILL REPORT

HB 1624

As Reported By House Committee On:
Government Reform & Land Use

Title: An act relating to defining wetlands for growth management purposes.

Brief Description: Defining wetlands for growth management purposes.

Sponsors: Representatives Thompson, Dunn, Mulliken, Mielke and Boldt.

Brief History:

Committee Activity:

Government Reform & Land Use: 2/20/97, 2/26/97 [DPS].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

Staff: Kimberly Klaiber (786-7156).

Background: Two categories of counties and cities are established under the Growth Management Act (GMA): those that are required to plan under all GMA requirements and all others. Each county and city, regardless of whether it plans under the GMA, must *designate* and adopt development regulations that *protect* designated critical areas. In designating critical areas, counties and cities must consider the minimum guidelines adopted by the Department of Community, Trade and Economic Development.

Under the GMA, the definition of critical areas includes wetlands. The GMA defines a wetland as an area saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and other similar areas.

Wetlands do not include artificial wetlands *intentionally* created from nonwetland sites, including irrigation ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. Wetlands *may*, however, include artificial wetlands *intentionally* created from nonwetland areas to mitigate conversion of wetlands. The definition of wetlands does not include wetlands created after July 1, 1990 that were *unintentionally* created as a result of the construction of a road, street, or highway.

Summary of Substitute Bill: The Legislature intends to focus on the function of wetlands rather than physical structure. In order to be characterized as a wetland, an area must measurably and demonstrably perform a wetland function. Lands that were used for purposes other than wetland purposes prior to 1987 cannot be designated a wetland.

In adopting critical areas development regulations, counties and cities must consider and balance the goals of the GMA. Counties and cities may exempt emergency activities and activities with minor impacts on critical areas from development regulations. Counties and cities may also exempt wetlands with wetland functions no greater than that performed by the surrounding upland. A project permit cannot be denied based upon adverse impact upon the wetland unless the *wetland function* is adversely impacted. A landowner whose land is flooded due to actions on surrounding land may take reasonable measures without a permit to halt the flooding and to drain the water.

Substitute Bill Compared to Original Bill: The substitute emphasizes the function of wetlands and removes language that focused on the structure of wetlands. Additional criteria and requirements for the designation of wetlands are provided.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Wetlands are often not wetlands as the law intends. We need a more common sense approach to determining whether an area is a wetland. This topic could be addressed by a joint select subcommittee on wetlands. The definition of wetlands now is overly narrow. An example of a definition of wetlands going too far is a proposed rule in the Department of Ecology that makes all wetlands state waters,— which could be a taking.— Definition approach— is getting away from what really makes a wetland a wetland.

Testimony Against: We now have one single, statewide definition of wetlands. This bill takes authority out of the hands of local government and puts it in the hands of the federal and state governments to administer wetlands regulations.

Testified: Representative Thompson, prime sponsor (pro); Myrtle Cooper (pro); Merton Cooper (pro); Karla Kay Fullerton, Washington Cattlemen's Association (pro); Heather Hansen Rainey, Washington State Grange (pro); Bill Garvin, Washington State Farm Bureau (pro); Mark Triplett, Washington Aggregate & Concrete Association (pro); Robert Cornish, resident, city of Kirkland (pro); George Tyler (concerns); and Tom Mark, Department of Ecology (con).