

HOUSE BILL REPORT

HB 2806

As Reported By House Committee On:
Local Government

Title: An act relating to the integration of shoreline master programs into growth management planning.

Brief Description: Providing for integration of shoreline master programs into growth management planning.

Sponsors: Representatives G. Chandler, Doumit, Mulliken, Buck, Grant, Mastin, Hatfield and Parlette.

Brief History:

Committee Activity:

Local Government: 1/31/00, 2/3/00 [DPS].

Brief Summary of Substitute Bill

- Includes shorelines of the state within the definition of critical areas in the Growth Management Act (GMA) and requires local governments to adopt critical area regulations to protect shorelines of the state.
- Makes shoreline master program guidelines mandatory only for shorelines of statewide significance and allows local governments to adopt "alternative techniques" for protecting shorelines other than shorelines of statewide significance.
- Changes requirements for review and revision of GMA plans and regulations.
- Allows countywide planning policies to include policies related to watershed planning and salmon recovery efforts.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Mulliken, Republican Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Ericksen and Fortunato.

Minority Report: Do not pass. Signed by 3 members: Representatives Scott, Democratic Co-Chair; Edwards and Fisher.

Staff: Caroleen Dineen (786-7156).

Background:

Shoreline Management Act

The Shoreline Management Act (SMA) requires counties and cities to adopt local shoreline master programs regulating land use activities in shorelines of the state and to enforce approved programs within their jurisdictions. "Shorelines of the state" are defined to include both "shorelines" and "shorelines of statewide significance" as defined by the SMA. "Shorelines" include all water areas, including reservoirs, and their associated shorelands except: shorelines of statewide significance [separately defined to include specific shoreline areas and larger lakes and rivers meeting specified criteria]; shorelines (and their wetlands) on segments of streams upstream of a point at which the mean annual flow is fewer than or equal to 20 cubic feet per second (cfs); and shorelines (and their wetlands) on lakes fewer than 20 acres in size.

The SMA requires the Department of Ecology (DOE) to adopt guidelines for local governments to use when developing local shoreline master programs. Local governments must develop or amend shoreline master programs consistent with the DOE guidelines within 24 months after the DOE guidelines are adopted.

The DOE considers the adopted guidelines and SMA requirements when reviewing and approving local shoreline master programs. DOE's decision approving or rejecting a local shoreline master program may be appealed to the Shorelines Hearings Board for non-GMA jurisdictions or to the Growth Management Hearings Board for GMA jurisdictions. When approved, a local master program regulates shoreline uses and permit approvals within the local jurisdiction.

The SMA specifies standards for local governments to review and approve permit applications. In addition to other requirements, local governments must notify the DOE of all SMA permit decisions. The DOE has authority to approve conditional use and variance permits issued by local governments.

Growth Management Act

The Growth Management Act (GMA) requires certain counties and the cities in those counties to plan according to statutory requirements and specifies other counties may choose to plan under the GMA. All jurisdictions must designate natural resource lands and designate and protect critical areas. "Critical areas" are defined in the GMA to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. The Department of Community, Trade, and Economic Development (CTED) develops minimum guidelines to guide the classification of critical areas and natural resource lands.

Among other requirements, each county and city planning under RCW 36.70A.040 (GMA jurisdiction) is required to designate urban growth areas and to adopt a comprehensive plan. GMA jurisdictions must also adopt development regulations to implement their comprehensive plans. By September 1, 2002, and at least every five years thereafter, GMA jurisdictions are required to review their comprehensive plans and development regulations for consistency with GMA requirements and to revise their comprehensive plans and development regulations if necessary.

The SMA master program goals and policies are considered an element of GMA comprehensive plans and other parts of master programs are considered part of GMA development regulations.

Summary of Substitute Bill:

Shoreline Management Act

Critical areas are defined in the Growth Management Act (GMA) to include "shorelines of the state" as defined in the Shoreline Management Act (SMA). All shorelines of the state must be designated and protected as critical areas under the GMA. Critical areas regulations must continue to recognize SMA preferred uses and current exemptions.

"Master programs" are defined to include local critical areas ordinances pertaining to shorelines (adopted by local governments) and provisions [adopted or approved by the Department of Ecology (DOE)] pertaining to shorelines of statewide significance. Master programs related to "shorelines" as defined in the SMA are adopted according to the GMA's critical area requirements. The DOE may review and comment on proposed critical area ordinances pertaining to shorelines but does not have authority to approve these ordinances.

The shoreline master program guidelines adopted by the DOE are mandatory standards for shoreline master programs related to shorelines of statewide significance, except as variations are allowed by the DOE. The components of local

shoreline master programs related to shorelines of statewide significance must be submitted to and approved by the DOE as required by the SMA and become effective when approved by the DOE.

For shorelines, the guidelines are recommendations for local governments. Local governments must consider the guidelines within 24 months after their adoption but may develop "alternative techniques" to protect shorelines as long as these techniques: (1) actually protect shorelines; (2) are consistent with SMA policy; and (3) are supported by best available science. Master program provisions related to shorelines become effective when adopted in GMA critical areas ordinances, which are presumed valid upon adoption.

Appeal of master programs adopted by jurisdictions planning under RCW 36.70A.040 (GMA jurisdictions) continue to be appealed to the growth management hearings boards. For non-GMA jurisdictions, appeals of master program components related to shorelines of statewide significance and adoption of critical areas ordinances pertaining to shorelines are appealed to the shorelines hearings board within 60 days after publication.

SMA permit appeal provisions are amended to specify the appellant, rather than the aggrieved local government, has the burden of proof on appeal and to allow any aggrieved party (rather than the DOE and the local government) to appeal a decision of the shoreline hearings board to superior court.

Growth Management Act

Counties and cities containing "shorelines of the state" as defined in the SMA that were not previously designated as critical areas under the GMA must adopt interim development regulations to protect shorelines of the state within one year. These interim development regulations may remain in effect until the GMA comprehensive plans and development regulations are reviewed and revised for compliance with GMA requirements. In developing these interim development regulations, counties and cities must consider strategies to protect any commercial shellfish beds located near the shoreline. These interim development regulations and any existing critical area ordinances pertaining to shorelines must include penalties for violations.

Each county and city adopting a critical areas ordinance to protect shorelines must notify the DOE of its intent to adopt the ordinance and provide a copy of the ordinance to the DOE for its review and comment at least 60 days before final adoption.

The Department of Community, Trade, and Economic Development (CTED) is required to establish a schedule for periodic formal reviews by all GMA jurisdictions of GMA comprehensive plans and development regulations and of urban growth area

designations. In developing the schedule, CTED must consider counties' population and growth rate, the date comprehensive plans and development regulations were adopted or last revised, and the resources available to counties and cities to conduct formal reviews. The review schedule adopted by CTED must provide for formal periodic review of provisions related to critical areas and natural resource lands approximately once every five years. For other provisions, the schedule must provide for periodic formal review approximately once every 10 years.

Countywide planning policies adopted under the GMA may be revised to include policies implementing watershed planning and policies developed in response to federal Endangered Species Act listings.

Various technical changes are made to shoreline management and growth management planning processes.

Substitute Bill Compared to Original Bill: The substitute bill adds express requirements for critical areas ordinances for shorelines of the state to continue to recognize and allow the preferred uses and current exemptions of the Shoreline Management Act.

Appropriation: None.

Fiscal Note: Requested on January 21, 2000.

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

Testimony For: (original bill) This bill starts the process of merging Growth Management Act (GMA) and Shoreline Management Act (SMA) programs by merging shorelines into GMA critical areas ordinances. These are the first steps to regulatory

reform of the GMA and SMA. This bill is "pro-environment" and does not weaken the SMA; rather, it will stiffen environmental protection by bringing the two programs together and making them more directed. The Department of Ecology (DOE) will have more time to concentrate on shorelines of statewide significance. Streamlining programs also promotes economic development and enhances the ability to provide affordable housing.

The bill recognizes a new form of critical area. Commercial shellfish areas will have to be protected, and local governments will have to include penalties for violations of critical areas ordinances. This bill also will authorize local governments to protect

shorelines through critical areas regulations, using best available science and the science developed through the salmon recovery and watershed planning efforts.

The time frame for revisions of shoreline master programs should be extended and tied to funding. The division of shoreline programs may be time consuming and costly for areas like Pacific County. The bill should give local governments authority over shorelines of statewide significance.

(pro with amendments) (Original bill) This bill does not address some policy issues regarding integration of land use and environmental laws but should be used as a foundation for recommendations by the proposed task force on shoreline planning.

Testimony Against: (Original bill) Shorelines are important to the state as a whole and are not just of local concern. The bill eliminates most state oversight authority for shorelines, as shorelines of statewide significance are a very small percentage of all shorelines of the state. The recent report by the Department of Community, Trade, and Economic Development shows problems exist with critical areas ordinances and the use of best available science. Environmental protection cannot be compromised for the sake of efficiency.

The preferred uses in the Shoreline Management Act (SMA) may be construed as conflicting with the Growth Management Act (GMA) critical areas regulations. The Department of Ecology (DOE) would still be required to review local permits, but the bill removes the criteria used to review those permits. This bill may create confusion with different regulations for different shoreline classifications and will require the DOE to revise its shoreline materials.

Shellfish growers cannot escape encroachment from upland development. Shoreline areas cross local government boundaries; with this bill, there will be no guarantee that shoreline areas will be equally protected.

(concerns) (original bill) The bill needs to clarify that policies and preferred uses specified in the SMA will be retained in GMA critical areas regulations for shorelines.

Testified: (Support) Representative Gary Chandler, prime sponsor; Dave Williams, Association of Washington Cities; Vincent Moore, Association of County and Regional Planning Directors; Jodi Slavik, Building Industry Association of Washington; Paul Parker, Washington State Association of Counties; and Pat Hamilton, Pacific County.

(Support with Amendments) Scott Hazelgrove, Association of Washington Business.

(Concerns) Scott Taylor, Washington Public Ports Association.

(Opposed) Diane Cooper, Pacific Coast Shellfish Growers; Bruce Wishart, People for Puget Sound; and Neil Aaland, Department of Ecology.