

HOUSE BILL REPORT

ESHB 1933

As Passed Legislature

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

Brief Description: Declaring shoreline management act legislative intent.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Berkey, Kessler, Cairnes, Buck, Sullivan, Orcutt, Hatfield, Jarrett, Miloscia, Gombosky, Grant, DeBolt, Quall, Woods, Schoesler, Conway, Lovick, Clibborn, Edwards, Schindler, McCoy, Eickmeyer and Alexander).

Brief History:

Committee Activity:

Local Government: 3/3/03, 3/5/03 [DPS].

Floor Activity:

Passed House: 3/17/03, 66-31.

Senate Amended.

Passed Senate: 4/9/03, 45-0.

House Concurred.

Passed House: 4/25/03, 98-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Establishes that the integration of the goals and policies of the Shoreline Management Act (SMA) into the Growth Management Act (GMA) does not create an order of priority among the planning goals of the GMA.
- Makes the policies, goals, and provisions of the SMA the basis for determining compliance of a master program with the GMA.
- Specifies additional protection and statutory jurisdiction provisions for critical areas.
- Limits the master program review authority of Growth Management Hearings Boards.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Romero, Chair; Schindler, Ranking Member; Jarrett, Assistant Ranking Member; Ahern, Berkey, Clibborn, Mielke and Moeller.

Minority Report: Do not pass. Signed by 2 members: Representatives Upthegrove, Vice Chair; and Ericksen.

Staff: Ethan Moreno (786-7386).

Background:

I. SHORELINE MANAGEMENT ACT

Policy

The Shoreline Management Act (SMA) governs uses of state shorelines. The SMA enunciates state "policy" to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and creates "preference" criteria listed in the following order of priority that must be used by state and local governments in regulating shoreline uses:

- recognizing statewide interest over local interest;
- preserving natural shoreline character;
- resulting in long-term over short-term benefit;
- protecting shoreline resources and ecology;
- increasing public access to publicly owned shoreline areas;
- increasing public recreational opportunities; and
- providing for any of the mandatory elements within the local shoreline master program as delineated in RCW 90.58.100.

The SMA governs "shorelines of the state." These "shorelines of the state" are defined in the SMA to include both "shorelines" and "shorelines of statewide significance;" terms defined by statute.

"Shorelands" include the lands extending landward for 200 feet in all directions from the ordinary high water mark as well as floodways and contiguous floodplain areas landward 200 feet from the floodways. "Shorelands" also include all wetlands and river deltas associated with streams, lakes, and tidal waters subject to the SMA.

Requirements

The 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. All 39 counties and more than 200 cities have enacted shoreline master programs.

Master Programs

Master programs regulate land use and activities within the shoreline jurisdiction. Local master programs have certain mandatory elements as appropriate. These include:

- an *economic development* element for locating and designing water-dependent industrial projects and other commercial activities;
- a *public access* element to provide for public access to public areas;
- a *recreational* element to preserve and enhance shoreline recreational opportunities;
- a *circulation* element to locate transportation and other public facilities for shoreline use;
- a *use* element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a *conservation* element to preserve natural resources in shoreline areas;
- a *historic, cultural, scientific, and educational* element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing *flood damage*.

Local governments may include other elements necessary to implement the SMA requirements.

Appeals

Appeals of shoreline rules and regulations adopted by the Department of Ecology (DOE) and other specific matters are reviewed by the Shorelines Hearings Board (SHB).

For jurisdictions planning under the major Growth Management Act requirements, adoption or amendment of local master programs are appealed to the Growth Management Hearings Board (GMHB). Master programs adopted by other jurisdictions are appealed to the SHB. Certain standards are specified for appellate review of master programs. Decisions of either the SHB or the GMHB may be appealed to superior court.

II. GROWTH MANAGEMENT ACT

Policy

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Currently, 29 of 39 counties, and the cities within those 29 counties, are required to or have chosen to comply with the major requirements of the GMA (GMA jurisdictions).

The GMA establishes a list of 13 planning goals to be used exclusively for guiding the development and adoption of comprehensive plans and development regulations by GMA jurisdictions. The goals, which are not listed in an order of priority, include:

- encouraging *urban growth* in urban areas with adequate public facilities;
- *reducing* low-density development *sprawl*;
- encouraging efficient, regionally coordinated *transportation* systems;
- encouraging affordable *housing* availability;
- encouraging *economic development* and growth in areas with insufficient growth;
- protecting private *property rights*;
- processing *permits* in a timely and fair manner;
- maintaining and enhancing *natural resource* industries;
- retaining and developing *open space and recreation* availability and opportunities;
- protecting the *environment* and water availability;
- encouraging *citizen participation and coordination*;
- ensuring adequate *public facilities and services*; and
- encouraging *historic preservation*.

Requirements - Comprehensive Land Use Plans/Critical Areas

Among numerous planning requirements, GMA jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Each comprehensive plan must include the following elements:

- land use;
- housing;
- capital facilities plan;
- utilities;
- rural;
- transportation;
- economic development; and
- parks and recreation.

The economic development and parks and recreation elements do not require jurisdictional compliance or action until state funding is provided.

The GMA also requires all local governments to comply with specific provisions for critical areas. "Critical areas" are defined to include: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Each county and city must designate and protect critical areas. The protection of designated critical areas occurs through mandatory development regulations (i.e., critical area ordinances) adopted at the local level.

Comprehensive land use plans and development regulations are subject to continuing review and evaluation by the adopting county or city. Any amendments or revisions of development regulations must comply with the requirements of the GMA and must be consistent with and implement comprehensive plans.

III. POLICY INTEGRATION

In 1995 the Legislature enacted environmental regulatory reform legislation (i.e., ESHB 1724, enacted as ch. 347, Laws of 1995). As a result of the legislation, which implemented recommendations of the Governor's Task Force on Regulatory Reform, the goals and policies of the SMA were added as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a shoreline master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

Summary of Engrossed Substitute Bill:

GMA Provisions

I. Policy and Governance

The GMA is amended to specify new policy and governance provisions for shorelines of the state, including establishing that:

- the integration of SMA goals and policies into the planning goals of the GMA does not create an order of priority among the GMA planning goals;
- shoreline master programs may not be adopted pursuant to goals, policies, and other existing GMA criteria presently used for the adoption of comprehensive plans or development regulations; and
- SMA policies, goals, provisions, and applicable guidelines must, with limited exceptions, be the sole basis for determining compliance of a master program with the GMA.

II. Critical Areas - Jurisdictional Provisions

"Shorelines of the state" are not considered critical areas under the GMA except to the

extent that specific areas within shorelines of the state qualify for designation and have been designated as such by a local government.

As of the date the DOE approves a master program adopted under applicable shoreline guidelines, the protection of critical areas within shorelines of the state must be accomplished through a master program. Master programs must provide a level of protection to critical areas within shorelines of the state that is at least equal to that provided by specific development regulations (*i.e.*, critical area ordinances) required by the GMA. Except as provided, these critical areas are not subject to the procedural and substantive requirements of the GMA. If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, the local jurisdiction must continue to regulate those critical areas, and the required buffers, according to critical area ordinances.

III. Best Available Science

The GMA requirement for using the best available science when designating and protecting critical areas may not apply to the adoption or amendment of master programs and may not be used to determine compliance of a master program with the SMA and applicable guidelines.

SMA Provisions

I. Definitions and Concepts - Shorelands

The SMA definition of "shorelands" is amended to allow a local jurisdiction to include within its master program buffers for critical areas that occur within shorelines of the state. Forest practices, other than conversions to nonforest land use, within these buffer areas are not subject to additional regulations under the SMA.

II. Master Program Approval

The DOE must approve the segment of a master program relating to critical areas if the segment is consistent with the policy of the SMA and applicable guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by critical area ordinances.

III. Master Program Appeals - Growth Management Hearings Boards

The existing authority of Growth Management Hearings Boards (GMHBs) to review proposed master programs or amendments for compliance with the requirements of the GMA is limited to reviewing for compliance with specific internal consistency provisions of the GMA. GMHBs may also, however, review proposed master programs or amendments for compliance with consistency provisions required for city and county

development regulations.

Legislative findings and intent are included.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The City of Everett's amended shoreline master program is one of the most environmentally sound programs in the state. The city spent nearly a decade and almost \$1 million preparing the plan prior to having amendments to its plan remanded by the GMHB. The Legislature has several reasons to act on this legislation, including: 1) The potential that other local governments will not update master programs; 2) the linkage between this bill and legislation establishing a schedule for master program amendments; and 3) enormous risks to development that may result without legislative clarification. This bill will restore a historic interpretation of the integration of the GMA and the SMA, correcting an erroneous interpretation by the GMHB. New guidelines for master programs will be helpful, but without legislative action, the statutory scheme analyzed by the GMHB will remain. This bill addresses issues of global concern and competitiveness. Legislative clarity is essential, as the urgency of this issue cannot wait for the judicial process to unfold. This bill, as a vehicle for clarifying the relevant issues, should move forward.

Testimony Against: This bill may upset the balance of the SMA and result in unintended consequences. Great concern exists about this bill, but progress among parties negotiating potential amendatory provisions continues to be made. Opposition to this bill could be reduced with very narrowly crafted language, including removal of the provisions contained within section one. The Boeing/Mukilteo project can proceed without changes to existing law.

Testified: Representative Berkey, prime sponsor; Larry Stout, Washington Association of Realtors; Paul Roberts, City of Everett; John Koster and Stephen Holt, Snohomish County; Kristen Sawin, Association of Washington Business; Dave Williams, Association of Washington Cities; Gordon White, Department of Ecology; and Eric Johnson, Washington Public Ports Association.

(Against) Bruce Wishart, People for Puget Sound; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Nina Carter, Audubon Society; and Tim Trohimovich, 1000 Friends of Washington.