

HOUSE BILL REPORT

SSB 6012

As Reported by House Committee On:
Local Government

Title: An act relating to shoreline management.

Brief Description: Codifying shoreline rules.

Sponsors: Senate Committee on Land Use & Planning (originally sponsored by Senators Mulliken, T. Sheldon and Morton).

Brief History:

Committee Activity:

Local Government: 4/2/03, 4/3/03 [DPA].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Replaces the 24-month deadline for development or amendment of shoreline master programs with a staggered statutory schedule.
- Removes the limits on the Department of Ecology (DOE) grants to local governments for developing master programs and establishes new grant funding and related compliance requirements.
- Requires local governments to conduct a comprehensive master program review at least once every seven years after the applicable deadlines in the established schedule.
- Requires the DOE to review master program guidelines every seven years beginning July 1, 2015.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Romero, Chair; Upthegrove, Vice Chair; Jarrett, Assistant Ranking Minority Member; Berkey, Clibborn, Edwards and Moeller.

Minority Report: Do not pass. Signed by 4 members: Representatives Schindler, Ranking Minority Member; Ahern, Ericksen and Mielke.

Staff: Ethan Moreno (786-7386).

Background:

Shoreline Management Act

Enacted in 1971, 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 an order of priority that must be used by state and local governments in regulating shoreline uses.

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.

Master programs have certain mandatory elements as appropriate. Among other requirements, the master program elements provide for economic development, public access, recreation, circulation, use, and conservation. Local governments may also include other elements necessary to implement the SMA requirements.

Master Program Guidelines

The Department of Ecology (DOE) is required to adopt state shoreline master program guidelines (Guidelines) for local governments to use when developing their master programs. The Guidelines are adopted in the form of administrative rules. The DOE also is required to approve master programs and consider the Guidelines when reviewing and approving these master programs.

In 1995 the Legislature directed the DOE to review the Guidelines at least once every five years. Pursuant to that direction, in April 1999 the DOE issued revised Guidelines as a draft rule. After conducting a series of public hearings and receiving more than 2,000 comments, the DOE withdrew the draft Guidelines in late 1999. In June 2000 the DOE began the rule making process for a revised version of draft Guidelines. These draft Guidelines were formally adopted as a rule in November 2000.

The November 2000 Guidelines were appealed to the Shorelines Hearings Board (SHB) by various parties. Appellants challenged numerous issues regarding the validity of the Guidelines and the DOE's authority to include some of the provisions in the Guidelines.

In August 2001 the SHB invalidated the November 2000 Guidelines. The SHB concluded

the November 2000 Guidelines exceeded the statutory authority of the SMA and failed to comply with state Administrative Procedure Act requirements.

The November 2000 Guidelines repealed the Guidelines in effect prior to their adoption. The SHB did not reinstate the previous Guidelines or address their validity.

Summary of Amended Bill:

The SMA provision requiring local governments to develop or amend shoreline master programs within 24 months after the adoption of Guidelines by the DOE is replaced with a staggered schedule. The initial deadline for developing or amending master programs under the established schedule will occur on or before December 1, 2005, and continue through the staggered schedule until December 1, 2014. Provisions for local governments required or choosing to develop or amend master programs on or before December 1, 2009, are included. Local governments meeting specific date and other criteria that have new or amended master programs approved by the DOE are not required to complete master program updates until seven years after the applicable date established by the schedule.

Grant funding and related compliance date provisions are specified. Grants to local governments for master program development or amendments must be provided at least two years before the established compliance dates. Local governments applying for but not receiving funding may delay development or amendment of their master programs until the following biennium. Local governments exercising this provision to delay must be the first funding priority in the subsequent biennium. Additionally, the current statutory provision prohibiting the DOE from making grants to local governments in excess of the recipient's contribution to the estimated program cost is removed.

Following the initial round of developing and amending master programs, local governments are required to conduct a comprehensive review of their master programs at least once every seven years after the applicable dates established by the schedule. Following the review, local governments must, as necessary, revise their master programs.

The guideline review authority of the DOE is revised to allow the agency to adopt annual amendments to the Guidelines. The annual amendments, however, are limited to either technical and procedural issues resulting from the review and adoption of master programs under the Guidelines or issues of statutory compliance. In addition, the existing provision requiring the DOE to conduct a review of the Guidelines every five years is replaced with a provision requiring reviews every seven years beginning July 1, 2015.

Amended Bill Compared to Substitute Bill:

All provisions of the underlying substitute bill are removed. A statutory schedule is established for the development, amendment, and review of shoreline master programs by local governments. Grant funding and delayed compliance provisions are specified. The DOE is allowed to adopt technical, procedural, and statutory compliance amendments to the Guidelines not more than once each year. Furthermore, the DOE is required to conduct a review of the Guidelines beginning July 1, 2015, and every seven years thereafter.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This bill was put forth as a placeholder in response to uncertainties accompanying the proposed Guidelines and the related funding provisions for cities and counties. The Guidelines codified within the bill originated in 1972, however, they were updated as recently as the 1990s.

(In support with concerns) This bill does not give cities and counties an unfunded mandate. Local governments are primarily concerned with scheduling and funding provisions, not the specifics of the proposed Guidelines. The engrossed House bill (ESHB 1769) resolves many of the concerns of local governments.

Testimony Against: The bill does not make sense as it codifies outdated Guidelines. Engrossed Substitute House Bill 1769, which received bipartisan support from the House, codifies a schedule for master program updates, is timely, and provides opportunities for public participation. Following the remand of the Guidelines by the SHB, negotiators reached a settlement on newly proposed Guidelines. Legislation resulting from that settlement has been supported by this Committee. Codifying the former Guidelines will not provide increased certainty. The proposed Guidelines are the result of substantial and collaborative work among negotiators representing diverse interests. The provisions of this bill are contrary to directives issued by the Legislature in 1995. This bill is inconsistent with ESHB 1769. The shorelines of Puget Sound have experienced development and change during the past 30 years. This development has been detrimental to some species. It is time to move forward with new Guidelines that reflect the new realities of today. The proposed Guidelines have probably been subjected to more scrutiny than any administrative rules in the state's history. The Guidelines in this bill do not recognize the Growth Management Act - this will create cross-referencing problems for local governments implementing this legislation. The Guidelines in this bill contradict shoreline management directives enacted by the Legislature and create a potential for conflict.

Testified: (In support) Representative Schindler.

(In support with concerns) Dave Williams, Association of Washington Cities; and Scott Merriman, Washington State Association of Counties.

(Against) Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Genesee Adkins, 1000 Friends of Washington; Nina Carter, Audubon Society; Jay Geck, Attorney General's Office; Mike Ryherd, American Planning Association; Bruce Wishart, People for Puget Sound; Tom Bjorgen, Washington Environmental Council; and Gordon White, Department of Ecology.