

FINAL BILL REPORT

ESHB 1933

C 321 L 03

Synopsis as Enacted

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).

House Committee on Local Government
Senate Committee on Land Use & Planning

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.

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" as 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 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 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. 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. Twenty-nine 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 land use 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 (comprehensive plans), which are generalized, coordinated land use policy statements of the governing body. Each comprehensive plan must include planning provisions for each of the following elements:

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

The economic development and park 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. Using the best available science, 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 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 that implemented recommendations of the Governor's Task Force on Regulatory Reform. The legislation added the goals and policies of the SMA as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

Summary:

GMA PROVISIONS

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;
- master programs may not be adopted pursuant to goals, policies, and other existing GMA criteria 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.

Critical Areas - Jurisdictional Provisions. "Shorelines of the state" must not be 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 (such as 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.

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

Definitions and Concepts - Shorelands. The SMA definition of "shorelands" allows 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.

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.

Master Program Appeals - Growth Management Hearings Boards. Growth Management Hearings Boards (GMHBs) may review appeals of proposed master programs or amendments for compliance with specific internal consistency provisions of the GMA. GMHBs may also review appeals of proposed master programs or amendments for compliance with consistency provisions required for city and county development regulations.

Votes on Final Passage:

House 66 31
Senate 45 0 (Senate amended)
House 98 0 (House concurred)

Effective: July 27, 2003