

SENATE BILL REPORT

ESHB 1933

As Reported By Senate Committee On:
Land Use & Planning, April 3, 2003

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: 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: Land Use & Planning: 3/31/03, 4/3/03 [DPA].

SENATE COMMITTEE ON LAND USE & PLANNING

Majority Report: Do pass as amended.

Signed by Senators Mulliken, Chair; Kline, McCaslin, Morton and T. Sheldon.

Staff: Jennifer Arnold (786-7471)

Background: In 1995, the Growth Management Act (GMA) was amended to require that the goals and policies of a shoreline master program under the Shoreline Management Act (SMA) be considered as an element of the local government's comprehensive plan. The other mandatory elements within a comprehensive plan include: land use, housing, a capital facilities plan, utilities, rural areas, transportation, economic development and parks and recreation.

GMA also sets forth 14 planning goals, although expressly not listed in order of priority within GMA, to guide the development of comprehensive plans and development regulations: urban growth, sprawl reduction, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, air and water quality, citizen participation and coordination, public facilities and services, and the goals of SMA.

Recently, the Central Puget Sound Growth Management Hearings Board (CPSGMHB) in *Everett Shorelines Coalition v. City of Everett* interpreted the goals of GMA to require that the shoreline management element of a GMA comprehensive plan be given greater weight than the other elements in the comprehensive plan. The board further found that, under SMA, shoreline preservation, protection, enhancement and restoration are primary interests of the state, while development is not. In regards to critical areas, the board held that all "shorelines of statewide significance" are critical areas subject to both GMA and SMA.

There are concerns that, in the absence of any shoreline guidelines to interpret SMA, the board's findings were flawed; shoreline management policy has traditionally provided that the state's interest is broader than solely environmental concerns. Further, there are additional concerns that the goals and policies of SMA should not be required to take priority over all of the other goals of GMA, having the effect of limiting the discretion of local governments to determine the priorities of their particular community. And finally, there is concern that the board's implication that the best available science cannot exist without the consensus support of qualified reviewers is incorrect and inconsistent with state statutes.

Summary of Amended Bill: It is clarified that legislative intent is for all 14 goals, as well as the policies, of GMA to continue to be listed without an order of priority. The goals and policies of SMA are to be interpreted and applied consistent with the Shoreline Hearings Board and court decisions that were made prior to the CPSGMHB decision.

Shorelines of statewide significance are not deemed to be critical areas solely because they have been designated "shorelines of statewide significance."

Local governments may include buffer land for critical areas in their shoreline master programs under the SMA, but if such lands are not included in the master program, the local government must include these lands in its critical area ordinances under the GMA. In regards to critical area buffers, it is clarified that this legislation is not intended to apply any additional regulations under the SMA upon forest practices that are regulated under the Forest Practices Act. It is further clarified that nothing in this bill is intended to affect whether or to what extent the definition under current law for agricultural activities in RCW 90.58.065 is subject to the GMA.

GMA provisions for best available science do not apply to shoreline master programs; instead, SMA and the applicable shoreline guidelines govern. It is expressly provided that this provision is not intended to reduce the quality of information used in protecting critical areas.

Growth management hearings boards (GMHBs) may review shoreline master programs only for compliance with SMA and applicable shorelines guidelines. GMHB review of a local master program for GMA compliance is restricted to specific GMA internal consistency statutes.

Amended Bill Compared to Substitute Bill: All reference to the new proposed guidelines by the Department of Ecology is removed and instead reference is made to "applicable" guidelines. It is clarified that forest practices regulated under the Forest Practices Act are not subject to additional regulations under the SMA as a result of this bill. It is further clarified that the bill is not intended to affect the treatment of agricultural activities under the GMA. The definition of shorelands in the SMA is changed and a new section is added to the GMA, which provides that if a local government does not include lands necessary for critical area buffers in its shoreline master program, then such lands must be included within the local governments' critical area ordinance under the GMA.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill is in response to a GMHB decision regarding the City of Everett, although the importance of the bill transcends the board decision. The primary purpose of the bill is to clarify legislative intent in three major areas: (1) clarify that there is no order of priority among the goals and policies of the GMA; (2) establish a bright line for critical area jurisdiction between the GMA and the SMA; and (3) clarify the role of the Department of Ecology in approving master programs under the SMA. This legislation is a solution created by a broad spectrum of interests: local government, the business community, and environmental groups. The stakeholders in the board decision came to the Legislature with this bill in order to address a few of the issues raised in that decision, in particular, that the GMA and SMA are not a total harmonious statutory scheme. The Everett decision was rendered in the absence of any shoreline guidelines. This bill addresses that issue and is therefore only applicable after the new Department of Ecology guidelines kick in. The trigger for having separate jurisdictions is the new guidelines, but this bill does not address what the content of those new guidelines should be. This bill will also take into consideration the difference in development needs in urban areas versus rural areas. The bottom line is that it is the Legislature's job to decide if the SMA should be integrated into the GMA or not. This bill does not solve all the problems, but goes a long way to sort out the parts that GMA and SMA play and to make sure that they work together better. In addition, this legislation is needed in order to ease the current tensions and allow jurisdictions that want to update their master programs to move forward.

Testimony Against: None.

Testified: Rep. Jean Berkey, prime sponsor; Dick McCann, AWB (pro); Gordon White, Ecology (pro); Heather Ballash, CTED (pro); Chris Towne, City of Everett (pro); Dave Williams, AWC (pro); Eric Johnson, WPPA (pro); Kristen Sawin, AWB (pro).