

HOUSE BILL REPORT

HB 2535

As Reported by House Committee On: Local Government

Title: An act relating to moratoria and other interim official controls adopted under the shoreline management act.

Brief Description: Allowing local governments to adopt moratoria and other interim official controls under the shoreline management act.

Sponsors: Representatives Lantz, Hunt, Seaquist, Appleton, Nelson and Chase.

Brief History:

Committee Activity:

Local Government: 1/18/08, 1/24/08 [DPS].

Brief Summary of Substitute Bill

- Specifies that local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement the Shoreline Management Act (SMA).
- Establishes public hearing, notification, and other requirements that must be met by local governments choosing to adopt moratoria or interim controls.
- Specifies that moratoria or interim controls may be effective for up to six months, but allows the local government to renew the moratoria if delineated requirements are met.
- Specifies that bill's provisions may not be construed to modify county and city moratoria powers conferred outside of the SMA.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Simpson, Chair; Takko, Vice Chair; Eddy and Nelson.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Warnick, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; Schmick.

Staff: Ethan Moreno (786-7386).

Background:

Shoreline Management Act

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 enjoyment and creates preference criteria listed in prioritized order 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, the 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 that 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 must be consistent with guidelines adopted by the Department of Ecology (DOE), and the programs, and segments of or amendments to, become effective when approved by the DOE.

Supreme Court Action

On October 11, 2007, the Washington Supreme Court ruled *Ray Biggers, et. al., v. City of Bainbridge Island*, 2007 Wash. LEXIS 784, that Bainbridge Island exceeded its authority in adopting rolling moratoria for shoreline development. The four justices comprising the lead opinion expressed that the city's actions failed, in part, because the SMA does not include an express provision authorizing jurisdictions to adopt moratoria. Concurring in result with the lead opinion, a fifth justice concluded that the city had proper authority to adopt moratoria, but that the imposition of rolling moratoria was unreasonable and in excess of its lawful power.

Summary of Substitute Bill:

Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement the SMA. A local government adopting a moratorium or control under this authority must satisfy timely public hearing requirements, adopt detailed findings of fact, and notify the DOE of the moratorium or control.

A moratorium or control under the SMA may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. Moratoria and controls may be renewed for one or more six-month period if the local government satisfies public hearing, fact finding, and notification requirements before each renewal.

Substitute Bill Compared to Original Bill:

Includes a provision specifying that nothing in the bill may be construed to modify county and city moratoria powers that are conferred outside of the SMA.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The Gig Harbor peninsula is experiencing explosive growth. The amount of shoreline in the area, however, is limited and must be protected. Local governments are required to update shoreline ordinances under the SMA: this process is underway. This bill will allow jurisdictions to take a break and will enable them to implement updated regulations. This bill is about planning for the future. Cities have constitutional authority to adopt shoreline and non-shoreline moratoria, necessary planning tools, but the Washington Supreme Court's recent decision muddied the legal waters. This bill will clarify issues for cities and will establish moratoria procedural requirements. The City of Gig Harbor is unaware of any need to implement moratoria as a result of its ongoing shoreline master program updates, but the city needs the authority to respond to the unexpected. A 12-month moratoria period may be more useful to jurisdictions than the six-month period specified in the bill.

(Opposed) The SMA includes provisions to protect property rights and measures to allow property owners to protect their property from erosion in a timely manner. This bill will lessen the ability of property owners to protect their shoreline property. The Washington Supreme Court noted in its recent decision that rolling moratoria is poor public policy.

Persons Testifying: (In support) Representative Simpson, prime sponsor; Carol Morris and Tom Dolan, City of Gig Harbor; Tom Clingman, Department of Ecology; and Bruce Wishart, People for Puget Sound.

(Opposed) Andrew Cook, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.