

# HOUSE BILL REPORT

## EHB 2734

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**As Passed House:**  
February 19, 2008

**Title:** An act relating to encouraging the removal of artificial vertical shoreline bank structures by redefining for certain projects the point from where the two hundred feet of shoreline is calculated.

**Brief Description:** Encouraging the removal of artificial vertical shoreline bank structures.

**Sponsors:** By Representatives Newhouse and Hudgins.

**Brief History:**

**Committee Activity:**

Local Government: 1/22/08, 2/1/08 [DP].

**Floor Activity:**

Passed House: 2/19/08, 95-0.

**Brief Summary of Engrossed Bill**

- Establishes new permitting, variance, and master program provisions in the Shoreline Management Act for development requests in areas created by a voluntary habitat restoration project.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass. Signed by 7 members: Representatives Simpson, Chair; Takko, Vice Chair; Warnick, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; Eddy, Nelson and Schmick.

**Staff:** Ethan Moreno (786-7386).

**Background:**

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

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enjoyment, and creates preference criteria 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, 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. 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.

Each local government must establish a program for the administration and enforcement of a shoreline permit system. While the SMA specifies standards for counties and cities to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Counties and cities are also required to notify the DOE of all permit decisions under the SMA. Additionally, only the DOE may approve variance or conditional use permits that authorize actions otherwise prohibited by shoreline regulations.

The SMA requires property owners or developers to obtain substantial development permits for qualifying developments within shorelines areas. "Substantial developments" are defined to include both developments with total cost or fair market value exceeding \$5,000, or other amount as adjusted for inflation, and developments materially interfering with normal public shoreline use.

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### **Summary of Engrossed Bill:**

New permitting and variance provisions for the SMA are established. A substantial development permit is not required for development within a restoration area if the proposed project is to be located on:

- shorelines designated as a high-intensity shoreline environment under the applicable master plan; or
- shorelines consistent with a high-intensity shoreline environment designation under the applicable master plan.

"Restoration area" is defined to mean an area that: was created by a landward shift in the ordinary high water mark that resulted from a voluntary habitat restoration project; and was not subject to regulation under the SMA prior to the restoration project.

Requests for development approvals within restoration areas may be granted in the form of restoration project variances. Restoration project variances may be issued to authorize relief from bulk, dimension, or other master program development standards, including use regulations, if:

- the shift in shoreline jurisdiction resulting from the voluntary restoration project causes hardship in the area within and adjacent to the restoration area. "Hardship" is defined to

mean that a reasonable use of the property is precluded or significantly diminished in the area within and adjacent to the restoration area due to requirements of the applicable master program; and

- the variance includes measures to ensure that allowable uses of the property result in no net loss of shoreline ecological functions within the restoration area.

Issued restoration project variances must comply with specific requirements. The variances:

- must be limited to only the minimum approvals necessary to afford relief;
- may not cause the public interest to suffer substantial detriment; and
- must be processed according to the same procedures used for other shoreline variances.

New provisions for master programs adopted under the SMA are established. Master programs may include provisions, including conditions of approval, areas of applicability, and other requirements, to ensure that restoration project variance processes achieve certain objectives.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is the result of a tour of the Duwamish River. A portion of the river bank is a prime area for habitat restoration. However, if you remove the bulkhead, the buffer requirements will shift. This shift can discourage restoration efforts and will impact the current or future use of the private property. Property owners are fighting restoration efforts because of concerns about being negatively affected by jurisdictional changes. This bill will allow land owners to improve habitat without diminishing their property rights. This bill will promote harmony between land owners and the environment.

(Opposed) The Department of Ecology (DOE) wants to prevent regulations from discouraging restoration activities: the agency recognizes that, in some cases, this does occur. The DOE has not provided clear guidance to local governments about jurisdictional shifts resulting from restoration activities. The DOE, however, is concerned about the specific mechanisms of the bill: small and large areas could be affected. This bill is not an effective way to manage shorelines. The DOE does not believe the SMA needs to be amended.

**Persons Testifying:** (In support) Representative Newhouse, prime sponsor; and Representative Hudgins.

(Opposed) Tom Clingman, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.