

HB 1653 - H AMD 377

By Representative Simpson

NOT CONSIDERED 04/26/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
4 Engrossed Substitute House Bill No. 1933, enacted as chapter 321, Laws
5 of 2003, modified the relationship between the shoreline management act
6 and the growth management act. The legislature recognizes also that
7 its 2003 efforts, while intended to create greater operational clarity
8 between these significant shoreline and land use acts, have been the
9 subject of differing, and occasionally contrary, legal interpretations.
10 This act is intended to affirm and clarify the legislature's intent
11 relating to the provisions of chapter 321, Laws of 2003.

12 (2) The legislature affirms that development regulations adopted
13 under the growth management act to protect critical areas remain in
14 effect within shorelines otherwise governed under the shoreline
15 management act until the department of ecology, on or after March 1,
16 2002, approves a comprehensive update to a shoreline master program, or
17 segment of a master program relating to critical areas.

18 (3) The legislature does not intend to have buffers for fish and
19 wildlife habitat conservation areas and wetlands that are adopted under
20 the growth management act prohibit development or redevelopment of
21 water-dependent, water-related, and associated accessory uses
22 authorized by shoreline master programs on shorelands that are
23 substantially developed with those uses. The legislature does,
24 however, intend for those water-dependent, water-related, and
25 associated accessory uses to comply with other local requirements.

26 (4) The legislature finds that development regulations adopted
27 under the growth management act address ecological concerns and public
28 safety issues beyond those typically included in shoreline regulations.
29 The legislature recognizes that it is not necessary or appropriate to
30 incorporate every category of critical area within a shoreline master

1 program. However, for two categories of critical areas, wetlands and
2 fish and wildlife habitat conservation areas, there is significant
3 overlap between the shoreline management act and the growth management
4 act, and it is therefore appropriate to regulate these areas solely
5 within an updated shoreline master program.

6 (5) The legislature affirms that no net loss is the standard
7 established in guidelines adopted by the department of ecology for
8 shoreline program updates. Adopting this environmental standard in
9 shoreline master programs for the protection of critical areas provides
10 a clear path to the adoption of improved standards that avoid potential
11 conflicts with shoreline management act objectives for water-dependent
12 uses and public shoreline access.

13 (6) By removing the requirement that updated shoreline regulations
14 provide a level of protection that is at least equal to critical area
15 regulations adopted under the growth management act, the legislature
16 affirms that buffers or other critical area protections that may be
17 appropriate outside shoreline areas may not be appropriate within
18 shoreline areas where shoreline access and water-dependent activities
19 are preferred uses. Furthermore, the legislature finds that within
20 shoreline areas, shoreline master programs may allow these uses when
21 they achieve the no net loss standards of shoreline guidelines adopted
22 by the department of ecology.

23 **Sec. 2.** RCW 36.70A.480 and 2003 c 321 s 5 are each amended to read
24 as follows:

25 (1) For shorelines of the state, the goals and policies of the
26 shoreline management act as set forth in RCW 90.58.020 are added as one
27 of the goals of this chapter as set forth in RCW 36.70A.020 without
28 creating an order of priority among the fourteen goals. The goals and
29 policies of a shoreline master program for a county or city approved
30 under chapter 90.58 RCW shall be considered an element of the county or
31 city's comprehensive plan. All other portions of the shoreline master
32 program for a county or city adopted under chapter 90.58 RCW, including
33 use regulations, shall be considered a part of the county or city's
34 development regulations.

35 (2) The shoreline master program shall be adopted pursuant to the
36 procedures of chapter 90.58 RCW rather than the goals, policies, and

1 procedures set forth in this chapter for the adoption of a
2 comprehensive plan or development regulations.

3 (3) The policies, goals, and provisions of chapter 90.58 RCW and
4 applicable guidelines shall be the sole basis for determining
5 compliance of a shoreline master program with this chapter except as
6 the shoreline master program is required to comply with the internal
7 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and
8 35A.63.105.

9 (a) (~~(As of the date)~~) In accordance with this section and RCW
10 90.58.090, the department of ecology may approve a comprehensive update
11 to a shoreline master program or a segment of a master program relating
12 to critical areas. Upon approval by the department of ecology
13 (~~approves a local government's~~) of a shoreline master program adopted
14 (~~under applicable shoreline guidelines~~) on or after March 1, 2002,
15 the protection of (~~critical~~) wetlands and fish and wildlife habitat
16 conservation areas (~~as defined by RCW 36.70A.030(5)~~) located within
17 shorelines of the state shall be accomplished only through the local
18 government's shoreline master program and shall not be subject to the
19 procedural and substantive requirements of this chapter, except as
20 provided in subsection (6) of this section.

21 (b) (~~(Critical areas within shorelines of the state that have been~~
22 ~~identified as meeting the definition of critical areas as defined by~~
23 ~~RCW 36.70A.030(5), and that are subject to a shoreline master program~~
24 ~~adopted under applicable shoreline guidelines shall not be subject to~~
25 ~~the procedural and substantive requirements of this chapter, except as~~
26 ~~provided in subsection (6) of this section.)~~) Nothing in chapter 321,
27 Laws of 2003, this section, or RCW 90.58.090 is intended to affect
28 whether or to what extent agricultural activities, as defined in RCW
29 90.58.065, are subject to chapter 36.70A RCW.

30 (c) The provisions of RCW 36.70A.172 shall not apply to the
31 adoption or subsequent amendment of a local government's shoreline
32 master program and shall not be used to determine compliance of a local
33 government's shoreline master program with chapter 90.58 RCW and
34 applicable guidelines. Nothing in this section, however, is intended
35 to limit or change the quality of information to be applied in
36 protecting critical areas within shorelines of the state, as required
37 by chapter 90.58 RCW and applicable guidelines.

1 (4) Shoreline master programs shall provide a level of protection
2 to ~~((critical))~~ wetlands and fish and wildlife habitat conservation
3 areas located within shorelines of the state that ~~((is at least equal~~
4 ~~to the level of protection provided to critical areas by the local~~
5 ~~government's critical area ordinances adopted and thereafter amended~~
6 ~~pursuant to RCW 36.70A.060(2))~~ assures, in accordance with guidelines
7 adopted under RCW 90.58.060, no net loss of shoreline ecological
8 functions that are necessary to sustain shoreline natural resources.

9 (5) Shorelines of the state shall not be considered critical areas
10 under this chapter except to the extent that specific areas located
11 within shorelines of the state qualify for critical area designation
12 based on the definition of critical areas provided by RCW 36.70A.030(5)
13 and have been designated as such by a local government pursuant to RCW
14 36.70A.060(2).

15 (6) If a local jurisdiction's master program does not include land
16 necessary for buffers for critical areas that occur within shorelines
17 of the state, as authorized by RCW 90.58.030(2)(f), then the local
18 jurisdiction shall continue to regulate those critical areas and their
19 required buffers pursuant to RCW 36.70A.060(2).

20 (7)(a) Development regulations adopted under this chapter to
21 protect critical areas apply within shorelines of the state until the
22 shoreline master program, or the segment of the master program relating
23 to critical areas, has been approved by the department of ecology under
24 subsection (3) of this section.

25 (b) Development regulations adopted under this chapter to protect
26 critical areas that are not superseded as provided in subsection (3) of
27 this section remain in effect and continue to apply within shorelines
28 of the state.

29 (8) For purposes of this section "wetlands and fish and wildlife
30 habitat conservation areas" means wetlands and fish and wildlife
31 habitat conservation areas designated under RCW 36.70A.170.

32 **Sec. 3.** RCW 90.58.090 and 2003 c 321 s 3 are each amended to read
33 as follows:

34 (1) A master program, segment of a master program, or an amendment
35 to a master program shall become effective when approved by the
36 department. Within the time period provided in RCW 90.58.080, each

1 local government shall have submitted a master program, either totally
2 or by segments, for all shorelines of the state within its jurisdiction
3 to the department for review and approval.

4 (2) Upon receipt of a proposed master program or amendment, the
5 department shall:

6 (a) Provide notice to and opportunity for written comment by all
7 interested parties of record as a part of the local government review
8 process for the proposal and to all persons, groups, and agencies that
9 have requested in writing notice of proposed master programs or
10 amendments generally or for a specific area, subject matter, or issue.
11 The comment period shall be at least thirty days, unless the department
12 determines that the level of complexity or controversy involved
13 supports a shorter period;

14 (b) In the department's discretion, conduct a public hearing during
15 the thirty-day comment period in the jurisdiction proposing the master
16 program or amendment;

17 (c) Within fifteen days after the close of public comment, request
18 the local government to review the issues identified by the public,
19 interested parties, groups, and agencies and provide a written response
20 as to how the proposal addresses the identified issues;

21 (d) Within thirty days after receipt of the local government
22 response pursuant to (c) of this subsection, make written findings and
23 conclusions regarding the consistency of the proposal with the policy
24 of RCW 90.58.020 and the applicable guidelines, provide a response to
25 the issues identified in (c) of this subsection, and either approve the
26 proposal as submitted, recommend specific changes necessary to make the
27 proposal approvable, or deny approval of the proposal in those
28 instances where no alteration of the proposal appears likely to be
29 consistent with the policy of RCW 90.58.020 and the applicable
30 guidelines. The written findings and conclusions shall be provided to
31 the local government, all interested persons, parties, groups, and
32 agencies of record on the proposal;

33 (e) If the department recommends changes to the proposed master
34 program or amendment, within thirty days after the department mails the
35 written findings and conclusions to the local government, the local
36 government may:

37 (i) Agree to the proposed changes. The receipt by the department

1 of the written notice of agreement constitutes final action by the
2 department approving the amendment; or

3 (ii) Submit an alternative proposal. If, in the opinion of the
4 department, the alternative is consistent with the purpose and intent
5 of the changes originally submitted by the department and with this
6 chapter it shall approve the changes and provide written notice to all
7 recipients of the written findings and conclusions. If the department
8 determines the proposal is not consistent with the purpose and intent
9 of the changes proposed by the department, the department may resubmit
10 the proposal for public and agency review pursuant to this section or
11 reject the proposal.

12 (3) The department shall approve the segment of a master program
13 relating to shorelines unless it determines that the submitted segments
14 are not consistent with the policy of RCW 90.58.020 and the applicable
15 guidelines.

16 (4) The department shall approve the segment of a master program
17 relating to critical areas as defined by RCW 36.70A.030(5) (~~provided~~)
18 if the master program segment is consistent with RCW 90.58.020 and
19 applicable shoreline guidelines, and if the segment provides a level of
20 protection of critical areas (~~at least equal to that provided by the~~
21 ~~local government's critical areas ordinances adopted and thereafter~~
22 ~~amended pursuant to RCW 36.70A.060(2))~~) that assures, in accordance
23 with guidelines adopted under RCW 90.58.060, no net loss of shoreline
24 ecological functions that are necessary to sustain shoreline natural
25 resources.

26 (5) The department shall approve those segments of the master
27 program relating to shorelines of statewide significance only after
28 determining the program provides the optimum implementation of the
29 policy of this chapter to satisfy the statewide interest. If the
30 department does not approve a segment of a local government master
31 program relating to a shoreline of statewide significance, the
32 department may develop and by rule adopt an alternative to the local
33 government's proposal.

34 (6) In the event a local government has not complied with the
35 requirements of RCW 90.58.070 it may thereafter upon written notice to
36 the department elect to adopt a master program for the shorelines
37 within its jurisdiction, in which event it shall comply with the

1 provisions established by this chapter for the adoption of a master
2 program for such shorelines.

3 Upon approval of such master program by the department it shall
4 supersede such master program as may have been adopted by the
5 department for such shorelines.

6 (7) A master program or amendment to a master program takes effect
7 when and in such form as approved or adopted by the department.
8 Shoreline master programs that were adopted by the department prior to
9 July 22, 1995, in accordance with the provisions of this section then
10 in effect, shall be deemed approved by the department in accordance
11 with the provisions of this section that became effective on that date.
12 The department shall maintain a record of each master program, the
13 action taken on any proposal for adoption or amendment of the master
14 program, and any appeal of the department's action. The department's
15 approved document of record constitutes the official master program.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.58 RCW
17 to read as follows:

18 Provisions in RCW 36.70A.480 govern the relationship between
19 shoreline master programs and development regulations to protect
20 critical areas that are adopted under chapter 36.70A RCW.

21 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately."

25 Correct the title.

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