

# SENATE BILL REPORT

## ESHB 1379

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As Reported by Senate Committee On:  
Government Operations & Elections, March 26, 2009

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

**Brief Description:** Regarding moratoria and other interim official controls adopted under the shoreline management act.

**Sponsors:** House Committee on Local Government & Housing (originally sponsored by Representatives Seaquist, Angel and Liias).

**Brief History:** Passed House: 3/10/09, 60-36.

**Committee Activity:** Government Operations & Elections: 3/26/09 [DPA, DNP].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; McDermott and Pridemore.

**Minority Report:** Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton and Swecker.

**Staff:** Edward Redmond (786-7471)

**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 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 in the state must adopt master programs that regulate land use activities in shoreline areas of the state. Counties and cities must also enforce master programs within their jurisdictions. Master programs must be consistent with guidelines adopted by the Department of Ecology (DOE). The master

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programs, and segments of or amendments to such, become effective when approved by the DOE.

In 2007, the Washington State Supreme Court case of *Biggers, et. al., v. City of Bainbridge Island*, 162 Wn.2nd 683, 169 P.3d 14 (Wash. 2007), addressed the issue of whether Bainbridge Island was authorized to adopt rolling moratoria that imposed a multi-year freeze on private property development in shoreline areas. The majority opinion held that the Washington Constitution (Article XVII, Sec. I) declares that shorelines were originally owned by the state, and therefore subject to state regulation. Even after sale or lease of shorelines, the state continues to hold remaining sovereign interest of the public. The court further reasoned that local governments do not possess any inherent constitutional police power over state shoreline use. Since the SMA does not include an express provision authorizing jurisdictions to adopt moratoria, the moratoria adopted by Bainbridge Island was found to be in conflict with general law.

The concurring opinion held 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 Bill (Recommended Amendments):** 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 two six-month periods if the local government satisfies public hearing, fact finding, and notification requirements before each renewal.

If a local government has effected a moratorium or control, and during this period submits a proposed master program or amendment to the department, the moratorium or control will remain in effect until the department has taken final action on the proposal. The moratorium or control will expire six months from the date of submitting the proposed master program or amendment if final action has not been taken by the department.

Specified moratoria and interim official control provisions may not be construed to modify county and city moratoria powers conferred outside the SMA.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Amendments):** Provides that if a local government has effected a moratorium or control, and during this period submits a proposed master program or amendment to the department, the moratorium or control will remain in effect until the department has taken final action on the proposal. The moratorium or control will expire six months from the date of submitting the proposed master program or amendment if final action has not been taken by the department.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: This bill is a result of the number of cities who were uncertain about their rights to apply a moratoria after the Supreme Court decision. It makes it clear that they can indeed apply the moratorium and rules for how long it can last. The department supports this bill. The moratoria in the bill is consistent with other laws such as the GMA and the host of planning and enabling acts. The unique feature here, which is different, is that this one has a timing side board. None of the other statutes have that. The situation without the offered striker is that the local government would not be able to complete the job that they were given. The department brought this striker forward to fix that problem. The Association of Counties and Cities support this striker.

CON: This bill would significantly change the SMA to allow for moratoria to be adopted, which is not currently in the act. If allowed, this would run contrary to other parts of the SMA that aim to prevent government inaction. The SMA was amended by the Legislature in 1992 to require that permits be expedited for many improvement projects on the shoreline. Furthermore, we are talking about land that is 200 feet landward from the ordinary high water mark; this is a lot property. The concern is that we are going to be affecting a lot of development and redevelopment in the shoreline area. This bill allows for a lengthy two year moratorium, a six month moratorium would be more reasonable.

**Persons Testifying:** PRO: Representative Seaquist, prime sponsor; Tom Clingman, Department of Ecology; Bruce Wishart, People for Puget Sound; Tim Schellberg, Derek Young, city of Gig Harbor.

CON: Julie Nichols, Building Industry Association of Washington; Jeanette Mckague, Washington Realtors.