

SENATE BILL REPORT

EHB 1653

As of February 19, 2010

Title: An act relating to clarifying the integration of shoreline management act policies with the growth management act.

Brief Description: Clarifying the integration of shoreline management act policies with the growth management act.

Sponsors: Representative Simpson; by request of Department of Ecology and Department of Community, Trade and Economic Development.

Brief History: Passed House: 2/15/10, 58-39.

Committee Activity: Environment, Water & Energy: 2/19/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

Background: The Shoreline Management Act (SMA), enacted in 1971, governs uses of state shorelines. SMA includes specific legislative findings that pressures on shoreline uses and the impacts of unrestricted development on public and private shoreline property create the need to coordinate planning for shoreline development activities. SMA also finds these pressures create the need to protect private property rights consistent with the public interest.

SMA applies to all shorelines of the state, which include both shorelines and shorelines of state-wide significance. SMA applies to all marine water areas of the state, together with the lands underlying them, to the western boundary of the state in the Pacific Ocean, to streams with a mean annual flow of 20 cubic feet per second or more, to lakes larger than 20 acres in area, and to reservoirs.

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 which regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce master programs within their jurisdictions.

The Growth Management Act (GMA) is the comprehensive land-use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA

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establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, fully plan under the GMA.

In addition to other GMA requirements, all local governments must designate and protect critical areas. Critical areas are defined by statute to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

In 2003 the Legislature adopted ESHB 1933 which established that shorelines of the state must not be considered critical areas under the GMA except to the extent that specific areas within the shorelines of the state qualify for designation and have been designated as such by a local government.

Summary of Bill: With limited exceptions, development regulations adopted under the GMA to protect critical areas within shorelines of the state apply within shorelines of the state until the Department of Ecology (Ecology) approves one of the following:

- a comprehensive master program update, a term defined to mean a master program that fully achieves the procedural and substantive requirements of guidelines adopted by Ecology, and subsequent amendments, that are effective January 17, 2004;
- a segment of a master program relating to critical areas; or
- a new or amended master program, provided the master program is approved by Ecology on or after March 1, 2002.

The adoption or update of development regulations to protect critical areas under the GMA prior to Ecology approval of a master program update is not a comprehensive or segment update to a master program.

Until Ecology approves a master program or segment thereof as provided above, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if the redevelopment or modification is consistent with the local government's master program, and the local government determines that the proposed action will result in no net loss of shoreline ecological functions. The local government may waive this determination requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas. An agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification.

Upon approval by Ecology of a master program or critical area segment of a master program, critical areas within shorelines of the state are protected under the SMA and, with limited exceptions, are not subject to the procedural and substantive requirements of the GMA.

Master programs must provide a level of protection to critical areas within shorelines of the state that assure no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

A specific provision of the GMA that is amended in the legislation is expressly identified as governing the relationship between master programs and regulations to protect critical areas that are adopted under the GMA.

The bill is curative in nature and applies retroactively to July 27, 2003.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: There has been quite a bit of discussion with many parties to arrive at a solution to the interplay between SMA and GMA. The Supreme Court decision in 2008 has resulted in some confusion and differing results from that decision. This bill will clarify that issue for cities and counties. Additionally, this will result in a more efficient way for cities and counties to regulate uses into the shorelands until they have updated their shoreline master programs. This provides a clear path forward for the shoreline master program update process. There are no new protections or restrictions within this bill. The bill clarifies existing law and provides certainty for land owners, local governments, and the general public to make sure that our state's hundreds of miles of shorelines, wetlands, critical areas, and habitat are protected. If a local jurisdiction chooses to put a critical areas ordinance on the shoreline, any lawfully existing uses that are there will still be conforming uses. This bill protects existing uses and structures as well as agricultural activities. Agricultural activities are protected from a requirement of modification or from being prohibited under the SMA, but not under GMA. A local government cannot affect agricultural activities within the shorelands under the GMA as these activities are regulated under the SMA. This bill not only protects what is existing, but also has a pathway to allow new development to occur.

CON: Private citizens are far better motivated and equipped to take care of their property and its environment than is the government. The GMA and SMA have both been applied to shorelines, with an unprecedented impact on property owners. In Kitsap County, the GMA was used to establish 100 foot buffers, declaring en-bloc that the entire shoreline is a critical area. The courts, in both the Anacortes Supreme Court decision and the Kitsap Alliance of Property Owners Appeals Court decision have clearly said that only the SMA applies to the shorelines. This bill acknowledges those decisions, but ignores them on an interim basis. This bill allows critical areas ordinances to be overlaid on shoreline areas during the period of time a shoreline master program is updated. The Legislature and the courts have made it clear that only the SMA governs the shorelines and the GMA governs everything upland.

Persons Testifying: PRO: Leonard Bauer, Department of Commerce; Tom Clingman, Department of Ecology; Scott Merriman, Washington State Association of Counties; April Putney, Futurewise; Chris McCabe, Association of Washington Business; Dan Wood,

Washington Farm Bureau; Eric Johnson, Washington Public Ports Association; Jeanette McKague, Washington Realtors.

CON: Bob Benze, Kitsap Alliance of Property Owners; Julie Nichols, Building Industry Association of Washington.