

HOUSE BILL REPORT

HB 1082

As Reported by House Committee On:
Local Government

Title: An act relating to local governments and state agencies providing assistance to citizens prior to issuing penalties for violating certain laws.

Brief Description: Concerning violations of the shoreline management act and the growth management act.

Sponsors: Representatives Bailey, Chandler, Finn and Angel.

Brief History:

Committee Activity:

Local Government: 1/21/11, 2/16/11 [DPS].

Brief Summary of Substitute Bill

- Obligates local governments and state agencies, prior to issuing penalties, to seek voluntary compliance actions from persons who violate requirements adopted in accordance with the Growth Management Act, the Shoreline Management Act, and water pollution control provisions.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Takko, Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Fitzgibbon, Rodne, Smith, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Tharinger, Vice Chair.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act.

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.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

The GMA includes enforcement and penalty provisions for public entities. A Growth Management Hearings Board (Board) established in the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA and related statutory provisions by state agencies, counties, or cities. Upon receipt from a Board of a finding that a state agency, county, or city is noncompliant with the GMA, the Governor may impose financial penalties in the form of reducing or withholding appropriations or revenues to which the agency or local government is otherwise entitled.

Shoreline Management Act.

The Shoreline Management Act of 1971 (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 city and county shoreline master programs (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.

The SMA includes enforcement and penalty provisions for private parties. The Office of the Attorney General or the attorney for the local government may take actions as are necessary to enforce the SMA and to ensure that no uses are made of shorelines of the state that conflict with the act's provisions and programs. Any person who fails to conform to the terms of a permit issued under the SMA or who undertakes development on shorelines of the state without first obtaining a required permit is subject to a civil penalty of \$1,000 or less per violation. Furthermore, any person found to have willfully engaged in activities on shorelines of the state in violation of the SMA or its associated requirements is guilty of a gross misdemeanor and must be punished by a maximum fine of \$1,000, imprisonment, or both. Fines for third and subsequent violations in a five-year period may not exceed \$10,000.

Water Pollution Control Violations.

In addition to its responsibilities under the SMA, the DOE is charged with controlling and preventing the pollution of surface and ground waters of the state. The DOE is also the designated water pollution control agency for all purposes of the federal Clean Water Act. The DOE has the authority to adopt rules and regulations related to its water pollution control authority and may, with the assistance of the Attorney General, bring appropriate legal actions to fulfill its responsibilities.

It is unlawful to discharge or to permit the discharge of organic or inorganic matters that, as determined by the DOE, cause or tend to cause pollution in waters of the state. However, the disposal or discharge of solid or liquid waste material into the waters of the state may be allowed by commercial or industrial operations through permits issued by the DOE or local governments that have been granted permitting authority.

Provisions governing water pollution controls specify civil penalties for persons who:

- violate the terms or conditions of a waste discharge permit;
- conduct a commercial or industrial operation or other point-source discharge operation without a required waste discharge permit; or
- improperly discharge polluting matters in waters.

Civil penalties for violating water pollution controls include fines of up to \$10,000 per day per violation. Imposed penalties may be appealed to the Pollution Control Hearings Board within 30 days after receipt of the penalty notice by the applicable person.

Technical Assistance Programs.

Regulatory agencies, a term defined to mean agencies that have the authority to issue civil monetary penalties, are required to develop programs to encourage voluntary compliance by providing technical assistance that is consistent with statutory requirements. The programs must include, but are not limited to, technical assistance visits, printed information, and information and assistance by telephone. Subject to certain limitations, persons who have received a technical assistance visit must be given a reasonable period of time to correct violations identified during a visit before a civil penalty may be imposed for those violations.

Summary of Substitute Bill:

Growth Management Act.

Prior to issuing a penalty authorized in a local ordinance adopted in accordance with the GMA, counties and cities must seek voluntary compliance actions from the alleged violator and work in good faith with any person who indicates an interest in voluntary compliance.

In seeking voluntary compliance actions, the county or city must provide the person with educational information on methods of correcting the alleged violation and technical assistance for expeditiously achieving compliance with the local ordinance. If the provided information and assistance do not result in a voluntary rectification of the violation, the

county or city may impose a penalty upon the alleged violator. The voluntary compliance requirements do not lessen or otherwise affect the authority of the county or city to take actions necessary to address an immediate threat to human health or safety.

Shoreline Management Act.

Prior to a civil penalty being issued under the SMA for failure to comply with the terms of a permit or for undertaking development on shorelines of the state without obtaining a required permit, the applicable governmental entity (either the DOE or a local government) must seek voluntary compliance actions from the noncompliant person. The applicable governmental entity must also seek to work in good faith with any person who indicates an interest in voluntary compliance.

In seeking voluntary compliance, the DOE or local government must provide the person with educational information on methods of correcting the alleged violation and technical assistance for expeditiously achieving compliance with applicable requirements. If the provided information and assistance do not result in a voluntary rectification of the violation, the DOE or local government may impose a civil penalty under the SMA. The voluntary compliance requirements do not lessen or otherwise affect the authority of a local government to take actions necessary to address an immediate threat to human health or safety.

Additional SMA penalty implementation provisions are specified. The applicable governmental entity must attempt to achieve voluntary compliance with a person found to have willfully engaged in activities on shorelines of the state that are in violation of the SMA or its associated requirements before the person may be found guilty of a gross misdemeanor and punished by a fine, imprisonment, or both.

Water Pollution Control Violations.

Prior to issuing a penalty authorized under water pollution control provisions, the DOE must seek voluntary compliance actions from the alleged violator and work in good faith with any person who indicates an interest in voluntary compliance.

In seeking voluntary compliance actions, the DOE must provide the person with educational information on methods of correcting the alleged violation and technical assistance for expeditiously achieving compliance with water pollution control requirements. If the provided information and assistance do not result in a voluntary rectification of the violation, the DOE may impose a penalty upon the alleged violator. The voluntary compliance requirements do not lessen or otherwise affect the authority of the DOE to take actions necessary to address an immediate threat to human health or safety. Additionally, if the voluntary compliance requirements are found to be in conflict with federal law or program requirements related to a specific pollutant discharge permit program, or requirements pertaining to the allocation of related funds, the conflicting part is inoperative.

Funded Through Existing Resources.

All voluntary compliance requirements specified for the GMA, the SMA, and water pollution control violation provisions must be funded and administered within existing resources.

Substitute Bill Compared to Original Bill:

The amended bill adds language specifying that if provisions related to water pollution control violations are determined to be in conflict with federal law or program requirements for the National Pollutant Discharge Elimination System permit program, or in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state for this program, the conflicting part of this section is inoperative.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Every year, hundreds of new regulations result from rule-making practices. These regulations are cumbersome to people who must be aware of and follow them. Constituents have raised issues about how public servants interact with the public, as those relationships are not what they should be. This bill is not intended to allow harmful environmental actions to occur, but rather to promote good stewardship. The intent of the bill is to seek compliance through non-adversarial relationships. The bill will help create certainty and is not intended to hinder government in its efforts to protect the public.

Most people want to be in compliance and this bill may result in higher levels of compliance. Market-based solutions are in the best interest of everyone. This bill creates a step of cooperation before penalties are issued. This bill is consistent with William D. Ruckelshaus Center (Ruckelshaus) discussions and efforts related to agricultural activities and critical areas. Environmental protections will still occur under this bill. If government takes a more gentle and cooperative approach, the end result will be improved. This bill is consistent with practices of the DOE and it is the right thing to do.

(With concerns) County commissioners recognize that heavy-handed enforcement provisions are not in their best interests — especially if they frustrate the electorate. Counties like local options, but this bill creates new obligations for them. Voluntary compliance and technical assistance actions already occur, but if county budgets continue to shrink, they may not be able to provide these services. This bill may tie the hands of counties.

(Opposed) The DOE believes it can accommodate the proposed changes to the SMA, but the agency has concerns with provisions in the bill pertaining to water pollution control violations. The DOE believes, however, that its concerns can be remedied through an amendment.

The amount of enforcement that is taking place at the ground level is minimal, as are the enforcement resources. Making enforcement more difficult would be a step in the wrong direction. Prosecutorial discretion needs to be retained in enforcement proceedings and this bill may reduce that discretion. This bill requires educational and technical assistance services for persons who willfully violate the law; this is not appropriate. Enforcement policies already provide education and technical assistance, as appropriate. The distinction between a good faith violation and a willful violation is important. The Ruckelshaus discussions and efforts related to agricultural activities and critical areas are founded on an understanding of existing laws and practices. This bill will undermine the delicate balance that underpins assumptions and understandings related to ongoing negotiations.

Voluntary cooperation is a flawed philosophical approach to environmental regulation. The laws are so complex that people need to have their hands held at every step of the process. If a person is willfully dumping toxic waste into our waters, penalties need to be issued immediately. The real intent of the bill is to make enforcement of environmental regulations much more difficult. This bill will tie the hands of regulators and will lessen the effectiveness of already weak enforcement practices.

Persons Testifying: (In support) Representative Bailey, prime sponsor; Art Castle and Steve Gano, Building Industry Association of Washington; and Dan Wood, Washington Farm Bureau.

(With concerns) Josh Weiss, Washington State Association of Counties.

(Opposed) Don Seeberger, Department of Ecology; Bruce Wishart, People for Puget Sound; April Putney, Futurewise; Mo McBroom, Washington Environmental Council; and Arthur West.

Persons Signed In To Testify But Not Testifying: None.