

HOUSE BILL REPORT

SSB 5192

As Passed House - Amended:
April 6, 2011

Title: An act relating to provisions for notifications and appeals timelines under the shoreline management act.

Brief Description: Concerning provisions for notifications and appeals timelines under the shoreline management act.

Sponsors: Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators Nelson, Swecker and Chase; by request of Department of Ecology).

Brief History:

Committee Activity:

Local Government: 3/4/11, 3/8/11 [DPA].

Floor Activity:

Passed House - Amended: 4/6/11, 97-0.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Makes numerous technical changes to notification and timing provisions governing appeals under the Shoreline Management Act (SMA).
- Establishes that the effective date of a local shoreline master program (master program) adopted under the SMA is 14 days from the date of the Department of Ecology's (DOE) written notice of final action to the local government stating that the DOE has approved or rejected the proposal.
- Modifies provisions governing appeals of master programs adopted by jurisdictions fully planning under the Growth Management Act to require the DOE, rather than the applicable local government, to promptly publish a notice that a master program or amendment has been approved or disapproved by the DOE.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: Do pass as amended. Signed by 7 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Smith, Springer and Upthegrove.

Staff: Ethan Moreno (786-7386).

Background:

Shoreline Management Act – General Provisions.

Policy.

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.

Requirements/Agency Review and Approval.

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, which must be approved by the Department of Ecology (DOE), must be consistent with guidelines adopted by the DOE.

Provisions governing the review of master programs and master program amendments are established in statute. For example, upon receipt of a proposed master program or amendment, the DOE must provide notice to and opportunity for written comment by all interested parties. Within 15 days after the close of the public comment period, the DOE must request the local government to review issues identified in the public comments and to provide a written response as to how the proposal addresses the identified issues. Within 30 days after receipt of the local government response, the DOE must approve the proposal, recommend changes to make the proposal approvable, or deny approval. The written findings and conclusions of the DOE must be provided to the local government, all interested persons, parties, and groups, and the agencies of record.

If the DOE recommends changes to the proposal, the local government has 30 days to:

- agree to the proposed changes. Receipt by the DOE of a written notice of agreement constitutes the final decision action (*i.e.*, "final action") by the DOE approving the amendment; or
- submit an alternative proposal.

Master programs, and segments of or amendments to, become effective when and in such form as approved or adopted by the DOE.

Permits.

The SMA requires a property owner or developer to obtain a substantial development permit for substantial developments within shorelines areas. "Substantial developments" are defined to include both developments with total cost or fair market value exceeding \$5,000 and

developments materially interfering with normal public shoreline or water use. Certain exemptions to the substantial development permit requirement are specified in statute.

Master programs must allow for variances and conditional use permits to avoid creating unnecessary hardships or thwarting policies of the SMA. Variances and conditional uses must be based on "extraordinary circumstances," may not substantially impair the public interest, and must be 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 local governments to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Local governments, however, must notify the DOE of all SMA permit decisions.

The permit review and approval standards generally specify that the local permit system must include provisions to assure that construction on a project, including construction for limited utility extensions and erosion protection measures for single family homes, may not begin or be authorized until 21 days from the "date of receipt," or until all review proceedings are terminated if the proceedings were initiated within 21 days from the date of receipt. "Date of receipt," for purposes of permit requirements under the SMA, means the date the applicant receives written notice from the DOE that the DOE has received the local government's permit decision. If the permit is for a variance or conditional use, "date of receipt" means the date a local government or applicant receives the written decision of the DOE rendered on the permit.

All shoreline permit decisions must, concurrently with the transmittal of the ruling to the applicant, be transmitted to the DOE and the Attorney General.

Appeals and Timing – Master Programs and Permits.

Appeals of substantial development permit decisions and the DOE shoreline rules and regulations are reviewed by the Shorelines Hearings Board (SHB). For jurisdictions that fully plan under the Growth Management Act (GMA), master program adoptions and amendment appeals must be made to the Growth Management Hearings Board (GMHB) within 60 days from the date of the DOE's written notice to the local government of its final decision to approve or reject a proposed plan or amendment. For other jurisdictions, provisions governing master program adoptions and amendment appeals are similar, but timeline and venue requirements differ as the petitioner has 30 days to file the petition with the SHB. Decisions of either the SHB or the GMHB may be appealed to the superior court.

Any person aggrieved by the granting, denying, or rescinding of a shorelines permit may seek review from the SHB by filing a petition for review within 21 days of the date of receipt of the decision. Additionally, the DOE or the Washington Attorney General may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the SHB and the appropriate local government within 21 days of the date of receipt.

Growth Management Act – General Provisions.

Policy.

The 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.

Requirements.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) 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.

Appeals, Timing, and "Date of Publication" Triggers.

The GMA establishes a seven-member GMHB that has limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the SMA, or certain mandates of the State Environmental Policy Act (SEPA) relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

Petitions for review that are filed with the GMHB must be heard and decided by a regional three-member panel, with membership selected from among the GMHB. The GMHB must make findings of fact and prepare a written decision in each decided case. Final decisions of the GMHB may be appealed to the superior court.

All petitions relating to whether or not an adopted or amended comprehensive plan or development regulation is in compliance with the GMA, the SMA, or the SEPA must be filed within 60 days after publication by the applicable city or county legislative body. The "date of publication" for city comprehensive plans and development regulations is the date the city publishes the ordinance, or a summary of the ordinance. The "date of publication" for county comprehensive plans and development regulations is the date the county publishes notice that its plans or regulations have been amended or adopted.

Separate "date of publication" provisions are specified for SMA master programs adopted by planning jurisdictions. Promptly after approval or disapproval of a local government's master program by the DOE, the local government must publish a notice of approval or disapproval. The "date of publication," for purposes of master program appeals to the GMHB, is the date the local government publishes notice that the master program has been approved or disapproved.

Summary of Amended Bill:

Numerous technical changes to notification and timing provisions governing appeals under the SMA are made. Technical changes to provisions governing master program appeals in jurisdictions that fully plan under the GMA are also made.

Master Programs.

The effective date of a master program is 14 days from the date of the DOE's written notice of final action to the local government stating that the DOE has approved or rejected the proposal. If the master program is adopted by administrative rule of the DOE, the effective date is governed by provisions for the filing of administrative rules with the Office of the Code Reviser. The DOE's written notice to the local government must conspicuously and plainly state that it is the DOE's final decision and that there will be no further modification to the proposal.

Promptly after approval or disapproval of a local government's master program or amendment, the DOE must publish a notice consistent with specified requirements that the master program or amendment has been approved or disapproved. This notice must be filed for all master programs or amendments, including master programs and amendments proposed by local governments, that do not fully plan under the GMA. On the day a shoreline master program (SMP) or SMP amendment of a local government that does not fully plan under the GMA is approved or disapproved, the DOE must notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary to ensure that the local government has received the full written approval or disapproval decision.

Written findings and conclusions pertaining to a decision by the DOE to approve or disapprove a master program must be made available to all interested persons, parties, groups, and agencies of record on the proposal.

Local Government Shoreline Permit Systems – Dates of Filing, 21-day Window Remains.

Local government shoreline permit systems must include provisions to assure that construction on a project, including construction for limited utility extensions and erosion protection measures for single family homes, may not begin or be authorized until 21 days from the date the permit decision was filed, rather than 21 days from the date of receipt, or until all review proceedings are terminated if the proceedings were initiated within 21 days from the date of filing rather than the date of receipt.

"Date of filing," for purposes of permit requirements under the SMA, is defined to mean the date of actual receipt by the DOE of the local government's decision. With regard to a permit for a variance or a conditional use, "date of filing" means the date the decision of the DOE is transmitted to the local government. When a local government simultaneously transmits to the DOE its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" means the date the decision of the DOE is transmitted to the local government. The DOE is expressly required to notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

All shoreline permit decisions must, concurrently with the transmittal of the ruling to the applicant, be filed with, rather than transmitted to, the DOE and the Attorney General. This filing must be accomplished by return receipt requested mail.

References to "date of receipt," including a definition of the term, are deleted.

Shoreline Management Act Appeals – Dates of Filing, Time Periods for Actions Unchanged.

Any person aggrieved by the granting, denying, or rescinding of a shoreline permit may seek review from the SHB by filing a petition for review within 21 days of the date of filing, rather than the date of receipt, of the decision. Additionally, the DOE or the Washington Attorney General may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the SHB and the appropriate local government within 21 days from the date the final decision was filed, rather than the date of receipt.

For jurisdictions that fully plan under the GMA, master program adoptions and amendment appeals must be made to the GMHB within 60 days from the date the DOE, rather than the local government, publishes notice that the master program or amendment has been approved or disapproved. For other jurisdictions, appeals pertaining to master program adoptions and amendments must be made within 30 days of the date the DOE publishes notice that the master program has been approved or disapproved.

Growth Management Act – Notice Publication Requirements for Master Programs Transferred from Local Governments to the Department of Ecology.

Provisions governing appeals of master programs adopted by jurisdictions fully planning under the GMA are modified to require the DOE, rather than the applicable local government, to promptly publish a notice that a master program or amendment has been approved or disapproved by the DOE. The term "date of publication" for master programs or amendments is defined as the date the DOE, rather than the local government, publishes notice that the master program or amendment has been approved or disapproved.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) In 2010 the Legislature adopted Substitute House Bill 2935, a bill that inadvertently created confusion for effective and appeal date provisions under the SMA. This confusion could prove problematic for upcoming master program update actions of local governments. This legislation clarifies the confusion resulting from the 2010 legislation. The bill is request legislation of the DOE and the DOE supports a proposed amendment that would harmonize the House and Senate versions of the bill.

(Opposed) None.

Persons Testifying: Senator Nelson, prime sponsor; and Tom Clingman, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.