

# HOUSE BILL REPORT

## SSB 5451

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**As Passed House - Amended:**  
April 5, 2011

**Title:** An act relating to shoreline structures in a master program adopted under the shoreline management act.

**Brief Description:** Concerning shoreline structures in a master program adopted under the shoreline management act.

**Sponsors:** Senate Committee on Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Ericksen, Pridemore, Harper, Carrell, Hobbs, Rockefeller, Tom, White and Shin).

**Brief History:**

**Committee Activity:**

Local Government: 3/8/11, 3/15/11 [DPA].

**Floor Activity:**

Passed House - Amended: 4/5/11, 77-19.

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

- Authorizes new or amended shoreline master programs (master programs) that are approved by the Department of Ecology (DOE) on or after September 1, 2011, to include provisions authorizing qualifying residential and appurtenant structures to be considered conforming structures.
- Authorizes these same master programs to include provisions authorizing redevelopment, expansion, and other modifications to residential structures if the modifications are consistent with the applicable master program.
- Specifies that the residential structure provisions do not restrict specified local government regulatory authorities, nor to they affect the application of other federal, state, or local government requirements to residential structures.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

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*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 9 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Fitzgibbon, Rodne, Smith, Springer and Upthegrove.

**Staff:** Ethan Moreno (786-7386).

**Background:**

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

Master programs must allow for variances and conditional use permits to avoid creating unnecessary hardships or thwarting SMA policies. Variances and conditional uses must be based on "extraordinary circumstances," may not substantially impair the public interest, and must be approved by the DOE.

Agency rules adopted by the DOE to implement the SMA include provisions governing nonconforming uses or development within shoreline jurisdiction. For purposes of these rules, a nonconforming use or development is a shoreline use or development that was lawfully constructed or established, but does not conform to current shoreline requirements. The rules specify that uses and developments that were legally established and are nonconforming under a master program may continue as legal nonconforming uses. The rules specify also that structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height; or density may be maintained and repaired. Furthermore these structures may also be enlarged or expanded if the enlargement does not increase the extent of nonconformity.

**Summary of Amended Bill:**

New or amended master programs approved by the DOE on or after September 1, 2011, may include provisions authorizing:

- residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: setbacks, buffers, or yards; area; bulk; height; or density; and
- redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

"Appurtenant structures" is defined to mean garages, sheds, and other legally established structures. The term "appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

The residential structure provisions do not restrict the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, nor do the provisions affect the application of other federal, state, or local government requirements governing residential structures.

**Appropriation:** None.

**Fiscal Note:** Available on original bill.

**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) This bill reflects interest in the growing number of nonconforming shoreline structures resulting from master program updates that are occurring across the state. This bill is not intended to diminish local government flexibility, nor is it intended to impose greater burdens upon property owners. A nonconforming use is illegal, but tolerated. The bill would be improved with amendments including, perhaps, a retroactive clause. Jurisdictions that were required to update their master programs before the effective date of this bill deserve the flexibility that the bill seeks to grant to others.

Many properties have been nonconforming for years, and nonconforming status is appropriate for uses that will eventually be abated. Case law indicates that nonconforming uses ultimately should be extinguished. Single-family homes, however, are a preferred use under the SMA and are not intended to be extinguished. This bill will be helpful to local governments and property owners, as it will reduce uncertainty associated with nonconforming status and will enable them to focus on more important issues.

Citizens have expressed concerns about insurance issues and property transactions involving nonconforming shoreline properties. Insurance companies have raised rates for nonconforming properties. This bill attempts to protect the environment and property owners.

(Opposed) None.

**Persons Testifying:** Senator Ranker, prime sponsor; Richard Civile and Dennis Reynolds, Common Sense Alliance; Tom Clingman, Department of Ecology; Bill Clarke, Washington Realtors; and Dave Williams, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.