

SENATE BILL REPORT

EHB 2671

As of February 22, 2012

Title: An act relating to clarifying procedures for appealing department of ecology final action on a local shoreline master program by ensuring consistency with existing procedural provisions of the growth management act, chapter 36.70A RCW, the administrative procedure act, chapter 34.05 RCW, and the state environmental policy act, chapter 43.21C RCW

Brief Description: Clarifying procedures for appealing department of ecology final action on a local shoreline master program by ensuring consistency with existing procedural provisions of the growth management act, chapter 36.70A RCW, the administrative procedure act, chapter 34.05 RCW, and the state environmental policy act, chapter 43.21C RCW.

Sponsors: Representatives Takko and Fitzgibbon; by request of Department of Ecology.

Brief History: Passed House: 2/13/12, 54-44.

Committee Activity: Energy, Natural Resources & Marine Waters: 2/22/12.

SENATE COMMITTEE ON ENERGY, NATURAL RESOURCES & MARINE WATERS

Staff: Angeline Thomas (786-7470)

Background: Shoreline Management Act (SMA). SMA provides for the management of development along the state shorelines. Local government has the primary responsibility for initiating the planning required by SMA and administering the regulatory program consistent with the policy and provisions of SMA. These locally tailored plans are called shoreline master programs and are used to guide future shoreline development.

The Department of Ecology (DOE) acts primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of SMA.

Master programs must be consistent with guidelines adopted by DOE. DOE has the authority to approve or reject a master program and to approve or reject individual segments of or amendments to it. A master program is not effective until approved by DOE.

A decision by DOE to approve or reject a master program may be appealed to either the Growth Management Hearings Board (GMHB) or the Shorelines Hearings Board (SHB),

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depending on the jurisdiction. For jurisdictions fully planning under the Growth Management Act, decisions are appealed to GMHB. For other jurisdictions, decisions are appealed to SHB.

If a city or county fails to adopt a master program in accordance with the time schedule under SMA, or DOE does not approve a segment of a master program relating to a shoreline of statewide significance, DOE may develop and adopt an alternative master program within the applicable jurisdiction. Shorelines of statewide significance are delineated under SMA.

State Environmental Policy Act (SEPA). SEPA applies to decisions by every state and local agency within Washington. One agency is usually identified as the lead agency for a specific proposal. The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. Some minor projects do not require an environmental review, so the lead agency first decides if an environmental review is needed. If the proposed project is the type that is categorically exempt from the SEPA review process, no further environmental review is required.

Summary of Bill: SEPA Issues Related to Shoreline Master Programs are Appealable to Either GMHB or SHB. In appeals involving shorelines of statewide significance, both GMHB and SHB must review whether the master program is compliant with the policy of SEPA as it relates to the adoption of master programs and amendments.

The Standard by Which GMHB or SHB Reviews Shoreline Master Programs is Changed. All references to the term inconsistent are changed to non-compliant.

Technical Change as to Who May Appeal is Updated. Existing language referencing aggrieved local government and local government is updated to “appellant” or party respectively.

For purposes of review by SHB, it is specified that the appellant has the burden of proof and SHB must consider the presentations of the parties in making its decision. DOE and any party aggrieved by a final decision of SHB may appeal to superior court.

When a Master Program Amendment Becomes Effective is Clarified. A master program amendment becomes effective after approval by DOE or after the decision of either GMHB or SHB as long as either board may remand the master program or master program amendment to the local government or to DOE for modification prior to final adoption.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is agency request legislation and intended to fix erroneous information and confusing language regarding the appeals process

for local shoreline master programs. Many local jurisdictions are in the process of updating their shoreline master programs, this fix will ensure consistency moving forward as more appeals are likely.

Persons Testifying: PRO: Josh Weiss, WA Assn. of Counties; Tom Clingman, DOE; April Putney, Futurewise; Brandon Housekeeper, Assn. of WA Business.