

# SENATE BILL REPORT

## SB 5044

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As Reported by Senate Committee On:  
Energy, Environment & Telecommunications, February 18, 2015

**Title:** An act relating to mitigation measures for shoreline development.

**Brief Description:** Concerning mitigation measures for shoreline development.

**Sponsors:** Senators Brown, Ericksen and Hewitt.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 2/10/15, 2/18/15 [DPS, DNP, w/oRec].

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5044 be substituted therefor, and the substitute bill do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown and Honeyford.

**Minority Report:** Do not pass.

Signed by Senators McCoy, Ranking Minority Member; Cleveland.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Habib.

**Staff:** Jeff Olsen (786-7428)

**Background:** The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines. The SMA specifies 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 that regulate land use activities in shoreline areas of the state. Shoreline master programs, which must be approved by the Department of Ecology (Ecology), must be consistent with guidelines adopted by Ecology. Counties and cities are also required to establish a program for the administration and enforcement of a shoreline permit system. In reviewing a permit

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for approval, a local jurisdiction may require that a project applicant mitigate for an adverse impact to the shoreline from the project.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Substitute):** Shoreline master programs must provide that an applicant for a proposed shoreline development may not be required to mitigate for environmental impacts that are not a direct result of the proposed development. The mitigation must be limited to measures that are proportional in scope to the environmental impacts of the project. The local jurisdiction enforcing the shoreline permit is responsible for demonstrating that the mitigation measures comply with these provisions.

In addition, local jurisdictions must establish a process that allows them to consult with federal agencies that require environmental mitigation for a proposed development.

**EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute):** Local jurisdictions must establish a process that allows them to consult with federal agencies that require environmental mitigation for a proposed development.

**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 on Proposed Substitute as Heard in Committee:**  
PRO: There are examples of dock owners who have been required to plant and irrigate trees and shrubs a long distance away from their property and maintain the site as mitigation for installing a dock. Mitigation measures for projects should be related to the impacts of the project and proportional to the impact of the development.

CON: There is support for the premise behind the bill, but concern about how it is implemented. There are already rules requiring proportionality for mitigation. Land use planning requires an examination of the cumulative effects of projects, not just the impact of a single project. There is a concern that a local government may need to document an environmental impact as a direct result of a proposed development. The requirement that mitigation measures that are a direct result of the proposed development appears to shift the burden from the project applicant to the local government issuing the permit. There is a mitigation sequence in current rule that would be impacted by the bill. Local governments are concerned about liability and need clear direction.

OTHER: There is support for the goals of the bill, but there is concern about local government's liability when making permitting decisions. There should be changes to the bill to limit counties' liability.

**Persons Testifying:** PRO: Senator Brown, prime sponsor.

CON: Tom Clingman, Ecology; Carl Schroeder, Assn. of WA Cities; Bryce Yadon, Futurewise; Bruce Wishart, Sound Action; Jeff Parsons, Puget Sound Partnership.

OTHER: Laura Merrill, WA State Assn. of Counties.