
Local Government & Housing Committee

HB 1653

Brief Description: Clarifying the integration of shoreline management act policies with the growth management act.

Sponsors: Representative Simpson; by request of Department of Ecology and Department of Community, Trade and Economic Development.

Brief Summary of Bill

- Modifies provisions in the Growth Management Act (GMA) pertaining to the integration of the GMA and the Shoreline Management Act.
- Establishes new provisions in the GMA pertaining to the regulation and protection of certain critical areas that are located within shorelines of the state.

Hearing Date: 2/11/09

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Background:

Growth Management Act - Introduction.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

Directives applying to all counties and cities require the designation and protection of critical areas, a term defined in statute to include the following areas and ecosystems:

- wetlands;

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- areas with a critical recharging effect on aquifers used for potable water;
- fish and wildlife habitat conservation areas;
- frequently flooded areas; and
- geologically hazardous areas.

The protection of critical areas is accomplished through mandatory development regulations enacted by counties and cities. These development regulations are often referred to as "critical area ordinances."

Comprehensive Land Use Plans, Development Regulations, and Selected Elements.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. The implementation of comprehensive plans occurs through development regulations mandated by the GMA.

Planning Goals.

The GMA establishes 14 planning goals in a non-prioritized list that must be used exclusively for guiding the development and adoption of comprehensive plans and development regulations. Examples of planning goals include the following:

- *urban growth* - encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- *transportation* - encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans; and
- *environment* - protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Shoreline Management Act.

The Shoreline Management Act (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 local shoreline master programs (master programs). All counties and cities with shorelines of the state, a term defined in the SMA, are required to adopt master programs that regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce master programs within their jurisdictions. 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 DOE must approve the segment of a master program relating to critical areas if the master program segment is consistent with specific requirements of the SMA and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas that is at least equal to that provided by the local government's adopted and amended critical areas ordinances.

Policy Integration.

In 1995 the Legislature enacted environmental regulatory reform legislation that implemented recommendations of the Governor's Task Force on Regulatory Reform. The legislation added the goals and policies of the SMA as an additional goal to the 13 planning goals of the GMA. The legislation also specified that the goals and policies of a master program required by the SMA were deemed an element of a planning jurisdiction's comprehensive plan.

2003 Legislation.

Legislation adopted in 2003 (*i.e.*, ESHB 1933, enacted as ch. 321, Laws of 2003) in response to a 2003 decision of the Central Puget Sound Growth Management Hearings Board, established new provisions pertaining to the jurisdiction, implementation, and partial integration of the GMA and the SMA. Among other provisions, the legislation specified that as of the date the DOE approves a local government's master program adopted under applicable shoreline guidelines, the protection of critical areas within shorelines of the state must be accomplished only through the local government's master program and, with limited exceptions, must not be subject to the procedural and substantive requirements of the GMA.

The 2003 legislation also specified that critical areas within shorelines of the state that have been identified as meeting the definition of critical areas and are subject to a master program adopted under applicable shoreline guidelines must not be subject to the procedural and substantive requirements of the GMA. Limited exceptions to this directive were established in ESHB 1933.

Furthermore, ESHB 1933 specified that master programs must provide a level of protection to critical areas located within shorelines of the state that is at least equal to the level of protection provided to critical areas by the local government's adopted and amended critical area ordinances.

Recent Supreme Court Action.

On July 31, 2008, the Washington Supreme Court ruled in *Futurewise v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 242; 189 P.3d 161, that a superior court erred when it reversed a decision of the Western Washington Growth Management Hearings Board involving the City of Anacortes, and held that the GMA controls procedures inside shorelines *until* new SMA plans are formulated and approved.

In its 2008 trial court reversal, the Supreme Court held that the provision of ESHB 1933 specifying that *as of the date the DOE approves a local government's master program adopted under applicable shoreline guidelines, the protection of critical areas within shorelines of the state must be accomplished only through the local government's master program*, is curative and immediate, not prospective. The court further held that a prospective interpretation of ESHB 1933 would change the effective date of the ESHB 1993 from July 27, 2003, to a much later date

based upon the DOE's processing and approving of master programs, and that a prospective interpretation would, in part, contradict the clear language and intent of the Legislature in ESHB 1933.

Summary of Bill:

As of the date the DOE approves a local government's master program adopted or updated under shoreline guidelines effective on or after January 17, 1994, the protection of critical areas that are wetlands or fish and wildlife habitat conservation areas located within shorelines of the state must be accomplished only through the local government's master program. These wetlands and habitat conservation areas, except in limited circumstances, are not subject to the procedural and substantive requirements of the GMA.

Adopted master programs must provide a level of protection to wetlands and fish and wildlife habitat conservation areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by guidelines of the DOE that are effective on or after January 17, 2004.

The DOE must approve the segment of a master program relating to critical areas that are wetlands or fish and wildlife habitat conservation areas if:

- the master program segment is consistent with specific requirements of the SMA and applicable shoreline guidelines; and
- the segment provides a level of protection to these critical areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined in administrative code requirements pertaining to master programs.

As of the date the DOE approves a local government's master program, or segment of the local government's master program relating to wetlands and fish and wildlife habitat conservation areas, adopted or updated under shoreline guidelines effective on or after January 17, 2004, the protection of critical areas that are wetlands and fish and wildlife habitat conservation areas that are also located within shorelines of the state may only be accomplished through the local government's master program.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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