

# HOUSE BILL REPORT

## HB 2199

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### As Passed Legislature

**Title:** An act relating to regulatory relief for properties impacted by shifts in shoreline location due to habitat restoration projects.

**Brief Description:** Providing regulatory relief for properties impacted by shifts in shoreline location due to habitat restoration projects.

**Sponsors:** Representatives Newhouse and Hudgins.

#### **Brief History:**

##### **Committee Activity:**

Local Government & Housing: 2/19/09 [DP].

##### **Floor Activity:**

Passed House: 3/3/09, 97-0.

Senate Amended.

Passed Senate: 4/10/09, 44-0.

House Concurred.

Passed House: 4/20/09, 95-0.

Passed Legislature.

#### **Brief Summary of Bill**

- Authorizes local governments to grant relief from shoreline master program standards and use regulations adopted under the Shoreline Management Act (SMA) that apply within an urban growth area (UGA) if specified requirements are met.
- Specifies that a substantial development permit under the SMA is not required on land within a UGA that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.
- Defines "shoreline restoration project."

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

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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. Signed by 10 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Miloscia, Short, Springer, Upthegrove, White and Williams.

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

**Background:**

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 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, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs that regulate land use activities in shoreline areas of the state. 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.

Each local government must establish a program for the administration and enforcement of a shoreline permit system. While the SMA specifies standards for counties and cities to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Counties and cities are also required to notify the DOE of all permit decisions under the SMA. Additionally, only the DOE may approve variance or conditional use permits that authorize actions otherwise prohibited by shoreline regulations.

The SMA requires property owners or developers to obtain substantial development permits for qualifying developments within shorelines areas. "Substantial developments" are defined to include both developments with total cost or fair market value exceeding \$5,000, or other amount as adjusted for inflation, and developments materially interfering with normal public shoreline use.

Growth Management Act.

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.

The GMA includes requirements relating to the use or development of land in urban and rural areas. Among other requirements, counties that fully plan under the GMA (planning counties) must designate urban growth areas (UGAs) or areas within which urban growth

must be encouraged and outside of which growth can occur only if it is not urban in nature. Additionally, planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period.

### **Summary of Bill:**

A local government may grant relief from master program standards and use regulations that apply within a UGA if a shoreline restoration project causes or will cause a landward shift in the ordinary high water mark that results in:

- land that had not been regulated under the SMA before construction of the restoration project being brought under shoreline jurisdiction; or
- additional regulatory requirements applying due to a landward shift in required shoreline buffers or other regulations of the applicable master program; and
- the application of master program regulations that preclude or interfere with use of the property in ways permitted by local development regulations, thus presenting a hardship to the project proponent.

"Shoreline restoration project" means a project designed to restore an impaired ecological function of a shoreline.

Relief may only be granted by a local government if specific requirements are met, including:

- the proposed relief is the minimum necessary to relieve the hardship;
- the restoration project for which the relief is proposed will result in a net environmental benefit; and
- the granting of proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the master program.

Local governments may not grant relief from master program standards for shoreline restoration projects that are mitigation measures required of a project proponent to obtain a development permit.

The application for relief must be submitted by the local government to the DOE for approval or disapproval. The application review must occur during the DOE's normal review of a shoreline substantial development permit, conditional use permit, or variance. If a permit is not required for the restoration project, the DOE must conduct its review when the local government provides a copy of a complete application and all necessary supporting information.

Except as provided otherwise, the DOE must provide at least 20 days notice to parties that have indicated interest to the DOE in reviewing applications for relief. The DOE must also post the notice on their website. The DOE must approve or reject the application within 30 calendar days of the close of the public notice period, or if additional public notice is not required, within 30 days of receipt of the proposal from the local government. These public notice requirements do not apply if the relevant shoreline restoration project was included in a master program or shoreline restoration plan and other requirements are met.

A substantial development permit is not required on land within a UGA that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** 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 is the result of a collaborative effort involving the DOE, local governments, and the business and environmental communities. Restoration projects are critical to restoring salmon habitat, but projects are difficult to complete if property owners oppose the restoration efforts. This bill will give local governments an additional tool for avoiding opposition and completing restoration projects. This bill is intended to help implement restoration projects, promote salmon recovery, and maintain economic vitality, in the Duamish Waterway. This bill will respond to property owner concerns about regulatory issues. The state has a financial interest in salmon recovery. Similar legislation was introduced in 2007, but the provisions in this bill represent an improved approach to restoration project issues. This bill will ease the financial burdens associated with restoration projects.

(Opposed) None.

**Persons Testifying:** Carol Lumb, City of Tukwila; Susan Saffery, City of Seattle; Dennis Clark, Water Resource Inventory Area 9; Bruce Wishart, People for Puget Sound; Tom Clingman, Department of Ecology; and Dennis Robertson.

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