

# SENATE BILL REPORT

## HB 2199

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As of March 19, 2009

**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:** Passed House: 3/03/09, 97-0.

**Committee Activity:** Natural Resources, Ocean & Recreation: 3/19/09.

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### SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

**Staff:** Karen Epps (786-7424)

**Background:** The Shoreline Management Act (SMA), enacted in 1971, governs uses of state shorelines. SMA applies to all "shorelines of the state," which include both "shorelines" and "shorelines of state-wide significance." SMA includes specific legislative findings that pressures on shoreline uses and the impacts of unrestricted development on public and private shoreline property create the need to coordinate planning for shoreline development activities.

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 must adopt master programs which regulate land use activities in shoreline areas of the state. Counties and cities must also enforce their master programs within their jurisdictions. Local governments issue permits for most activities in the shoreline zone, including substantial development permits, conditional use permits, and variance permits. No "substantial development" can be undertaken without first obtaining a permit from the local government in which the shoreline zone is located.

The Growth Management Act (GMA) 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 GMA and a reduced number of directives for all other counties and

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cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, fully plan under the GMA.

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.

**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.

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.

**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 the result of a collaborative effort. In urban areas adjacent to water, the cost per square foot of this land is very high, so the impact to the property owner and to the economic base of the area is affected when the high water mark is changed. Most property owners are not very enthusiastic about having portions of the property captured under SMA, as it impacts the uses that are permitted,

triggers a shoreline substantial development permit, lengthens the public notice process, and gives another agency besides the local government has final approval authority. The completion of shoreline restoration projects is critical for restoring habitat for threatened species such as salmon. Without this legislation, it will be harder for local governments to achieve that goal. This bill provides a unique solution to a rather unique problem that is created by these shoreline restoration projects. This bill is a valuable tool in improving the habitat and the environment along the Duwamish River. This bill will result in enhancements that will improve the shorelines, the habitat, the environment, and our fisheries. There is concern about any relaxation of SMA protections, but this bill strikes a balance between those concerns and the objectives of the bill.

**Persons Testifying:** PRO: Carol Lumb, city of Tukwilla; Dennis Clark, King County; Tom Clingman, Department of Ecology; Mel Oleson, Boeing; Bruce Wishart, People for Puget Sound.