

# HOUSE BILL REPORT

## EHB 2671

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### As Passed Legislature

**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:

##### Committee Activity:

Local Government: 1/27/12 [DP].

##### Floor Activity:

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

Passed Senate: 3/1/12, 42-6.

Passed Legislature.

#### Brief Summary of Engrossed Bill

- Amends certain standards and procedures relating to the review of shoreline master programs by the Growth Management Hearings Board, Shoreline Hearings Board, and superior courts.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Springer, Tharinger and Upthegrove.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Rodne and Smith.

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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.*

**Staff:** Kelly Pfundheller (786-7289).

**Background:**

Shoreline Management Act.

The Shoreline Management Act of 1971 (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 city and county shoreline master programs (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). The DOE has the authority to approve or reject a master program, and the segments of or amendments to it. A master program is not effective until approved by the DOE.

Appeals of Decisions Relating to Shoreline Master Programs.

A decision by the DOE to approve or reject a master program may be appealed to either the Growth Management Hearings Board (GMHB) or Shorelines Hearings Board (SHB), depending on the jurisdiction. For jurisdictions fully planning under the Growth Management Act, decisions are appealed to the GMHB. For other jurisdictions, decisions are appealed to the SHB.

A master program amendment is effective after approval of the DOE or after the decision of the SHB to uphold the master program or amendment, provided that the SHB may remand the master program or adjustment to the local government or the DOE for modification prior to final adoption.

Certain standards are specified in statute for review of master programs by both boards. For the purposes of review before the SHB, the validity of the master program must be determined in light of the SMA and its applicable guidelines. The aggrieved local government has the burden of proof, and the SHB must consider the presentations of the local government and the DOE in making its decision. The DOE and any local government may appeal a final decision of the SHB to superior court.

In appeals concerning "shorelines of statewide significance," either the GMHB or the SHB are required to uphold the decision of the DOE unless either board, by clear and convincing evidence, determines that the decision of the DOE is inconsistent with the policy of the SMA and the applicable guidelines. "Shorelines of statewide significance" are delineated under the SMA.

State Environmental Policy Act.

The State Environmental Policy Act (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 will first decide if environmental review is needed. If the proposed project is the type of project that is "categorically exempt" from the SEPA review process, no further environmental review is required.

**Summary of Engrossed Bill:**

For the purposes of review by the GMHB, a master program amendment is effective after it is upheld by the GMHB, provided that the matter may be remanded to the local government or the DOE for modification prior to final adoption.

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

In appeals involving "shorelines of statewide significance," both the GMHB and SHB are required to review whether the master program is compliant with the policy of the SMA as well as with the SEPA as it relates to the adoption of master programs and amendments.

**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 legislation was requested by the DOE. The bill does not change who can file appeals, where appeals must be filed, or any of the issues subject to appeal. It simply makes several necessary technical changes. One significant change is replacing the word "inconsistent" with "noncompliant" in regards to the standard by which the hearings boards review shoreline master programs in the context of applicable laws. The SMA currently uses different terms depending on the type of shoreline, but this does not make sense. The bill provides essential uniformity and consistency.

(Opposed) None.

**Persons Testifying:** Tom Clingman, Washington State Department of Ecology.

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