

HOUSE BILL REPORT

HB 2356

As Passed House:

February 6, 1996

Title: An act relating to review of shoreline development permits.

Brief Description: Limiting review of shoreline development permits.

Sponsors: Representatives Hymes, Koster, Thompson, Sterk, Radcliff, Cairnes, Pelesky, Blanton, Quall, Goldsmith, Hargrove and Mulliken.

Brief History:

Committee Activity:

Government Operations: 1/24/96, 1/26/96 [DP].

Floor Activity:

Passed House: 2/6/96, 70-27.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass. Signed by 9 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Hargrove; Honeyford; Hymes; Mulliken; D. Schmidt and Van Luven.

Minority Report: Do not pass. Signed by 6 members: Representatives Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Conway; R. Fisher; Scheuerman and Wolfe.

Staff: Steve Lundin (786-7127).

Background: State voters adopted the Shorelines Management Act in 1971 by approving an alternative measure to Initiative 43.

1. Shoreline master programs.

The Shorelines Management Act requires every county and city to adopt a shoreline master program under state guidance for all shoreland areas within its jurisdiction. A shoreland area is defined to include bodies of water (other than small streams or small lakes), floodways, many wetlands, and areas landward for a distance of 200 feet.

A proposed local shoreline master program does not become effective unless the Department of Ecology approves the program as being consistent with both the Shoreline Management Act and the state shoreline master program that is adopted by the department. The action of the department approving or rejecting a shoreline master program is appealable to the Shoreline Hearings Board, if the county or city does not plan under all the requirements of the Growth Management Act, or to the Growth Management Hearings Board, if the county or city plans under all the requirements of the Growth Management Act.

2. Shoreland substantial development permits.

Development activity within the shoreland area is allowed only if consistent with the local shoreline master program. In addition, most development activity within the shoreland area is allowed only if the county or city, within whose planning jurisdiction the shoreland area is located, issues a shoreland substantial development permit authorizing the development activity. Counties and cities are required to adopt programs to administer their shoreland substantial development permit programs.

Counties and cities may provide for variances and conditional use permits as part of their permit programs, but variances and conditional use permits must be submitted to the Department of Ecology for its approval or disapproval.

A "substantial development" includes most development with a total cost or fair market value of \$2,500 or more, or any development that "materially interferes with the normal public use of the water or shorelines of the state." However, among other activities, a "substantial development" does not include a number of activities, including (1) normal maintenance or repair of existing structures or developments; (2) construction and practices normal or necessary for farming, irrigation, and ranching activities; and (3) construction of a single family residence for use by the person who constructs the residence or use by his or her family.

The applicant for a substantial development permit has the burden of providing that the proposal is consistent with permit requirements.

A party aggrieved over the action by a county or city on an application for a substantial development permit may appeal the action to the Shorelines Hearings Board. A person seeking review has the burden of proof. Review by the Shorelines Hearings Board is under the Administrative Procedures Act. Appeal of a decision by the Shorelines Hearing Board may be made to Superior Court.

Summary of Bill: As part of its automatic review of variances and conditional use permits issued by a county or city under its shoreline substantial development permit program, the Department of Ecology may rely only on evidence that is part of the record before the county or city.

Review by the Shorelines Hearings Board on an appeal of a shoreline substantial development permit shall be on the record and the board may not substitute its judgment for that of a county or city, nor rely on evidence that is not part of the record before the county or city. The board shall give substantial deference to the county's or city's interpretation of its shoreline master program and may only invalidate a county's or city's decision if it was predicated on a clearly erroneous interpretation or was not supported by substantial evidence. Further, a board may not invalidate a county's or city's decision based upon any provision of a county's or city's shoreline master program that exceeds requirements of the Shoreline Management Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Return local control. De novo review is not right. Let all the parties come to the table at the county or city and not wait for the Shorelines Hearings Board. The Department of Ecology arbitrarily turned down a variance.

Testimony Against: This is a two-way sword. Permit applicants, as well as others, will have a tremendous burden to overcome the action by a county or city. Hearings board's decisions are almost always upheld in court. This will lead to more appeals, cost more, and delay projects.

Testified: Representative Hymes, prime sponsor; Matt Ryan, Kitsap County; Bryan Harrison, Pierce County; Tom Starr, San Juan County Commissioner; Mike Rhyerd, American Planning Association; Bob Jensen, Environmental Hearings Board; and Jeff Parsons, People for Puget Sound.