

FINAL BILL REPORT

EHB 2671

C 172 L 12
Synopsis as Enacted

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.

House Committee on Local Government
Senate Committee on Energy, Natural Resources & Marine Waters

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.

Appeals of Decisions Relating to Shoreline Master Programs.

The DOE decision 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.

Standards are specified in statute for review of master programs by both boards. For the purposes of review by the SHB, the validity of the master program must be determined in

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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," both 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.

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. For appeals to the GMHB, it is not specified at which stage the master program is effective.

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. Because some minor projects do not require an environmental review, 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:

Certain standards regarding review of master programs are changed. 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.

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.

Votes on Final Passage:

House	54	44
Senate	42	6

Effective: June 7, 2012