

FINAL BILL REPORT

ESB 5776

C 382 L 95

Synopsis as Enacted

Brief Description: Integrating water resources and growth management.

Sponsors: Senator Fraser.

Background: The Growth Management Act (GMA) and Shoreline Management Act regulate activities that may impact wetlands. However, the two acts contain different definitions of wetlands. The GMA excludes from the regulatory definition those wetlands artificially created from non-wetland sites. The Shoreline Act does not provide for such an exclusion. Neither act provides guidance on the standards or methods to be used in delineating the boundaries of regulated wetlands.

The Shoreline Act directs local governments to adopt land use plans and permit programs regulating activities within 200 feet of Washington's saltwater shorelines and larger lakes and rivers. These programs overlap with the land use planning and regulatory requirements implemented by local governments under GMA, and a Governor's Regulatory Reform Task Force has recommended legislation in the 1995 session to integrate these programs (House Bill 1724).

The Environmental Hearings Office (EHO) consists of four quasi-judicial hearing boards: the Pollution Control Hearings Board, the Forest Practices Hearings Board, the Shorelines Hearings Board, and the Hydraulics Appeals Board. Each board has jurisdiction as set forth in statute to hear appeals in certain environmental cases arising from decisions by local governments or state agencies.

The GMA created three regional Growth Management Hearings Boards with jurisdiction to hear appeals of local government decisions on GMA planning matters within their region. Appeals of Growth Board decisions may be taken to Thurston County Superior Court, although legislation has been proposed in the 1995 legislative session to provide the option to appealing parties to file the appeal in other superior courts (House Bill 1724).

Under the state Administrative Procedure Act, appeals of EHO board decisions are heard in superior court. However, the superior court may certify a case directly to the Court of Appeals under certain conditions. The Court of Appeals may accept or reject a certified case for direct review.

Although the EHO boards' enabling statutes no longer distinguish between formal and informal hearings, a few references to them still appear in the statutory code.

Summary: A definition of "wetlands" is added to the Shoreline Act that is identical to the definition under the GMA. Excluded from the wetlands definition under both acts are wetlands created after July 1, 1990 that were unintentionally created as the result of road construction. The Department of Ecology is required to adopt by rule a manual for the

delineation of wetlands regulated under the Shoreline Act and the GMA. The manual must implement and be consistent with the manual used by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency on January 1, 1995. If those federal agencies change the manual or adopt a different manual, the department may adopt rules implementing those changes.

Nothing in section 104 of Engrossed Substitute House Bill 1724, relating to integrating local shoreline programs into local GMA comprehensive plans, shall be construed to authorize a local government to adopt shorelands regulations inconsistent with the Shoreline Act.

The Administrative Procedure Act is amended to authorize the EHO boards and the Growth Management Hearings Boards to certify a case directly to the Court of Appeals when an appeal to superior court would result in undue delay, and: (1) the case involves fundamental and urgent matters of statewide or regional concern; or (2) the case is likely to establish a significant precedent. If the Court of Appeals declines to accept a case, the aggrieved party may appeal the case to superior court.

All remaining references to informal and formal hearings in the EHO enabling statutes and Shoreline Act are deleted.

A city may use special assessments imposed in a local improvement district to finance connection charges, capacity charges, and acquiring rights to use of property, facilities, or other improvements.

Votes on Final Passage:

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|--------|----|---|
| Senate | 43 | 2 |
| House | 94 | 0 |

Effective: July 23, 1995