

HOUSE BILL REPORT

HB 1933

As Reported by House Committee On:
Local Government

Title: An act relating to the integration of shoreline management policies with the growth management act.

Brief Description: Modifying shoreline and growth management provisions.

Sponsors: Representatives Berkey, Kessler, Cairnes, Buck, Sullivan, Orcutt, Hatfield, Jarrett, Miloscia, Gombosky, Grant, DeBolt, Quall, Woods, Schoesler, Conway, Lovick, Clibborn, Edwards, Schindler, McCoy, Eickmeyer and Alexander.

Brief History:

Committee Activity:

Local Government: 3/3/03, 3/5/03 [DPS].

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">· Specifies legislative findings and intent.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Romero, Chair; Schindler, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Ahern, Berkey, Clibborn, Mielke and Moeller.

Minority Report: Do not pass. Signed by 2 members: Representatives Upthegrove, Vice Chair; and Ericksen.

Staff: Ethan Moreno (786-7386).

Background:

I. SHORELINE MANAGEMENT ACT

Policy

The Shoreline Management Act (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 creates "preference" criteria listed in the following order of priority that must be used by state and local governments in regulating shoreline uses:

- recognizing statewide interest over local interest;
- preserving natural shoreline character;
- resulting in long-term over short-term benefit;
- protecting shoreline resources and ecology;
- increasing public access to publicly owned shoreline areas;
- increasing public recreational opportunities; and
- providing for any of the mandatory elements within the local shoreline master program as delineated in RCW 90.58.100.

The SMA governs "shorelines of the state." These "shorelines of the state" are defined in the SMA to include both "shorelines" and "shorelines of statewide significance;" terms defined by statute. "Shorelines" include all water areas, including reservoirs, and their associated "shorelands" except:

- shorelines of statewide significance [separately defined to include specific shoreline areas in RCW 90.58.030(2)(e)];
- shorelines (and their wetlands) on segments of streams upstream of a point at which the mean annual flow is less than or equal to 20 cubic feet per second (cfs); and
- shorelines (and their wetlands) on lakes fewer than 20 acres in size.

"Shorelands" include the lands extending landward for 200 feet in all directions from the ordinary high water mark as well as floodways and contiguous floodplain areas landward 200 feet from the floodways. "Shorelands" also include all wetlands and river deltas associated with streams, lakes and tidal waters subject to the SMA.

Requirements

The 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 are required to adopt master programs which regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted shoreline master programs.

Master Programs

Master programs regulate land use and activities within the shoreline jurisdiction. Local master programs have certain mandatory elements as appropriate. These include:

- an *economic development* element for locating and designing water-dependent industrial projects and other commercial activities;
- a *public access* element to provide for public access to public areas;
- a *recreational* element to preserve and enhance shoreline recreational opportunities;
- a *circulation* element to locate transportation and other public facilities for shoreline use;
- a *use* element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a *conservation* element to preserve natural resources in shoreline areas;
- a *historic, cultural, scientific, and educational* element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing *flood damage*.

Local governments may include other elements necessary to implement the SMA requirements.

II. GROWTH MANAGEMENT ACT

Policy

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Currently, 29 of 39 counties, and the cities within those 29 counties, are required to or have chosen to comply with the major requirements of the GMA (GMA jurisdictions).

The GMA establishes a list of 13 planning goals to be used exclusively for guiding the development and adoption of comprehensive plans and development regulations by GMA jurisdictions. The goals, which are not listed in an order of priority, include:

- encouraging *urban growth* in urban areas with adequate public facilities;
- *reducing* low-density development *sprawl*;
- encouraging efficient, regionally coordinated *transportation* systems;
- encouraging affordable *housing* availability;
- encouraging *economic development* and growth in areas with insufficient growth;
- protecting private *property rights*;

- processing *permits* in a timely and fair manner;
- maintaining and enhancing *natural resource* industries;
- retaining and developing *open space and recreation* availability and opportunities;
- protecting the *environment* and water availability;
- encouraging *citizen participation and coordination*;
- ensuring adequate *public facilities and services*; and
- encouraging *historic preservation*.

Requirements - Comprehensive Land Use Plans

Among numerous planning requirements, GMA jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Each comprehensive plan must include the following elements:

- land use;
- housing;
- capital facilities plan;
- utilities;
- rural;
- transportation;
- economic development; and
- parks and recreation.

The economic development and parks and recreation elements do not require jurisdictional compliance or action until state funding is provided.

Comprehensive plans must also include designations of urban growth areas (UGAs) within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature.

Comprehensive land use plans and development regulations are subject to continuing review and evaluation by the adopting county or city. Any amendments or revisions of development regulations must conform to the requirements of the GMA and must be consistent with and implement comprehensive plans.

III. POLICY INTEGRATION

In 1995 the Legislature enacted environmental regulatory reform legislation (i.e., ESHB 1724, enacted as ch. 347, Laws of 1995). As a result of the legislation, which implemented recommendations of the Governor's Task Force on Regulatory Reform, the goals and polices of the SMA were added as an additional goal to the 13 planning goals of the GMA. Furthermore, the goals and policies of a shoreline master program required by the SMA were deemed an element of a GMA jurisdiction's comprehensive plan.

Summary of Substitute Bill:

The stated finding of the Legislature is that the final decision and order issued by the Central Puget Sound Growth Management Hearings Board (Board) in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, was a case of first impression for interpreting the integration of the Shoreline Management Act (SMA) into the Growth Management Act (GMA). The Legislature further finds that the Board issued its final decision and order without the benefit of shorelines guidelines to assist in the adoption of shoreline master programs.

The stated intent of the Legislature is to affirm that the SMA be implemented in accordance with decisions of the Shorelines Hearings Board and Washington courts prior to the integration of the SMA into the GMA. The Legislature further states its intent that: 1) The goals and policies of the SMA be read, interpreted, applied, and implemented as a whole; 2) the goals of the GMA continue to be listed without priority; and 3) shorelines of statewide significance may include critical areas, but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

Substitute Bill Compared to Original Bill:

The substitute bill replaces an amendatory provision to the enunciated state policy of the Shoreline Management Act with a new section specifying legislative findings and intent. A second amendatory provision requiring the goals and policies of a shoreline master program, an element of a jurisdiction's comprehensive plan, to be on an equal priority with the other stated goals of the Growth Management Act is removed.

Appropriation: None.**Fiscal Note:** Not Requested.**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.**Testimony For:** The City of Everett's amended shoreline master program is one of the most environmentally sound programs in the state. The city spent nearly a decade and almost \$1 million preparing the plan prior to having amendments to its plan remanded by the Board. The Legislature has several reasons to act on this legislation, including: 1) The potential that other local governments will not update master programs; 2) the linkage between this bill and legislation establishing a schedule for master program amendments; and 3) enormous risks to development that may result without legislative clarification. This bill will restore a historic interpretation of the integration of the GMA

and the SMA, correcting an erroneous interpretation by the Board. New guidelines for master programs will be helpful, but without legislative action, the statutory scheme analyzed by the Board will remain. This bill addresses issues of global concern and competitiveness. Legislative clarity is essential, as the urgency of this issue cannot wait for the judicial process to unfold. This bill, as a vehicle for clarifying the relevant issues, should move forward.

Testimony Against: This bill may upset the balance of the SMA and result in unintended consequences. Great concern exists about this bill, but progress among parties negotiating potential amendatory provisions continues to be made. Opposition to this bill could be reduced with very narrowly crafted language, including removal of the provisions contained within section one. The Boeing/Mukilteo project can proceed without changes to existing law.

Testified: Representative Berkey; prime sponsor; Larry Stout, Washington Association of Realtors; Paul Roberts, City of Everett; John Koster and Stephen Holt, Snohomish County; Kristen Sawin, Association of Washington Business; Dave Williams, Association of Washington Cities; Gordon White, Department of Ecology; and Eric Johnson, Washington Public Ports Association.

(Against) Bruce Wishart, People for Puget Sound; Cliff Traisman, Washington Environmental Council and Washington Conservation Voters; Nina Carter, Audobon Society; and Tim Trihimovich, 1000 Friends of Washington.