

SENATE BILL REPORT

ESSB 6113

AS PASSED SENATE, FEBRUARY 17, 1992

Brief Description: Requiring reviews of final orders on permit applications under the shoreline management act to be on the record.

SPONSORS: Senate Committee on Environment & Natural Resources (originally sponsored by Senators Craswell, Owen, Oke and McCaslin)

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 6113 be substituted therefor, and the substitute bill do pass.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Conner, Owen, and Snyder.

Minority Report: Do not pass.

Signed by Senator Sutherland.

Staff: Gary Wilburn (786-7453)

Hearing Dates: January 29, 1992; February 6, 1992

BACKGROUND:

The Shoreline Management Act requires that a permit be obtained from local government for any substantial development to be undertaken within the shorelines of the state. This includes the state's open waters as well as areas up to 200 feet upland from the state's marine waters and certain lakes, rivers and wetlands. Each county, city and town containing areas covered by the act is required to develop a shoreline master program consistent with state guidelines. Once adopted and approved by the state, the local master program provides the standards by which substantial development permits are to be considered.

The act provides for public notice and opportunity to comment upon applications for permits. If a hearing is to be held by the local government on the application, the public notice is to include a statement that a person may submit oral or written comments at the hearing. The act does not describe the record that the local government must develop in considering the application.

A decision on the application is to be submitted to both the state Department of Ecology and the Attorney General. The act also provides a system for administrative and judicial review of permits whether granted or denied. The Department of Ecology and the Attorney General are authorized to intervene in such appeals and to initiate appeals. This review is primarily in the jurisdiction of the Shoreline Hearings Board,

which is composed of the three members of the Pollution Control Hearings Board, the state Land Commissioner or his designee, a counties representative and a cities representative.

The board is empowered to consider evidence and take testimony pursuant to the procedures for adjudicative proceedings under the state's Administrative Procedure Act. This act defines the official record to be maintained in the proceeding. Judicial review of decisions of the board may be had as provided for judicial review under the Administrative Procedure Act.

SUMMARY:

Review by the Shoreline Hearings Board of local government permit decisions shall be on the record developed by local government and supplemented with additional evidence submitted before the board where determined necessary or of substantial assistance to the board. Local government is required to develop an official record in substantial compliance with that required for adjudicative proceedings under the Administrative Procedure Act. Record review shall be limited to whether the local government decision was (i) in accordance with required procedures; (ii) arbitrary and capricious; or (iii) consistent with the intent of the Shoreline Management Act and the local master program.

Appropriation: none

Revenue: none

Fiscal Note: requested January 23, 1992

TESTIMONY FOR:

Shoreline Board should conduct record review to ensure applicants make their full case at the local government level.

TESTIMONY AGAINST:

Shoreline Board needs ability to obtain new evidence not presented at local level or not available at that time.

TESTIFIED: Senator Craswell, prime sponsor; Hal Zimmerman, Annette McGee, Env. Hearings Office; Rod Mack; Jeff Parsons; John Horsley, Kitsap County Commissioner