
SENATE BILL 5726

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline and Swecker; by request of Department of Ecology and Department of Community, Trade, and Economic Development

Read first time 01/29/09. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to clarifying the integration of shoreline
2 management act policies with the growth management act; amending RCW
3 36.70A.480 and 90.58.090; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This act is intended to affirm the
6 legislature's intent relating to HB 1933 adopted in 2003. This act is
7 intended to clarify that:

8 (1) Wetlands and fish and wildlife habitat conservation areas
9 within the jurisdiction of the shoreline management act must be
10 governed by the shoreline management act as described in subsection (2)
11 of this section and that critical areas outside the jurisdiction of the
12 shoreline management act must be governed by the growth management act.

13 (2) As provided in RCW 36.70A.480 and 90.58.090:

14 (a) Except as provided in (b) of this subsection, the shoreline
15 management act applies to wetlands and fish and wildlife habitat
16 conservation areas only upon department of ecology approval of a
17 comprehensive updated shoreline master program meeting the requirements
18 of chapter 90.58 RCW and department of ecology guidelines effective on
19 or after January 17, 2004; and

1 (b) If a local government requests department of ecology approval
2 of a shoreline master program segment relating to wetlands and fish and
3 wildlife habitat conservation areas, the intended separation of
4 authority must occur upon department of ecology approval of a shoreline
5 master program segment protecting wetlands and fish and wildlife
6 habitat conservation areas that meets the requirements of chapter 90.58
7 RCW and department of ecology guidelines effective on or after January
8 17, 2004.

9 (3) A local government's critical area regulations adopted under
10 chapter 36.70A RCW that were in effect on January 14, 2004, or that
11 were amended on or after January 14, 2004, apply within the shoreline
12 jurisdiction until the local government's shoreline master program or
13 shoreline master program segment has been approved as provided in RCW
14 36.70A.480 and 90.58.090.

15 **Sec. 2.** RCW 36.70A.480 and 2003 c 321 s 5 are each amended to read
16 as follows:

17 (1) For shorelines of the state, the goals and policies of the
18 shoreline management act as set forth in RCW 90.58.020 are added as one
19 of the goals of this chapter as set forth in RCW 36.70A.020 without
20 creating an order of priority among the fourteen goals. The goals and
21 policies of a shoreline master program for a county or city approved
22 under chapter 90.58 RCW shall be considered an element of the county or
23 city's comprehensive plan. All other portions of the shoreline master
24 program for a county or city adopted under chapter 90.58 RCW, including
25 use regulations, shall be considered a part of the county or city's
26 development regulations.

27 (2) The shoreline master program shall be adopted pursuant to the
28 procedures of chapter 90.58 RCW rather than the goals, policies, and
29 procedures set forth in this chapter for the adoption of a
30 comprehensive plan or development regulations.

31 (3) The policies, goals, and provisions of chapter 90.58 RCW and
32 applicable guidelines shall be the sole basis for determining
33 compliance of a shoreline master program with this chapter except as
34 the shoreline master program is required to comply with the internal
35 consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and
36 35A.63.105.

1 (a) As of the date the department of ecology approves a local
2 government's shoreline master program adopted or updated under
3 ~~((applicable))~~ shoreline guidelines effective on or after January 17,
4 1994, the protection of ~~((critical))~~ wetlands and fish and wildlife
5 habitat conservation areas, as defined by RCW 36.70A.030(5), located
6 within shorelines of the state:

7 (i) Shall be accomplished only through the local government's
8 shoreline master program and shall not be subject to the procedural and
9 substantive requirements of this chapter, except as provided in
10 subsection (6) of this section(~~(-~~

11 ~~(b) Critical areas within shorelines of the state that have been~~
12 ~~identified as meeting the definition of critical areas as defined by~~
13 ~~RCW 36.70A.030(5), and that are subject to a shoreline master program~~
14 ~~adopted under applicable shoreline guidelines)); and~~

15 (ii) Shall not be subject to the procedural and substantive
16 requirements of this chapter, except as provided in subsection (6) of
17 this section.

18 (b) Nothing in chapter 321, Laws of 2003 is intended to affect
19 whether or to what extent agricultural activities, as defined in RCW
20 90.58.065, are subject to chapter 36.70A RCW.

21 (c) The provisions of RCW 36.70A.172 shall not apply to the
22 adoption or subsequent amendment of a local government's shoreline
23 master program and shall not be used to determine compliance of a local
24 government's shoreline master program with chapter 90.58 RCW and
25 applicable guidelines. Nothing in this section, however, is intended
26 to limit or change the quality of information to be applied in
27 protecting critical areas within shorelines of the state, as required
28 by chapter 90.58 RCW and applicable guidelines.

29 (4) Shoreline master programs shall provide a level of protection
30 to ~~((critical))~~ wetlands and fish and wildlife habitat conservation
31 areas located within shorelines of the state that ~~((is at least equal~~
32 ~~to the level of protection provided to critical areas by the local~~
33 ~~government's critical area ordinances adopted and thereafter amended~~
34 ~~pursuant to RCW 36.70A.060(2))~~ assures no net loss of shoreline
35 ecological functions necessary to sustain shoreline natural resources
36 as defined by agency guidelines effective on or after January 17, 2004.

37 (5) Shorelines of the state shall not be considered critical areas
38 under this chapter except to the extent that specific areas located

1 within shorelines of the state qualify for critical area designation
2 based on the definition of critical areas provided by RCW 36.70A.030(5)
3 and have been designated as such by a local government pursuant to RCW
4 36.70A.060(2).

5 (6) If a local jurisdiction's master program does not include land
6 necessary for buffers for critical areas that occur within shorelines
7 of the state, as authorized by RCW 90.58.030(2)(f), then the local
8 jurisdiction shall continue to regulate those critical areas and their
9 required buffers pursuant to RCW 36.70A.060(2).

10 **Sec. 3.** RCW 90.58.090 and 2003 c 321 s 3 are each amended to read
11 as follows:

12 (1) A master program, segment of a master program, or an amendment
13 to a master program shall become effective when approved by the
14 department. Within the time period provided in RCW 90.58.080, each
15 local government shall have submitted a master program, either totally
16 or by segments, for all shorelines of the state within its jurisdiction
17 to the department for review and approval.

18 (2) Upon receipt of a proposed master program or amendment, the
19 department shall:

20 (a) Provide notice to and opportunity for written comment by all
21 interested parties of record as a part of the local government review
22 process for the proposal and to all persons, groups, and agencies that
23 have requested in writing notice of proposed master programs or
24 amendments generally or for a specific area, subject matter, or issue.
25 The comment period shall be at least thirty days, unless the department
26 determines that the level of complexity or controversy involved
27 supports a shorter period;

28 (b) In the department's discretion, conduct a public hearing during
29 the thirty-day comment period in the jurisdiction proposing the master
30 program or amendment;

31 (c) Within fifteen days after the close of public comment, request
32 the local government to review the issues identified by the public,
33 interested parties, groups, and agencies and provide a written response
34 as to how the proposal addresses the identified issues;

35 (d) Within thirty days after receipt of the local government
36 response pursuant to (c) of this subsection, make written findings and
37 conclusions regarding the consistency of the proposal with the policy

1 of RCW 90.58.020 and the applicable guidelines, provide a response to
2 the issues identified in (c) of this subsection, and either approve the
3 proposal as submitted, recommend specific changes necessary to make the
4 proposal approvable, or deny approval of the proposal in those
5 instances where no alteration of the proposal appears likely to be
6 consistent with the policy of RCW 90.58.020 and the applicable
7 guidelines. The written findings and conclusions shall be provided to
8 the local government, all interested persons, parties, groups, and
9 agencies of record on the proposal;

10 (e) If the department recommends changes to the proposed master
11 program or amendment, within thirty days after the department mails the
12 written findings and conclusions to the local government, the local
13 government may:

14 (i) Agree to the proposed changes. The receipt by the department
15 of the written notice of agreement constitutes final action by the
16 department approving the amendment; or

17 (ii) Submit an alternative proposal. If, in the opinion of the
18 department, the alternative is consistent with the purpose and intent
19 of the changes originally submitted by the department and with this
20 chapter it shall approve the changes and provide written notice to all
21 recipients of the written findings and conclusions. If the department
22 determines the proposal is not consistent with the purpose and intent
23 of the changes proposed by the department, the department may resubmit
24 the proposal for public and agency review pursuant to this section or
25 reject the proposal.

26 (3) The department shall approve the segment of a master program
27 relating to shorelines unless it determines that the submitted segments
28 are not consistent with the policy of RCW 90.58.020 and the applicable
29 guidelines.

30 (4) The department shall approve the segment of a master program
31 relating to ~~((critical))~~ wetlands and fish and wildlife habitat
32 conservation areas as defined by RCW 36.70A.030(5) ~~((provided))~~ if
33 the master program segment is consistent with RCW 90.58.020 and applicable
34 shoreline guidelines, and if the segment provides a level of protection
35 of ~~((critical))~~ wetlands and fish and wildlife habitat conservation
36 areas ~~((at least equal to that provided by the local government's~~
37 ~~critical areas ordinances adopted and thereafter amended pursuant to~~

1 ~~RCW 36.70A.060(2))~~ that assures no net loss of shoreline ecological
2 functions necessary to sustain shoreline natural resources as defined
3 by chapter 173-26 WAC.

4 (5) As of the date the department of ecology approves a local
5 government's shoreline master program, or segment of the local
6 government's shoreline master program relating to wetlands and fish and
7 wildlife habitat conservation areas, adopted or updated under shoreline
8 guidelines effective on or after January 17, 2004, the protection of
9 wetlands and fish and wildlife habitat conservation areas, as defined
10 by RCW 36.70A.030(5), located within shorelines of the state may be
11 accomplished only through the local government's shoreline master
12 program.

13 (6) The department shall approve those segments of the master
14 program relating to shorelines of statewide significance only after
15 determining the program provides the optimum implementation of the
16 policy of this chapter to satisfy the statewide interest. If the
17 department does not approve a segment of a local government master
18 program relating to a shoreline of statewide significance, the
19 department may develop and by rule adopt an alternative to the local
20 government's proposal.

21 ~~((+6))~~ (7) In the event a local government has not complied with
22 the requirements of RCW 90.58.070 it may thereafter upon written notice
23 to the department elect to adopt a master program for the shorelines
24 within its jurisdiction, in which event it shall comply with the
25 provisions established by this chapter for the adoption of a master
26 program for such shorelines.

27 Upon approval of such master program by the department it shall
28 supersede such master program as may have been adopted by the
29 department for such shorelines.

30 ~~((+7))~~ (8) A master program or amendment to a master program takes
31 effect when and in such form as approved or adopted by the department.
32 Shoreline master programs that were adopted by the department prior to
33 July 22, 1995, in accordance with the provisions of this section then
34 in effect, shall be deemed approved by the department in accordance
35 with the provisions of this section that became effective on that date.
36 The department shall maintain a record of each master program, the
37 action taken on any proposal for adoption or amendment of the master

1 program, and any appeal of the department's action. The department's
2 approved document of record constitutes the official master program.

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