

1 **ESB 6128** - H COMM AMD **ADOPTED 3/4/92**

2 By Committee on Environmental Affairs

3 Strike everything after the enacting clause and insert:

4 "Sec. 1. RCW 90.58.020 and 1982 1st ex.s. c 13 s 1 are each
5 amended to read as follows:

6 The legislature finds that the shorelines of the state are
7 among the most valuable and fragile of its natural resources and
8 that there is great concern throughout the state relating to their
9 utilization, protection, restoration, and preservation. In
10 addition it finds that ever increasing pressures of additional uses
11 are being placed on the shorelines necessitating increased
12 coordination in the management and development of the shorelines of
13 the state. The legislature further finds that much of the
14 shorelines of the state and the uplands adjacent thereto are in
15 private ownership; that unrestricted construction on the privately
16 owned or publicly owned shorelines of the state is not in the best
17 public interest; and therefore, coordinated planning is necessary
18 in order to protect the public interest associated with the
19 shorelines of the state while, at the same time, recognizing and
20 protecting private property rights consistent with the public
21 interest. There is, therefor, a clear and urgent demand for a
22 planned, rational, and concerted effort, jointly performed by
23 federal, state, and local governments, to prevent the inherent harm

1 in an uncoordinated and piecemeal development of the state's
2 shorelines.

3 It is the policy of the state to provide for the management of
4 the shorelines of the state by planning for and fostering all
5 reasonable and appropriate uses. This policy is designed to insure
6 the development of these shorelines in a manner which, while
7 allowing for limited reduction of rights of the public in the
8 navigable waters, will promote and enhance the public interest.
9 This policy contemplates protecting against adverse effects to the
10 public health, the land and its vegetation and wildlife, and the
11 waters of the state and their aquatic life, while protecting
12 generally public rights of navigation and corollary rights
13 incidental thereto.

14 The legislature declares that the interest of all of the
15 people shall be paramount in the management of shorelines of state-
16 wide significance. The department, in adopting guidelines for
17 shorelines of state-wide significance, and local government, in
18 developing master programs for shorelines of state-wide
19 significance, shall give preference to uses in the following order
20 of preference which:

21 (1) Recognize and protect the state-wide interest over local
22 interest;

23 (2) Preserve the natural character of the shoreline;

24 (3) Result in long term over short term benefit;

25 (4) Protect the resources and ecology of the shoreline;

1 (5) Increase public access to publicly owned areas of the
2 shorelines;

3 (6) Increase recreational opportunities for the public in the
4 shoreline;

5 (7) Provide for any other element as defined in RCW 90.58.100
6 deemed appropriate or necessary.

7 In the implementation of this policy the public's opportunity
8 to enjoy the physical and aesthetic qualities of natural shorelines
9 of the state shall be preserved to the greatest extent feasible
10 consistent with the overall best interest of the state and the
11 people generally. To this end uses shall be preferred which are
12 consistent with control of pollution and prevention of damage to
13 the natural environment, or are unique to or dependent upon use of
14 the state's shoreline. Alterations of the natural condition of the
15 shorelines of the state, in those limited instances when
16 authorized, shall be given priority for single family residences
17 and their appurtenant structures, ports, shoreline recreational
18 uses including but not limited to parks, marinas, piers, and other
19 improvements facilitating public access to shorelines of the state,
20 industrial and commercial developments which are particularly
21 dependent on their location on or use of the shorelines of the
22 state and other development that will provide an opportunity for
23 substantial numbers of the people to enjoy the shorelines of the
24 state. Alterations of the natural condition of the shorelines and
25 wetlands of the state shall be recognized by the department.

1 Shorelines and wetlands of the state shall be appropriately
2 classified and these classifications shall be revised when
3 circumstances warrant regardless of whether the change in
4 circumstances occurs through man-made causes or natural causes.
5 Any areas resulting from alterations of the natural condition of
6 the shorelines and wetlands of the state no longer meeting the
7 definition of "shorelines of the state" shall not be subject to the
8 provisions of chapter 90.58 RCW.

9 Permitted uses in the shorelines of the state shall be
10 designed and conducted in a manner to minimize, insofar as
11 practical, any resultant damage to the ecology and environment of
12 the shoreline area and any interference with the public's use of
13 the water.

14 **Sec. 2.** RCW 90.58.100 and 1991 c 322 s 32 are each amended to
15 read as follows:

16 (1) The master programs provided for in this chapter, when
17 adopted and approved by the department, as appropriate, shall
18 constitute use regulations for the various shorelines of the state.
19 In preparing the master programs, and any amendments thereto, the
20 department and local governments shall to the extent feasible:

21 (a) Utilize a systematic interdisciplinary approach which will
22 insure the integrated use of the natural and social sciences and
23 the environmental design arts;

1 (b) Consult with and obtain the comments of any federal,
2 state, regional, or local agency having any special expertise with
3 respect to any environmental impact;

4 (c) Consider all plans, studies, surveys, inventories, and
5 systems of classification made or being made by federal, state,
6 regional, or local agencies, by private individuals, or by
7 organizations dealing with pertinent shorelines of the state;

8 (d) Conduct or support such further research, studies,
9 surveys, and interviews as are deemed necessary;

10 (e) Utilize all available information regarding hydrology,
11 geography, topography, ecology, economics, and other pertinent
12 data;

13 (f) Employ, when feasible, all appropriate, modern scientific
14 data processing and computer techniques to store, index, analyze,
15 and manage the information gathered.

16 (2) The master programs shall include, when appropriate, the
17 following:

18 (a) An economic development element for the location and
19 design of industries, transportation facilities, port facilities,
20 tourist facilities, commerce and other developments that are
21 particularly dependent on their location on or use of the
22 shorelines of the state;

23 (b) A public access element making provision for public access
24 to publicly owned areas;

1 (c) A recreational element for the preservation and
2 enlargement of recreational opportunities, including but not
3 limited to parks, tidelands, beaches, and recreational areas;

4 (d) A circulation element consisting of the general location
5 and extent of existing and proposed major thoroughfares,
6 transportation routes, terminals, and other public utilities and
7 facilities, all correlated with the shoreline use element;

8 (e) A use element which considers the proposed general
9 distribution and general location and extent of the use on
10 shorelines and adjacent land areas for housing, business, industry,
11 transportation, agriculture, natural resources, recreation,
12 education, public buildings and grounds, and other categories of
13 public and private uses of the land;

14 (f) A conservation element for the preservation of natural
15 resources, including but not limited to scenic vistas, aesthetics,
16 and vital estuarine areas for fisheries and wildlife protection;

17 (g) An historic, cultural, scientific, and educational element
18 for the protection and restoration of buildings, sites, and areas
19 having historic, cultural, scientific, or educational values;

20 (h) An element that gives consideration to the state-wide
21 interest in the prevention and minimization of flood damages; and

22 (i) Any other element deemed appropriate or necessary to
23 effectuate the policy of this chapter.

1 (3) The master programs shall include such map or maps,
2 descriptive text, diagrams and charts, or other descriptive
3 material as are necessary to provide for ease of understanding.

4 (4) Master programs will reflect that state-owned shorelines
5 of the state are particularly adapted to providing wilderness
6 beaches, ecological study areas, and other recreational activities
7 for the public and will give appropriate special consideration to
8 same.

9 (5) Each master program shall contain provisions to allow for
10 the varying of the application of use regulations of the program,
11 including provisions for permits for conditional uses and
12 variances, to insure that strict implementation of a program will
13 not create unnecessary hardships or thwart the policy enumerated in
14 RCW 90.58.020. Any such varying shall be allowed only if
15 extraordinary circumstances are shown and the public interest
16 suffers no substantial detrimental effect. The concept of this
17 subsection shall be incorporated in the rules adopted by the
18 department relating to the establishment of a permit system as
19 provided in RCW 90.58.140(3).

20 (6) Each master program shall contain standards governing the
21 protection of single family residences and appurtenant structures
22 against shoreline erosion. The standards shall provide for both
23 structural and non-structural methods of protection. The standards
24 shall provide a preference for permit issuance for measures to
25 protect single family residences occupied prior to January 1, 1992,

1 where the proposed measure is designed to minimize harm to the
2 shoreline natural environment.

3 **Sec. 3.** RCW 90.58.140 and 1990 c 201 s 2 are each amended to
4 read as follows:

5 (1) A development shall not be undertaken on the shorelines of
6 the state unless it is consistent with the policy of this chapter
7 and, after adoption or approval, as appropriate, the applicable
8 guidelines, rules, or master program.

9 (2) A substantial development shall not be undertaken on
10 shorelines of the state without first obtaining a permit from the
11 government entity having administrative jurisdiction under this
12 chapter.

13 A permit shall be granted:

14 (a) From June 1, 1971, until such time as an applicable master
15 program has become effective, only when the development proposed is
16 consistent with: (i) The policy of RCW 90.58.020; and (ii) after
17 their adoption, the guidelines and rules of the department; and
18 (iii) so far as can be ascertained, the master program being
19 developed for the area;

20 (b) After adoption or approval, as appropriate, by the
21 department of an applicable master program, only when the
22 development proposed is consistent with the applicable master
23 program and the provisions of chapter 90.58 RCW.

1 (3) The local government shall establish a program, consistent
2 with rules adopted by the department, for the administration and
3 enforcement of the permit system provided in this section. The
4 administration of the system so established shall be performed
5 exclusively by the local government.

6 (4) Except as otherwise specifically provided in subsection
7 (13) of this section, the local government shall require
8 notification of the public of all applications for permits governed
9 by any permit system established pursuant to subsection (3) of this
10 section by ensuring that:

11 (a) A notice of such an application is published at least once
12 a week on the same day of the week for two consecutive weeks in a
13 legal newspaper of general circulation within the area in which the
14 development is proposed; and

15 (b) Additional notice of such an application is given by at
16 least one of the following methods:

17 (i) Mailing of the notice to the latest recorded real property
18 owners as shown by the records of the county assessor within at
19 least three hundred feet of the boundary of the property upon which
20 the substantial development is proposed;

21 (ii) Posting of the notice in a conspicuous manner on the
22 property upon which the project is to be constructed; or

23 (iii) Any other manner deemed appropriate by local authorities
24 to accomplish the objectives of reasonable notice to adjacent
25 landowners and the public.

1 The notices shall include a statement that any person desiring
2 to submit written comments concerning an application, or desiring
3 to receive a copy of the final order concerning an application as
4 expeditiously as possible after the issuance of the order, may
5 submit the comments or requests for orders to the local government
6 within thirty days of the last date the notice is to be published
7 pursuant to subsection (a) of this subsection. The local
8 government shall forward, in a timely manner following the issuance
9 of an order, a copy of the order to each person who submits a
10 request for the order.

11 If a hearing is to be held on an application, notices of such
12 a hearing shall include a statement that any person may submit oral
13 or written comments on an application at the hearing.

14 (5) The system shall include provisions to assure that
15 construction pursuant to a permit will not begin or be authorized
16 until thirty days from the date the final order was filed as
17 provided in subsection (6) of this section; or until all review
18 proceedings are terminated if the proceedings were initiated within
19 thirty days from the date of filing as defined in subsection (6) of
20 this section except as follows:

21 (a) In the case of any permit issued to the state of
22 Washington, department of transportation, for the construction and
23 modification of SR 90 (I-90) on or adjacent to Lake Washington, the
24 construction may begin after thirty days from the date of filing,
25 and the permits are valid until December 31, 1995;

1 (b) If a permit is granted by the local government and (i) the
2 granting of the permit is appealed to the shorelines hearings board
3 within thirty days of the date of filing, (ii) the hearings board
4 approves the granting of the permit by the local government or
5 approves a portion of the substantial development for which the
6 local government issued the permit, and (iii) an appeal for
7 judicial review of the hearings board decision is filed pursuant to
8 chapter 34.05 RCW, the permittee may request, within ten days of
9 the filing of the appeal with the court, a hearing before the court
10 to determine whether construction may begin pursuant to the permit
11 approved by the hearings board or to a revised permit issued
12 pursuant to the order of the hearings board. If, at the conclusion
13 of the hearing, the court finds that construction pursuant to such
14 a permit would not involve a significant, irreversible damaging of
15 the environment, the court may allow the permittee to begin the
16 construction pursuant to the approved or revised permit as the
17 court deems appropriate. The court may require the permittee to
18 post bonds, in the name of the local government that issued the
19 permit, sufficient to remove the substantial development or to
20 restore the environment if the permit is ultimately disapproved by
21 the courts, or to alter the substantial development if the
22 alteration is ultimately ordered by the courts. Construction
23 pursuant to a permit revised at the direction of the hearings board
24 may begin only on that portion of the substantial development for
25 which the local government had originally issued the permit, and

1 construction pursuant to such a revised permit on other portions of
2 the substantial development may not begin until after all review
3 proceedings are terminated. In such a hearing before the court,
4 the burden of proving whether the construction may involve
5 significant irreversible damage to the environment and
6 demonstrating whether such construction would or would not be
7 appropriate is on the appellant;

8 (c) If a permit is granted by the local government and the
9 granting of the permit is appealed directly to the superior court
10 for judicial review pursuant to the proviso in RCW 90.58.180(1),
11 the permittee may request the court to remand the appeal to the
12 shorelines hearings board, in which case the appeal shall be so
13 remanded and construction pursuant to such a permit shall be
14 governed by the provisions of subsection (b) of this subsection or
15 may otherwise begin after review proceedings before the hearings
16 board are terminated if judicial review is not thereafter requested
17 pursuant to chapter 34.05 RCW;

18 (d) If the permit is for a substantial development meeting the
19 requirements of subsection (13) of this section, construction
20 pursuant to that permit may not begin or be authorized until thirty
21 days from the date the final order was filed as provided in
22 subsection (6) of this section.

23 If a permittee begins construction pursuant to subsections
24 (a), (b), (c), or (d) of this subsection, the construction is begun
25 at the permittee's own risk. If, as a result of judicial review,

1 the courts order the removal of any portion of the construction or
2 the restoration of any portion of the environment involved or
3 require the alteration of any portion of a substantial development
4 constructed pursuant to a permit, the permittee is barred from
5 recovering damages or costs involved in adhering to such
6 requirements from the local government that granted the permit, the
7 hearings board, or any appellant or intervener.

8 (6) Any ruling on an application for a permit under the
9 authority of this section, whether it is an approval or a denial,
10 shall, concurrently with the transmittal of the ruling to the
11 applicant, be filed with the department and the attorney general.
12 With regard to a permit other than a permit governed by subsection
13 (12) of this section, "date of filing" as used herein means the
14 date of actual receipt by the department. With regard to a permit
15 for a variance or a conditional use, "date of filing" means the
16 date a decision of the department rendered on the permit pursuant
17 to subsection (12) of this section is transmitted by the department
18 to the local government. The department shall notify in writing
19 the local government and the applicant of the date of filing.

20 (7) Applicants for permits under this section have the burden
21 of proving that a proposed substantial development is consistent
22 with the criteria that must be met before a permit is granted. In
23 any review of the granting or denial of an application for a permit
24 as provided in RCW 90.58.180 (1) and (2), the person requesting the
25 review has the burden of proof.

1 (8) Any permit may, after a hearing with adequate notice to
2 the permittee and the public, be rescinded by the issuing authority
3 upon the finding that a permittee has not complied with conditions
4 of a permit. If the department is of the opinion that
5 noncompliance exists, the department shall provide written notice
6 to the local government and the permittee. If the department is of
7 the opinion that the noncompliance continues to exist thirty days
8 after the date of the notice, and the local government has taken no
9 action to rescind the permit, the department may petition the
10 hearings board for a rescission of the permit upon written notice
11 of the petition to the local government and the permittee if the
12 request by the department is made to the hearings board within
13 fifteen days of the termination of the thirty-day notice to the
14 local government.

15 (9) The holder of a certification from the governor pursuant
16 to chapter 80.50 RCW shall not be required to obtain a permit under
17 this section.

18 (10) A permit shall not be required for any development on
19 shorelines of the state included within a preliminary or final plat
20 approved by the applicable state agency or local government before
21 April 1, 1971, if:

22 (a) The final plat was approved after April 13, 1961, or the
23 preliminary plat was approved after April 30, 1969; and

24 (b) The development is completed within two years after June
25 1, 1971.

1 (11) The applicable state agency or local government is
2 authorized to approve a final plat with respect to shorelines of
3 the state included within a preliminary plat approved after April
4 30, 1969, and before April 1, 1971: PROVIDED, That any substantial
5 development within the platted shorelines of the state is
6 authorized by a permit granted pursuant to this section, or does
7 not require a permit as provided in subsection (10) of this
8 section, or does not require a permit because of substantial
9 development occurred before June 1, 1971.

10 (12) Any permit for a variance or a conditional use by local
11 government under approved master programs must be submitted to the
12 department for its approval or disapproval.

13 (13)(a) An application for a substantial development permit
14 for a limited utility extension or for the construction of a
15 bulkhead or other measures to protect a single family residence and
16 its appurtenant structures from shoreline erosion shall be subject
17 to the following procedures:

18 (i) The public comment period under subsection (4) of this
19 section shall be twenty days. The notice provided under subsection
20 (4) of this section shall state the manner in which the public may
21 obtain a copy of the local government decision on the application
22 no later than two days following its issuance;

23 (ii) The local government shall issue its decision to grant or
24 deny the permit within twenty-one days of the last day of the
25 comment period specified in (i) of this subsection; and

1 (iii) If there is an appeal of the decision to grant or deny
2 the permit to the local government legislative authority, the
3 appeal shall be finally determined by the legislative authority
4 within thirty days.

5 (b) For purposes of this section, a limited utility extension
6 means the extension of a utility service that:

7 (i) Is categorically exempt under chapter 43.21C RCW for one
8 or more of the following: Natural gas, electricity, telephone,
9 water, or sewer;

10 (~~((b)–[ii])~~) (ii) Will serve an existing use in compliance
11 with this chapter; and

12 (~~((c)–[iii])~~) (iii) Will not extend more than twenty-five
13 hundred linear feet within the shorelines of the state."

14 **ESB 6128** - H COMM AMD

15 By Committee on Environmental Affairs

16 On page 1, line 2 of the title, after "purposes;" strike the
17 remainder of the title and insert "and amending RCW 90.58.020,
18 90.58.100, and 90.58.140."