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SENATE BILL 6128

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State of Washington

52nd Legislature

1992 Regular Session

By Senators Owen and Amondson

Read first time 01/17/92. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to erosion of shoreline uplands used for  
2 residential purposes; and amending RCW 90.58.020, 90.58.100, 90.58.140,  
3 and 84.70.010.

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

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

7 The legislature finds that the shorelines of the state are among  
8 the most valuable and fragile of its natural resources and that there  
9 is great concern throughout the state relating to their utilization,  
10 protection, restoration, and preservation. In addition it finds that  
11 ever increasing pressures of additional uses are being placed on the  
12 shorelines necessitating increased coordination in the management and  
13 development of the shorelines of the state. The legislature further  
14 finds that much of the shorelines of the state and the uplands adjacent

1 thereto are in private ownership; that unrestricted construction on the  
2 privately owned or publicly owned shorelines of the state is not in the  
3 best public interest; and therefore, coordinated planning is necessary  
4 in order to protect the public interest associated with the shorelines  
5 of the state while, at the same time, recognizing and protecting  
6 private property rights consistent with the public interest. There is,  
7 therefor, a clear and urgent demand for a planned, rational, and  
8 concerted effort, jointly performed by federal, state, and local  
9 governments, to prevent the inherent harm in an uncoordinated and  
10 piecemeal development of the state's shorelines.

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

21 The legislature declares that the interest of all of the people  
22 shall be paramount in the management of shorelines of state-wide  
23 significance. The department, in adopting guidelines for shorelines of  
24 state-wide significance, and local government, in developing master  
25 programs for shorelines of state-wide significance, shall give  
26 preference to uses in the following order of preference which:

27 (1) Recognize and protect the state-wide interest over local  
28 interest;

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

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

- 1 (4) Protect the resources and ecology of the shoreline;
- 2 (5) Increase public access to publicly owned areas of the  
3 shorelines;
- 4 (6) Increase recreational opportunities for the public in the  
5 shoreline;
- 6 (7) Provide for any other element as defined in RCW 90.58.100  
7 deemed appropriate or necessary.

8 In the implementation of this policy the public's opportunity to  
9 enjoy the physical and aesthetic qualities of natural shorelines of the  
10 state shall be preserved to the greatest extent feasible consistent  
11 with the overall best interest of the state and the people generally.  
12 To this end uses shall be preferred which are consistent with control  
13 of pollution and prevention of damage to the natural environment, or  
14 are unique to or dependent upon use of the state's shoreline.  
15 Alterations of the natural condition of the shorelines of the state, in  
16 those limited instances when authorized, shall be given priority for  
17 single family residences and their associated upland sites including  
18 structures to protect against shoreline erosion, ports, shoreline  
19 recreational uses including but not limited to parks, marinas, piers,  
20 and other improvements facilitating public access to shorelines of the  
21 state, industrial and commercial developments which are particularly  
22 dependent on their location on or use of the shorelines of the state  
23 and other development that will provide an opportunity for substantial  
24 numbers of the people to enjoy the shorelines of the state.  
25 Alterations of the natural condition of the shorelines and wetlands of  
26 the state shall be recognized by the department. Shorelines and  
27 wetlands of the state shall be appropriately classified and these  
28 classifications shall be revised when circumstances warrant regardless  
29 of whether the change in circumstances occurs through man-made causes  
30 or natural causes. Any areas resulting from alterations of the natural

1 condition of the shorelines and wetlands of the state no longer meeting  
2 the definition of "shorelines of the state" shall not be subject to the  
3 provisions of chapter 90.58 RCW.

4 Permitted uses in the shorelines of the state shall be designed and  
5 conducted in a manner to minimize, insofar as practical, any resultant  
6 damage to the ecology and environment of the shoreline area and any  
7 interference with the public's use of the water.

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

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

15 (a) Utilize a systematic interdisciplinary approach which will  
16 insure the integrated use of the natural and social sciences and the  
17 environmental design arts;

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

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

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

27 (e) Utilize all available information regarding hydrology,  
28 geography, topography, ecology, economics, and other pertinent data;

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

4 (2) The master programs shall include, when appropriate, the  
5 following:

6 (a) An economic development element for the location and design of  
7 industries, transportation facilities, port facilities, tourist  
8 facilities, commerce and other developments that are particularly  
9 dependent on their location on or use of the shorelines of the state;

10 (b) A public access element making provision for public access to  
11 publicly owned areas;

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

15 (d) A circulation element consisting of the general location and  
16 extent of existing and proposed major thoroughfares, transportation  
17 routes, terminals, and other public utilities and facilities, all  
18 correlated with the shoreline use element;

19 (e) A use element which considers the proposed general distribution  
20 and general location and extent of the use on shorelines and adjacent  
21 land areas for housing, business, industry, transportation,  
22 agriculture, natural resources, recreation, education, public buildings  
23 and grounds, and other categories of public and private uses of the  
24 land;

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

28 (g) An historic, cultural, scientific, and educational element for  
29 the protection and restoration of buildings, sites, and areas having  
30 historic, cultural, scientific, or educational values;

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

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

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

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

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

22 (6) Each master program shall contain standards governing the  
23 issuance of substantial development permits for the construction of  
24 bulkheads and other structures to protect single family residences and  
25 their associated upland sites from damage or loss due to shoreline  
26 erosion. The standards shall provide a preference for permit issuance  
27 for structures to protect sites with single family residences occupied  
28 prior to January 1, 1992, where the proposed structure is designed to  
29 minimize harm to the shoreline natural environment.

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

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

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

10       A permit shall be granted:

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

16       (b) After adoption or approval, as appropriate, by the department  
17 of an applicable master program, only when the development proposed is  
18 consistent with the applicable master program and the provisions of  
19 chapter 90.58 RCW.

20       (3) The local government shall establish a program, consistent with  
21 rules adopted by the department, for the administration and enforcement  
22 of the permit system provided in this section. The administration of  
23 the system so established shall be performed exclusively by the local  
24 government.

25       (4) Except as otherwise specifically provided in subsection (13) of  
26 this section, the local government shall require notification of the  
27 public of all applications for permits governed by any permit system  
28 established pursuant to subsection (3) of this section by ensuring  
29 that:

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

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

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

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

13 (iii) Any other manner deemed appropriate by local authorities to  
14 accomplish the objectives of reasonable notice to adjacent landowners  
15 and the public.

16 The notices shall include a statement that any person desiring to  
17 submit written comments concerning an application, or desiring to  
18 receive a copy of the final order concerning an application as  
19 expeditiously as possible after the issuance of the order, may submit  
20 the comments or requests for orders to the local government within  
21 thirty days of the last date the notice is to be published pursuant to  
22 subsection (a) of this subsection. The local government shall forward,  
23 in a timely manner following the issuance of an order, a copy of the  
24 order to each person who submits a request for the order.

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

28 (5) The system shall include provisions to assure that construction  
29 pursuant to a permit will not begin or be authorized until thirty days  
30 from the date the final order was filed as provided in subsection (6)



1 of this section; or until all review proceedings are terminated if the  
2 proceedings were initiated within thirty days from the date of filing  
3 as defined in subsection (6) of this section except as follows:

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

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

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

9 (c) If a permit is granted by the local government and the granting  
10 of the permit is appealed directly to the superior court for judicial  
11 review pursuant to the proviso in RCW 90.58.180(1), the permittee may  
12 request the court to remand the appeal to the shorelines hearings  
13 board, in which case the appeal shall be so remanded and construction  
14 pursuant to such a permit shall be governed by the provisions of  
15 subsection (b) of this subsection or may otherwise begin after review  
16 proceedings before the hearings board are terminated if judicial review  
17 is not thereafter requested 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 pursuant  
20 to that permit may not begin or be authorized until thirty days from  
21 the date the final order was filed as provided in subsection (6) of  
22 this section.

23 If a permittee begins construction pursuant to subsections (a),  
24 (b), (c), or (d) of this subsection, the construction is begun at the  
25 permittee's own risk. If, as a result of judicial review, the courts  
26 order the removal of any portion of the construction or the restoration  
27 of any portion of the environment involved or require the alteration of  
28 any portion of a substantial development constructed pursuant to a  
29 permit, the permittee is barred from recovering damages or costs  
30 involved in adhering to such requirements from the local government

1 that granted the permit, the hearings board, or any appellant or  
2 intervener.

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

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

21 (8) Any permit may, after a hearing with adequate notice to the  
22 permittee and the public, be rescinded by the issuing authority upon  
23 the finding that a permittee has not complied with conditions of a  
24 permit. If the department is of the opinion that noncompliance exists,  
25 the department shall provide written notice to the local government and  
26 the permittee. If the department is of the opinion that the  
27 noncompliance continues to exist thirty days after the date of the  
28 notice, and the local government has taken no action to rescind the  
29 permit, the department may petition the hearings board for a rescission  
30 of the permit upon written notice of the petition to the local

1 government and the permittee if the request by the department is made  
2 to the hearings board within fifteen days of the termination of the  
3 thirty-day notice to the local government.

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

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

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

13 (b) The development is completed within two years after June 1,  
14 1971.

15 (11) The applicable state agency or local government is authorized  
16 to approve a final plat with respect to shorelines of the state  
17 included within a preliminary plat approved after April 30, 1969, and  
18 before April 1, 1971: PROVIDED, That any substantial development  
19 within the platted shorelines of the state is authorized by a permit  
20 granted pursuant to this section, or does not require a permit as  
21 provided in subsection (10) of this section, or does not require a  
22 permit because of substantial development occurred before June 1, 1971.

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

26 (13)(a) An application for a substantial development permit for a  
27 limited utility extension or for the construction of a bulkhead or  
28 other structure to protect a single family residence and its associated  
29 upland site from shoreline erosion shall be subject to the following  
30 procedures:

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

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

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

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

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

17 (~~(b)~~ ~~(iii)~~) (ii) Will serve an existing use in compliance with  
18 this chapter; and

19 (~~(c)~~ ~~(iii)~~) (iii) Will not extend more than twenty-five hundred  
20 linear feet within the shorelines of the state.

21 **Sec. 4.** RCW 84.70.010 and 1987 c 319 s 6 are each amended to read  
22 as follows:

23 (1) If, on or before December 31 in any calendar year, any real or  
24 personal property placed upon the assessment roll of that year is  
25 destroyed in whole or in part, or is in an area that has been declared  
26 a disaster area by the governor and has been reduced in value by more  
27 than twenty percent as a result of a natural disaster, the true cash  
28 value of such property shall be reduced for that year by an amount  
29 determined as follows:

1 (a) First take the true cash value of such taxable property before  
2 destruction or reduction in value and deduct therefrom the true cash  
3 value of the remaining property after destruction or reduction in  
4 value.

5 (b) Then divide any amount remaining by the number of days in the  
6 year and multiply the quotient by the number of days remaining in the  
7 calendar year after the date of the destruction or reduction in value  
8 of the property.

9 (2) No reduction in the true cash value shall be made more than  
10 three years after the date of destruction or reduction in value.

11 (3) The assessor shall make such reduction on his or her own  
12 motion; however, the taxpayer may make application for reduction on  
13 forms prepared by the department and provided by the assessor. The  
14 assessor shall notify the taxpayer of the amount of reduction.

15 (4) If destroyed property is replaced prior to the valuation dates  
16 contained in RCW 36.21.080 and 36.21.090, the total taxable value for  
17 that year shall not exceed the value as of the appropriate valuation  
18 date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

19 (5) The taxpayer may appeal the amount of reduction to the county  
20 board of equalization within thirty days of notification or July 15th  
21 of the year of reduction, whichever is later. The board shall  
22 reconvene, if necessary, to hear the appeal.

23 (6) This section shall apply to the loss of upland real property  
24 due to shoreline erosion regardless of whether the loss was caused by  
25 a sudden occurrence or by gradual erosion over a substantial period of  
26 time.