
HOUSE BILL 2198

State of Washington

55th Legislature

1997 Regular Session

By Representatives Reams, Thompson and Mielke

Read first time 02/26/97. Referred to Committee on Government Reform & Land Use.

1 AN ACT Relating to shoreline management; amending RCW 90.58.020 and
2 36.70A.480; adding a new chapter to Title 90 RCW; creating a new
3 section; repealing RCW 90.58.185; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that each county and
6 city that has adopted and implemented plans under the requirements of
7 the growth management act has accomplished through a participatory,
8 public process a scheme for balanced environmental protection, economic
9 development, and other important goals throughout its jurisdiction just
10 as the state has required for twenty-five years for the utilization,
11 protection, restoration, and preservation of shorelines. The
12 legislature further finds that given the success of growth management
13 in those jurisdictions that have completed initial implementation,
14 along with the need for efficient and effective provision of
15 governmental services, the mission and function of the shorelines
16 management act should be coordinated and fully integrated with the
17 planning and regulatory requirements of the growth management act,
18 chapter 36.70A RCW.

1 In this act, the legislature authorizes and encourages each county
2 and city that has adopted and implemented a comprehensive plan under
3 chapter 36.70A RCW to manage its shorelines through a streamlined
4 process while ensuring continued recognition of the valuable and
5 fragile nature of our shorelines.

6 **Sec. 2.** RCW 90.58.020 and 1995 c 347 s 301 are each amended to
7 read as follows:

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

26 It is the policy of the state to provide for the management of the
27 shorelines of the state by planning for and fostering all reasonable
28 and appropriate uses. This policy is designed to insure the
29 development of these shorelines in a manner which, while allowing for
30 limited reduction of rights of the public in the navigable waters, will
31 promote and enhance the public interest. This policy contemplates
32 protecting against adverse effects to the public health, the land and
33 its vegetation and wildlife, and the waters of the state and their
34 aquatic life, while protecting generally public rights of navigation
35 and corollary rights incidental thereto.

36 The legislature declares that the interest of all of the people
37 shall be paramount in the management of shorelines of state-wide
38 significance. The department, in adopting guidelines for shorelines of

1 state-wide significance, and local government, in developing master
2 programs for shorelines of state-wide significance, shall give
3 preference to uses in the following order of preference which:

4 (1) Recognize and protect the state-wide interest over local
5 interest;

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

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

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

9 (5) Increase public access to publicly owned areas of the
10 shorelines;

11 (6) Increase recreational opportunities for the public in the
12 shoreline;

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

15 In the implementation of this policy the public's opportunity to
16 enjoy the physical and aesthetic qualities of natural shorelines of the
17 state shall be preserved to the greatest extent feasible consistent
18 with the overall best interest of the state and the people generally.
19 To this end uses shall be preferred which are consistent with control
20 of pollution and prevention of damage to the natural environment, or
21 are unique to or dependent upon use of the state's shoreline.
22 Alterations of the natural condition of the shorelines of the state, in
23 those limited instances when authorized, shall be given priority for
24 single family residences and their appurtenant structures, ports,
25 shoreline recreational uses including but not limited to parks,
26 marinas, piers, and other improvements facilitating public access to
27 shorelines of the state, industrial and commercial developments which
28 are particularly dependent on their location on or use of the
29 shorelines of the state and other development that will provide an
30 opportunity for substantial numbers of the people to enjoy the
31 shorelines of the state. Alterations of the natural condition of the
32 shorelines and shorelands of the state shall be recognized by the
33 department. Shorelines and shorelands of the state shall be
34 appropriately classified and these classifications shall be revised
35 when circumstances warrant regardless of whether the change in
36 circumstances occurs through man-made causes or natural causes. Any
37 areas resulting from alterations of the natural condition of the
38 shorelines and shorelands of the state no longer meeting the definition

1 of "shorelines of the state" shall not be subject to the provisions of
2 chapter 90.58 RCW.

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

7 Any county or city that has adopted and implemented its
8 comprehensive plan under chapter 36.70A RCW may manage its shorelines
9 under either this chapter or chapter 90.-- RCW (sections 4 through 45
10 of this act).

11 **Sec. 3.** RCW 36.70A.480 and 1995 c 347 s 104 are each amended to
12 read as follows:

13 (1) For shorelines of the state, the goals and policies of the
14 shoreline management act as set forth in RCW 90.58.020 are added as one
15 of the goals of this chapter as set forth in RCW 36.70A.020. The goals
16 and policies of a shoreline master program for a county or city
17 approved under chapter 90.58 RCW or adopted under chapter 90.-- RCW
18 (sections 4 through 45 of this act) shall be considered an element of
19 the county or city's comprehensive plan. All other portions of the
20 shoreline master program for a county or city adopted under chapter
21 90.58 RCW, including use regulations, shall be considered a part of the
22 county or city's development regulations.

23 (2) The shoreline master program shall be adopted pursuant to the
24 procedures of chapter 90.58 RCW or under the procedures of chapter
25 90.-- RCW (sections 4 through 45 of this act) rather than the
26 procedures set forth in this chapter for the adoption of a
27 comprehensive plan or development regulations.

28 NEW SECTION. **Sec. 4.** Unless the context clearly requires
29 otherwise, the definitions in this section apply throughout this
30 chapter.

31 (1) Administration:

32 (a) "Department" means the department of ecology.

33 (b) "Director" means the director of the department of ecology.

34 (c) "Local government" means any county, incorporated city, or town
35 which contains within its boundaries any lands or waters subject to
36 this chapter.

1 (d) "Person" means an individual, partnership, corporation,
2 association, organization, cooperative, public or municipal
3 corporation, or agency of the state or local governmental unit however
4 designated.

5 (e) "Hearing board" means the shoreline hearings board established
6 by this chapter.

7 (2) Geographical:

8 (a) "Extreme low tide" means the lowest line on the land reached by
9 a receding tide.

10 (b) "Ordinary high water mark" on all lakes, streams, and tidal
11 water is that mark that will be found by examining the bed and banks
12 and ascertaining where the presence and action of waters are so common
13 and usual, and so long continued in all ordinary years, as to mark upon
14 the soil a character distinct from that of the abutting upland, in
15 respect to vegetation as that condition exists on June 1, 1971, as it
16 may naturally change thereafter, or as it may change thereafter in
17 accordance with permits issued by a local government or the department.
18 However, in any area where the ordinary high water mark cannot be
19 found, the ordinary high water mark adjoining salt water shall be the
20 line of mean higher high tide and the ordinary high water mark
21 adjoining fresh water shall be the line of mean high water.

22 (c) "Shorelines of the state" are the total of all shorelines and
23 shorelines of state-wide significance within the state.

24 (d) "Shorelines" means all of the water areas of the state,
25 including reservoirs, and their associated shorelands, together with
26 the lands underlying them; except (i) shorelines of state-wide
27 significance; (ii) shorelines on segments of streams upstream of a
28 point where the mean annual flow is twenty cubic feet per second or
29 less and the wetlands associated with such upstream segments; and (iii)
30 shorelines on lakes less than twenty acres in size and wetlands
31 associated with such small lakes.

32 (e) "Shorelines of state-wide significance" means the following
33 shorelines of the state:

34 (i) The area between the ordinary high water mark and the western
35 boundary of the state from Cape Disappointment on the south to Cape
36 Flattery on the north, including harbors, bays, estuaries, and inlets;

37 (ii) Those areas of Puget Sound and adjacent salt waters and the
38 Strait of Juan de Fuca between the ordinary high water mark and the
39 line of extreme low tide as follows:

- 1 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point;
2 (B) Birch Bay--from Point Whitehorn to Birch Point;
3 (C) Hood Canal--from Tala Point to Foulweather Bluff;
4 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point;
5 and

6 (E) Padilla Bay--from March Point to William Point;

7 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
8 adjacent salt waters north to the Canadian line and lying seaward from
9 the line of extreme low tide;

10 (iv) Those lakes, whether natural, artificial, or a combination
11 thereof, with a surface acreage of one thousand acres or more measured
12 at the ordinary high water mark;

13 (v) Those natural rivers or segments thereof as follows:

14 (A) Any west of the crest of the Cascade range downstream of a
15 point where the mean annual flow is measured at one thousand cubic feet
16 per second or more;

17 (B) Any east of the crest of the Cascade range downstream of a
18 point where the annual flow is measured at two hundred cubic feet per
19 second or more, or those portions of rivers east of the crest of the
20 Cascade range downstream from the first three hundred square miles of
21 drainage area, whichever is longer;

22 (vi) Those shorelands associated with (e)(i), (ii), (iv), and (v)
23 of this subsection.

24 (f) "Shorelands" or "shoreland areas" means those lands extending
25 landward for two hundred feet in all directions as measured on a
26 horizontal plane from the ordinary high water mark; floodways and
27 contiguous flood plain areas landward two hundred feet from such
28 floodways; and all wetlands and river deltas associated with the
29 streams, lakes, and tidal waters which are subject to the provisions of
30 this chapter; the same to be designated as to location by the
31 department. Any county or city may determine that portion of a one
32 hundred year flood plain to be included in its master program as long
33 as such portion includes, as a minimum, the floodway and the adjacent
34 land extending landward two hundred feet from the floodway.

35 (g) "Floodway" means those portions of the area of a river valley
36 lying streamward from the outer limits of a watercourse upon which
37 flood waters are carried during periods of flooding that occur with
38 reasonable regularity, although not necessarily annually, the floodway
39 being identified, under normal condition, by changes in surface soil

1 conditions or changes in types or quality of vegetative ground cover
2 condition. The floodway shall not include those lands that can
3 reasonably be expected to be protected from flood waters by flood
4 control devices maintained by or maintained under license from the
5 federal government, the state, or a political subdivision of the state.

6 (h) "Wetlands" means areas that are inundated or saturated by
7 surface water or ground water at a frequency and duration sufficient to
8 support, and that under normal circumstances do support, a prevalence
9 of vegetation typically adapted for life in saturated soil conditions.
10 Wetlands generally include swamps, marshes, bogs, and similar areas.
11 Wetlands do not include those artificial wetlands intentionally created
12 from nonwetland sites, including, but not limited to, irrigation and
13 drainage ditches, grass-lined swales, canals, detention facilities,
14 wastewater treatment facilities, farm ponds, and landscape amenities,
15 or those wetlands created after July 1, 1990, that were unintentionally
16 created as a result of the construction of a road, street, or highway.
17 Wetlands may include those artificial wetlands intentionally created
18 from nonwetland areas to mitigate the conversion of wetlands.

19 (3) Procedural terms:

20 (a) "Guidelines" means those standards adopted to implement the
21 policy of this chapter for regulation of use of the shorelines of the
22 state prior to adoption of master programs. The standards shall also
23 provide criteria to local governments and the department in developing
24 master programs.

25 (b) "Master program" means the comprehensive use plan for a
26 described area, and the use regulations together with maps, diagrams,
27 charts, or other descriptive material and text, a statement of desired
28 goals, and standards developed in accordance with the policies
29 enunciated in RCW 90.58.020.

30 (c) "State master program" means the cumulative total of all master
31 programs approved or adopted by the department.

32 (d) "Development" means a use consisting of the construction or
33 exterior alteration of structures; dredging; drilling; dumping;
34 filling; removal of any sand, gravel, or minerals; bulkheading; driving
35 of piling; placing of obstructions; or any project of a permanent or
36 temporary nature that interferes with the normal public use of the
37 surface of the waters overlying lands subject to this chapter at any
38 state of water level.

1 (e) "Substantial development" means any development of which the
2 total cost or fair market value exceeds two thousand five hundred
3 dollars, or any development which materially interferes with the normal
4 public use of the water or shorelines of the state; except that the
5 following is not considered substantial developments for the purpose of
6 this chapter:

7 (i) Normal maintenance or repair of existing structures or
8 developments, including damage by accident, fire, or elements;

9 (ii) Construction of the normal protective bulkhead common to
10 single-family residences;

11 (iii) Emergency construction necessary to protect property from
12 damage by the elements;

13 (iv) Construction and practices normal or necessary for farming,
14 irrigation, and ranching activities, including agricultural service
15 roads and utilities on shorelands, and the construction and maintenance
16 of irrigation structures including but not limited to head gates,
17 pumping facilities, and irrigation channels. A feedlot of any size,
18 all processing plants, other activities of a commercial nature,
19 alteration of the contour of the shorelands by leveling or filling
20 other than that which results from normal cultivation, are not
21 considered normal or necessary farming or ranching activities. A
22 feedlot is an enclosure or facility used or capable of being used for
23 feeding livestock hay, grain, silage, or other livestock feed, but does
24 not include land for growing crops or vegetation for livestock feeding
25 or grazing, or both, nor does it include normal livestock wintering
26 operations;

27 (v) Construction or modification of navigational aids such as
28 channel markers and anchor buoys;

29 (vi) Construction on shorelands by an owner, lessee, or contract
30 purchaser of a single-family residence for his or her own use or for
31 the use of his or her family, which residence does not exceed a height
32 of thirty-five feet above average grade level and that meets all
33 requirements of the state agency or local government having
34 jurisdiction thereof, other than requirements imposed under this
35 chapter;

36 (vii) Construction of a dock, including a community dock, designed
37 for pleasure craft only, for the private noncommercial use of the
38 owner, lessee, or contract purchaser of single and multiple family
39 residences. This exception applies if either: (A) In salt waters, the

1 fair market value of the dock does not exceed two thousand five hundred
2 dollars; or (B) in fresh waters, the fair market value of the dock does
3 not exceed ten thousand dollars, but if subsequent construction having
4 a fair market value exceeding two thousand five hundred dollars occurs
5 within five years of completion of the prior construction, the
6 subsequent construction shall be considered a substantial development
7 for the purpose of this chapter;

8 (viii) Operation, maintenance, or construction of canals,
9 waterways, drains, reservoirs, or other facilities that now exist or
10 are hereafter created or developed as a part of an irrigation system
11 for the primary purpose of making use of system waters, including
12 return flow and artificially stored ground water for the irrigation of
13 lands;

14 (ix) The marking of property lines or corners on state owned lands,
15 when such marking does not significantly interfere with normal public
16 use of the surface of the water;

17 (x) Operation and maintenance of any system of dikes, ditches,
18 drains, or other facilities existing on September 8, 1975, that were
19 created, developed, or used primarily as a part of an agricultural
20 drainage or diking system;

21 (xi) Site exploration and investigation activities that are
22 prerequisite to preparation of an application for development
23 authorization under this chapter, if:

24 (A) The activity does not interfere with the normal public use of
25 the surface waters;

26 (B) The activity will have no significant adverse impact on the
27 environment including, but not limited to, fish, wildlife, fish or
28 wildlife habitat, water quality, and aesthetic values;

29 (C) The activity does not involve the installation of a structure,
30 and upon completion of the activity the vegetation and land
31 configuration of the site are restored to conditions existing before
32 the activity;

33 (D) A private entity seeking development authorization under this
34 section first posts a performance bond or provides other evidence of
35 financial responsibility to the local jurisdiction to ensure that the
36 site is restored to preexisting conditions; and

37 (E) The activity is not subject to the permit requirements of
38 section 41 of this act;

1 (xii) The process of removing or controlling an aquatic noxious
2 weed, as defined in RCW 17.26.020, through the use of an herbicide or
3 other treatment methods applicable to weed control that are recommended
4 by a final environmental impact statement published by the department
5 of agriculture or the department jointly with other state agencies
6 under chapter 43.21C RCW.

7 NEW SECTION. **Sec. 5.** The shoreline management program of this
8 chapter applies to the shorelines of the state.

9 NEW SECTION. **Sec. 6.** This chapter establishes a cooperative
10 program of shoreline management between local government and the state.
11 Local government has the primary responsibility for initiating the
12 planning required by this chapter and administering the regulatory
13 program consistent with the policy and provisions of this chapter. The
14 department shall act in a supportive and review capacity with an
15 emphasis on providing assistance to local government and on insuring
16 compliance with the policy and provisions of this chapter.

17 NEW SECTION. **Sec. 7.** (1) The department shall periodically review
18 and adopt guidelines consistent with RCW 90.58.020, containing the
19 elements specified in section 10 of this act for:

20 (a) Development of master programs for regulation of the uses of
21 shorelines; and

22 (b) Development of master programs for regulation of the uses of
23 shorelines of state-wide significance.

24 (2) Before adopting or amending guidelines under this section, the
25 department shall provide an opportunity for public review and comment
26 as follows:

27 (a) The department shall mail copies of the proposal to all cities,
28 counties, and federally recognized Indian tribes, and to any other
29 person who has requested a copy, and shall publish the proposed
30 guidelines in the Washington State Register. Comments shall be
31 submitted in writing to the department within sixty days from the date
32 the proposal has been published in the Washington State Register.

33 (b) The department shall hold at least four public hearings on the
34 proposal in different locations throughout the state to provide a
35 reasonable opportunity for residents in all parts of the state to
36 present statements and views on the proposed guidelines. Notice of the

1 hearings shall be published at least once in each of the three weeks
2 immediately preceding the hearing in one or more newspapers of general
3 circulation in each county of the state. If an amendment to the
4 guidelines addresses an issue limited to one geographic area, the
5 number and location of hearings may be adjusted consistent with the
6 intent of this subsection to assure all parties a reasonable
7 opportunity to comment on the proposed amendment. The department shall
8 accept written comments on the proposal during the sixty-day public
9 comment period and for seven days after the final public hearing.

10 (c) At the conclusion of the public comment period, the department
11 shall review the comments received and modify the proposal consistent
12 with the provisions of this chapter. The proposal shall then be
13 published for adoption under the provisions of chapter 34.05 RCW.

14 (3) The department may propose amendments to the guidelines not
15 more than once each year. At least once every five years the
16 department shall conduct a review of the guidelines under the
17 procedures outlined in subsection (2) of this section.

18 NEW SECTION. **Sec. 8.** Local governments shall develop or amend,
19 within twenty-four months after the adoption of guidelines as provided
20 in section 7 of this act, a master program for regulation of uses of
21 the shorelines of the state consistent with the required elements of
22 the guidelines adopted by the department.

23 NEW SECTION. **Sec. 9.** A master program, segment of a master
24 program, or an amendment to a master program becomes effective when
25 approved by the legislative body of the local government.

26 NEW SECTION. **Sec. 10.** (1) The master programs provided for in
27 this chapter, when adopted or approved by the local government shall
28 constitute use regulations for the various shorelines of the state. In
29 preparing the master programs, and any amendments thereto, local
30 governments shall to the extent feasible:

31 (a) Use a systematic interdisciplinary approach that will ensure
32 the integrated use of the natural and social sciences and the
33 environmental design arts;

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

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

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

7 (e) Use all available information regarding hydrology, geography,
8 topography, ecology, economics, and other pertinent data;

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

12 (2) The master programs shall include, when appropriate, the
13 following:

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

18 (b) A public access element making provision for public access to
19 publicly owned areas;

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

23 (d) A circulation element consisting of the general location and
24 extent of existing and proposed major thoroughfares, transportation
25 routes, terminals, and other public utilities and facilities, all
26 correlated with the shoreline use element;

27 (e) A use element which considers the proposed general distribution
28 and general location and extent of the use on shorelines and adjacent
29 land areas for housing, business, industry, transportation,
30 agriculture, natural resources, recreation, education, public buildings
31 and grounds, and other categories of public and private uses of the
32 land;

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

36 (g) An historic, cultural, scientific, and educational element for
37 the protection and restoration of buildings, sites, and areas having
38 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 ensure
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 guidelines
20 adopted by rule by the department relating to the establishment of a
21 permit system as provided in section 14(3) of this act.

22 (6) Each master program shall contain standards governing the
23 protection of single-family residences and appurtenant structures
24 against damage or loss due to shoreline erosion. The standards shall
25 govern the issuance of substantial development permits for shoreline
26 protection, including structural methods such as construction of
27 bulkheads, and nonstructural methods of protection. The standards
28 shall provide for methods which achieve effective and timely protection
29 against loss or damage to single-family residences and appurtenant
30 structures due to shoreline erosion. The standards shall provide a
31 preference for permit issuance for measures to protect single-family
32 residences occupied prior to January 1, 1992, where the proposed
33 measure is designed to minimize harm to the shoreline natural
34 environment.

35 NEW SECTION. **Sec. 11.** (1) If it appears to the director that a
36 master program should be developed for a region of the shorelines of
37 the state which includes lands and waters located in two or more
38 adjacent local government jurisdictions, the director shall designate

1 the region and notify the appropriate units of local government
2 thereof. It is the duty of the notified units to develop cooperatively
3 an inventory and master program in accordance with and within the time
4 provided in section 8 of this act.

5 (2) A local government master program may be adopted in segments
6 applicable to particular areas so that immediate attention may be given
7 to those areas of the shorelines of the state in most need of a use
8 regulation.

9 NEW SECTION. **Sec. 12.** All rules, regulations, designations,
10 and guidelines issued by the department under RCW 90.58.070(2) or
11 90.58.090(4) shall be adopted or approved in accordance with the
12 provisions of RCW 34.05.310 through 34.05.395 insofar as such
13 provisions are not inconsistent with the provisions of this chapter.
14 All guidelines, regulations, or designations adopted under this chapter
15 shall be available for public inspection at the office of the
16 department or the appropriate county and city. The term "adopt" for
17 purposes of this section includes modifications and rescission of
18 guidelines.

19 NEW SECTION. **Sec. 13.** To ensure that all persons and entities
20 having an interest in the guidelines and master programs developed
21 under this chapter are provided with a full opportunity for involvement
22 in both their development and implementation, local governments shall
23 comply with the public participation requirements of RCW 36.70A.140.

24 NEW SECTION. **Sec. 14.** (1) A development shall not be undertaken
25 on the shorelines of the state unless it is consistent with the master
26 program.

27 (2) A substantial development shall not be undertaken on shorelines
28 of the state without first obtaining a permit from the local
29 governmental entity having administrative jurisdiction under this
30 chapter.

31 A permit shall be granted:

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

1 (b) After adoption or approval, as appropriate, by the local
2 government of its master program, only when the development proposed is
3 consistent with the applicable master program.

4 (3) The local government shall establish a program, using the
5 guidelines adopted by the department, for the administration and
6 enforcement of the permit system provided in this section. The
7 adoption and administration of the system so established shall be
8 performed exclusively by the local government.

9 (4) Except as otherwise specifically provided in subsection (10) of
10 this section, the local government shall require notification of the
11 public of all applications for permits governed by any permit system
12 established under subsection (3) of this section by ensuring that
13 notice of the application is given by at least one of the following
14 methods:

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

19 (b) Posting of the notice in a conspicuous manner on the property
20 upon which the project is to be constructed; or

21 (c) Any other manner deemed appropriate by local authorities to
22 accomplish the objectives of reasonable notice to adjacent landowners
23 and the public.

24 The notices shall include a statement that any person desiring to
25 submit written comments concerning an application, or desiring to
26 receive notification of the final decision concerning an application as
27 expeditiously as possible after the issuance of the decision, may
28 submit the comments or requests for decisions to the local government
29 within thirty days of the date the notice of application is issued
30 under this subsection. The local government shall forward, in a timely
31 manner following the issuance of a decision, a copy of the decision to
32 each person who submits a request for the decision.

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

36 (5) The system shall include provisions to assure that construction
37 pursuant to a permit will not begin or be authorized until twenty-one
38 days from the date the permit decision was filed as provided in
39 subsection (6) of this section; or until all review proceedings are

1 terminated if the proceedings were initiated within twenty-one days
2 from the date of filing as defined in subsection (6) of this section
3 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) Construction may be commenced no sooner than twenty-one days
10 after the local government's decision granting the permit is filed. If
11 an appeal for judicial review of the decision is filed under chapter
12 36.70C RCW, the appellant in any action filed under the provisions of
13 section 19 (1) and (2) of this act may request, within ten days of the
14 filing of the appeal with the court, a hearing before the court to
15 determine whether construction under the permit approved by the local
16 government should not commence. In such a hearing before the court,
17 the burden of proving whether the construction may involve significant
18 irreversible damage to the environment and demonstrating whether such
19 construction would or would not be appropriate is on the appellant.
20 If, at the conclusion of the hearing, the court finds that construction
21 under the permit would involve a significant, irreversible damaging of
22 the environment, the court shall prohibit the permittee from commencing
23 the construction under the approved permit until all review proceedings
24 are final. Construction under a permit revised at the direction of the
25 superior court may begin only on that portion of the substantial
26 development for which the local government had originally issued the
27 permit, and construction under a revised permit on other portions of
28 the substantial development may not begin until after all review
29 proceedings are terminated.

30 If a permittee begins construction under (a) or (b) of this
31 subsection, the construction is begun at the permittee's own risk. If,
32 as a result of judicial review, the courts order the removal of any
33 portion of the construction or the restoration of any portion of the
34 environment involved or require the alteration of any portion of a
35 substantial development constructed under a permit, the permittee is
36 barred from recovering damages or costs involved in adhering to such
37 requirements from the local government that granted the permit or any
38 appellant or intervener.

1 (6) Any decision on an application for a permit under the authority
2 of this section, whether it is an approval or a denial, shall,
3 concurrently with the transmittal of the ruling to the applicant, be
4 filed with the department and the attorney general. With regard to a
5 permit, "date of filing" as used in this section means the date of
6 actual receipt by the department. The department shall notify in
7 writing the local government and the applicant of the date of filing.

8 (7) Applicants for permits under this section have the burden of
9 proving that a proposed substantial development is consistent with the
10 criteria that must be met before a permit is granted. In any review of
11 the granting or denial of an application for a permit as provided in
12 section 19 (1) and (2) of this act, the person requesting the review
13 has the burden of proof.

14 (8) Any permit may, after a hearing with adequate notice to the
15 permittee and the public, be rescinded by the issuing authority upon
16 the finding that a permittee has not complied with conditions of a
17 permit. If the department is of the opinion that noncompliance exists,
18 the department shall provide written notice to the local government and
19 the permittee. If the department is of the opinion that the
20 noncompliance continues to exist thirty days after the date of the
21 notice, and the local government has taken no action to rescind the
22 permit, the department may apply for enforcement, modification, or
23 rescission to superior court in the county in which the permit was
24 issued.

25 (9) The holder of a certification from the governor under chapter
26 80.50 RCW is not required to obtain a permit under this section.

27 (10)(a) An application for a substantial development permit for a
28 limited utility extension or for the construction of a bulkhead or
29 other measures to protect a single-family residence and its appurtenant
30 structures from shoreline erosion is subject to the following
31 procedures:

32 (i) The public comment period under subsection (4) of this section
33 is twenty days. The notice provided under subsection (4) of this
34 section shall state the manner in which the public may obtain a copy of
35 the local government decision on the application no later than two days
36 following its issuance;

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

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

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

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

9 (ii) Will serve an existing use in compliance with this chapter;
10 and

11 (iii) Will not extend more than twenty-five hundred linear feet
12 within the shorelines of the state.

13 NEW SECTION. **Sec. 15.** (1) The time requirements of this section
14 apply to all substantial development permits and to any development
15 authorized under a variance or conditional use permit authorized under
16 this chapter. Upon a finding of good cause, based on the requirements
17 and circumstances of the project proposed and consistent with the
18 policy and provisions of the master program and this chapter, local
19 government may adopt different time limits as a part of action on a
20 substantial development permit.

21 (2) Construction activities shall be commenced or, where no
22 construction activities are involved, the use or activity shall be
23 commenced within two years of the effective date of a substantial
24 development permit. However, local government may authorize a single
25 extension for a period not to exceed one year based on reasonable
26 factors, if a request for extension has been filed before the
27 expiration date and notice of the proposed extension is given to
28 parties of record on the substantial development permit and to the
29 department.

30 (3) Authorization to conduct construction activities shall
31 terminate five years after the effective date of a substantial
32 development permit. However, local government may authorize a single
33 extension for a period not to exceed one year based on reasonable
34 factors, if a request for extension has been filed before the
35 expiration date and notice of the proposed extension is given to
36 parties of record and to the department.

37 (4) The effective date of a substantial development permit is the
38 date of the last action required on the substantial development permit

1 and all other government permits and approvals for the development that
2 authorize the development to proceed, including all administrative and
3 legal actions on any permits or approvals.

4 NEW SECTION. **Sec. 16.** A public or private project that is
5 designed to improve fish or wildlife habitat or fish passage is exempt
6 from the substantial development permit requirements of this chapter
7 when all of the following apply:

8 (1) The project has been approved by the department of fish and
9 wildlife;

10 (2) The project has received hydraulic project approval by the
11 department of fish and wildlife under chapter 75.20 RCW; and

12 (3) The local government has determined that the project is
13 substantially consistent with the local shoreline master program. The
14 local government shall make such determination in a timely manner and
15 provide it by letter to the project proponent.

16 NEW SECTION. **Sec. 17.** With respect to timber situated within two
17 hundred feet abutting landward of the ordinary high water mark within
18 shorelines of state-wide significance, the department or local
19 government shall allow only selective commercial timber cutting, so
20 that no more than thirty percent of the merchantable trees may be
21 harvested in any ten-year period of time. However, other timber
22 harvesting methods may be permitted in those limited instances where
23 the topography, soil conditions, or silviculture practices necessary
24 for regeneration render selective logging ecologically detrimental.
25 Further, clear cutting of timber that is solely incidental to the
26 preparation of land for other uses authorized by this chapter may be
27 permitted.

28 NEW SECTION. **Sec. 18.** Surface drilling for oil or gas is
29 prohibited in the waters of Puget Sound north to the Canadian boundary
30 and the Strait of Juan de Fuca seaward from the ordinary high water
31 mark and on all lands within one thousand feet landward from the mark.

32 NEW SECTION. **Sec. 19.** (1) Any person aggrieved by the granting,
33 denying, or rescinding of a permit on shorelines of the state under
34 section 14 of this act may seek judicial review as provided in chapter
35 36.70C RCW by filing a petition for review within twenty-one days of

1 the date of filing as defined in section 14(5) of this act. Within
2 seven days of the filing of any petition for review as provided in this
3 subsection (1) pertaining to a final decision of a local government,
4 the petitioner shall serve copies of the petition on the department and
5 the office of the attorney general. The department and the attorney
6 general may intervene to protect the public interest and ensure that
7 the provisions of this chapter are complied with at any time within
8 fifteen days from the date of the receipt by the department or the
9 attorney general of a copy of the petition for review filed under this
10 section.

11 (2) The department or the attorney general may seek judicial review
12 as provided in chapter 36.70C RCW of any final decision granting a
13 permit, or granting or denying an application for a permit issued by a
14 local government by filing a written petition for review within twenty-
15 one days from the date the final decision was filed as provided in
16 section 14(6) of this act.

17 (3) When the department or the attorney general intervenes as
18 provided in subsection (1) of this section, or in an appeal filed by
19 the department or the attorney general as provided in subsection (2) of
20 this section, the record for judicial review provided by the local
21 government under RCW 36.70C.110 may be supplemented by the department
22 or the attorney general as provided in RCW 36.70C.120.

23 (4) Any person may appeal any rules, regulations, or guidelines
24 adopted or approved by the department to the shorelines hearings board
25 within thirty days of the date of the adoption or approval. The board
26 shall make a final decision within sixty days following the hearing
27 held thereon.

28 (5) The board shall find the rule, regulation, or guideline to be
29 valid and enter a final decision to that effect unless it determines
30 that the rule, regulation, or guideline:

- 31 (a) Is clearly erroneous in light of the policy of this chapter;
- 32 (b) Constitutes an implementation of this chapter in violation of
33 constitutional or statutory provisions;
- 34 (c) Is arbitrary and capricious;
- 35 (d) Was developed without fully considering and evaluating all
36 material submitted to the department during public review and comment;
37 or
- 38 (e) Was not adopted in accordance with required procedures.

1 (6) If the board makes a determination under subsection (5)(a)
2 through (e) of this section, it shall enter a final decision declaring
3 the rule, regulation, or guideline invalid, remanding the rule,
4 regulation, or guideline to the department with a statement of the
5 reasons in support of the determination, and directing the department
6 to adopt, after a thorough consultation with the affected local
7 government and any other interested party, a new rule, regulation, or
8 guideline consistent with the board's decision.

9 (7) A decision of the board on the validity of a rule, regulation,
10 or guideline is subject to review in superior court, if authorized
11 under chapter 34.05 RCW. A petition for review of the decision of the
12 shorelines hearings board on a rule, regulation, or guideline shall be
13 filed within thirty days after the date of final decision by the
14 shorelines hearings board.

15 NEW SECTION. **Sec. 20.** (1) The department, in cooperation with
16 other state agencies and coastal local governments, shall prepare and
17 adopt ocean use guidelines and policies to be used in reviewing
18 shoreline master programs of local governments with coastal waters or
19 coastal shorelines within their boundaries.

20 (2) After the department has adopted the guidelines required in
21 subsection (1) of this section, counties, cities, and towns with
22 coastal waters or coastal shorelines shall review their shoreline
23 master programs to ensure that the programs conform with RCW 43.143.010
24 and 43.143.030 and with the department's ocean use guidelines.

25 NEW SECTION. **Sec. 21.** The department and local governments are
26 authorized to adopt those rules as are necessary and appropriate to
27 carry out the provisions of this chapter.

28 NEW SECTION. **Sec. 22.** (1) Except as provided in RCW 43.05.060
29 through 43.05.080 and 43.05.150, the attorney general or the attorney
30 for the local government shall bring such injunctive, declaratory, or
31 other actions as are necessary to ensure that no uses are made of the
32 shorelines of the state in conflict with the provisions and programs of
33 this chapter, and to otherwise enforce the provisions of this chapter.

34 (2) Any person who fails to conform to the terms of a permit issued
35 under this chapter or who undertakes development on the shorelines of
36 the state without first obtaining any permit required under this

1 chapter is also subject to a civil penalty not to exceed one thousand
2 dollars for each violation. Each permit violation or each day of
3 continued development without a required permit constitutes a separate
4 violation.

5 (3) The penalty provided for in this section shall be imposed by a
6 notice in writing, either by certified mail with return receipt
7 requested or by personal service, to the person incurring the same from
8 the department or local government, describing the violation with
9 reasonable particularity and ordering the act or acts constituting the
10 violation or violations to cease and desist or, in appropriate cases,
11 requiring necessary corrective action to be taken within a specific and
12 reasonable time.

13 (4) Within thirty days after the notice is received, the person
14 incurring the penalty may apply in writing to the department for
15 remission or mitigation of the penalty. Upon receipt of the
16 application, the department or local government may remit or mitigate
17 the penalty upon whatever terms the department or local government in
18 its discretion deems proper. Any penalty imposed under this section by
19 the department is subject to review by the shorelines hearings board.
20 Any penalty imposed under this section by local government is subject
21 to review by the local government legislative authority. Any penalty
22 jointly imposed by the department and local government shall be
23 appealed to the shorelines hearings board.

24 NEW SECTION. **Sec. 23.** In addition to incurring civil liability
25 under section 22 of this act, any person found to have willfully
26 engaged in activities on the shorelines of the state in violation of
27 the provisions of this chapter or any of the master programs, rules, or
28 regulations adopted under this chapter is guilty of a gross
29 misdemeanor, and shall be punished by a fine of not less than twenty-
30 five dollars nor more than one thousand dollars or by imprisonment in
31 the county jail for not more than ninety days, or by both such fine and
32 imprisonment. However, the fine for the third and all subsequent
33 violations in any five-year period shall be not less than five hundred
34 dollars nor more than ten thousand dollars. Further, fines for
35 violations of section 41 of this act, or any rule adopted under section
36 41 of this act, shall be determined under section 42 of this act.

1 NEW SECTION. **Sec. 24.** Any person subject to the regulatory
2 program of this chapter who violates any provision of this chapter or
3 permit issued under this chapter is liable for all damage to public or
4 private property arising from the violation, including the cost of
5 restoring the affected area to its condition prior to violation. The
6 attorney general or local government attorney shall bring suit for
7 damages under this section on behalf of the state or local governments.
8 Private persons have the right to bring suit for damages under this
9 section on their own behalf and on the behalf of all persons similarly
10 situated. If liability has been established for the cost of restoring
11 an area affected by a violation the court shall make provision to
12 assure that restoration will be accomplished within a reasonable time
13 at the expense of the violator. In addition to such relief, including
14 money damages, the court in its discretion may award attorneys' fees
15 and costs of the suit to the prevailing party.

16 NEW SECTION. **Sec. 25.** In addition to any other powers granted
17 under this chapter, the department and local governments may:

18 (1) Acquire lands and easements within shorelines of the state by
19 purchase, lease, or gift, either alone or in concert with other
20 governmental entities, when necessary to achieve implementation of
21 master programs adopted under this chapter;

22 (2) Accept grants, contributions, and appropriations from any
23 agency, public or private, or individual for the purposes of this
24 chapter;

25 (3) Appoint advisory committees to assist in carrying out the
26 purposes of this chapter;

27 (4) Contract for professional or technical services required by it
28 which cannot be performed by its employees.

29 NEW SECTION. **Sec. 26.** The department is directed to cooperate
30 fully with local governments in discharging their responsibilities
31 under this chapter. Funds shall be available for distribution to local
32 governments on the basis of applications for preparation of master
33 programs. Such applications shall be submitted in accordance with
34 regulations developed by the department. The department is authorized
35 to make and administer grants within appropriations authorized by the
36 legislature to any local government within the state for the purpose of
37 developing a master shorelines program.

1 No grant shall be made in an amount in excess of the recipient's
2 contribution to the estimated cost of the program.

3 NEW SECTION. **Sec. 27.** The state, through the department and the
4 attorney general, shall represent its interest before water resource
5 regulation management, development, and use agencies of the United
6 States, including among others, the federal power commission,
7 environmental protection agency, corps of engineers, department of the
8 interior, department of agriculture, and the atomic energy commission,
9 before interstate agencies and the courts with regard to activities or
10 uses of shorelines of the state and the program of this chapter. Where
11 federal or interstate agency plans, activities, or procedures conflict
12 with state policies, all reasonable steps available shall be taken by
13 the state to preserve the integrity of its policies.

14 NEW SECTION. **Sec. 28.** (1) Nothing in this chapter constitutes
15 authority for requiring or ordering the removal of any structures,
16 improvements, docks, fills, or developments placed in navigable waters
17 prior to December 4, 1969, and the consent and authorization of the
18 state of Washington to the impairment of public rights of navigation,
19 and corollary rights incidental thereto, caused by the retention and
20 maintenance of the structures, improvements, docks, fills, or
21 developments are granted. However, the consent given in this section
22 shall not relate to any structures, improvements, docks, fills, or
23 developments placed on tidelands, shorelands, or beds underlying the
24 waters that are in trespass or in violation of state law.

25 (2) Nothing in this section shall be construed as altering or
26 abridging any private right of action, other than a private right that
27 is based upon the impairment of public rights consented to in
28 subsection (1) of this section.

29 (3) Nothing in this section shall be construed as altering or
30 abridging the authority of the state or local governments to suppress
31 or abate nuisances or to abate pollution.

32 (4) Subsection (1) of this section applies to any case pending in
33 the courts of this state on June 1, 1971, relating to the removal of
34 structures, improvements, docks, fills, or developments based on the
35 impairment of public navigational rights.

1 NEW SECTION. **Sec. 29.** The provisions of this chapter are
2 applicable to those counties and public and municipal corporations that
3 have chosen to manage shorelines under this chapter and to all
4 shorelines of the state owned or administered by them.

5 NEW SECTION. **Sec. 30.** The restrictions imposed by this chapter
6 shall be considered by the county assessor in establishing the fair
7 market value of the property.

8 NEW SECTION. **Sec. 31.** The department is designated the state
9 agency responsible for the program of regulation of the shorelines of
10 the state, including coastal shorelines and the shorelines of the inner
11 tidal waters of the state, and is authorized to cooperate with the
12 federal government and sister states and to receive benefits of any
13 statutes of the United States whenever enacted that relate to the
14 programs of this chapter.

15 NEW SECTION. **Sec. 32.** Additional shorelines of the state shall be
16 designated shorelines of state-wide significance only by affirmative
17 action of the legislature.

18 The director may however, from time to time, recommend to the
19 legislature areas of the shorelines of the state that have state-wide
20 significance relating to special economic, ecological, educational,
21 developmental, recreational, or aesthetic values to be designated as
22 shorelines of state-wide significance.

23 Prior to making any such recommendation the director shall hold a
24 public hearing in the county or counties where the shoreline under
25 consideration is located. It is the duty of the county commissioners
26 of each county where such a hearing is conducted to submit their views
27 with regard to a proposed designation to the director at such date as
28 the director determines but in no event shall the date be later than
29 sixty days after the public hearing in the county.

30 NEW SECTION. **Sec. 33.** No permit shall be issued under this
31 chapter for any new or expanded building or structure of more than
32 thirty-five feet above average grade level on shorelines of the state
33 that will obstruct the view of a substantial number of residences on
34 areas adjoining the shorelines except where a master program does not

1 prohibit the same and then only when overriding considerations of the
2 public interest will be served.

3 NEW SECTION. **Sec. 34.** All state agencies, counties, and public
4 and municipal corporations shall review administrative and management
5 policies, regulations, plans, and ordinances relative to lands under
6 their respective jurisdictions adjacent to the shorelines of the state
7 so as to achieve a use policy on the land consistent with the policy of
8 this chapter, the guidelines, and the master programs for the
9 shorelines of the state. The department may develop recommendations
10 for land use control for the lands. Local governments shall, in
11 developing use regulations for such areas, take into consideration any
12 recommendations developed by the department as well as any other state
13 agencies or units of local government.

14 NEW SECTION. **Sec. 35.** Nothing in this chapter affects any rights
15 established by treaty to which the United States is a party.

16 NEW SECTION. **Sec. 36.** The procedural requirements of this chapter
17 do not apply to any person conducting a remedial action at a facility
18 under a consent decree, order, or agreed order issued under chapter
19 70.105D RCW, or to the department when it conducts a remedial action
20 under chapter 70.105D RCW. The department shall ensure compliance with
21 the substantive requirements of this chapter through the consent
22 decree, order, or agreed order issued under chapter 70.105D RCW, or
23 during the department-conducted remedial action, through the procedures
24 developed by the department under RCW 70.105D.090.

25 NEW SECTION. **Sec. 37.** Nothing in this chapter obviates any
26 requirement to obtain any permit, certificate, license, or approval
27 from any state agency or local government.

28 NEW SECTION. **Sec. 38.** All state and local agencies with authority
29 under this chapter to issue permits or other authorizations in
30 connection with emergency water withdrawals and facilities authorized
31 under RCW 43.83B.410 shall expedite the processing of the permits or
32 authorizations in keeping with the emergency nature of such requests
33 and shall provide a decision to the applicant within fifteen calendar
34 days of the date of application.

1 NEW SECTION. **Sec. 39.** The department by rule shall adopt a manual
2 for the delineation of wetlands under this chapter that implements and
3 is consistent with the 1987 manual in use on January 1, 1995, by the
4 United States army corps of engineers and the United States
5 environmental protection agency. If the corps of engineers and the
6 environmental protection agency adopt changes to or a different manual,
7 the department shall consider those changes and may adopt rules
8 implementing those changes.

9 NEW SECTION. **Sec. 40.** Watershed restoration projects as defined
10 in RCW 89.08.460 are exempt from the requirement to obtain a
11 substantial development permit. Local government shall review the
12 projects for consistency with the locally adopted shoreline master
13 program in an expeditious manner and shall issue its decision along
14 with any conditions within forty-five days of receiving a complete
15 consolidated application form from the applicant. No fee may be
16 charged for accepting and processing applications for watershed
17 restoration projects as used in this section.

18 NEW SECTION. **Sec. 41.** (1) As used in this section:

19 (a) "Exploration activity" means reconnaissance or survey work
20 related to gathering information about geologic features and formations
21 underlying or adjacent to marine waters;

22 (b) "Marine waters" include the waters of Puget Sound north to the
23 Canadian border, the waters of the Strait of Juan de Fuca, the waters
24 between the western boundary of the state and the ordinary high water
25 mark, and related bays and estuaries;

26 (c) "Vessel" includes ships, boats, barges, or any other floating
27 craft.

28 (2) A person desiring to perform oil or natural gas exploration
29 activities by vessel located on or within marine waters of the state
30 shall first obtain a permit from the department. The department may
31 approve an application for a permit only if it determines that the
32 proposed activity will not:

33 (a) Interfere materially with the normal public uses of the marine
34 waters of the state;

35 (b) Interfere with activities authorized by a permit issued under
36 section 14(2) of this act;

37 (c) Injure the marine biota, beds, or tidelands of the waters;

1 (d) Violate water quality standards established by the department;
2 or

3 (e) Create a public nuisance.

4 (3) Decisions on an application under subsection (2) of this
5 section are subject to review only by the pollution control hearings
6 board under chapter 43.21B RCW.

7 (4) This section does not apply to activities conducted by an
8 agency of the United States or the state of Washington.

9 (5) This section does not lessen, reduce, or modify section 18 of
10 this act.

11 (6) The department may adopt rules necessary to implement this
12 section.

13 (7) The attorney general shall enforce this section.

14 NEW SECTION. **Sec. 42.** (1) Except as provided in RCW 43.05.060
15 through 43.05.080 and 43.05.150, a person who violates section 41 of
16 this act, or any rule adopted under section 41 of this act, is subject
17 to a penalty in an amount of up to five thousand dollars a day for
18 every such violation. Each and every such violation is a separate and
19 distinct offense, and in case of a continuing violation, every day's
20 continuance is a separate and distinct violation. Every act of
21 commission or omission that procures, aids, or abets in the violation
22 is considered a violation under the provisions of this section and
23 subject to the penalty provided for in this section.

24 (2) The penalty shall be imposed by a notice in writing, either by
25 certified mail with return receipt requested or by personal service, to
26 the person incurring the penalty from the director or the director's
27 representative describing the violation with reasonable particularity.
28 The director or the director's representative may, upon written
29 application therefor received within fifteen days after notice imposing
30 any penalty is received by the person incurring the penalty, and when
31 deemed to carry out the purposes of this chapter, remit or mitigate any
32 penalty provided for in this section upon such terms as he or she deems
33 proper, and has authority to ascertain the facts upon all such
34 applications in such manner and under such regulations as he or she may
35 deem proper.

36 (3) Any person incurring any penalty under this section may appeal
37 the penalty to the hearings board as provided for in chapter 43.21B
38 RCW. Such appeals shall be filed within thirty days of receipt of

1 notice imposing any penalty unless an application for remission or
2 mitigation is made to the department. When an application for
3 remission or mitigation is made, such appeals shall be filed within
4 thirty days of receipt of notice from the director or the director's
5 representative setting forth the disposition of the application. Any
6 penalty imposed under this section becomes due and payable thirty days
7 after receipt of a notice imposing the same unless application for
8 remission or mitigation is made or an appeal is filed. When an
9 application for remission or mitigation is made, any penalty incurred
10 under this section becomes due and payable thirty days after receipt of
11 notice setting forth the disposition of the application unless an
12 appeal is filed from the disposition. Whenever an appeal of any
13 penalty incurred under this section is filed, the penalty becomes due
14 and payable only upon completion of all review proceedings and the
15 issuance of a final order confirming the penalty in whole or in part.

16 (4) If the amount of any penalty is not paid to the department
17 within thirty days after it becomes due and payable, the attorney
18 general, upon the request of the director, shall bring an action in the
19 name of the state of Washington in the superior court of Thurston
20 county or of any county in which the violator may do business, to
21 recover such penalty. In all such actions the procedure and rules of
22 evidence shall be the same as an ordinary civil action except as
23 otherwise provided in this chapter. All penalties recovered under this
24 section shall be paid into the state treasury and credited to the
25 general fund.

26 NEW SECTION. **Sec. 43.** The department shall consult with affected
27 state agencies, local governments, Indian tribes, and the public prior
28 to responding to federal coastal zone management consistency
29 certifications for uses and activities occurring on the federal outer
30 continental shelf.

31 NEW SECTION. **Sec. 44.** With respect to the national scenic area,
32 as defined in the Columbia River Gorge national scenic area act, P.L.
33 99-663, the exercise of any power or authority by a local government or
34 the department under this chapter is subject to and in conformity with
35 the requirements of chapter 43.97 RCW, including the management plan
36 regulations and ordinances adopted by the Columbia River Gorge
37 commission under the compact.

1 NEW SECTION. **Sec. 45.** This chapter is exempted from the rule of
2 strict construction and shall be liberally construed to give full
3 effect to the objectives and purposes for which it was enacted.

4 NEW SECTION. **Sec. 46.** RCW 90.58.185 and 1994 c 253 s 2 are each
5 repealed.

6 NEW SECTION. **Sec. 47.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 48.** Sections 4 through 45 of this act
11 constitute a new chapter in Title 90 RCW.

--- END ---