

---

**SUBSTITUTE SENATE BILL 6556**

---

**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senators Anderson, T. Sheldon, Horn and Hale)

Read first time 02/06/98. Referred to Committee on .

1 AN ACT Relating to integration of land-use related laws; amending  
2 RCW 90.58.090, 90.58.100, 90.58.140, 90.58.143, 90.58.180, and  
3 90.58.190; adding a new section to chapter 90.58 RCW; creating new  
4 sections; and repealing RCW 90.58.185 and 90.58.360.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes by this act  
7 that the growth management act, chapter 36.70A RCW, is the fundamental  
8 building block of land-use related regulatory reform. The state and  
9 local governments have invested considerable resources in the growth  
10 management act which, together with chapters 36.70B and 36.70C RCW,  
11 should serve as the integrating framework for all other land-use  
12 related laws.

13 (2) The legislature recognizes by this act that some of the  
14 regulatory requirements and procedures of the shoreline management act,  
15 chapter 90.58 RCW, overlap with and are duplicated by, or are  
16 inconsistent with, critical area regulations now required by the growth  
17 management act. It is the intent of the legislature to eliminate this  
18 procedural and jurisdictional overlap, duplication, and inconsistency.

1 (3) The legislature further recognizes that integration of the  
2 shoreline management act, chapter 90.58 RCW, with the growth management  
3 act, chapter 36.70A RCW, does not alter or diminish the fundamental  
4 principles of shoreline management relating to water-dependent and  
5 water-related uses, harbor and port area planning, and the other  
6 policies and findings set forth in RCW 90.58.020. This includes the  
7 continued use of planning elements for economic development, public  
8 access, recreation, circulation, use, conservation, flood damage  
9 prevention, and the preservation of historic, cultural, scientific, and  
10 educational values.

11 **Sec. 2.** RCW 90.58.090 and 1997 c 429 s 50 are each amended to read  
12 as follows:

13 (1) The procedures for the adoption or amendment of shoreline  
14 master programs by local governments planning under RCW 36.70A.040  
15 shall be governed by the requirements for the adoption or amendment of  
16 comprehensive plans and development regulations pursuant to chapter  
17 36.70A RCW. For local governments not planning under RCW 36.70A.040,  
18 a master program, segment of a master program, or an amendment to a  
19 master program shall become effective when approved by the department.  
20 Within the time period provided in RCW 90.58.080, each local government  
21 not planning under RCW 36.70A.040 shall have submitted a master  
22 program, either totally or by segments, for all shorelines of the state  
23 within its jurisdiction to the department for review and approval.

24 (2) Upon receipt of a proposed master program or amendment from a  
25 local government not planning under RCW 36.70A.040, the department  
26 shall:

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

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

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

5 (d) Within thirty days after receipt of the local government  
6 response pursuant to (c) of this subsection, make written findings and  
7 conclusions regarding the consistency of the proposal with the policy  
8 of RCW 90.58.020 and the applicable guidelines, provide a response to  
9 the issues identified in (c) of this subsection, and either approve the  
10 proposal as submitted, recommend specific changes necessary to make the  
11 proposal approvable, or deny approval of the proposal in those  
12 instances where no alteration of the proposal appears likely to be  
13 consistent with the policy of RCW 90.58.020 and the applicable  
14 guidelines. The written findings and conclusions shall be provided to  
15 the local government, all interested persons, parties, groups, and  
16 agencies of record on the proposal;

17 (e) If the department recommends changes to the proposed master  
18 program or amendment, within thirty days after the department mails the  
19 written findings and conclusions to the local government, the local  
20 government may:

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

24 (ii) Submit an alternative proposal. If, in the opinion of the  
25 department, the alternative is consistent with the purpose and intent  
26 of the changes originally submitted by the department and with this  
27 chapter it shall approve the changes and provide written notice to all  
28 recipients of the written findings and conclusions. If the department  
29 determines the proposal is not consistent with the purpose and intent  
30 of the changes proposed by the department, the department may resubmit  
31 the proposal for public and agency review pursuant to this section or  
32 reject the proposal.

33 (3) The department shall approve the segment of a master program  
34 submitted by a local government not planning under RCW 36.70A.040  
35 relating to shorelines unless it determines that the submitted segments  
36 are not consistent with the policy of RCW 90.58.020 and the applicable  
37 guidelines.

38 (4) The department shall approve those segments of the master  
39 program submitted by a local government not planning under RCW

1 36.70A.040 relating to shorelines of state-wide significance only after  
2 determining the program provides the optimum implementation of the  
3 policy of this chapter to satisfy the state-wide interest. If the  
4 department does not approve a segment of a local government master  
5 program relating to a shoreline of state-wide significance, the  
6 department may develop and by rule adopt an alternative to the local  
7 government s proposal.

8 (5) In the event a local government has not complied with the  
9 requirements of RCW 90.58.070 it may thereafter upon written notice to  
10 the department elect to adopt a master program for the shorelines  
11 within its jurisdiction, in which event it shall comply with the  
12 provisions established by this chapter for the adoption of a master  
13 program for such shorelines.

14 (~~Upon approval of such master program by the department it shall  
15 supersede such master program as may have been adopted by the  
16 department for such shorelines.~~)

17 (6) For local governments not planning under RCW 36.70A.040, a  
18 master program or amendment to a master program takes effect when and  
19 in such form as approved or adopted by the department.

20 (7) Shoreline master programs that were adopted by the department  
21 prior to July 22, 1995, in accordance with the provisions of this  
22 section then in effect, shall be deemed approved by the department in  
23 accordance with the provisions of this section that became effective on  
24 that date. The department shall maintain a record of each master  
25 program, the action taken on any proposal for adoption or amendment of  
26 the master program, and any appeal of the department's action. The  
27 department's approved document of record constitutes the official  
28 master program.

29 **Sec. 3.** RCW 90.58.100 and 1997 c 369 s 7 are each amended to read  
30 as follows:

31 (1) The master programs provided for in this chapter, when adopted  
32 or approved (~~by the department~~) as required by this chapter shall  
33 constitute use regulations for the various shorelines of the state. In  
34 preparing the master programs, and any amendments thereto, the  
35 department and local governments shall to the extent feasible:

36 (a) Utilize a systematic interdisciplinary approach which will  
37 insure the integrated use of the natural and social sciences and the  
38 environmental design arts;

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

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

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

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

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

15 (2) The master programs adopted by local governments planning under  
16 RCW 36.70A.040 shall be incorporated into the comprehensive plans and  
17 development regulations adopted pursuant to chapter 36.70A RCW and  
18 shall be consistent with the policies of this chapter and chapter  
19 36.70A RCW. Local governments planning under RCW 36.70A.040 may  
20 include their shoreline master programs as separate elements of their  
21 comprehensive plans, and include the appropriate elements required by  
22 subsection (3) of this section, or may integrate their shoreline plan  
23 policies into the elements of their comprehensive plans required by RCW  
24 36.70A.070.

25 (3) The master programs adopted by local governments not planning  
26 under RCW 36.70A.040 shall include, when appropriate, the following:

27 (a) An economic development element for the location and design of  
28 industries, industrial projects of state-wide significance,  
29 transportation facilities, port facilities, tourist facilities,  
30 commerce and other developments that are particularly dependent on  
31 their location on or use of the shorelines of the state;

32 (b) A public access element making provision for public access to  
33 publicly owned areas;

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

37 (d) A circulation element consisting of the general location and  
38 extent of existing and proposed major thoroughfares, transportation

1 routes, terminals, and other public utilities and facilities, all  
2 correlated with the shoreline use element;

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

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

12 (g) An historic, cultural, scientific, and educational element for  
13 the protection and restoration of buildings, sites, and areas having  
14 historic, cultural, scientific, or educational values;

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

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

19 ~~((+3))~~ (4) The master programs shall include such map or maps,  
20 descriptive text, diagrams and charts, or other descriptive material as  
21 are necessary to provide for ease of understanding.

22 ~~((+4))~~ (5) Master programs will reflect that state-owned  
23 shorelines of the state are particularly adapted to providing  
24 wilderness beaches, ecological study areas, and other recreational  
25 activities for the public and will give appropriate special  
26 consideration to same.

27 ~~((+5))~~ (6) Local governments shall include their procedures for  
28 the permit required by RCW 90.58.140(2) in their development  
29 regulations required by chapter 36.70B RCW. Each master program shall  
30 contain provisions to allow for the varying of the application of use  
31 regulations of the program, including provisions for permits for  
32 conditional uses and variances, to insure that strict implementation of  
33 a program will not create unnecessary hardships or thwart the policy  
34 enumerated in RCW 90.58.020. Any such varying shall be allowed only if  
35 extraordinary circumstances are shown and the public interest suffers  
36 no substantial detrimental effect. ~~((The concept of this subsection~~  
37 ~~shall be incorporated in the rules adopted by the department relating~~  
38 ~~to the establishment of a permit system as provided in RCW~~  
39 ~~90.58.140(3)).~~

1       ~~(6))~~ (7) Each master program shall contain standards governing the  
2 protection of single family residences and appurtenant structures  
3 against damage or loss due to shoreline erosion. The standards shall  
4 govern the issuance of substantial development permits for shoreline  
5 protection, including structural methods such as construction of  
6 bulkheads, and nonstructural methods of protection. The standards  
7 shall provide for methods which achieve effective and timely protection  
8 against loss or damage to single family residences and appurtenant  
9 structures due to shoreline erosion. The standards shall provide a  
10 preference for permit issuance for measures to protect single family  
11 residences occupied prior to January 1, 1992, where the proposed  
12 measure is designed to minimize harm to the shoreline natural  
13 environment.

14       NEW SECTION. **Sec. 4.** A new section is added to chapter 90.58 RCW  
15 to read as follows:

16       Development regulations and standards, adopted in compliance with  
17 chapter 36.70A RCW, regulating critical areas as defined in RCW  
18 36.70A.030(5), shall apply to critical areas within shorelines of the  
19 state. Local governments with critical areas regulations adopted in  
20 compliance with chapter 36.70A RCW shall not apply or impose different  
21 or additional regulations or standards under this chapter to the same  
22 development activity. Nothing in this section is intended to limit a  
23 local government's authority to adopt regulations under this chapter to  
24 regulate the type of land use permitted within critical areas or the  
25 level of development, including but not limited to density and height  
26 limits.

27       **Sec. 5.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to  
28 read as follows:

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

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

36       A permit shall be granted(~~(~~

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

6       ~~(b) After adoption or approval, as appropriate, by the department~~  
7 ~~of an applicable master program,)) only when the development proposed~~  
8 ~~is consistent with the applicable master program and this chapter.~~

9       (3) The local government shall ~~((establish a program, consistent~~  
10 ~~with rules adopted by the department, for the administration and~~  
11 ~~enforcement of the permit system provided in this section)) include the~~  
12 ~~permit required by subsection (2) of this section in the permit system~~  
13 ~~established pursuant to the requirements of chapter 36.70B RCW. The~~  
14 ~~administration of the system so established shall be performed~~  
15 ~~exclusively by the local government.~~

16       (4) Except as otherwise specifically provided in subsection (10) of  
17 this section, local governments planning under RCW 36.70A.040 shall  
18 include in their permit systems required by subsection (3) of this  
19 section a requirement for a notice of application and an opportunity  
20 for public comment, as provided in RCW 36.70B.110, for all permits  
21 required by subsection (2) of this section.

22       (5) Except as otherwise specifically provided in subsection  
23 ~~((+11)) (10) of this section, ((the)) local governments not planning~~  
24 ~~under RCW 36.70A.040 shall require notification of the public of all~~  
25 ~~applications for permits governed by any permit system established~~  
26 ~~pursuant to subsection (3) of this section by ensuring that notice of~~  
27 ~~the application is given by at least one of the following methods:~~

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

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

34       (c) Any other manner deemed appropriate by local authorities to  
35 accomplish the objectives of reasonable notice to adjacent landowners  
36 and the public.

37       The notices shall include a statement that any person desiring to  
38 submit written comments concerning an application, or desiring to  
39 receive notification of the final decision concerning an application as



1 expeditiously as possible after the issuance of the decision, may  
2 submit the comments or requests for decisions to the local government  
3 within thirty days of the last date the notice is to be published  
4 pursuant to this subsection. The local government shall forward, in a  
5 timely manner following the issuance of a decision, a copy of the  
6 decision to each person who submits a request for the decision.

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

10 ~~((5))~~ (6) The system shall include provisions to assure that  
11 construction within shorelines of the state pursuant to a permit  
12 required by subsection (2) of this section will not begin or be  
13 authorized until ~~((twenty one days from the date the permit decision  
14 was filed as provided in subsection (6) of this section; or until all  
15 review proceedings are terminated if the proceedings were initiated  
16 within twenty one days from the date of filing as defined in subsection  
17 (6) of this section except as follows:~~

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

23 (b) ~~Construction may be commenced no sooner than thirty days after  
24 the date of the appeal of the board's decision is filed if a permit is  
25 granted by the local government and (i) the granting of the permit is  
26 appealed to the shorelines hearings board within twenty one days of the  
27 date of filing, (ii) the hearings board approves the granting of the  
28 permit by the local government or approves a portion of the substantial  
29 development for which the local government issued the permit, and (iii)  
30 an appeal for judicial review of the hearings board decision is filed  
31 pursuant to chapter 34.05 RCW. The appellant may request, within ten  
32 days of the filing of the appeal with the court, a hearing before the  
33 court to determine whether construction pursuant to the permit approved  
34 by the hearings board or to a revised permit issued pursuant to the  
35 order of the hearings board should not commence. If, at the conclusion  
36 of the hearing, the court finds that construction pursuant to such a  
37 permit would involve a significant, irreversible damaging of the  
38 environment, the court shall prohibit the permittee from commencing the  
39 construction pursuant to the approved or revised permit until all~~

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

11 (c) If the permit is for a substantial development meeting the  
12 requirements of subsection (11) of this section, construction pursuant  
13 to that permit may not begin or be authorized until twenty one days  
14 from the date the permit decision was filed as provided in subsection  
15 (6) of this section)) the time limit for filing an appeal pursuant to  
16 chapter 36.70C RCW has expired.

17 If a permittee begins construction pursuant to ((subsections (a),  
18 (b), or (c) of)) this subsection, the construction is begun at the  
19 permittee's own risk. If, as a result of judicial review, the courts  
20 order the removal of any portion of the construction or the restoration  
21 of any portion of the environment involved or require the alteration of  
22 any portion of a substantial development constructed pursuant to a  
23 permit, the permittee is barred from recovering damages or costs  
24 involved in adhering to such requirements from the local government  
25 that granted the permit, the hearings board, or any appellant or  
26 intervener.

27 ((6) Any decision on an application for a permit under the  
28 authority of this section, whether it is an approval or a denial,  
29 shall, concurrently with the transmittal of the ruling to the  
30 applicant, be filed with the department and the attorney general. With  
31 regard to a permit other than a permit governed by subsection (10) of  
32 this section, "date of filing" as used herein means the date of actual  
33 receipt by the department.— With regard to a permit for a variance or  
34 a conditional use, "date of filing" means the date a decision of the  
35 department rendered on the permit pursuant to subsection (10) of this  
36 section is transmitted by the department to the local government.— The  
37 department shall notify in writing the local government and the  
38 applicant of the date of filing.))

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

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

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

23 ~~(10) ((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 ~~(11))~~ (a) An application for a substantial development permit for  
27 a limited utility extension or for the construction of a bulkhead or  
28 other measures to protect a single family residence and its appurtenant  
29 structures from shoreline erosion shall be subject to the following  
30 procedures:

31 (i) The public comment period under subsection ~~((+4))~~ (5) of this  
32 section shall be twenty days. The notice provided under subsection  
33 ~~((+4))~~ (5) of this section shall state the manner in which the public  
34 may obtain a copy of the local government decision on the application  
35 no later than two days following its issuance;

36 (ii) The local government shall issue its decision to grant or deny  
37 the permit within twenty-one days of the last day of the comment period  
38 specified in (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 means  
5 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 **Sec. 6.** RCW 90.58.143 and 1997 c 429 s 51 are each amended to read  
14 as follows:

15 (1) The time requirements of this section shall apply to all  
16 ~~((substantial development permits and to any development authorized~~  
17 ~~pursuant to a variance or conditional use permit authorized under this~~  
18 ~~chapter))~~ permits required by RCW 90.58.140(2). Upon a finding of good  
19 cause, based on the requirements and circumstances of the project  
20 proposed and consistent with the policy and provisions of the master  
21 program and this chapter, local government may adopt different time  
22 limits from those set forth in subsections (2) and (3) of this section  
23 as a part of action on a substantial development permit required by RCW  
24 90.58.140(2).

25 (2) Construction activities shall be commenced or, where no  
26 construction activities are involved, the use or activity shall be  
27 commenced within two years of the effective date of a ~~((substantial~~  
28 ~~development))~~ permit required by RCW 90.58.140(2). However, local  
29 government may authorize ~~((a single))~~ extensions ~~((for a period not to~~  
30 ~~exceed one year))~~ based on reasonable factors, if a request for  
31 extension has been filed before the expiration date and notice of the  
32 proposed extension is given to parties of record on the substantial  
33 development permit and to the department.

34 (3) Authorization to conduct construction activities shall  
35 terminate five years after the effective date of a ~~((substantial~~  
36 ~~development))~~ permit required by RCW 90.58.140(2). However, local  
37 government may authorize ~~((a single))~~ extensions ~~((for a period not to~~  
38 ~~exceed one year))~~ based on reasonable factors, if a request for

1 extension has been filed before the expiration date and notice of the  
2 proposed extension is given to parties of record and to the department.

3 (4) The effective date of a ~~((substantial development))~~ permit  
4 required by RCW 90.58.140(2) shall be the date ~~((of filing as provided~~  
5 ~~in RCW 90.58.140(6))~~ the permit decision is issued as provided in RCW  
6 36.70C.040(4). The permit time periods in subsections (2) and (3) of  
7 this section do not include the time during which a use or activity was  
8 not actually pursued due to the pendency of administrative appeals or  
9 legal actions or due to the need to obtain any other government permits  
10 and approvals for the development that authorize the development to  
11 proceed, including all reasonably related administrative or legal  
12 actions on any such permits or approvals.

13 **Sec. 7.** RCW 90.58.180 and 1997 c 199 s 1 are each amended to read  
14 as follows:

15 (1) Any person aggrieved by the granting, denying, or rescinding of  
16 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
17 judicial review ~~((from the shorelines hearings board by filing a~~  
18 ~~petition for review within twenty one days of the date of filing as~~  
19 ~~defined in RCW 90.58.140(6)).~~

20 ~~Within seven days of the filing of any petition for review with the~~  
21 ~~board as provided in this section pertaining to a final decision of a~~  
22 ~~local government, the petitioner shall serve copies of the petition on~~  
23 ~~the department, the office of the attorney general, and the local~~  
24 ~~government. The department and the attorney general may intervene to~~  
25 ~~protect the public interest and insure that the provisions of this~~  
26 ~~chapter are complied with at any time within fifteen days from the date~~  
27 ~~of the receipt by the department or the attorney general of a copy of~~  
28 ~~the petition for review filed pursuant to this section. The shorelines~~  
29 ~~hearings board shall schedule review proceedings on the petition for~~  
30 ~~review without regard as to whether the period for the department or~~  
31 ~~the attorney general to intervene has or has not expired.~~

32 (2) The department or the attorney general may obtain review of any  
33 final decision granting a permit, or granting or denying an application  
34 for a permit issued by a local government by filing a written petition  
35 with the shorelines hearings board and the appropriate local government  
36 within twenty one days from the date the final decision was filed as  
37 provided in RCW 90.58.140(6).

1       ~~(3) The review proceedings authorized in subsections (1) and (2) of~~  
2 ~~this section are subject to the provisions of chapter 34.05 RCW~~  
3 ~~pertaining to procedures in adjudicative proceedings. Judicial review~~  
4 ~~of such proceedings of the shorelines hearings board is governed by~~  
5 ~~chapter 34.05 RCW. The board shall issue its decision on the appeal~~  
6 ~~authorized under subsections (1) and (2) of this section within one~~  
7 ~~hundred eighty days after the date the petition is filed with the board~~  
8 ~~or a petition to intervene is filed by the department or the attorney~~  
9 ~~general, whichever is later. The time period may be extended by the~~  
10 ~~board for a period of thirty days upon a showing of good cause or may~~  
11 ~~be waived by the parties)) of the decision by the local government,~~  
12 ~~pursuant to chapter 36.70C RCW.~~

13       ~~((4))~~ (2) Any person may appeal any rules, regulations, or  
14 guidelines adopted or approved by the department by filing a petition  
15 for review with the shorelines hearings board within thirty days of the  
16 date of the adoption or approval. The board shall make a final  
17 decision within sixty days following the hearing held thereon.

18       ~~((5))~~ (3) The board shall find the rule, regulation, or guideline  
19 to be valid and enter a final decision to that effect unless it  
20 determines that the rule, regulation, or guideline:

21       (a) Is clearly erroneous in light of the policy of this chapter; or

22       (b) Constitutes an implementation of this chapter in violation of  
23 constitutional or statutory provisions; or

24       (c) Is arbitrary and capricious; or

25       (d) Was developed without fully considering and evaluating all  
26 material submitted to the department during public review and comment;  
27 or

28       (e) Was not adopted in accordance with required procedures.

29       ~~((6))~~ (4) If the board makes a determination under subsection  
30 ~~((5))~~ (3)(a) through (e) of this section, it shall enter a final  
31 decision declaring the rule, regulation, or guideline invalid,  
32 remanding the rule, regulation, or guideline to the department with a  
33 statement of the reasons in support of the determination, and directing  
34 the department to adopt, after a thorough consultation with the  
35 affected local government and any other interested party, a new rule,  
36 regulation, or guideline consistent with the board's decision.

37       ~~((7))~~ (5) A decision of the board on the validity of a rule,  
38 regulation, or guideline shall be subject to review in superior court,  
39 if authorized pursuant to chapter 34.05 RCW. A petition for review of

1 the decision of the shorelines hearings board on a rule, regulation, or  
2 guideline shall be filed within thirty days after the date of final  
3 decision by the shorelines hearings board.

4 **Sec. 8.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to  
5 read as follows:

6 (1) The appeal of the department's decision to adopt a master  
7 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is  
8 governed by RCW 34.05.510 through 34.05.598.

9 (2)(a) The court conducting judicial review pursuant to subsection  
10 (1) of this section may allow the department to seek hearing board  
11 review of a decision by a local government granting, denying, or  
12 rescinding a permit on shorelines of the state pursuant to RCW  
13 90.58.140 under the following circumstances:

14 (i) The substantial development for which the permit is issued will  
15 occur in an area designated a shoreline of state-wide significance;

16 (ii) The department demonstrates that the permit decision raises  
17 issues common to substantial development in multiple local  
18 jurisdictions; and

19 (iii) The department demonstrates a substantial state interest  
20 associated with the decision of local government to grant, deny, or  
21 rescind a permit on shorelines of the state pursuant to RCW 90.58.140.

22 (b) Hearing board review shall be completed based on the written  
23 record generated by local government prior to their decision to grant,  
24 deny, or rescind a permit on shorelines of the state pursuant to RCW  
25 90.58.140. The hearing board shall not allow the written record  
26 generated by local government to be supplemented in any way. The  
27 hearing board shall conduct a hearing to determine solely if the local  
28 government decision to grant, deny, or rescind the permit is in  
29 compliance with the plan, or plan element, adopted by the local  
30 government pursuant to RCW 90.58.080. The hearing board shall conduct  
31 a hearing and render a written decision within thirty days of the date  
32 the court submits the issue to the hearing board for review.

33 (c) The superior court judge originally reviewing the decision by  
34 local government to grant, deny, or rescind a permit on shorelines of  
35 the state issued pursuant to RCW 90.58.140 shall retain jurisdiction  
36 over the matter. The judge shall consider the decision rendered by the  
37 hearing board to be advisory and shall issue a final decision pursuant  
38 to the timelines and standards established in chapter 36.70C RCW.

1       ~~(3)~~ The ~~((department's decision to approve, reject, or modify a~~  
2 ~~proposed))~~ adoption or amendment of a master program ~~((or amendment~~  
3 ~~adopted))~~ by a local government planning under RCW 36.70A.040 shall be  
4 appealed to the growth management hearings board with jurisdiction over  
5 the local government. The appeal shall be initiated by filing a  
6 petition as provided in RCW 36.70A.250 through 36.70A.320.

7       ~~(b)~~ ~~((If the appeal to the growth management hearings board~~  
8 ~~concerns shorelines,))~~ The growth management hearings board shall  
9 review the proposed master program or amendment for compliance with the  
10 requirements of this chapter and chapter 36.70A RCW, the policy of RCW  
11 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it  
12 relates to the adoption of master programs and amendments under chapter  
13 90.58 RCW.

14       ~~(c)~~ ~~((If the appeal to the growth management hearings board~~  
15 ~~concerns a shoreline of state wide significance, the board shall uphold~~  
16 ~~the decision by the department unless the board, by clear and~~  
17 ~~convincing evidence, determines that the decision of the department is~~  
18 ~~inconsistent with the policy of RCW 90.58.020 and the applicable~~  
19 ~~guidelines.~~

20       ~~(d))~~ The appellant has the burden of proof in all appeals to the  
21 growth management hearings board under this subsection.

22       ~~((e))~~ (d) Any party aggrieved by a final decision of a growth  
23 management hearings board under this subsection may appeal the decision  
24 to superior court as provided in RCW 36.70A.300.

25       ~~((3))~~ (4)(a) The department's decision to approve, reject, or  
26 modify a proposed master program or master program amendment by a local  
27 government not planning under RCW 36.70A.040 shall be appealed to the  
28 shorelines hearings board by filing a petition within thirty days of  
29 the date of the department's written notice to the local government of  
30 the department's decision to approve, reject, or modify a proposed  
31 master program or master program amendment as provided in RCW  
32 90.58.090(2).

33       (b) In an appeal relating to shorelines, the shorelines hearings  
34 board shall review the proposed master program or master program  
35 amendment and, after full consideration of the presentations of the  
36 local government and the department, shall determine the validity of  
37 the local government's master program or amendment in light of the  
38 policy of RCW 90.58.020 and the applicable guidelines.



1 (c) In an appeal relating to shorelines of state-wide significance,  
2 the shorelines hearings board shall uphold the decision by the  
3 department unless the board determines, by clear and convincing  
4 evidence that the decision of the department is inconsistent with the  
5 policy of RCW 90.58.020 and the applicable guidelines.

6 (d) Review by the shorelines hearings board shall be considered an  
7 adjudicative proceeding under chapter 34.05 RCW, the Administrative  
8 Procedure Act. The aggrieved local government shall have the burden of  
9 proof in all such reviews.

10 (e) Whenever possible, the review by the shorelines hearings board  
11 shall be heard within the county where the land subject to the proposed  
12 master program or master program amendment is primarily located. The  
13 department and any local government aggrieved by a final decision of  
14 the hearings board may appeal the decision to superior court as  
15 provided in chapter 34.05 RCW.

16 ~~((4))~~ (5) A master program ~~((amendment))~~ adopted or amended by a  
17 local government not planning under RCW 36.70A.040 shall become  
18 effective after the approval of the department or, if not approved by  
19 the department, after the decision of the shorelines hearings board to  
20 uphold the master program or master program amendment, provided that  
21 the board may remand the master program or master program  
22 ~~((adjustment))~~ amendment to the local government ~~((or the department))~~  
23 for modification prior to the final adoption of the master program or  
24 master program amendment.

25 NEW SECTION. Sec. 9. The following acts or parts of acts are each  
26 repealed:

- 27 (1) RCW 90.58.185 and 1994 c 253 s 2; and  
28 (2) RCW 90.58.360 and 1971 ex.s. c 286 s 36.

29 NEW SECTION. Sec. 10. If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. Sec. 11. The provisions of this act shall apply to  
34 shoreline master programs and amendments thereto adopted by local

1 governments after the effective date of this act and to shoreline  
2 permit applications filed with local governments after July 1, 1999.

--- END ---