
SENATE BILL 6556

State of Washington 55th Legislature 1998 Regular Session

By Senators Anderson, T. Sheldon, Horn and Hale

Read first time 01/21/98. Referred to Committee on Government Operations.

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

3 (1) The procedures for the adoption or amendment of shoreline
4 master programs by local governments planning under RCW 36.70A.040
5 shall be governed by the requirements for the adoption or amendment of
6 comprehensive plans and development regulations pursuant to chapter
7 36.70A RCW. For local governments not planning under RCW 36.70A.040,
8 a master program, segment of a master program, or an amendment to a
9 master program shall become effective when approved by the department.
10 Within the time period provided in RCW 90.58.080, each local government
11 not planning under RCW 36.70A.040 shall have submitted a master
12 program, either totally or by segments, for all shorelines of the state
13 within its jurisdiction to the department for review and approval.

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

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

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

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

32 (d) Within thirty days after receipt of the local government
33 response pursuant to (c) of this subsection, make written findings and
34 conclusions regarding the consistency of the proposal with the policy
35 of RCW 90.58.020 and the applicable guidelines, provide a response to
36 the issues identified in (c) of this subsection, and either approve the
37 proposal as submitted, recommend specific changes necessary to make the
38 proposal approvable, or deny approval of the proposal in those
39 instances where no alteration of the proposal appears likely to be

1 consistent with the policy of RCW 90.58.020 and the applicable
2 guidelines. The written findings and conclusions shall be provided to
3 the local government, all interested persons, parties, groups, and
4 agencies of record on the proposal;

5 (e) If the department recommends changes to the proposed master
6 program or amendment, within thirty days after the department mails the
7 written findings and conclusions to the local government, the local
8 government may:

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

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

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

26 (4) The department shall approve those segments of the master
27 program submitted by a local government not planning under RCW
28 36.70A.040 relating to shorelines of state-wide significance only after
29 determining the program provides the optimum implementation of the
30 policy of this chapter to satisfy the state-wide interest. If the
31 department does not approve a segment of a local government master
32 program relating to a shoreline of state-wide significance, the
33 department may develop and by rule adopt an alternative to the local
34 government s proposal.

35 (5) In the event a local government has not complied with the
36 requirements of RCW 90.58.070 it may thereafter upon written notice to
37 the department elect to adopt a master program for the shorelines
38 within its jurisdiction, in which event it shall comply with the

1 provisions established by this chapter for the adoption of a master
2 program for such shorelines.

3 ~~((Upon approval of such master program by the department it shall
4 supersede such master program as may have been adopted by the
5 department for such shorelines.))~~

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

9 (7) Shoreline master programs that were adopted by the department
10 prior to July 22, 1995, in accordance with the provisions of this
11 section then in effect, shall be deemed approved by the department in
12 accordance with the provisions of this section that became effective on
13 that date. The department shall maintain a record of each master
14 program, the action taken on any proposal for adoption or amendment of
15 the master program, and any appeal of the department's action. The
16 department's approved document of record constitutes the official
17 master program.

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

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

25 (a) Utilize a systematic interdisciplinary approach which will
26 insure the integrated use of the natural and social sciences and the
27 environmental design arts;

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

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

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

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

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

4 (2) The master programs adopted by local governments planning under
5 RCW 36.70A.040 shall be incorporated into the comprehensive plans and
6 development regulations adopted pursuant to chapter 36.70A RCW and
7 shall be consistent with the policies of this chapter and chapter
8 36.70A RCW. Local governments planning under RCW 36.70A.040 may
9 include their shoreline master programs as separate elements of their
10 comprehensive plans, and include the appropriate elements required by
11 subsection (3) of this section, or may integrate their shoreline plan
12 policies into the elements of their comprehensive plans required by RCW
13 36.70A.070.

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

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

21 (b) A public access element making provision for public access to
22 publicly owned areas;

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

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

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

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

1 (g) An historic, cultural, scientific, and educational element for
2 the protection and restoration of buildings, sites, and areas having
3 historic, cultural, scientific, or educational values;

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

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

8 ~~((3))~~ (4) The master programs shall include such map or maps,
9 descriptive text, diagrams and charts, or other descriptive material as
10 are necessary to provide for ease of understanding.

11 ~~((4))~~ (5) Master programs will reflect that state-owned
12 shorelines of the state are particularly adapted to providing
13 wilderness beaches, ecological study areas, and other recreational
14 activities for the public and will give appropriate special
15 consideration to same.

16 ~~((5))~~ (6) Local governments shall include their procedures for
17 the permit required by RCW 90.58.140(2) in their development
18 regulations required by chapter 36.70B RCW. Each master program shall
19 contain provisions to allow for the varying of the application of use
20 regulations of the program, including provisions for permits for
21 conditional uses and variances, to insure that strict implementation of
22 a program will not create unnecessary hardships or thwart the policy
23 enumerated in RCW 90.58.020. Any such varying shall be allowed only if
24 extraordinary circumstances are shown and the public interest suffers
25 no substantial detrimental effect. ~~((The concept of this subsection~~
26 ~~shall be incorporated in the rules adopted by the department relating~~
27 ~~to the establishment of a permit system as provided in RCW~~
28 ~~90.58.140(3)).~~

29 ~~(6))~~ (7) Each master program shall contain standards governing the
30 protection of single family residences and appurtenant structures
31 against damage or loss due to shoreline erosion. The standards shall
32 govern the issuance of substantial development permits for shoreline
33 protection, including structural methods such as construction of
34 bulkheads, and nonstructural methods of protection. The standards
35 shall provide for methods which achieve effective and timely protection
36 against loss or damage to single family residences and appurtenant
37 structures due to shoreline erosion. The standards shall provide a
38 preference for permit issuance for measures to protect single family
39 residences occupied prior to January 1, 1992, where the proposed

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

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

5 Development regulations and standards, adopted in compliance with
6 chapter 36.70A RCW, regulating critical areas as defined in RCW
7 36.70A.030(5), shall apply to critical areas within shorelines of the
8 state. Local governments with critical areas regulations adopted in
9 compliance with chapter 36.70A RCW shall not apply or impose different
10 or additional regulations or standards under this chapter to the same
11 development activity. Nothing in this section is intended to limit a
12 local government's authority to adopt regulations under this chapter to
13 regulate the type of land use permitted within critical areas or the
14 level of development, including but not limited to density and height
15 limits.

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

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

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

25 A permit shall be granted(~~:~~

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

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

34 (3) The local government shall (~~establish a program, consistent~~
35 ~~with rules adopted by the department, for the administration and~~
36 ~~enforcement of the permit system provided in this section)) include the
37 permit required by subsection (2) of this section in the permit system~~

1 established pursuant to the requirements of chapter 36.70B RCW. The
2 administration of the system so established shall be performed
3 exclusively by the local government.

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

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

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

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

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

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

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

37 ~~((+5))~~ (6) The system shall include provisions to assure that
38 construction within shorelines of the state pursuant to a permit
39 required by subsection (2) of this section will not begin or be

1 authorized until (~~twenty one days from the date the permit decision~~
2 ~~was filed as provided in subsection (6) of this section; or until all~~
3 ~~review proceedings are terminated if the proceedings were initiated~~
4 ~~within twenty one days from the date of filing as defined in subsection~~
5 ~~(6) of this section except as follows:~~

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

11 (b) ~~Construction may be commenced no sooner than thirty days after~~
12 ~~the date of the appeal of the board's decision is filed if a permit is~~
13 ~~granted by the local government and (i) the granting of the permit is~~
14 ~~appealed to the shorelines hearings board within twenty one days of the~~
15 ~~date of filing, (ii) the hearings board approves the granting of the~~
16 ~~permit by the local government or approves a portion of the substantial~~
17 ~~development for which the local government issued the permit, and (iii)~~
18 ~~an appeal for judicial review of the hearings board decision is filed~~
19 ~~pursuant to chapter 34.05 RCW. The appellant may request, within ten~~
20 ~~days of the filing of the appeal with the court, a hearing before the~~
21 ~~court to determine whether construction pursuant to the permit approved~~
22 ~~by the hearings board or to a revised permit issued pursuant to the~~
23 ~~order of the hearings board should not commence. If, at the conclusion~~
24 ~~of the hearing, the court finds that construction pursuant to such a~~
25 ~~permit would involve a significant, irreversible damaging of the~~
26 ~~environment, the court shall prohibit the permittee from commencing the~~
27 ~~construction pursuant to the approved or revised permit until all~~
28 ~~review proceedings are final. Construction pursuant to a permit~~
29 ~~revised at the direction of the hearings board may begin only on that~~
30 ~~portion of the substantial development for which the local government~~
31 ~~had originally issued the permit, and construction pursuant to such a~~
32 ~~revised permit on other portions of the substantial development may not~~
33 ~~begin until after all review proceedings are terminated. In such a~~
34 ~~hearing before the court, the burden of proving whether the~~
35 ~~construction may involve significant irreversible damage to the~~
36 ~~environment and demonstrating whether such construction would or would~~
37 ~~not be appropriate is on the appellant;~~

38 (c) ~~If the permit is for a substantial development meeting the~~
39 ~~requirements of subsection (11) of this section, construction pursuant~~

1 to that permit may not begin or be authorized until twenty one days
2 from the date the permit decision was filed as provided in subsection
3 ~~(6) of this section))~~ the time limit for filing an appeal pursuant to
4 chapter 36.70C RCW has expired.

5 If a permittee begins construction pursuant to ~~((subsections (a),~~
6 ~~(b), or (c) of))~~ this subsection, the construction is begun at the
7 permittee's own risk. If, as a result of judicial review, the courts
8 order the removal of any portion of the construction or the restoration
9 of any portion of the environment involved or require the alteration of
10 any portion of a substantial development constructed pursuant to a
11 permit, the permittee is barred from recovering damages or costs
12 involved in adhering to such requirements from the local government
13 that granted the permit, the hearings board, or any appellant or
14 intervener.

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

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

33 (8) Any permit may, after a hearing with adequate notice to the
34 permittee and the public, be rescinded by the issuing authority upon
35 the finding that a permittee has not complied with conditions of a
36 permit. If the department is of the opinion that noncompliance exists,
37 the department shall provide written notice to the local government and
38 the permittee. If the department is of the opinion that the
39 noncompliance continues to exist thirty days after the date of the

1 notice, and the local government has taken no action to rescind the
2 permit, the department may petition the hearings board for a rescission
3 of the permit upon written notice of the petition to the local
4 government and the permittee if the request by the department is made
5 to the hearings board within fifteen days of the termination of the
6 thirty-day notice to the local government.

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

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

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

18 (i) The public comment period under subsection ~~((+4))~~ (5) of this
19 section shall be twenty days. The notice provided under subsection
20 ~~((+4))~~ (5) of this section shall state the manner in which the public
21 may obtain a copy of the local government decision on the application
22 no later than two days following its issuance;

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

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

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

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

34 (ii) Will serve an existing use in compliance with this chapter;
35 and

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

1 **Sec. 6.** RCW 90.58.143 and 1997 c 429 s 51 are each amended to read
2 as follows:

3 (1) The time requirements of this section shall apply to all
4 ~~((substantial development permits and to any development authorized~~
5 ~~pursuant to a variance or conditional use permit authorized under this~~
6 ~~chapter))~~ permits required by RCW 90.58.140(2). Upon a finding of good
7 cause, based on the requirements and circumstances of the project
8 proposed and consistent with the policy and provisions of the master
9 program and this chapter, local government may adopt different time
10 limits from those set forth in subsections (2) and (3) of this section
11 as a part of action on a substantial development permit required by RCW
12 90.58.140(2).

13 (2) Construction activities shall be commenced or, where no
14 construction activities are involved, the use or activity shall be
15 commenced within two years of the effective date of a ~~((substantial~~
16 ~~development))~~ permit required by RCW 90.58.140(2). However, local
17 government may authorize ~~((a single))~~ extensions ~~((for a period not to~~
18 ~~exceed one year))~~ based on reasonable factors, if a request for
19 extension has been filed before the expiration date and notice of the
20 proposed extension is given to parties of record on the substantial
21 development permit and to the department.

22 (3) Authorization to conduct construction activities shall
23 terminate five years after the effective date of a ~~((substantial~~
24 ~~development))~~ permit required by RCW 90.58.140(2). However, local
25 government may authorize ~~((a single))~~ extensions ~~((for a period not to~~
26 ~~exceed one year))~~ based on reasonable factors, if a request for
27 extension has been filed before the expiration date and notice of the
28 proposed extension is given to parties of record and to the department.

29 (4) The effective date of a ~~((substantial development))~~ permit
30 required by RCW 90.58.140(2) shall be the date ~~((of filing as provided~~
31 ~~in RCW 90.58.140(6))~~) the permit decision is issued as provided in RCW
32 36.70C.040(4). The permit time periods in subsections (2) and (3) of
33 this section do not include the time during which a use or activity was
34 not actually pursued due to the pendency of administrative appeals or
35 legal actions or due to the need to obtain any other government permits
36 and approvals for the development that authorize the development to
37 proceed, including all reasonably related administrative or legal
38 actions on any such permits or approvals.

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

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

8 ~~Within seven days of the filing of any petition for review with the~~
9 ~~board as provided in this section pertaining to a final decision of a~~
10 ~~local government, the petitioner shall serve copies of the petition on~~
11 ~~the department, the office of the attorney general, and the local~~
12 ~~government. The department and the attorney general may intervene to~~
13 ~~protect the public interest and insure that the provisions of this~~
14 ~~chapter are complied with at any time within fifteen days from the date~~
15 ~~of the receipt by the department or the attorney general of a copy of~~
16 ~~the petition for review filed pursuant to this section. The shorelines~~
17 ~~hearings board shall schedule review proceedings on the petition for~~
18 ~~review without regard as to whether the period for the department or~~
19 ~~the attorney general to intervene has or has not expired.~~

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

26 (3) The review proceedings authorized in subsections (1) and (2) of
27 this section are subject to the provisions of chapter 34.05 RCW
28 pertaining to procedures in adjudicative proceedings. Judicial review
29 of such proceedings of the shorelines hearings board is governed by
30 chapter 34.05 RCW. The board shall issue its decision on the appeal
31 authorized under subsections (1) and (2) of this section within one
32 hundred eighty days after the date the petition is filed with the board
33 or a petition to intervene is filed by the department or the attorney
34 general, whichever is later. The time period may be extended by the
35 board for a period of thirty days upon a showing of good cause or may
36 be waived by the parties)) of the decision by the local government,
37 pursuant to chapter 36.70C RCW.

38 (~~(4)~~) (2) Any person may appeal any rules, regulations, or
39 guidelines adopted or approved by the department by filing a petition

1 for review with the shorelines hearings board within thirty days of the
2 date of the adoption or approval. The board shall make a final
3 decision within sixty days following the hearing held thereon.

4 ~~((+5+))~~ (3) The board shall find the rule, regulation, or guideline
5 to be valid and enter a final decision to that effect unless it
6 determines that the rule, regulation, or guideline:

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

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

10 (c) Is arbitrary and capricious; or

11 (d) Was developed without fully considering and evaluating all
12 material submitted to the department during public review and comment;
13 or

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

15 ~~((+6+))~~ (4) If the board makes a determination under subsection
16 ~~((+5+))~~ (3)(a) through (e) of this section, it shall enter a final
17 decision declaring the rule, regulation, or guideline invalid,
18 remanding the rule, regulation, or guideline to the department with a
19 statement of the reasons in support of the determination, and directing
20 the department to adopt, after a thorough consultation with the
21 affected local government and any other interested party, a new rule,
22 regulation, or guideline consistent with the board's decision.

23 ~~((+7+))~~ (5) A decision of the board on the validity of a rule,
24 regulation, or guideline shall be subject to review in superior court,
25 if authorized pursuant to chapter 34.05 RCW. A petition for review of
26 the decision of the shorelines hearings board on a rule, regulation, or
27 guideline shall be filed within thirty days after the date of final
28 decision by the shorelines hearings board.

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

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

34 (2)(a) The ~~((department's decision to approve, reject, or modify a
35 proposed))~~ adoption or amendment of a master program ~~((or amendment
36 adopted))~~ by a local government planning under RCW 36.70A.040 shall be
37 appealed to the growth management hearings board with jurisdiction over

1 the local government. The appeal shall be initiated by filing a
2 petition as provided in RCW 36.70A.250 through 36.70A.320.

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

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

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

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

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

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

35 (c) In an appeal relating to shorelines of state-wide significance,
36 the shorelines hearings board shall uphold the decision by the
37 department unless the board determines, by clear and convincing
38 evidence that the decision of the department is inconsistent with the
39 policy of RCW 90.58.020 and the applicable guidelines.

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

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

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

20 NEW SECTION. Sec. 9. The following acts or parts of acts are each
21 repealed:

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

24 NEW SECTION. Sec. 10. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. Sec. 11. The provisions of this act shall apply to
29 shoreline master programs and amendments thereto adopted by local
30 governments after the effective date of this act and to shoreline
31 permit applications filed with local governments after July 1, 1999.

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