

1 **SHB 1191** - H AMD

2 By Representative Morris

3 Strike everything after the enacting clause and insert the
4 following:

5 **Sec. 1.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
6 read as follows:

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

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

15 A permit shall be granted:

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

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

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

29 (4) Except as otherwise specifically provided in subsection (11)
30 of this section, the local government shall require notification of the
31 public of all applications for permits governed by any permit system
32 established pursuant to subsection (3) of this section by ensuring that
33 notice of the application is given by at least one of the following
34 methods:

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

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

7 (c) Any other manner deemed appropriate by local authorities to
8 accomplish the objectives of reasonable notice to adjacent landowners
9 and the public.

10 The notices shall include a statement that any person desiring to
11 submit written comments concerning an application, or desiring to
12 receive notification of the final decision concerning an application as
13 expeditiously as possible after the issuance of the decision, may
14 submit the comments or requests for decisions to the local government
15 within thirty days of the last date the notice is to be published
16 pursuant to this subsection. The local government shall forward, in a
17 timely manner following the issuance of a decision, a copy of the
18 decision to each person who submits a request for the decision.

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

22 (5) The system shall include provisions to assure that
23 construction pursuant to a permit will not begin or be authorized until
24 twenty-one days from the date the permit decision was filed as provided
25 in subsection (6) of this section; or until all review proceedings are
26 terminated if the proceedings were initiated within twenty-one days
27 from the date of filing as defined in subsection (6) of this section
28 except as follows:

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

34 (b) Construction may be commenced no sooner than thirty days after
35 the date of the appeal of the board's decision is filed if a permit is
36 granted by the local government and (i) the granting of the permit is
37 appealed to the shorelines hearings board within twenty-one days of the
38 date of filing, (ii) the hearings board approves the granting of the

1 permit by the local government or approves a portion of the substantial
2 development for which the local government issued the permit, and (iii)
3 an appeal for judicial review of the hearings board decision is filed
4 pursuant to chapter 34.05 RCW. The appellant may request, within ten
5 days of the filing of the appeal with the court, a hearing before the
6 court to determine whether construction pursuant to the permit approved
7 by the hearings board or to a revised permit issued pursuant to the
8 order of the hearings board should not commence. If, at the conclusion
9 of the hearing, the court finds that construction pursuant to such a
10 permit would involve a significant, irreversible damaging of the
11 environment, the court shall prohibit the permittee from commencing the
12 construction pursuant to the approved or revised permit until all
13 review proceedings are final. Construction pursuant to a permit
14 revised at the direction of the hearings board may begin only on that
15 portion of the substantial development for which the local government
16 had originally issued the permit, and construction pursuant to such a
17 revised permit on other portions of the substantial development may not
18 begin until after all review proceedings are terminated. In such a
19 hearing before the court, the burden of proving whether the
20 construction may involve significant irreversible damage to the
21 environment and demonstrating whether such construction would or would
22 not be appropriate is on the appellant;

23 (c) If the permit is for a substantial development meeting the
24 requirements of subsection (11) of this section, construction pursuant
25 to that permit may not begin or be authorized until twenty-one days
26 from the date the permit decision was filed as provided in subsection
27 (6) of this section.

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

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

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

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

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

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

1 (11)(a) An application for a substantial development permit for a
2 limited utility extension or for the construction of a bulkhead or
3 other measures to protect a single family residence and its appurtenant
4 structures from shoreline erosion shall be subject to the following
5 procedures:

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

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

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

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

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

22 (ii) Will serve an existing use in compliance with this chapter;
23 and

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

26 (12) An application for a substantial development purpose for a
27 temporary use of a shoreline for motion picture production shall be
28 subject to the following procedures:

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

34 (b) The local government shall issue its decision to grant or deny
35 the permit within twenty-one days of the last day of the comment period
36 specified in (a) of this subsection.

1 **Sec. 2.** 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
4 of a permit on shorelines of the state pursuant to RCW 90.58.140 may
5 seek review from the shorelines hearings board by filing a petition for
6 review within twenty-one days of the date of filing as defined in RCW
7 90.58.140(6), or within fourteen days of the date of filing if the
8 requested shoreline use is a temporary use for motion picture
9 production.

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

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

32 (3) The review proceedings authorized in subsections (1) and (2)
33 of this section are subject to the provisions of chapter 34.05 RCW
34 pertaining to procedures in adjudicative proceedings. Judicial review
35 of such proceedings of the shorelines hearings board is governed by
36 chapter 34.05 RCW. Except as otherwise provided in this section, the
37 board shall issue its decision on the appeal authorized under
38 subsections (1) and (2) of this section within one hundred eighty days

1 after the date the petition is filed with the board or a petition to
2 intervene is filed by the department or the attorney general, whichever
3 is later. The time period may be extended by the board for a period of
4 thirty days upon a showing of good cause or may be waived by the
5 parties. The board shall issue its decision on the appeal of a
6 substantial development permit for the temporary use of shorelines for
7 motion picture production within fourteen days after the date the
8 petition is filed with the board, or a petition to intervene is filed
9 by the department or attorney general, whichever is later. The scope
10 of review shall be limited to whether such a permit is consistent with
11 the provisions of the local shoreline master program in the county
12 where the shorelines are located.

13 (4) If the issue before the shorelines hearing board concerns the
14 granting, denial, or rescission of a substantial development permit for
15 the temporary use of shorelines for motion picture production, the
16 board shall issue its decision within fourteen days of receiving the

17 (4) Any person may appeal any rules, regulations, or guidelines
18 adopted or approved by the department within thirty days of the date of
19 the adoption or approval. The board shall make a final decision within
20 sixty days following the hearing held thereon.

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

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

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

28 (c) Is arbitrary and capricious; or

29 (d) Was developed without fully considering and evaluating all
30 material submitted to the department during public review and comment;
31 or

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

33 (6) If the board makes a determination under subsection (5)(a)
34 through (e) of this section, it shall enter a final decision declaring
35 the rule, regulation, or guideline invalid, remanding the rule,
36 regulation, or guideline to the department with a statement of the
37 reasons in support of the determination, and directing the department
38 to adopt, after a thorough consultation with the affected local

1 government and any other interested party, a new rule, regulation, or
2 guideline consistent with the board's decision.

3 (7) A decision of the board on the validity of a rule, regulation,
4 or guideline shall be subject to review in superior court, if
5 authorized pursuant to chapter 34.05 RCW. A petition for review of the
6 decision of the shorelines hearings board on a rule, regulation, or
7 guideline shall be filed within thirty days after the date of final
8 decision by the shorelines hearings board.-

Correct the title.

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Effect: Authorizes substantial development permits for the temporary use of shorelines for motion picture production. Reduces to two weeks the amount of time in which appeals to the shorelines hearings board may be made and the amount of time in which appeals can be decided by the board.