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HOUSE BILL 2585

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State of Washington

59th Legislature

2006 Regular Session

By Representatives Jarrett, Dunshee, Shabro, Clibborn, Anderson, B. Sullivan, Tom, Linville, Nixon, Upthegrove, Morrell, Moeller and Kilmer

Read first time 01/11/2006. Referred to Committee on Local Government.

1 AN ACT Relating to a collaborative design pilot program; amending  
2 RCW 90.58.100 and 90.58.140; adding new sections to chapter 36.70A RCW;  
3 adding a new section to chapter 43.21C RCW; creating a new section; and  
4 providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A RCW  
7 to read as follows:

8 The office of regulatory assistance shall conduct a collaborative  
9 design pilot program. The pilot program shall, at a minimum, establish  
10 a mechanism for convening collaborative design teams, evaluate the  
11 effectiveness of collaborative design pilot projects, and make findings  
12 and recommendations regarding the feasibility of applying collaborative  
13 design practices throughout the state.

14 (1) To be eligible for consideration as a collaborative design  
15 pilot program jurisdiction, a county or city must:

16 (a) Plan under RCW 36.70A.040; and

17 (b) Provide the office of regulatory assistance with a written  
18 request signed by a majority of the county or city's legislative

1 authority requesting participation in the pilot program authorized  
2 under this section.

3 (2) The office of regulatory assistance, the department of  
4 community, trade, and economic development, and the department of  
5 ecology shall develop operational guidelines and criteria for the  
6 collaborative design pilot program. The operational guidelines and  
7 criteria shall include provisions for:

8 (a) Establishing collaborative design teams comprised of local  
9 government officials with project design and permitting expertise, and  
10 public or private sector project applicants;

11 (b) Using collaborative design practices in the design and  
12 realization of comprehensive or phased projects;

13 (c) Varying the application of development regulations and use  
14 regulations adopted under this chapter and chapter 90.58 RCW,  
15 respectively;

16 (d) Exempting qualifying collaborative design projects from chapter  
17 43.21C RCW;

18 (e) Expediting county and city processing of permit applications  
19 and project approval requests, including using hearing examiner  
20 systems, for projects utilizing collaborative design teams;

21 (f) Tracking permit fees and collaborative design team costs  
22 associated with projects authorized under this section; and

23 (g) Awarding appropriated grant funds in accordance with subsection  
24 (5) of this section.

25 (3) The office of regulatory assistance, the department of  
26 community, trade, and economic development, and the department of  
27 ecology shall provide technical assistance to counties and cities  
28 participating in the collaborative design pilot program.

29 (4) Permits and approvals issued pursuant to collaborative design  
30 pilot projects shall provide a level of environmental analysis,  
31 protection, and mitigation that is at least equal to the level required  
32 by the jurisdiction's applicable:

33 (a) Comprehensive land use plan and development regulations adopted  
34 under this chapter; and

35 (b) Shoreline master program and use regulations adopted under  
36 chapter 90.58 RCW.

37 (5) Subject to the availability of amounts appropriated for this  
38 specific purpose, the department of community, trade, and economic

1 development shall provide grants to counties and cities participating  
2 in the pilot program authorized under this section. The grants shall  
3 be for reimbursing jurisdictions for local government personnel costs  
4 attributable to participating in a collaborative design project.

5 (6) This act does not limit or otherwise modify the level of  
6 environmental analysis, protection, and mitigation required or  
7 authorized by this chapter and chapters 43.21C and 90.58 RCW.

8 (7) The office of regulatory assistance shall report its findings  
9 and recommendations to the appropriate committees of the house of  
10 representatives and the senate by December 31, 2009.

11 (8) This section expires December 31, 2009.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW  
13 to read as follows:

14 (1) A county or city participating in the pilot program authorized  
15 under section 1 of this act may, by ordinance or resolution, allow  
16 variances in the application of development regulations adopted under  
17 RCW 36.70A.040 for collaborative design projects if the project and  
18 associated permits and approvals provide a level of environmental  
19 analysis, protection, and mitigation that is at least equal to the  
20 level required by the county or city's applicable comprehensive plan  
21 and development regulations adopted under this chapter.

22 (2) This section expires December 31, 2009.

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

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

30 (a) Utilize a systematic interdisciplinary approach which will  
31 insure the integrated use of the natural and social sciences and the  
32 environmental design arts;

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

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

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

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

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

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

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

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

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

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

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

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

37 (g) An historic, cultural, scientific, and educational element for

1 the protection and restoration of buildings, sites, and areas having  
2 historic, cultural, scientific, or educational values;

3 (h) An element that gives consideration to the statewide interest  
4 in the prevention and minimization of flood damages; and

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

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

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

14 (5)(a) Each master program shall contain provisions to allow for  
15 the varying of the application of use regulations of the program,  
16 including provisions for permits for conditional uses and variances, to  
17 insure that strict implementation of a program will not create  
18 unnecessary hardships or thwart the policy enumerated in RCW 90.58.020.  
19 Except as provided in (b) of this subsection, any such varying shall be  
20 allowed only if extraordinary circumstances are shown ((and)).  
21 Variances are allowed only when the public interest suffers no  
22 substantial detrimental effect. The concept of this subsection (5)(a)  
23 shall be incorporated in the rules adopted by the department relating  
24 to the establishment of a permit system as provided in RCW  
25 90.58.140(3).

26 (b) Until December 31, 2009, a county or city participating in the  
27 pilot program authorized under section 1 of this act may, by ordinance  
28 or resolution, allow variances in the application of use regulations of  
29 the master program for collaborative design projects if the project and  
30 associated permits and approvals provide a level of environmental  
31 analysis, protection, and mitigation that is at least equal to the  
32 level required by the county or city's applicable master program and  
33 use regulations adopted under this chapter.

34 (6) Each master program shall contain standards governing the  
35 protection of single family residences and appurtenant structures  
36 against damage or loss due to shoreline erosion. The standards shall  
37 govern the issuance of substantial development permits for shoreline  
38 protection, including structural methods such as construction of

1 bulkheads, and nonstructural methods of protection. The standards  
2 shall provide for methods which achieve effective and timely protection  
3 against loss or damage to single family residences and appurtenant  
4 structures due to shoreline erosion. The standards shall provide a  
5 preference for permit issuance for measures to protect single family  
6 residences occupied prior to January 1, 1992, where the proposed  
7 measure is designed to minimize harm to the shoreline natural  
8 environment.

9 **Sec. 4.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to  
10 read as follows:

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

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

18 A permit shall be granted:

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

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

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

32 (4) Except as otherwise specifically provided in subsection (11) of  
33 this section, the local government shall require notification of the  
34 public of all applications for permits governed by any permit system  
35 established pursuant to subsection (3) of this section by ensuring that  
36 notice of the application is given by at least one of the following  
37 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 construction  
23 pursuant to a permit will not begin or be authorized until twenty-one  
24 days from the date the permit decision was filed as provided in  
25 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 authority  
2 of this section, whether it is an approval or a denial, shall,  
3 concurrently with the transmittal of the ruling to the applicant, be  
4 filed with the department and the attorney general. With regard to a  
5 permit other than a permit governed by subsection (10) of this section,  
6 "date of filing" as used (~~herein~~) in this section means the date of  
7 actual receipt by the department. With regard to a permit for a  
8 variance or a conditional use, "date of filing" means:

9 (a) The date a decision of the department rendered on the permit  
10 pursuant to subsection (10)(a) of this section is transmitted by the  
11 department to the local government. The department shall notify in  
12 writing the local government and the applicant of the date of filing;  
13 or

14 (b) The date a decision of the local government rendered on the  
15 permit under subsection (10)(b) of this section is transmitted by the  
16 local government to the department.

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

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

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

1       (10)(a) Except as provided in (b) of this subsection, any permit  
2 for a variance or a conditional use by local government under approved  
3 master programs must be submitted to the department for its approval or  
4 disapproval.

5       **(b) Until December 31, 2009, permits for variances or conditional**  
6 **uses under an approved master program requested of a county or city**  
7 **participating in the pilot program authorized under section 1 of this**  
8 **act shall be approved or disapproved by the applicable county or city.**

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

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

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

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

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

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

30       (ii) Will serve an existing use in compliance with this chapter;  
31 and

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

34       **NEW SECTION. Sec. 5.** A new section is added to chapter 43.21C RCW  
35 to read as follows:

36       (1) A county or city participating in the pilot program authorized  
37 under section 1 of this act may, by ordinance or resolution, establish

1 categorical exemptions from the requirements of this chapter for  
2 collaborative design projects. An exemption may be adopted by a county  
3 or city under this section if it meets the following criteria:

4 (a) The project and associated permits and approvals issued  
5 pursuant to a collaborative design project provide a level of  
6 environmental analysis, protection, and mitigation that is at least  
7 equal to the level required by the county or city's applicable  
8 comprehensive land use plan and development regulations adopted under  
9 chapter 36.70A RCW;

10 (b) The county or city's applicable comprehensive plan was  
11 previously subjected to environmental analysis through an environmental  
12 impact statement under the requirements of this chapter prior to  
13 adoption;

14 (c) The project and associated permits and approvals issued  
15 pursuant to a collaborative design project provide a level of  
16 environmental analysis, protection, and mitigation that is at least  
17 equal to the level required by the county or city's applicable master  
18 program and use regulations adopted under chapter 90.58 RCW; and

19 (d) The county or city's applicable shoreline master program was  
20 previously subjected to environmental analysis through an environmental  
21 impact statement under the requirements of this chapter prior to  
22 adoption.

23 (2) Subsection (1)(c) and (d) of this section shall apply only if  
24 the collaborative design project is proposed for an area subject to the  
25 jurisdiction of chapter 90.58 RCW.

26 (3) An exemption adopted under this section applies even if it  
27 differs from the categorical exemptions adopted by rule of the  
28 department under RCW 43.21C.110(1)(a).

29 (4) This section expires December 31, 2009.

30 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this  
31 act, referencing this act by bill or chapter number, is not provided by  
32 June 30, 2006, in the omnibus appropriations act, this act is null and  
33 void.

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