

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6128

52nd Legislature
1992 Regular Session

Passed by the Senate March 12, 1992
Yeas 47 Nays 0

President of the Senate

Passed by the House March 11, 1992
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6128** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6128

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By Senators Owen and Amondson

Read first time 01/17/92. Referred to Committee on Environment & Natural Resources.

1 AN ACT Relating to erosion of shoreline uplands used for
2 residential purposes; and amending RCW 90.58.020, 90.58.100, and
3 90.58.140.

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

5 **Sec. 1.** RCW 90.58.020 and 1982 1st ex.s. c 13 s 1 are each amended
6 to read as follows:

7 The legislature finds that the shorelines of the state are among
8 the most valuable and fragile of its natural resources and that there
9 is great concern throughout the state relating to their utilization,
10 protection, restoration, and preservation. In addition it finds that
11 ever increasing pressures of additional uses are being placed on the
12 shorelines necessitating increased coordination in the management and
13 development of the shorelines of the state. The legislature further
14 finds that much of the shorelines of the state and the uplands adjacent
15 thereto are in private ownership; that unrestricted construction on the

1 privately owned or publicly owned shorelines of the state is not in the
2 best public interest; and therefore, coordinated planning is necessary
3 in order to protect the public interest associated with the shorelines
4 of the state while, at the same time, recognizing and protecting
5 private property rights consistent with the public interest. There is,
6 therefor, a clear and urgent demand for a planned, rational, and
7 concerted effort, jointly performed by federal, state, and local
8 governments, to prevent the inherent harm in an uncoordinated and
9 piecemeal development of the state's shorelines.

10 It is the policy of the state to provide for the management of the
11 shorelines of the state by planning for and fostering all reasonable
12 and appropriate uses. This policy is designed to insure the
13 development of these shorelines in a manner which, while allowing for
14 limited reduction of rights of the public in the navigable waters, will
15 promote and enhance the public interest. This policy contemplates
16 protecting against adverse effects to the public health, the land and
17 its vegetation and wildlife, and the waters of the state and their
18 aquatic life, while protecting generally public rights of navigation
19 and corollary rights incidental thereto.

20 The legislature declares that the interest of all of the people
21 shall be paramount in the management of shorelines of state-wide
22 significance. The department, in adopting guidelines for shorelines of
23 state-wide significance, and local government, in developing master
24 programs for shorelines of state-wide significance, shall give
25 preference to uses in the following order of preference which:

26 (1) Recognize and protect the state-wide interest over local
27 interest;

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

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

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

1 (5) Increase public access to publicly owned areas of the
2 shorelines;

3 (6) Increase recreational opportunities for the public in the
4 shoreline;

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

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

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

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

7 **Sec. 2.** RCW 90.58.100 and 1991 c 322 s 32 are each amended to read
8 as follows:

9 (1) The master programs provided for in this chapter, when adopted
10 and approved by the department, as appropriate, shall constitute use
11 regulations for the various shorelines of the state. In preparing the
12 master programs, and any amendments thereto, the department and local
13 governments shall to the extent feasible:

14 (a) Utilize a systematic interdisciplinary approach which will
15 insure the integrated use of the natural and social sciences and the
16 environmental design arts;

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

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

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

26 (e) Utilize all available information regarding hydrology,
27 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 shall include, when appropriate, the
5 following:

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

10 (b) A public access element making provision for public access to
11 publicly owned areas;

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

15 (d) A circulation element consisting of the general location and
16 extent of existing and proposed major thoroughfares, transportation
17 routes, terminals, and other public utilities and facilities, all
18 correlated with the shoreline use element;

19 (e) A use element which considers the proposed general distribution
20 and general location and extent of the use on shorelines and adjacent
21 land areas for housing, business, industry, transportation,
22 agriculture, natural resources, recreation, education, public buildings
23 and grounds, and other categories of public and private uses of the
24 land;

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

28 (g) An historic, cultural, scientific, and educational element for
29 the protection and restoration of buildings, sites, and areas having
30 historic, cultural, scientific, or educational values;

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

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

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

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

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

22 (6) Each master program shall contain standards governing the
23 protection of single family residences and appurtenant structures
24 against damage or loss due to shoreline erosion. The standards shall
25 govern the issuance of substantial development permits for shoreline
26 protection, including structural methods such as construction of
27 bulkheads, and nonstructural methods of protection. The standards
28 shall provide for methods which achieve effective and timely protection
29 against loss or damage to single family residences and appurtenant
30 structures due to shoreline erosion. The standards shall provide a

1 preference for permit issuance for measures to protect single family
2 residences occupied prior to January 1, 1992, where the proposed
3 measure is designed to minimize harm to the shoreline natural
4 environment.

5 **Sec. 3.** RCW 90.58.140 and 1990 c 201 s 2 are each amended to read
6 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 shorelines
12 of the state without first obtaining a permit from the government
13 entity having administrative jurisdiction under this chapter.

14 A permit shall be granted:

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

20 (b) After adoption or approval, as appropriate, by the department
21 of an applicable master program, only when the development proposed is
22 consistent with the applicable master program and the provisions of
23 chapter 90.58 RCW.

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

1 (4) Except as otherwise specifically provided in subsection (13) of
2 this section, the local government shall require notification of the
3 public of all applications for permits governed by any permit system
4 established pursuant to subsection (3) of this section by ensuring
5 that:

6 (a) A notice of such an application is published at least once a
7 week on the same day of the week for two consecutive weeks in a legal
8 newspaper of general circulation within the area in which the
9 development is proposed; and

10 (b) Additional notice of such an application is given by at least
11 one of the following methods:

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

16 (ii) Posting of the notice in a conspicuous manner on the property
17 upon which the project is to be constructed; or

18 (iii) Any other manner deemed appropriate by local authorities to
19 accomplish the objectives of reasonable notice to adjacent landowners
20 and the public.

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

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

4 (5) The system shall include provisions to assure that construction
5 pursuant to a permit will not begin or be authorized until thirty days
6 from the date the final order was filed as provided in subsection (6)
7 of this section; or until all review proceedings are terminated if the
8 proceedings were initiated within thirty days from the date of filing
9 as defined in subsection (6) of this section except as follows:

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

15 (b) If a permit is granted by the local government and (i) the
16 granting of the permit is appealed to the shorelines hearings board
17 within thirty days of the date of filing, (ii) the hearings board
18 approves the granting of the permit by the local government or approves
19 a portion of the substantial development for which the local government
20 issued the permit, and (iii) an appeal for judicial review of the
21 hearings board decision is filed pursuant to chapter 34.05 RCW, the
22 permittee may request, within ten days of the filing of the appeal with
23 the court, a hearing before the court to determine whether construction
24 may begin pursuant to the permit approved by the hearings board or to
25 a revised permit issued pursuant to the order of the hearings board.
26 If, at the conclusion of the hearing, the court finds that construction
27 pursuant to such a permit would not involve a significant, irreversible
28 damaging of the environment, the court may allow the permittee to begin
29 the construction pursuant to the approved or revised permit as the
30 court deems appropriate. The court may require the permittee to post

1 bonds, in the name of the local government that issued the permit,
2 sufficient to remove the substantial development or to restore the
3 environment if the permit is ultimately disapproved by the courts, or
4 to alter the substantial development if the alteration is ultimately
5 ordered by the courts. Construction pursuant to a permit revised at
6 the direction of the hearings board may begin only on that portion of
7 the substantial development for which the local government had
8 originally issued the permit, and construction pursuant to such a
9 revised permit on other portions of the substantial development may not
10 begin until after all review proceedings are terminated. In such a
11 hearing before the court, the burden of proving whether the
12 construction may involve significant irreversible damage to the
13 environment and demonstrating whether such construction would or would
14 not be appropriate is on the appellant;

15 (c) If a permit is granted by the local government and the granting
16 of the permit is appealed directly to the superior court for judicial
17 review pursuant to the proviso in RCW 90.58.180(1), the permittee may
18 request the court to remand the appeal to the shorelines hearings
19 board, in which case the appeal shall be so remanded and construction
20 pursuant to such a permit shall be governed by the provisions of
21 subsection (b) of this subsection or may otherwise begin after review
22 proceedings before the hearings board are terminated if judicial review
23 is not thereafter requested pursuant to chapter 34.05 RCW;

24 (d) If the permit is for a substantial development meeting the
25 requirements of subsection (13) of this section, construction pursuant
26 to that permit may not begin or be authorized until thirty days from
27 the date the final order was filed as provided in subsection (6) of
28 this section.

29 If a permittee begins construction pursuant to subsections (a),
30 (b), (c), or (d) of this subsection, the construction is begun at the

1 permittee's own risk. If, as a result of judicial review, the courts
2 order the removal of any portion of the construction or the restoration
3 of any portion of the environment involved or require the alteration of
4 any portion of a substantial development constructed pursuant to a
5 permit, the permittee is barred from recovering damages or costs
6 involved in adhering to such requirements from the local government
7 that granted the permit, the hearings board, or any appellant or
8 intervener.

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

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

27 (8) Any permit may, after a hearing with adequate notice to the
28 permittee and the public, be rescinded by the issuing authority upon
29 the finding that a permittee has not complied with conditions of a
30 permit. If the department is of the opinion that noncompliance exists,

1 the department shall provide written notice to the local government and
2 the permittee. If the department is of the opinion that the
3 noncompliance continues to exist thirty days after the date of the
4 notice, and the local government has taken no action to rescind the
5 permit, the department may petition the hearings board for a rescission
6 of the permit upon written notice of the petition to the local
7 government and the permittee if the request by the department is made
8 to the hearings board within fifteen days of the termination of the
9 thirty-day notice to the local government.

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

13 (10) A permit shall not be required for any development on
14 shorelines of the state included within a preliminary or final plat
15 approved by the applicable state agency or local government before
16 April 1, 1971, if:

17 (a) The final plat was approved after April 13, 1961, or the
18 preliminary plat was approved after April 30, 1969; and

19 (b) The development is completed within two years after June 1,
20 1971.

21 (11) The applicable state agency or local government is authorized
22 to approve a final plat with respect to shorelines of the state
23 included within a preliminary plat approved after April 30, 1969, and
24 before April 1, 1971: PROVIDED, That any substantial development
25 within the platted shorelines of the state is authorized by a permit
26 granted pursuant to this section, or does not require a permit as
27 provided in subsection (10) of this section, or does not require a
28 permit because of substantial development occurred before June 1, 1971.

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

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

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

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

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

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

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

25 (~~(b)~~ ~~[(iii)]~~) (ii) Will serve an existing use in compliance with
26 this chapter; and

27 (~~(c)~~ ~~[(iii)]~~) (iii) Will not extend more than twenty-five hundred
28 linear feet within the shorelines of the state.