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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: H-1530.1/99

ATTY/TYPIST: KT:mos

BRIEF TITLE:

2 HB 1191 - H COMM AMD

3 By Committee on Agriculture & Ecology

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 90.58.140 and 1995 c 347 s 309 are each amended to  
8 read as follows:

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

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

16 A permit shall be granted:

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

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

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

30 (4) Except as otherwise specifically provided in subsection (11) of  
31 this section, the local government shall require notification of the  
32 public of all applications for permits governed by any permit system  
33 established pursuant to subsection (3) of this section by ensuring that  
34 notice of the application is given by at least one of the following  
35 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  
39 permit by the local government or approves a portion of the substantial

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

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

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

37 (6) Any decision on an application for a permit under the authority  
38 of this section, whether it is an approval or a denial, shall,  
39 concurrently with the transmittal of the ruling to the applicant, be

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

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

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

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

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

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

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

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

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

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

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

17 (ii) Will serve an existing use in compliance with this chapter;  
18 and

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

21 (12)(a) For a temporary use of a shoreline location for motion  
22 picture production, a two-tier permit system is authorized.

23 (b) A general substantial development permit shall be available for  
24 a motion picture project in a shoreline within a county when all of the  
25 following apply:

26 (i) The local government determines the project will be consistent  
27 with the local shoreline master program and all applicable land use  
28 plans and development regulations;

29 (ii) The person seeking the general substantial development permit  
30 completes a state environmental policy act checklist for the use of a  
31 particular shoreline location and provides it to the appropriate local  
32 government;

33 (iii) The motion picture project will have no significant adverse  
34 impact on the environment, including, but not limited to:

35 (A) Fish or wildlife;

36 (B) Fish or wildlife habitat;

37 (C) Water quality; or

38 (D) Aesthetic values;

1       (iv) The project will not interfere with the normal public use of  
2 shorelines of the state;

3       (v) The project proponent agrees to restore the area of shoreline  
4 used for the project to the condition that existed prior to the  
5 project, or to an improved condition, within the one-year period  
6 identified in the general substantial development permit;

7       (vi) The project and its associated site restoration and mitigation  
8 shall both be completed within a one-year period as identified in the  
9 permit; and

10       (vii) A public hearing is held by the county prior to the issuance  
11 of a general substantial development permit for motion picture  
12 production. All other provisions of this section shall apply to a  
13 general substantial development permit for motion picture production.

14       (c) A person who holds a general substantial development permit for  
15 motion picture production shall apply for a site-specific permit at  
16 least sixty days prior to the start of the motion picture project  
17 authorized in the general permit. The site-specific permit shall be  
18 granted when all of the following apply:

19       (i) The person seeking the site-specific permit notifies all  
20 property owners within three hundred feet of the proposed site of his  
21 or her intention to use the site;

22       (ii) An environmental assessment of the existing conditions of the  
23 shoreline of the state to be used for the motion picture project, and  
24 a mitigation and restoration plan for same, are provided to the local  
25 government. The mitigation and restoration plan shall be provided to  
26 the local government for review no later than thirty days prior to the  
27 start of the project. The mitigation and restoration plan must be  
28 consistent with the local shoreline master program and with all  
29 applicable land use plans and development regulations. The mitigation  
30 and restoration plan must be approved by the local government before  
31 the motion picture project may begin within shorelines of the state.  
32 The mitigation and restoration plan shall be implemented within the  
33 one-year period authorized for the project under (b) of this  
34 subsection; and

35       (iii) A performance bond is provided to the local government before  
36 the start of a motion picture project to ensure the mitigation and  
37 restoration plan is satisfactorily completed.

1       (d) A local government shall grant a site-specific permit to an  
2 applicant no later than two weeks after all of the conditions in (c) of  
3 this subsection have been met."

4       Correct the title.

EFFECT: A two-tier permit system for motion picture production is added to the substantial development permit section of the Shoreline Management Act. The approach allows a substantial development permit to be acquired in two steps: a general permit is provided for a term of up to one year if it contains all of the required provisions for a general permit, including a public hearing. When a general permit has been obtained, a site-specific permit may be applied for. The site-specific permit requires notification of adjacent property owners, a site-specific environmental assessment, a mitigation and restoration plan, and a performance bond. A local government is required to issue a site-specific permit no later than two weeks after the conditions for a site-specific permit have been met.

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