
ENGROSSED SENATE BILL 6128

State of Washington

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By Senators Owen and Amondson

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1 AN ACT Relating to erosion of shoreline uplands used for
2 residential purposes; and amending RCW 90.58.020, 90.58.100, 90.58.140,
3 and 84.70.010.

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

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

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

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

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

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

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

- 1 (4) Protect the resources and ecology of the shoreline;
- 2 (5) Increase public access to publicly owned areas of the
3 shorelines;
- 4 (6) Increase recreational opportunities for the public in the
5 shoreline;
- 6 (7) Provide for any other element as defined in RCW 90.58.100
7 deemed appropriate or necessary.

8 In the implementation of this policy the public's opportunity to
9 enjoy the physical and aesthetic qualities of natural shorelines of the
10 state shall be preserved to the greatest extent feasible consistent
11 with the overall best interest of the state and the people generally.
12 To this end uses shall be preferred which are consistent with control
13 of pollution and prevention of damage to the natural environment, or
14 are unique to or dependent upon use of the state's shoreline.
15 Alterations of the natural condition of the shorelines of the state, in
16 those limited instances when authorized, shall be given priority for
17 single family residences and their appurtenant structures, ports,
18 shoreline recreational uses including but not limited to parks,
19 marinas, piers, and other improvements facilitating public access to
20 shorelines of the state, industrial and commercial developments which
21 are particularly dependent on their location on or use of the
22 shorelines of the state and other development that will provide an
23 opportunity for substantial numbers of the people to enjoy the
24 shorelines of the state. Alterations of the natural condition of the
25 shorelines and wetlands of the state shall be recognized by the
26 department. Shorelines and wetlands of the state shall be
27 appropriately classified and these classifications shall be revised
28 when circumstances warrant regardless of whether the change in
29 circumstances occurs through man-made causes or natural causes. Any
30 areas resulting from alterations of the natural condition of the

1 shorelines and wetlands of the state no longer meeting the definition
2 of "shorelines of the state" shall not be subject to the provisions of
3 chapter 90.58 RCW.

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

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

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

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

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

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

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

27 (e) Utilize all available information regarding hydrology,
28 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 issuance of substantial development permits for the placement of
24 bulkheads or other measures to protect single family residences and
25 their appurtenant structures from damage or loss due to shoreline
26 erosion. The standards shall provide a preference for permit issuance
27 for measures to protect single family residences occupied prior to
28 January 1, 1992, where the proposed measure is designed to minimize
29 harm to the shoreline natural environment.

1 **Sec. 3.** RCW 90.58.140 and 1990 c 201 s 2 are each amended to read
2 as follows:

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

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

10 A permit shall be granted:

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

16 (b) After adoption or approval, as appropriate, by the department
17 of an applicable master program, only when the development proposed is
18 consistent with the applicable master program and the provisions of
19 chapter 90.58 RCW.

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

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

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

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

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

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

13 (iii) Any other manner deemed appropriate by local authorities to
14 accomplish the objectives of reasonable notice to adjacent landowners
15 and the public.

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

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

28 (5) The system shall include provisions to assure that construction
29 pursuant to a permit will not begin or be authorized until thirty days
30 from the date the final order was filed as provided in subsection (6)

1 of this section; or until all review proceedings are terminated if the
2 proceedings were initiated within thirty days from the date of filing
3 as defined in subsection (6) of this section except as follows:

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

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

1 the substantial development for which the local government had
2 originally issued the permit, and construction pursuant to such a
3 revised permit on other portions of the substantial development may not
4 begin until after all review proceedings are terminated. In such a
5 hearing before the court, the burden of proving whether the
6 construction may involve significant irreversible damage to the
7 environment and demonstrating whether such construction would or would
8 not be appropriate is on the appellant;

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

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

23 If a permittee begins construction pursuant to subsections (a),
24 (b), (c), or (d) of this subsection, the construction is begun at the
25 permittee's own risk. If, as a result of judicial review, the courts
26 order the removal of any portion of the construction or the restoration
27 of any portion of the environment involved or require the alteration of
28 any portion of a substantial development constructed pursuant to a
29 permit, the permittee is barred from recovering damages or costs
30 involved in adhering to such requirements from the local government

1 that granted the permit, the hearings board, or any appellant or
2 intervener.

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

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

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

1 government and the permittee if the request by the department is made
2 to the hearings board within fifteen days of the termination of the
3 thirty-day notice to the local government.

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

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

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

13 (b) The development is completed within two years after June 1,
14 1971.

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

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

26 (13)(a) An application for a substantial development permit for a
27 limited utility extension or for the construction of a bulkhead or
28 other measures to protect a single family residence and its appurtenant
29 structures from shoreline erosion shall be subject to the following
30 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 (~~(b)-(iii)~~) (ii) Will serve an existing use in compliance with
18 this chapter; and

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

21 **Sec. 4.** RCW 84.70.010 and 1987 c 319 s 6 are each amended to read
22 as follows:

23 (1) If, on or before December 31 in any calendar year, any real or
24 personal property placed upon the assessment roll of that year is
25 destroyed in whole or in part, or is in an area that has been declared
26 a disaster area by the governor and has been reduced in value by more
27 than twenty percent as a result of a natural disaster, the true cash
28 value of such property shall be reduced for that year by an amount
29 determined as follows:

1 (a) First take the true cash value of such taxable property before
2 destruction or reduction in value and deduct therefrom the true cash
3 value of the remaining property after destruction or reduction in
4 value.

5 (b) Then divide any amount remaining by the number of days in the
6 year and multiply the quotient by the number of days remaining in the
7 calendar year after the date of the destruction or reduction in value
8 of the property.

9 (2) No reduction in the true cash value shall be made more than
10 three years after the date of destruction or reduction in value.

11 (3) The assessor shall make such reduction on his or her own
12 motion; however, the taxpayer may make application for reduction on
13 forms prepared by the department and provided by the assessor. The
14 assessor shall notify the taxpayer of the amount of reduction.

15 (4) If destroyed property is replaced prior to the valuation dates
16 contained in RCW 36.21.080 and 36.21.090, the total taxable value for
17 that year shall not exceed the value as of the appropriate valuation
18 date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

19 (5) The taxpayer may appeal the amount of reduction to the county
20 board of equalization within thirty days of notification or July 15th
21 of the year of reduction, whichever is later. The board shall
22 reconvene, if necessary, to hear the appeal.

23 (6) This section shall apply to the loss of upland real property
24 due to shoreline erosion regardless of whether the loss was caused by
25 a sudden occurrence or by gradual erosion from the time the taxpayer
26 acquired the property.