
HOUSE BILL 1591

State of Washington 60th Legislature 2007 Regular Session

By Representatives Warnick and Hinkle

Read first time 01/23/2007. Referred to Committee on Local Government.

1 AN ACT Relating to access facilities in artificial lakes; amending
2 RCW 90.58.030, 90.58.100, 90.58.140, 79.105.240, and 79.105.430; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
6 importance of appropriate regulation of shorelines of the state. The
7 legislature also recognizes that the shoreline management act properly
8 acknowledges the importance of granting regulatory relief from
9 inflexible mandates by requiring local master programs to contain
10 allowances for varying the application of regulations. This
11 requirement exists to ensure that the strict implementation of
12 regulations do not create unnecessary hardships or thwart the policy of
13 the act. An example further emphasizing the importance of appropriate
14 variances can be found in provisions of the act that exempt the
15 construction of qualifying private, noncommercial docks from certain
16 regulatory requirements.

17 (2) Recognizing that appropriate regulatory variances are
18 consistent with established policy and effective protection measures,
19 the legislature intends to: (a) Exempt qualifying private,

1 noncommercial docks and boat lifts in artificial lakes, including Moses
2 Lake, from certain regulatory requirements; (b) define the term
3 "artificial lake"; and (c) require that such docks and boat lifts in
4 artificial lakes be granted local permitting preferences. The
5 legislature also intends to establish provisions for the department of
6 natural resources pertaining to dock and boat lifts on artificial
7 lakes.

8 **Sec. 2.** RCW 90.58.030 and 2003 c 321 s 2 are each amended to read
9 as follows:

10 As used in this chapter, unless the context otherwise requires, the
11 following definitions and concepts apply:

12 (1) Administration:

13 (a) "Department" means the department of ecology;

14 (b) "Director" means the director of the department of ecology;

15 (c) "Local government" means any county, incorporated city, or town
16 which contains within its boundaries any lands or waters subject to
17 this chapter;

18 (d) "Person" means an individual, partnership, corporation,
19 association, organization, cooperative, public or municipal
20 corporation, or agency of the state or local governmental unit however
21 designated;

22 (e) "Hearing board" means the shoreline hearings board established
23 by this chapter.

24 (2) Geographical:

25 (a) "Artificial lake" means a lake that was created, and is
26 principally supplemented, by rainfall and the artificial diversion or
27 storage of water through man-made improvements, such as Moses Lake;

28 (b) "Extreme low tide" means the lowest line on the land reached by
29 a receding tide;

30 ((~~b~~)) (c) "Ordinary high water mark" on all lakes, streams, and
31 tidal water is that mark that will be found by examining the bed and
32 banks and ascertaining where the presence and action of waters are so
33 common and usual, and so long continued in all ordinary years, as to
34 mark upon the soil a character distinct from that of the abutting
35 upland, in respect to vegetation as that condition exists on June 1,
36 1971, as it may naturally change thereafter, or as it may change
37 thereafter in accordance with permits issued by a local government or

1 the department: PROVIDED, That in any area where the ordinary high
2 water mark cannot be found, the ordinary high water mark adjoining salt
3 water shall be the line of mean higher high tide and the ordinary high
4 water mark adjoining fresh water shall be the line of mean high water;

5 ~~((e))~~ (d) "Shorelines of the state" are the total of all
6 "shorelines" and "shorelines of statewide significance" within the
7 state;

8 ~~((d))~~ (e) "Shorelines" means all of the water areas of the state,
9 including reservoirs, and their associated shorelands, together with
10 the lands underlying them; except (i) shorelines of statewide
11 significance; (ii) shorelines on segments of streams upstream of a
12 point where the mean annual flow is twenty cubic feet per second or
13 less and the wetlands associated with such upstream segments; and (iii)
14 shorelines on lakes less than twenty acres in size and wetlands
15 associated with such small lakes;

16 ~~((e))~~ (f) "Shorelines of statewide significance" means the
17 following shorelines of the state:

18 (i) The area between the ordinary high water mark and the western
19 boundary of the state from Cape Disappointment on the south to Cape
20 Flattery on the north, including harbors, bays, estuaries, and inlets;

21 (ii) Those areas of Puget Sound and adjacent salt waters and the
22 Strait of Juan de Fuca between the ordinary high water mark and the
23 line of extreme low tide as follows:

24 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

25 (B) Birch Bay--from Point Whitehorn to Birch Point,

26 (C) Hood Canal--from Tala Point to Foulweather Bluff,

27 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

28 and

29 (E) Padilla Bay--from March Point to William Point;

30 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
31 adjacent salt waters north to the Canadian line and lying seaward from
32 the line of extreme low tide;

33 (iv) Those lakes, whether natural, artificial, or a combination
34 thereof, with a surface acreage of one thousand acres or more measured
35 at the ordinary high water mark;

36 (v) Those natural rivers or segments thereof as follows:

37 (A) Any west of the crest of the Cascade range downstream of a

1 point where the mean annual flow is measured at one thousand cubic feet
2 per second or more,

3 (B) Any east of the crest of the Cascade range downstream of a
4 point where the annual flow is measured at two hundred cubic feet per
5 second or more, or those portions of rivers east of the crest of the
6 Cascade range downstream from the first three hundred square miles of
7 drainage area, whichever is longer;

8 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
9 this subsection (2)(~~(e)~~) (f);

10 (~~(f)~~) (g) "Shorelands" or "shoreland areas" means those lands
11 extending landward for two hundred feet in all directions as measured
12 on a horizontal plane from the ordinary high water mark; floodways and
13 contiguous floodplain areas landward two hundred feet from such
14 floodways; and all wetlands and river deltas associated with the
15 streams, lakes, and tidal waters which are subject to the provisions of
16 this chapter; the same to be designated as to location by the
17 department of ecology.

18 (i) Any county or city may determine that portion of a one-hundred-
19 year-flood plain to be included in its master program as long as such
20 portion includes, as a minimum, the floodway and the adjacent land
21 extending landward two hundred feet therefrom.

22 (ii) Any city or county may also include in its master program land
23 necessary for buffers for critical areas, as defined in chapter 36.70A
24 RCW, that occur within shorelines of the state, provided that forest
25 practices regulated under chapter 76.09 RCW, except conversions to
26 nonforest land use, on lands subject to the provisions of this
27 subsection (2)(~~(f)~~)(~~ii~~) (g)(~~ii~~) are not subject to additional
28 regulations under this chapter;

29 (~~(g)~~) (h) "Floodway" means those portions of the area of a river
30 valley lying streamward from the outer limits of a watercourse upon
31 which flood waters are carried during periods of flooding that occur
32 with reasonable regularity, although not necessarily annually, said
33 floodway being identified, under normal condition, by changes in
34 surface soil conditions or changes in types or quality of vegetative
35 ground cover condition. The floodway shall not include those lands
36 that can reasonably be expected to be protected from flood waters by
37 flood control devices maintained by or maintained under license from

1 the federal government, the state, or a political subdivision of the
2 state;

3 ((~~h~~)) (i) "Wetlands" means areas that are inundated or saturated
4 by surface water or ground water at a frequency and duration sufficient
5 to support, and that under normal circumstances do support, a
6 prevalence of vegetation typically adapted for life in saturated soil
7 conditions. Wetlands generally include swamps, marshes, bogs, and
8 similar areas. Wetlands do not include those artificial wetlands
9 intentionally created from nonwetland sites, including, but not limited
10 to, irrigation and drainage ditches, grass-lined swales, canals,
11 detention facilities, wastewater treatment facilities, farm ponds, and
12 landscape amenities, or those wetlands created after July 1, 1990, that
13 were unintentionally created as a result of the construction of a road,
14 street, or highway. Wetlands may include those artificial wetlands
15 intentionally created from nonwetland areas to mitigate the conversion
16 of wetlands.

17 (3) Procedural terms:

18 (a) "Guidelines" means those standards adopted to implement the
19 policy of this chapter for regulation of use of the shorelines of the
20 state prior to adoption of master programs. Such standards shall also
21 provide criteria to local governments and the department in developing
22 master programs;

23 (b) "Master program" shall mean the comprehensive use plan for a
24 described area, and the use regulations together with maps, diagrams,
25 charts, or other descriptive material and text, a statement of desired
26 goals, and standards developed in accordance with the policies
27 enunciated in RCW 90.58.020;

28 (c) "State master program" is the cumulative total of all master
29 programs approved or adopted by the department of ecology;

30 (d) "Development" means a use consisting of the construction or
31 exterior alteration of structures; dredging; drilling; dumping;
32 filling; removal of any sand, gravel, or minerals; bulkheading; driving
33 of piling; placing of obstructions; or any project of a permanent or
34 temporary nature which interferes with the normal public use of the
35 surface of the waters overlying lands subject to this chapter at any
36 state of water level;

37 (e) "Substantial development" shall mean any development of which
38 the total cost or fair market value exceeds five thousand dollars, or

1 any development which materially interferes with the normal public use
2 of the water or shorelines of the state. The dollar threshold
3 established in this subsection (3)(e) must be adjusted for inflation by
4 the office of financial management every five years, beginning July 1,
5 2007, based upon changes in the consumer price index during that time
6 period. "Consumer price index" means, for any calendar year, that
7 year's annual average consumer price index, Seattle, Washington area,
8 for urban wage earners and clerical workers, all items, compiled by the
9 bureau of labor and statistics, United States department of labor. The
10 office of financial management must calculate the new dollar threshold
11 and transmit it to the office of the code reviser for publication in
12 the Washington State Register at least one month before the new dollar
13 threshold is to take effect. The following shall not be considered
14 substantial developments for the purpose of this chapter:

15 (i) Normal maintenance or repair of existing structures or
16 developments, including damage by accident, fire, or elements;

17 (ii) Construction of the normal protective bulkhead common to
18 single family residences;

19 (iii) Emergency construction necessary to protect property from
20 damage by the elements;

21 (iv) Construction and practices normal or necessary for farming,
22 irrigation, and ranching activities, including agricultural service
23 roads and utilities on shorelands, and the construction and maintenance
24 of irrigation structures including but not limited to head gates,
25 pumping facilities, and irrigation channels. A feedlot of any size,
26 all processing plants, other activities of a commercial nature,
27 alteration of the contour of the shorelands by leveling or filling
28 other than that which results from normal cultivation, shall not be
29 considered normal or necessary farming or ranching activities. A
30 feedlot shall be an enclosure or facility used or capable of being used
31 for feeding livestock hay, grain, silage, or other livestock feed, but
32 shall not include land for growing crops or vegetation for livestock
33 feeding and/or grazing, nor shall it include normal livestock wintering
34 operations;

35 (v) Construction or modification of navigational aids such as
36 channel markers and anchor buoys;

37 (vi) Construction on shorelands by an owner, lessee, or contract
38 purchaser of a single family residence for his own use or for the use

1 of his or her family, which residence does not exceed a height of
2 thirty-five feet above average grade level and which meets all
3 requirements of the state agency or local government having
4 jurisdiction thereof, other than requirements imposed pursuant to this
5 chapter;

6 (vii) Construction of a dock, including a community dock, designed
7 for pleasure craft only, for the private noncommercial use of the
8 owner, lessee, or contract purchaser of single and multiple family
9 residences. This exception applies (~~(if either)~~): (A) In salt waters,
10 the fair market value of the dock does not exceed two thousand five
11 hundred dollars; (~~(or)~~) (B) in fresh waters, if the fair market value
12 of the dock does not exceed ten thousand dollars, but if subsequent
13 construction having a fair market value exceeding two thousand five
14 hundred dollars occurs within five years of completion of the prior
15 construction, the subsequent construction shall be considered a
16 substantial development for the purpose of this chapter; and (C) in
17 artificial lakes;

18 (viii) Construction of a boat lift including a community boat lift,
19 designed for pleasure craft only, for the private noncommercial use of
20 the owner, lessee, or contract purchaser of single and multiple family
21 residences. This exception applies only in artificial lakes;

22 (ix) Removal and reinstallation of a dock or boat lift in an
23 artificial lake if:

24 (A) The dock or lift was constructed in accordance with (e)(vii) or
25 (viii) of this subsection; and

26 (B) The reinstallation of the dock or lift is consistent with the
27 location and specifications of the removed structure and is completed
28 by the first day of June following the removal of the dock or lift;

29 (x) Operation, maintenance, or construction of canals, waterways,
30 drains, reservoirs, or other facilities that now exist or are hereafter
31 created or developed as a part of an irrigation system for the primary
32 purpose of making use of system waters, including return flow and
33 artificially stored ground water for the irrigation of lands;

34 (~~(ix)~~) (xi) The marking of property lines or corners on state
35 owned lands, when such marking does not significantly interfere with
36 normal public use of the surface of the water;

37 (~~(x)~~) (xii) Operation and maintenance of any system of dikes,

1 ditches, drains, or other facilities existing on September 8, 1975,
2 which were created, developed, or utilized primarily as a part of an
3 agricultural drainage or diking system;

4 ~~((xi))~~ (xiii) Site exploration and investigation activities that
5 are prerequisite to preparation of an application for development
6 authorization under this chapter, if:

7 (A) The activity does not interfere with the normal public use of
8 the surface waters;

9 (B) The activity will have no significant adverse impact on the
10 environment including, but not limited to, fish, wildlife, fish or
11 wildlife habitat, water quality, and aesthetic values;

12 (C) The activity does not involve the installation of a structure,
13 and upon completion of the activity the vegetation and land
14 configuration of the site are restored to conditions existing before
15 the activity;

16 (D) A private entity seeking development authorization under this
17 section first posts a performance bond or provides other evidence of
18 financial responsibility to the local jurisdiction to ensure that the
19 site is restored to preexisting conditions; and

20 (E) The activity is not subject to the permit requirements of RCW
21 90.58.550;

22 ~~((xii))~~ (xiv) The process of removing or controlling an aquatic
23 noxious weed, as defined in RCW 17.26.020, through the use of an
24 herbicide or other treatment methods applicable to weed control that
25 are recommended by a final environmental impact statement published by
26 the department of agriculture or the department jointly with other
27 state agencies under chapter 43.21C RCW.

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

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

35 (a) Utilize a systematic interdisciplinary approach which will
36 insure the integrated use of the natural and social sciences and the
37 environmental design arts;

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

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

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

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

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

15 (2) The master programs shall include, when appropriate, the
16 following:

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

22 (b) A public access element making provision for public access to
23 publicly owned areas;

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

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

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

37 (f) A conservation element for the preservation of natural

1 resources, including but not limited to scenic vistas, aesthetics, and
2 vital estuarine areas for fisheries and wildlife protection;

3 (g) An historic, cultural, scientific, and educational element for
4 the protection and restoration of buildings, sites, and areas having
5 historic, cultural, scientific, or educational values;

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

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

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

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

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

27 (6) Each master program shall contain standards governing the
28 protection of single family residences and appurtenant structures
29 against damage or loss due to shoreline erosion. The standards shall
30 govern the issuance of substantial development permits for shoreline
31 protection, including structural methods such as construction of
32 bulkheads, and nonstructural methods of protection. The standards
33 shall provide for methods which achieve effective and timely protection
34 against loss or damage to single family residences and appurtenant
35 structures due to shoreline erosion. The standards shall provide a
36 preference for permit issuance for measures to protect single family
37 residences occupied prior to January 1, 1992, where the proposed

1 measure is designed to minimize harm to the shoreline natural
2 environment.

3 (7) Each master program shall contain provisions providing a
4 preference for permit issuance for the construction of docks and boat
5 lifts, including community docks and boat lifts, in artificial lakes.
6 Docks and lifts subject to this subsection must be designed for
7 pleasure craft only and must be for the private noncommercial use of
8 owners, lessees, or contract purchasers of single and multiple family
9 residences. Master programs may not prohibit the construction of docks
10 or boat lifts in artificial lakes.

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

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

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

20 A permit shall be granted:

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

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

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

34 (4) Except as otherwise specifically provided in subsection (11) of
35 this section, the local government shall require notification of the
36 public of all applications for permits governed by any permit system

1 established pursuant to subsection (3) of this section by ensuring that
2 notice of the application is given by at least one of the following
3 methods:

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

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

10 (c) Any other manner deemed appropriate by local authorities to
11 accomplish the objectives of reasonable notice to adjacent landowners
12 and the public.

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

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

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

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

37 (b) Construction may be commenced no sooner than thirty days after
38 the date of the appeal of the board's decision is filed if a permit is

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

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

31 If a permittee begins construction pursuant to subsections (a),
32 (b), or (c) of this subsection, the construction is begun at the
33 permittee's own risk. If, as a result of judicial review, the courts
34 order the removal of any portion of the construction or the restoration
35 of any portion of the environment involved or require the alteration of
36 any portion of a substantial development constructed pursuant to a
37 permit, the permittee is barred from recovering damages or costs

1 involved in adhering to such requirements from the local government
2 that granted the permit, the hearings board, or any appellant or
3 intervener.

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

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

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

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

1 (10) 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 (11)(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 (ii) Will serve an existing use in compliance with this chapter;
26 and

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

29 (12) Local governments may not require permits for development
30 activities in artificial lakes if the activities do not qualify as
31 substantial development under RCW 90.58.030(3)(e).

32 **Sec. 5.** RCW 79.105.240 and 2005 c 155 s 147 are each amended to
33 read as follows:

34 Except as otherwise provided by this chapter, annual rent rates for
35 the lease of state-owned aquatic lands for water-dependent uses shall
36 be determined as follows:

1 (1)(a) The assessed land value, exclusive of improvements, as
2 determined by the county assessor, of the upland tax parcel used in
3 conjunction with the leased area or, if there are no such uplands, of
4 the nearest upland tax parcel used for water-dependent purposes divided
5 by the parcel area equals the upland value.

6 (b) The upland value times the area of leased aquatic lands times
7 thirty percent equals the aquatic land value.

8 (2) As of July 1, 1989, and each July 1st thereafter, the
9 department shall determine the real capitalization rate to be applied
10 to water-dependent aquatic land leases commencing or being adjusted
11 under subsection (3)(a) of this section in that fiscal year. The real
12 capitalization rate shall be the real rate of return, except that until
13 June 30, 1989, the real capitalization rate shall be five percent and
14 thereafter it shall not change by more than one percentage point in any
15 one year or be more than seven percent or less than three percent.

16 (3) The annual rent shall be:

17 (a) Determined initially, and redetermined every four years or as
18 otherwise provided in the lease, by multiplying the aquatic land value
19 times the real capitalization rate; and

20 (b) Adjusted by the inflation rate each year in which the rent is
21 not determined under (a) of this subsection.

22 (4) If the upland parcel used in conjunction with the leased area
23 is not assessed or has an assessed value inconsistent with the purposes
24 of the lease, the nearest comparable upland parcel used for similar
25 purposes shall be substituted and the lease payment determined in the
26 same manner as provided in this section.

27 (5) For the purposes of this section, "upland tax parcel" is a tax
28 parcel, some portion of which has upland characteristics. Filled
29 tidelands or shorelands with upland characteristics which abut state-
30 owned aquatic land shall be considered as uplands in determining
31 aquatic land values.

32 (6) The annual rent for filled state-owned aquatic lands that have
33 the characteristics of uplands shall be determined in accordance with
34 RCW 79.105.270 in those cases in which the state owns the fill and has
35 a right to charge for the fill.

36 (7) For docks and boat lifts, including community docks and boat
37 lifts, that are built and maintained above or on any aquatic lands

1 administered by the department and located on the bed of an artificial
2 lake, as that term is defined in RCW 90.58.030, the annual rent for
3 each dock or lift is ten dollars.

4 (8) For all new leases for other water-dependent uses, issued after
5 December 31, 1997, the initial annual water-dependent rent shall be
6 determined by the methods in subsections (1) through (6) of this
7 section.

8 **Sec. 6.** RCW 79.105.430 and 2005 c 155 s 106 are each amended to
9 read as follows:

10 (1)(a) The abutting residential owner to state-owned shorelands,
11 tidelands, or related beds of navigable waters, other than harbor areas
12 but including artificial lakes as that term is defined in RCW
13 90.58.030, may install and maintain without charge a dock on the areas
14 if used exclusively for private recreational purposes and the area is
15 not subject to prior rights, including any rights of upland, tideland,
16 or shoreland owners as provided in RCW 79.125.400, 79.125.460,
17 79.125.410, and 79.130.010. Residential owners abutting an artificial
18 lake may also install and maintain one boat lift without charge.

19 (b) The dock or boat lift cannot be sold or leased separately from
20 the upland residence(~~(. — The dock)~~) and cannot be used to moor boats
21 for commercial or residential use. (~~(This)~~)

22 (c) Permission granted under this subsection (1) is subject to
23 applicable local, state, and federal rules and regulations governing
24 location, design, construction, size, and length of the dock. Nothing
25 in this subsection (1) prevents the abutting owner from obtaining a
26 lease if otherwise provided by law.

27 (2) The abutting residential owner to state-owned shorelands,
28 tidelands, or related beds of navigable waters, other than harbor
29 areas, may install and maintain a mooring buoy without charge if the
30 boat that is moored to the buoy is used for private recreational
31 purposes, the area is not subject to prior rights, including any rights
32 of upland, tideland, or shoreland owners as provided in RCW 79.125.400,
33 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct
34 the use of mooring buoys previously authorized by the department.

35 (a) The buoy must be located as near to the upland residence as
36 practical, consistent with applicable rules and regulations and the

1 provisions of this section. The buoy must be located, or relocated if
2 necessary, to accommodate the use of lawfully installed and maintained
3 buoys.

4 (b) If two or more residential owners, who otherwise qualify for
5 free use under the provisions of this section, are in dispute over
6 assertion of rights to install and maintain a mooring buoy in the same
7 location, they may seek formal settlement through adjudication in
8 superior court for the county in which the buoy site is located. In
9 the adjudication, preference must be given to the residential owner
10 that first installed and continually maintained and used a buoy on that
11 site, if it meets all applicable rules, regulations, and provisions of
12 this section, and then to the owner of the residential property nearest
13 the site. Nothing in this section requires the department to mediate
14 or otherwise resolve disputes between residential owners over the use
15 of the same site for a mooring buoy.

16 (c) The buoy cannot be sold or leased separately from the abutting
17 residential property. The buoy cannot be used to moor boats for
18 commercial or residential use, nor to moor boats over sixty feet in
19 length.

20 (d) If the department determines that it is necessary for secure
21 moorage, the abutting residential owner may install and maintain a
22 second mooring buoy, under the same provisions as the first, the use of
23 which is limited to a second mooring line to the boat moored at the
24 first buoy.

25 (e) The permission granted in this subsection (2) is subject to
26 applicable local, state, and federal rules and regulations governing
27 location, design, installation, maintenance, and operation of the
28 mooring buoy, anchoring system, and moored boat. Nothing in this
29 subsection (2) prevents a boat owner from obtaining a lease if
30 otherwise provided by law. This subsection (2) also applies to areas
31 that have been designated by the commissioner or the fish and wildlife
32 commission as aquatic reserves.

33 (3) This permission to install and maintain a recreational dock or
34 mooring buoy may be revoked by the department, or the department may
35 direct the owner of a recreational dock or mooring buoy to relocate
36 their dock or buoy, if the department makes a finding of public
37 necessity to protect waterward access, ingress rights of other
38 landowners, public health or safety, or public resources.

1 Circumstances prompting a finding of public necessity may include, but
2 are not limited to, the dock, buoy, anchoring system, or boat posing a
3 hazard or obstruction to navigation or fishing, contributing to
4 degradation of aquatic habitat, or contributing to decertification of
5 shellfish beds otherwise suitable for commercial or recreational
6 harvest. The revocation may be appealed as provided for under RCW
7 79.105.160.

8 (4) Nothing in this section authorizes a boat owner to abandon a
9 vessel at a recreational dock, mooring buoy, or elsewhere.

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