

CHAPTER 292

[Substitute Senate Bill No. 4572]
SHORELINE MANAGEMENT

AN ACT Relating to shoreline management; amending RCW 90.58.030, 90.58.180, 90.58.190, and 90.58.210; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

*Sec. 1. Section 3, chapter 286, Laws of 1971 ex. sess. as last amended by section 2, chapter 13, Laws of 1982 1st ex. sess. and RCW 90.58.030 are each amended to read as follows:

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

(1) Administration:

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

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

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

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

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

(2) Geographical:

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

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying

them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of state-wide significance" means the following shorelines of the state:

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

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

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

(B) Birch Bay—from Point Whitehorn to Birch Point,

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

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

(E) Padilla Bay—from March Point to William Point;

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

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

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

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

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

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology: PROVIDED, That any county or city may determine that portion of a one-hundred-

year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom;

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

(3) Procedural terms:

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

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

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

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

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds ((one)) two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

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

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

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

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

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

(vi) Construction on wetlands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single family residence, the cost of which does not exceed ((two thousand five hundred dollars)) six thousand five hundred dollars, to be adjusted annually by the Implicit Price Deflator as computed by the United States Department of Commerce: PROVIDED, That the size design and location of the dock shall meet the requirements of local master programs;

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

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

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Any action commenced prior to December 31, 1982, pertaining to (A) the restoration of interim transportation services as may be necessary as a consequence of the destruction of the Hood Canal bridge, including, but

not limited to, improvements to highways, development of park and ride facilities, and development of ferry terminal facilities until a new or reconstructed Hood Canal bridge is open to traffic; and (B) the reconstruction of a permanent bridge at the site of the original Hood Canal bridge.

***Sec. 1 was partially vetoed, see message at end of chapter.**

Sec. 2. Section 18, chapter 286, Laws of 1971 ex. sess. as last amended by section 2, chapter 51, Laws of 1975-'76 2nd ex. sess. and RCW 90.58-.180 are each amended to read as follows:

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 as now or hereafter amended may seek review from the shorelines hearings board by filing a request for the same within thirty days of the date of filing as defined in RCW 90.58.140(6) as now or hereafter amended.

Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: PROVIDED, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the request for review filed pursuant to this section. The shorelines hearings board shall initially schedule review proceedings on such requests for review without regard as to whether such requests have or have not been certified or as to whether the period for the department or the attorney general to intervene has or has not expired, unless such review is to begin within thirty days of such scheduling. If at the end of the thirty day period for certification neither the department nor the attorney general has certified a request for review, the hearings board shall remove the request from its review schedule.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines hearings board and the appropriate local government within thirty days from the date the final order was filed as provided in RCW 90.58.140(6) as now or hereafter amended.

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.04 RCW pertaining

to procedures in contested cases. Judicial review of such proceedings of the shorelines hearings board may be had as provided in chapter 34.04 RCW.

(4) Local government may appeal to the shorelines hearings board any rules, regulations, or guidelines~~((, designations, or master programs for shorelines of the state))~~ adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

~~((a) In an appeal relating to a master program for shorelines, the board, after full consideration of the positions of the local government and the department, shall determine the validity of the master program.))~~ If the board determines that said ~~((program))~~ rule, regulation, or guideline:

~~((i))~~ (a) Is clearly erroneous in light of the policy of this chapter; or

~~((ii))~~ (b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

~~((iii))~~ (c) Is arbitrary and capricious; or

~~((iv))~~ (d) Was developed without fully considering and evaluating all ~~((proposed master programs))~~ material submitted to the department by the local government; or

~~((v))~~ (e) Was not adopted in accordance with required procedures; the board shall enter a final decision declaring the ~~((program))~~ rule, regulation, or guideline invalid, remanding the ~~((master program))~~ rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new ~~((master program))~~ rule, regulation, or guideline. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the ~~((master program))~~ rule, regulation, or guideline to be valid and enter a final decision to that effect.

~~((b) In an appeal relating to a master program for shorelines of state-wide significance the board shall approve the master program adopted by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the master program approved by the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.~~

~~((c) In an appeal relating to rules, regulations, guidelines, master programs of state-wide significance, and designations, the standard of review provided in RCW 34.04.070 shall apply.))~~

(5) Rules, regulations, ~~((designations, master programs,))~~ and guidelines shall be subject to review in superior court, if authorized pursuant to RCW 34.04.070: PROVIDED, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section is filed within three months after the date of final decision by the shorelines hearings board.

Sec. 3. Section 19, chapter 286, Laws of 1971 ex. sess. and RCW 90.58.190 are each amended to read as follows:

(1) The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. ((Each local government shall submit any proposed adjustments, to the department as soon as they are completed. No such adjustment shall become effective until it has been approved by the department.)) Any adjustments proposed by a local government to its master program shall be forwarded to the department for review. The department shall approve, reject, or propose modification to the adjustment. If the department either rejects or proposes modification to the master program adjustment, it shall provide substantive written comments as to why the proposal is being rejected or modified.

(2) Any local government aggrieved by the department's decision to approve, reject, or modify a proposed master program or master program adjustment may appeal the department's decision to the shorelines hearings board. In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program adjustment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's adjustment in light of the policy of RCW 90.58.020 and the applicable guidelines. In an appeal relating to shorelines of state-wide significance, the board shall uphold the decision by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the decision of the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines. Review by the hearings board shall be considered a contested case under chapter 34.04 RCW. The aggrieved local government shall have the burden of proof in all such reviews. Whenever possible, the review by the hearings board shall be heard within the county where the land subject to the proposed master program or master program adjustment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to the superior court of Thurston county.

(3) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program adjustment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program adjustment.

Sec. 4. Section 21, chapter 286, Laws of 1971 ex. sess. and RCW 90.58.210 are each amended to read as follows:

(1) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the

provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 9, 1986.

Passed the House March 5, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to one portion, Substitute Senate Bill No. 4572, entitled:

"AN ACT Relating to shoreline management."

Section 1(3)(c)(vii) of this bill, on page 5, lines 22 through 26, would increase from \$2,500 to \$6,500 the value of shoreline docks exempted from the permit requirement of the Shoreline Management Act.

One of the purposes of the Shoreline Management Act is to provide public review of proposed substantial developments on the state's shorelines. By requiring a permit for any proposed substantial development, as defined in the Act, the public is

afforded an opportunity to be notified of any substantial development and to comment on its consistency with the goals, policies and regulations of the local master program and of the Shoreline Management Act.

The change proposed to the definition in section 1(3)(c)(vii) would provide a blanket exemption from the permit and public review process for any dock with a value of up to \$6,500. Since docks of this value can have a substantial impact on the environment, create neighborhood conflicts and interfere with navigation, I do not believe such an exemption from the process is appropriate. I am therefore vetoing this portion of Substitute Senate Bill No. 4572.

With the exception of section 1(3)(c)(vii), Substitute Senate Bill No. 4572 is approved.*

CHAPTER 293

[Senate Bill No. 4691]

INDUSTRIAL INSURANCE—CHILD REDEFINED

AN ACT Relating to the definition of child for industrial insurance purposes; amending RCW 51.08.030; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 4, chapter 14, Laws of 1980 and RCW 51.08.030 are each amended to read as follows:

"Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

****NEW SECTION. Sec. 2. The director of the department of labor and industries shall appoint a temporary chiropractic advisory committee from health care professionals licensed under chapter 18.25 RCW. The committee shall consist of six members, three from eastern Washington and three from western Washington, who shall serve without compensation, with the director or the director's designee as chair. The committee shall assist in the development for the director's consideration of standards for the determination of temporary and permanent disability, standards for chiropractic treatment, care and practice, and a proposal for a chiropractic peer review program. The temporary chiropractic advisory committee established by this section shall cease to exist on June 30, 1987.***

*Sec. 2 was vetoed, see message at end of chapter.

Passed the Senate March 8, 1986.

Passed the House March 4, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.