
HOUSE BILL 2832

State of Washington

57th Legislature

2002 Regular Session

By Representatives Edwards, Mulliken, Kirby, O'Brien, Mielke, Armstrong, Doumit, Hatfield and Dunn

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1 AN ACT Relating to permits for a conditional use or variance issued
2 by local governments under approved master programs pursuant to the
3 shoreline management act; amending RCW 90.58.140; adding a new section
4 to chapter 90.58 RCW; creating a new section; providing an effective
5 date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that environmental
8 permit processes must provide protection for the resource, adequate
9 public involvement, and fairness to the permit applicants. The
10 legislature further finds that duplicative procedures should be
11 eliminated from these permit processes when they delay permit decisions
12 without providing any meaningful additional protection to the resource.

13 The shoreline management act allows local governments to issue both
14 conditional use permits and variance permits. Local governments may
15 only issue a permit for a variance or a conditional use under the
16 shoreline management act after providing extensive public notice and an
17 opportunity for public involvement. Conditional use and variance
18 permits, unlike substantial development permits, must be approved by
19 the department of ecology. The department can approve, deny, or

1 approve with conditions these permits. The legislature finds that this
2 process, which allows the department of ecology to impose additional
3 conditions on these two types of permits when the department often has
4 not been a participant in the public hearings, is an unnecessary step
5 that adds frustration and delay to the parties involved. The
6 legislature therefore finds that it is in the public interest to
7 eliminate the authority of the department of ecology to impose
8 conditions upon conditional use permits or variance permits issued
9 under the shoreline management act, and that instead the department
10 simply appeal any conditional use or variance permit which it finds
11 defective.

12 **Sec. 2.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
13 read as follows:

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

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

21 A permit shall be granted:

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

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

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

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

1 notice of the application is given by at least one of the following
2 methods:

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

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

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

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

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

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

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

36 (b) Construction may be commenced no sooner than thirty days after
37 the date of the appeal of the board's decision is filed if a permit is
38 granted by the local government and (i) the granting of the permit is
39 appealed to the shorelines hearings board within twenty-one days of the

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

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

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

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

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

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

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

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

38 (11)(a) An application for a substantial development permit for a
39 limited utility extension or for the construction of a bulkhead or

1 other measures to protect a single family residence and its appurtenant
2 structures from shoreline erosion shall be subject to the following
3 procedures:

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

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

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

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

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

20 (ii) Will serve an existing use in compliance with this chapter;
21 and

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

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.58 RCW
25 to read as follows:

26 (1) The department is not authorized to deny or impose new
27 conditions for a shoreline conditional use permit or a shoreline
28 variance permit authorized by a local government after May 1, 2002.
29 The local government issuing the conditional use or variance permit is
30 required to file the permit with the department in accordance with RCW
31 90.58.140(10). The department or any aggrieved party may seek review
32 of a conditional use or variance permit pursuant to RCW 90.58.180.

33 (2) For any conditional use or variance permit that was either
34 denied by the department or had conditions imposed upon it before May
35 1, 2002, and for which a final permit has not yet been issued, the
36 local government at its option may: (a) Continue to process the permit
37 with the conditions; or (b) notify the department in writing by June 1,
38 2002, that it is not accepting the permit conditions and is treating

1 the original permit issuance by the local government as final. The
2 department or any aggrieved party may seek review pursuant to RCW
3 90.58.180 of any conditional use or variance permit deemed as final
4 under this subsection by the local government.

5 (3) This section does not change the requirements or standards that
6 must be met for the issuance of a conditional use or variance permit.

7 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 May 1, 2002.

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