

2SHB 1662 - S AMD 291

By Senators Swecker, Ranker, Harper

PULLED 04/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.58.140 and 2010 c 210 s 36 are each amended to
4 read as follows:

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

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

12 A permit shall be granted:

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

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

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

26 (4) Except as otherwise specifically provided in subsection (11) of
27 this section, the local government shall require notification of the
28 public of all applications for permits governed by any permit system
29 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 of receipt as provided in subsection (6) of this
27 section; or until all review proceedings are terminated if the
28 proceedings were initiated within twenty-one days from the date of
29 receipt as defined in subsection (6) of this section except as follows:

30 (a) ~~((In the case of any permit issued to the state of Washington,~~
31 ~~department of transportation, for the construction and modification of~~
32 ~~SR 90 (I-90) on or adjacent to Lake Washington, the construction may~~
33 ~~begin after thirty days from the date of filing, and the permits are~~
34 ~~valid until December 31, 1995)) If an appeal is filed with the
35 shorelines hearings board, construction outside of the shoreland area
36 may be commenced in advance of final action on the appeal if the local
37 government makes a written finding that such work is not inconsistent
38 with any requirements of the applicable master program. Project~~

1 construction that occurs under the authority of this section is done at
2 the proponent's risk with the project proponent being responsible for
3 meeting the requirements of the final permit decision after appeal;

4 (b) Construction may be commenced no sooner than thirty days after
5 the date of the appeal of the board's decision is filed if a permit is
6 granted by the local government and (i) the granting of the permit is
7 appealed to the shorelines hearings board within twenty-one days of the
8 date of receipt, (ii) the hearings board approves the granting of the
9 permit by the local government or approves a portion of the substantial
10 development for which the local government issued the permit, and (iii)
11 an appeal for judicial review of the hearings board decision is filed
12 pursuant to chapter 34.05 RCW. The appellant may request, within ten
13 days of the filing of the appeal with the court, a hearing before the
14 court to determine whether construction pursuant to the permit approved
15 by the hearings board or to a revised permit issued pursuant to the
16 order of the hearings board should not commence. If, at the conclusion
17 of the hearing, the court finds that construction pursuant to such a
18 permit would involve a significant, irreversible damaging of the
19 environment, the court shall prohibit the permittee from commencing the
20 construction pursuant to the approved or revised permit until all
21 review proceedings are final. Construction pursuant to a permit
22 revised at the direction of the hearings board may begin only on that
23 portion of the substantial development for which the local government
24 had originally issued the permit, and construction pursuant to such a
25 revised permit on other portions of the substantial development may not
26 begin until after all review proceedings are terminated. In such a
27 hearing before the court, the burden of proving whether the
28 construction may involve significant irreversible damage to the
29 environment and demonstrating whether such construction would or would
30 not be appropriate is on the appellant;

31 (c) If the permit is for a substantial development meeting the
32 requirements of subsection (11) of this section, construction pursuant
33 to that permit may not begin or be authorized until twenty-one days
34 from the date of receipt as provided in subsection (6) of this section.

35 If a permittee begins construction pursuant to ((subsections)) (a),
36 (b), or (c) of this subsection, the construction is begun at the
37 permittee's own risk. If, as a result of judicial review, the courts
38 order the removal of any portion of the construction or the restoration

1 of any portion of the environment involved or require the alteration of
2 any portion of a substantial development constructed pursuant to a
3 permit, the permittee is barred from recovering damages or costs
4 involved in adhering to such requirements from the local government
5 that granted the permit, the hearings board, or any appellant or
6 intervener.

7 (6) Any decision on an application for a permit under the authority
8 of this section, whether it is an approval or a denial, shall,
9 concurrently with the transmittal of the ruling to the applicant, be
10 transmitted to the department and the attorney general. A petition for
11 review of such a decision must be commenced within twenty-one days from
12 the date of receipt of the decision. With regard to a permit other
13 than a permit governed by subsection (10) of this section, "date of
14 receipt" as used herein refers to the date that the applicant receives
15 written notice from the department that the department has received the
16 decision. With regard to a permit for a variance or a conditional use,
17 "date of receipt" means the date a local government or applicant
18 receives the written decision of the department rendered on the permit
19 pursuant to subsection (10) of this section. For the purposes of this
20 subsection, the term "date of receipt" has the same meaning as provided
21 in RCW 43.21B.001.

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

28 (8) Any permit may, after a hearing with adequate notice to the
29 permittee and the public, be rescinded by the issuing authority upon
30 the finding that a permittee has not complied with conditions of a
31 permit. If the department is of the opinion that noncompliance exists,
32 the department shall provide written notice to the local government and
33 the permittee. If the department is of the opinion that the
34 noncompliance continues to exist thirty days after the date of the
35 notice, and the local government has taken no action to rescind the
36 permit, the department may petition the hearings board for a rescission
37 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) Any permit for a variance or a conditional use by local
8 government under approved master programs must be submitted to the
9 department for its approval or disapproval.

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

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

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

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

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

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

31 (ii) Will serve an existing use in compliance with this chapter;
32 and

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

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1 On page 1, line 2 of the title, after "act;" strike the remainder
2 of the title and insert "and amending RCW 90.58.140."

EFFECT: Clarifies that if an appeal is filed with the shorelines hearings board, construction outside of the shoreland area may be commenced in advance of final action on the appeal if the local government makes a written finding that such work is not inconsistent with any requirements of the applicable master program. Also clarifies that project construction occurring under the authority of this section is done at the project proponent's risk.

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