
Local Government Committee

HB 2162

Brief Description: Addressing appeal and permit procedures under the shoreline management act.

Sponsors: Representatives Takko, Angel, Rivers, Blake, Springer and Dahlquist.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Amends provisions of the Shoreline Management Act governing whether construction on a project can be commenced in advance of a final decision on a permit by the Shorelines Hearings Board.

Hearing Date: 1/10/12

Staff: Kelly Pfundheller (786-7289).

Background:

The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines. The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in city and county shoreline master programs that regulate land use activities in shoreline areas of the state.

Substantial Development Permits.

The SMA requires a property owner or developer to obtain a substantial development permit for substantial developments within shorelands. "Substantial developments" include both developments with a total cost or fair market value exceeding \$5,000 and developments materially interfering with normal public shoreline or water use. "Shorelands" or "shoreland areas" refers to lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark. Certain exemptions to the substantial development permit requirement are specified in statute.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

While the SMA specifies standards for local governments to review and approve permit applications, the administration and enforcement of permit systems are performed primarily at the local level. Local governments must notify the Department of Ecology (DOE) of all permit decisions, and variance and conditional use permits are subject to approval by the DOE.

Commencement of Construction During the Review Process.

Any person aggrieved by the granting, denying, or rescinding of a permit may file a petition for review with the Shorelines Hearings Board (SHB) within 21 days of the permit decision. In circumstances where a permit is granted and a petition for review is subsequently filed, commencement of construction on the project is prohibited until the SHB's review proceedings are terminated.

If the granting of a permit by a local government is sustained by the SHB and appealed to superior court, the appellant may request a hearing to determine whether construction pursuant to the permit should not commence. If the court finds that construction would involve a significant, irreversible damaging of the environment, the court must prohibit commencement of construction until all review proceedings are final. Absent such a judicial finding, construction may commence no sooner than 30 days after the SHB's decision is filed to superior court.

Merkel v. Port of Brownsville (1973).

In *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 509 P.2d 390 (1973), the Washington Court of Appeals addressed a case where a developer did not obtain a substantial development permit prior to commencing construction in upland areas on a project that also involved shorelands. The Court determined that a single project with an interrelated effect on both uplands and shorelands cannot be divided into segments for the purposes of complying with the SMA and State Environmental Policy Act.

Summary of Bill:

The Legislature finds that the decision in *Merkel v. Port of Brownsville* impedes development by delaying construction outside shoreland areas, when such construction is part of a project with elements under appeal to the SHB. The Legislature intends to expressly authorize the commencement of development activity outside shoreland areas before final action has been taken on a related appeal as long as the local government finds that the work is not inconsistent with any requirement of the applicable master plan.

If a permit is issued and an appeal of the permit decision is subsequently filed with the SHB, construction outside of the shoreland area may be commenced in advance of final action on the appeal, provided that the local government makes a written finding that such work is not inconsistent with any requirements of the applicable master program.

Construction occurring under these circumstances is at the proponent's risk with the project proponent being responsible for meeting the requirements of the final permit decision after appeal.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.