

---

SECOND SUBSTITUTE HOUSE BILL 1662

---

State of Washington                      62nd Legislature                      2011 Regular Session

By House General Government Appropriations & Oversight (originally sponsored by Representatives Takko, Rodne, and Angel)

READ FIRST TIME 02/23/11.

1            AN ACT Relating to appeal and permit procedures under the shoreline  
2 management act; and amending RCW 90.58.140.

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

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

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

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

13           A permit shall be granted:

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

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

4 (3) The local government shall establish a program, consistent with  
5 rules adopted by the department, for the administration and enforcement  
6 of the permit system provided in this section. The administration of  
7 the system so established shall be performed exclusively by the local  
8 government.

9 (4) Except as otherwise specifically provided in subsection (11) of  
10 this section, the local government shall require notification of the  
11 public of all applications for permits governed by any permit system  
12 established pursuant to subsection (3) of this section by ensuring that  
13 notice of the application is given by at least one of the following  
14 methods:

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

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

21 (c) Any other manner deemed appropriate by local authorities to  
22 accomplish the objectives of reasonable notice to adjacent landowners  
23 and the public.

24 The notices shall include a statement that any person desiring to  
25 submit written comments concerning an application, or desiring to  
26 receive notification of the final decision concerning an application as  
27 expeditiously as possible after the issuance of the decision, may  
28 submit the comments or requests for decisions to the local government  
29 within thirty days of the last date the notice is to be published  
30 pursuant to this subsection. The local government shall forward, in a  
31 timely manner following the issuance of a decision, a copy of the  
32 decision to each person who submits a request for the decision.

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

36 (5) The system shall include provisions to assure that construction  
37 pursuant to a permit will not begin or be authorized until twenty-one  
38 days from the date of receipt as provided in subsection (6) of this

1 section; or until all review proceedings are terminated if the  
2 proceedings were initiated within twenty-one days from the date of  
3 receipt as defined in subsection (6) of this section except as follows:

4 ~~(a) ((In the case of any permit issued to the state of Washington,~~  
5 ~~department of transportation, for the construction and modification of~~  
6 ~~SR 90 (I-90) on or adjacent to Lake Washington, the construction may~~  
7 ~~begin after thirty days from the date of filing, and the permits are~~  
8 ~~valid until December 31, 1995))~~ Work outside the shoreland area may  
9 commence in advance of the issuance of the shoreline permit if the work  
10 outside the shoreland area does not depend on or require the work  
11 proposed within the shoreland area, and the local government finds that  
12 such work will not interfere with the goals of this chapter;

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

1 environment and demonstrating whether such construction would or would  
2 not be appropriate is on the appellant;

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

7 If a permittee begins construction pursuant to subsections (a),  
8 (b), or (c) of this subsection, the construction is begun at the  
9 permittee's own risk. If, as a result of judicial review, the courts  
10 order the removal of any portion of the construction or the restoration  
11 of any portion of the environment involved or require the alteration of  
12 any portion of a substantial development constructed pursuant to a  
13 permit, the permittee is barred from recovering damages or costs  
14 involved in adhering to such requirements from the local government  
15 that granted the permit, the hearings board, or any appellant or  
16 intervener.

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

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

1 (8) Any permit may, after a hearing with adequate notice to the  
2 permittee and the public, be rescinded by the issuing authority upon  
3 the finding that a permittee has not complied with conditions of a  
4 permit. If the department is of the opinion that noncompliance exists,  
5 the department shall provide written notice to the local government and  
6 the permittee. If the department is of the opinion that the  
7 noncompliance continues to exist thirty days after the date of the  
8 notice, and the local government has taken no action to rescind the  
9 permit, the department may petition the hearings board for a rescission  
10 of the permit upon written notice of the petition to the local  
11 government and the permittee if the request by the department is made  
12 to the hearings board within fifteen days of the termination of the  
13 thirty-day notice to the local government.

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

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

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

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

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

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

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

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

4 (ii) Will serve an existing use in compliance with this chapter;  
5 and

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

--- END ---