
SUBSTITUTE HOUSE BILL 2162

State of Washington

62nd Legislature

2012 Regular Session

By House Local Government (originally sponsored by Representatives Takko, Angel, Rivers, Blake, Springer, and Dahlquist)

READ FIRST TIME 01/31/12.

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

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the public
5 interest is served by amending the shoreline management act, chapter
6 90.58 RCW, to reduce the burden on permit applicants when the part of
7 the project within shoreline jurisdiction is appealed to the shorelines
8 hearings board.

9 The legislature intends to expressly authorize the commencement of
10 development activity landward of the shoreland area before a final
11 decision has been rendered by the shorelines hearings board on a
12 related shorelines appeal, as long as the local government and, for
13 conditional use permits and variances, the department of ecology find
14 that the development activity is not inconsistent with any requirement
15 of the applicable shoreline master program or the permit under appeal.
16 However, this authorization for development activity is not intended
17 to: (1) Result in a balancing of interests that subverts the intent of
18 the shoreline master program or the shoreline management act; (2)
19 result in vesting of any project except through the permit approval

1 process; or (3) result in piecemealing by the project proponent. The
2 legislature further intends that any work performed by the project
3 proponent under the authority of this act be solely at the risk of the
4 project proponent.

5 **Sec. 2.** RCW 90.58.140 and 2011 c 277 s 3 are each amended to read
6 as follows:

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

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

14 A permit shall be granted:

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

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

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

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

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

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

3 (c) Any other manner deemed appropriate by local authorities to
4 accomplish the objectives of reasonable notice to adjacent landowners
5 and the public.

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

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

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

25 (a) (~~In the case of any permit issued to the state of Washington,~~
26 ~~department of transportation, for the construction and modification of~~
27 ~~SR 90 (I-90) on or adjacent to Lake Washington, the construction may~~
28 ~~begin after thirty days from the date of filing, and the permits are~~
29 ~~valid until December 31, 1995)) If an appeal is filed with the
30 shorelines hearings board, construction landward of the shoreland area
31 may be commenced in advance of final action by the shorelines hearings
32 board if the local government, and the department for a conditional use
33 and variance permit, makes a written finding that the work is not
34 inconsistent with any requirement of the applicable master program or
35 the permit under appeal. Project construction that occurs under the
36 authority of this subsection is done at the proponent's risk with the
37 project proponent being responsible for meeting the requirements of the
38 final permit decision. During any judicial appeal of a permit~~

1 decision, a reviewing court may not consider the following as factors
2 favoring the project proponent: (i) The fact that construction
3 landward of the shoreland area was authorized under this subsection; or
4 (ii) the cost or value of the construction landward of the shoreland
5 area authorized under this subsection;

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

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

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

10 (6) Any decision on an application for a permit under the authority
11 of this section, whether it is an approval or a denial, shall,
12 concurrently with the transmittal of the ruling to the applicant, be
13 filed with the department and the attorney general. This shall be
14 accomplished by return receipt requested mail. A petition for review
15 of such a decision must be commenced within twenty-one days from the
16 date of filing of the decision.

17 (a) With regard to a permit other than a permit governed by
18 subsection (10) of this section, "date of filing" as used in this
19 section refers to the date of actual receipt by the department of the
20 local government's decision.

21 (b) With regard to a permit for a variance or a conditional use
22 governed by subsection (10) of this section, "date of filing" means the
23 date the decision of the department is transmitted by the department to
24 the local government.

25 (c) When a local government simultaneously transmits to the
26 department its decision on a shoreline substantial development with its
27 approval of either a shoreline conditional use permit or variance, or
28 both, "date of filing" has the same meaning as defined in (b) of this
29 subsection.

30 (d) The department shall notify in writing the local government and
31 the applicant of the date of filing by telephone or electronic means,
32 followed by written communication as necessary, to ensure that the
33 applicant has received the full written decision.

34 (7) Applicants for permits under this section have the burden of
35 proving that a proposed substantial development is consistent with the
36 criteria that must be met before a permit is granted. In any review of
37 the granting or denial of an application for a permit as provided in

1 RCW 90.58.180 (1) and (2), the person requesting the review has the
2 burden of proof.

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

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

19 (10) Any permit for a variance or a conditional use issued with
20 approval by a local government under their approved master program must
21 be submitted to the department for its approval or disapproval.

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

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

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

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

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

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

6 (ii) Will serve an existing use in compliance with this chapter;
7 and

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

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