

SHB 1864 - H AMD 422

By Representative Pedersen

ADOPTED 04/16/2013

1 On page 82, after line 13, insert the following:

2 "Sec. 711. RCW 90.58.140 and 2012 c 84 s 2 are each amended to
3 read as follows:

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

8 (2) A substantial development shall not be undertaken on
9 shorelines of the state without first obtaining a permit from the
10 government entity having administrative jurisdiction under this
11 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
16 their adoption, the guidelines and rules of the department; and (iii)
17 so far as can be ascertained, the master program being developed for
18 the area;

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

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

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

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

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

13 (c) Any other manner deemed appropriate by local authorities to
14 accomplish the objectives of reasonable notice to adjacent landowners
15 and the public.

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

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

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

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

6 (b)(i) In the case of any permit or decision to issue any permit
7 to the state of Washington, department of transportation, for the
8 replacement of the floating bridge and landings of the state route
9 number 520 Evergreen Point bridge on or adjacent to Lake Washington,
10 the construction may begin twenty-one days from the date of filing.
11 Any substantial development permit granted for the floating bridge and
12 landings is deemed to have been granted on the date that the local
13 government's decision to grant the permit is issued. This
14 authorization to construct is limited to only those elements of the
15 floating bridge and landings that do not preclude the department of
16 transportation's selection of a four-lane alternative for state route
17 number 520 between Interstate 5 and Medina. Additionally, the
18 Washington state department of transportation shall not engage in or
19 contract for any construction on any portion of state route number 520
20 between Interstate 5 and the western landing of the floating bridge
21 until the legislature has authorized the imposition of tolls on the
22 Interstate 90 floating bridge and/or other funding sufficient to
23 complete construction of the state route number 520 bridge replacement
24 and HOV program. For the purposes of this subsection (5)(b), the
25 "western landing of the floating bridge" means the least amount of new
26 construction necessary to connect the new floating bridge to the
27 existing state route number 520 and anchor the west end of the new
28 floating bridge;

29 (ii) Nothing in this subsection (5)(b) precludes the shorelines
30 hearings board from concluding that the project or any element of the
31 project is inconsistent with the goals and policies of the shoreline
32 management act or the local shoreline master program;

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1 (iii) This subsection (5)(b) applies retroactively to any appeals
2 filed after January 1, 2012, and to any appeals filed on or after
3 March 23, 2012, and expires June 30, (~~2014~~)2015.

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

32 (d) Except as authorized in (b) of this subsection, if the permit
33 is for a substantial development meeting the requirements of
34 subsection (11) of this section, construction pursuant to that permit

1 may not begin or be authorized until twenty-one days from the date the
2 permit decision was filed as provided in subsection (6) of this
3 section.

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

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

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

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

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

33 (d) The department shall notify in writing the local government
34 and the applicant of the date of filing by telephone or electronic

1 means, followed by written communication as necessary, to ensure that
2 the applicant has received the full written decision.

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

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

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

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

28 (11)(a) An application for a substantial development permit for a
29 limited utility extension or for the construction of a bulkhead or
30 other measures to protect a single-family residence and its
31 appurtenant structures from shoreline erosion shall be subject to the
32 following procedures:

33 (i) The public comment period under subsection (4) of this section
34 shall be twenty days. The notice provided under subsection (4) of

1 this section shall state the manner in which the public may obtain a
2 copy of the local government decision on the application no later than
3 two days following its issuance;

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

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

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

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

15 (ii) Will serve an existing use in compliance with this chapter;
16 and

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

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EFFECT: Subsection 5 requires that construction pursuant to a permit may not begin until 21 days after a permit decision is filed. It also requires that sufficient funding must be in place before the Department begins construction on the any part of State Route 520 between Interstate 5 and the western landing of the floating bridge. This amendment changes the expiration date of subsection 5 from June 30, 2014 to June 30, 2015.

FISCAL IMPACT: No net change to appropriated levels.

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