
HOUSE BILL 1794

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Moscoso, Sells, Zeiger, Appleton, and Liias

Read first time 02/11/13. Referred to Committee on Local Government.

1 AN ACT Relating to shoreline development permits; and amending RCW
2 90.58.140.

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

4 **Sec. 1.** RCW 90.58.140 and 2012 c 84 s 2 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 the permit decision was filed as provided in

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

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

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

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

37 (iii) This subsection (5)(b) applies retroactively to any appeals

1 filed after January 1, 2012, and to any appeals filed on or after March
2 23, 2012, and expires June 30, 2014((-));

3 (c)(i) In the case of any appeal of a permit or decision to issue
4 a permit to a regional transit system for a voter-approved regional
5 transit facility, the regional transit authority may request an
6 expedited de novo hearing before the hearings board to determine
7 whether construction pursuant to the permit should commence despite the
8 pendency of the appeal, and the hearings board shall conduct such a
9 hearing as expeditiously as possible. If, at the conclusion of the
10 hearing, the hearings board determines that the preponderance of the
11 evidence demonstrates that construction pursuant to such a permit would
12 not involve a significant, irreversible net loss of ecological
13 functions, the hearings board shall lift the stay and allow
14 construction pursuant to the approved permit to commence, provided that
15 the construction is subject to the final decision of the hearings board
16 or to any subsequent, final decision by a court in the event of a
17 judicial appeal.

18 (ii) For the purposes of this subsection (5)(c), "facility" has the
19 same meaning as "facilities" as defined in RCW 81.112.020;

20 (d) Except as authorized in (b) and (c) of this subsection,
21 construction may be commenced no sooner than thirty days after the date
22 of the appeal of the board's decision is filed if a permit is granted
23 by the local government and (i) the granting of the permit is appealed
24 to the shorelines hearings board within twenty-one days of the date of
25 filing, (ii) the hearings board approves the granting of the permit by
26 the local government or approves a portion of the substantial
27 development for which the local government issued the permit, and (iii)
28 an appeal for judicial review of the hearings board decision is filed
29 pursuant to chapter 34.05 RCW. The appellant may request, within ten
30 days of the filing of the appeal with the court, a hearing before the
31 court to determine whether construction pursuant to the permit approved
32 by the hearings board or to a revised permit issued pursuant to the
33 order of the hearings board should not commence. If, at the conclusion
34 of the hearing, the court finds that construction pursuant to such a
35 permit would involve a significant, irreversible damaging of the
36 environment, the court shall prohibit the permittee from commencing the
37 construction pursuant to the approved or revised permit until all
38 review proceedings are final. Construction pursuant to a permit

1 revised at the direction of the hearings board may begin only on that
2 portion of the substantial development for which the local government
3 had originally issued the permit, and construction pursuant to such a
4 revised permit on other portions of the substantial development may not
5 begin until after all review proceedings are terminated. In such a
6 hearing before the court, the burden of proving whether the
7 construction may involve significant irreversible damage to the
8 environment and demonstrating whether such construction would or would
9 not be appropriate is on the appellant;

10 ~~((d))~~ (e) Except as authorized in (b), (c), and (d) of this
11 subsection, if the permit is for a substantial development meeting the
12 requirements of subsection (11) of this section, construction pursuant
13 to that permit may not begin or be authorized until twenty-one days
14 from the date the permit decision was filed as provided in subsection
15 (6) of this section.

16 If a permittee begins construction pursuant to (a), (b), (c),
17 ~~((e))~~ (d), or (e) of this subsection, the construction is begun at the
18 permittee's own risk. If, as a result of judicial review, the courts
19 order the removal of any portion of the construction or the restoration
20 of any portion of the environment involved or require the alteration of
21 any portion of a substantial development constructed pursuant to a
22 permit, the permittee is barred from recovering damages or costs
23 involved in adhering to such requirements from the local government
24 that granted the permit, the hearings board, or any appellant or
25 intervener.

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

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

37 (b) With regard to a permit for a variance or a conditional use

1 governed by subsection (10) of this section, "date of filing" means the
2 date the decision of the department is transmitted by the department to
3 the local government.

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

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

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

19 (8) Any permit may, after a hearing with adequate notice to the
20 permittee and the public, be rescinded by the issuing authority upon
21 the finding that a permittee has not complied with conditions of a
22 permit. If the department is of the opinion that noncompliance exists,
23 the department shall provide written notice to the local government and
24 the permittee. If the department is of the opinion that the
25 noncompliance continues to exist thirty days after the date of the
26 notice, and the local government has taken no action to rescind the
27 permit, the department may petition the hearings board for a rescission
28 of the permit upon written notice of the petition to the local
29 government and the permittee if the request by the department is made
30 to the hearings board within fifteen days of the termination of the
31 thirty-day notice to the local government.

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

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

1 (11)(a) An application for a substantial development permit for a
2 limited utility extension or for the construction of a bulkhead or
3 other measures to protect a single-family residence and its appurtenant
4 structures from shoreline erosion shall be subject to the following
5 procedures:

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

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

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

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

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

22 (ii) Will serve an existing use in compliance with this chapter;
23 and

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

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