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SENATE BILL 5295

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Ericksen and Schoesler

Read first time 01/25/13. Referred to Committee on Energy, Environment & Telecommunications.

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 2012 c 84 s 2 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)(i) In the case of any permit or decision to issue any permit to  
7 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;

33 (iii) This subsection (5)(b) applies retroactively to any appeals  
34 filed after January 1, 2012, and to any appeals filed on or after March  
35 23, 2012, and expires June 30, 2014.

36 (c) Except as authorized in (b) of this subsection, construction  
37 may be commenced no sooner than thirty days after the date of the  
38 appeal of the board's decision is filed if a permit is granted by the

1 local government and (i) the granting of the permit is appealed to the  
2 shorelines hearings board within twenty-one days of the date of filing,  
3 (ii) the hearings board approves the granting of the permit by the  
4 local government or approves a portion of the substantial development  
5 for which the local government issued the permit, and (iii) an appeal  
6 for judicial review of the hearings board decision is filed pursuant to  
7 chapter 34.05 RCW. The appellant may request, within ten days of the  
8 filing of the appeal with the court, a hearing before the court to  
9 determine whether construction pursuant to the permit approved by the  
10 hearings board or to a revised permit issued pursuant to the order of  
11 the hearings board should not commence. If, at the conclusion of the  
12 hearing, the court finds that construction pursuant to such a permit  
13 would involve a significant, irreversible damaging of the environment,  
14 the court shall prohibit the permittee from commencing the construction  
15 pursuant to the approved or revised permit until all review proceedings  
16 are final. Construction pursuant to a permit revised at the direction  
17 of the hearings board may begin only on that portion of the substantial  
18 development for which the local government had originally issued the  
19 permit, and construction pursuant to such a revised permit on other  
20 portions of the substantial development may not begin until after all  
21 review proceedings are terminated. In such a hearing before the court,  
22 the burden of proving whether the construction may involve significant  
23 irreversible damage to the environment and demonstrating whether such  
24 construction would or would not be appropriate is on the appellant;

25 (d) Except as authorized in (b) of this subsection, if the permit  
26 is for a substantial development meeting the requirements of subsection  
27 (11) of this section, construction pursuant to that permit may not  
28 begin or be authorized until twenty-one days from the date the permit  
29 decision was filed as provided in subsection (6) of this section.

30 If a permittee begins construction pursuant to (a), (b), (c), or  
31 (d) of this subsection, the construction is begun at the permittee's  
32 own risk. If, as a result of judicial review, the courts order the  
33 removal of any portion of the construction or the restoration of any  
34 portion of the environment involved or require the alteration of any  
35 portion of a substantial development constructed pursuant to a permit,  
36 the permittee is barred from recovering damages or costs involved in  
37 adhering to such requirements from the local government that granted  
38 the permit, the hearings board, or any appellant or intervener.

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

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

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

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

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

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

31 (8) Any permit may, after a hearing with adequate notice to the  
32 permittee and the public, be rescinded by the issuing authority upon  
33 the finding that a permittee has not complied with conditions of a  
34 permit. If the department is of the opinion that noncompliance exists,  
35 the department shall provide written notice to the local government and  
36 the permittee. If the department is of the opinion that the  
37 noncompliance continues to exist thirty days after the date of the  
38 notice, and the local government has taken no action to rescind the

1 permit, the department may petition the hearings board for a rescission  
2 of the permit upon written notice of the petition to the local  
3 government and the permittee if the request by the department is made  
4 to the hearings board within fifteen days of the termination of the  
5 thirty-day notice to the local government.

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

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

12 (11)(a) An application for a substantial development permit for a  
13 limited utility extension or for the construction of a bulkhead or  
14 other measures to protect a single-family residence and its appurtenant  
15 structures from shoreline erosion shall be subject to the following  
16 procedures:

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

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

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

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

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

33 (ii) Will serve an existing use in compliance with this chapter;  
34 and

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

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