
HOUSE BILL 2162

State of Washington 62nd Legislature 2011 2nd Special Session

By Representatives Takko, Angel, Rivers, Blake, Springer, and Dahlquist

Read first time 12/09/11. Referred to Committee on Local Government.

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 facilitating development outside shoreland areas
6 protected by the shoreline management act, chapter 90.58 RCW. The
7 legislature further finds that the decision in *Merkel v. Port of*
8 *Brownsville*, 8 Wn. App. 844; 509 P.2d 390 (1973), impedes development
9 by delaying construction outside shoreland areas, when such
10 construction is part of a project with elements under appeal to the
11 shorelines hearings board. Therefore, it is the intent of the
12 legislature to expressly authorize the commencement of development
13 activity outside the shoreland area before final action has been taken
14 on a related shorelines appeal, as long as the local government finds
15 that the work is not inconsistent with any requirement of the
16 applicable shorelines master plan.

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

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

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

8 A permit shall be granted:

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

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

17 (3) The local government shall establish a program, consistent with
18 rules adopted by the department, for the administration and enforcement
19 of the permit system provided in this section. The administration of
20 the system so established shall be performed exclusively by the local
21 government.

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

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

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

34 (c) Any other manner deemed appropriate by local authorities to
35 accomplish the objectives of reasonable notice to adjacent landowners
36 and the public.

37 The notices shall include a statement that any person desiring to
38 submit written comments concerning an application, or desiring to

1 receive notification of the final decision concerning an application as
2 expeditiously as possible after the issuance of the decision, may
3 submit the comments or requests for decisions to the local government
4 within thirty days of the last date the notice is to be published
5 pursuant to this subsection. The local government shall forward, in a
6 timely manner following the issuance of a decision, a copy of the
7 decision to each person who submits a request for the decision.

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

11 (5) The system shall include provisions to assure that construction
12 pursuant to a permit will not begin or be authorized until twenty-one
13 days from the date the permit decision was filed as provided in
14 subsection (6) of this section; or until all review proceedings are
15 terminated if the proceedings were initiated within twenty-one days
16 from the date of filing as defined in subsection (6) of this section
17 except as follows:

18 ~~(a) ((In the case of any permit issued to the state of Washington,~~
19 ~~department of transportation, for the construction and modification of~~
20 ~~SR 90 (I-90) on or adjacent to Lake Washington, the construction may~~
21 ~~begin after thirty days from the date of filing, and the permits are~~
22 ~~valid until December 31, 1995;))~~ If an appeal is filed with the
23 shorelines hearings board, construction outside of the shoreland area
24 may be commenced in advance of final action on the appeal if the local
25 government makes a written finding that the work is not inconsistent
26 with any requirement of the applicable master program. Project
27 construction that occurs under the authority of this section is done at
28 the proponent's risk with the project proponent being responsible for
29 meeting the requirements of the final permit decision after appeal;

30 (b) Construction may be commenced no sooner than thirty days after
31 the date of the appeal of the board's decision is filed if a permit is
32 granted by the local government and (i) the granting of the permit is
33 appealed to the shorelines hearings board within twenty-one days of the
34 date of filing, (ii) the hearings board approves the granting of the
35 permit by the local government or approves a portion of the substantial
36 development for which the local government issued the permit, and (iii)
37 an appeal for judicial review of the hearings board decision is filed
38 pursuant to chapter 34.05 RCW. The appellant may request, within ten

1 days of the filing of the appeal with the court, a hearing before the
2 court to determine whether construction pursuant to the permit approved
3 by the hearings board or to a revised permit issued pursuant to the
4 order of the hearings board should not commence. If, at the conclusion
5 of the hearing, the court finds that construction pursuant to such a
6 permit would involve a significant, irreversible damaging of the
7 environment, the court shall prohibit the permittee from commencing the
8 construction pursuant to the approved or revised permit until all
9 review proceedings are final. Construction pursuant to a permit
10 revised at the direction of the hearings board may begin only on that
11 portion of the substantial development for which the local government
12 had originally issued the permit, and construction pursuant to such a
13 revised permit on other portions of the substantial development may not
14 begin until after all review proceedings are terminated. In such a
15 hearing before the court, the burden of proving whether the
16 construction may involve significant irreversible damage to the
17 environment and demonstrating whether such construction would or would
18 not be appropriate is on the appellant;

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

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

33 (6) Any decision on an application for a permit under the authority
34 of this section, whether it is an approval or a denial, shall,
35 concurrently with the transmittal of the ruling to the applicant, be
36 filed with the department and the attorney general. This shall be
37 accomplished by return receipt requested mail. A petition for review

1 of such a decision must be commenced within twenty-one days from the
2 date of filing of the decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (ii) Will serve an existing use in compliance with this chapter;
29 and

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

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