
HOUSE BILL 2469

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Upthegrove, Angel, Takko, and Asay

Read first time 01/16/12. Referred to Committee on Local Government.

1 AN ACT Relating to boatyard storm water treatment systems; amending
2 RCW 90.58.140; and adding a new section to chapter 90.58 RCW.

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

4 **Sec. 1.** RCW 90.58.140 and 2011 c 277 s 3 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 except as provided by subsection (11) of this section and section 2 of
29 this act, submit the comments or requests for decisions to the local
30 government within thirty days of the last date the notice is to be
31 published pursuant to this subsection. The local government shall
32 forward, in a timely manner following the issuance of a decision, a
33 copy of the decision to each person who submits a request for the
34 decision.

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

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

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

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

1 environment and demonstrating whether such construction would or would
2 not be appropriate is on the appellant;

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

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

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

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

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

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

37 (d) The department shall notify in writing the local government and

1 the applicant of the date of filing by telephone or electronic means,
2 followed by written communication as necessary, to ensure that the
3 applicant has received the full written decision.

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

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

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

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

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

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

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

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

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

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

12 (ii) Will serve an existing use in compliance with this chapter;
13 and

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

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.58 RCW
17 to read as follows:

18 (1) An application for a substantial development permit for a
19 boatyard storm water treatment system is subject to the following
20 procedures:

21 (a) The public comment period under RCW 90.58.140(4) is fourteen
22 days. The notice provided under RCW 90.58.140(4) must state the manner
23 in which the public may obtain a copy of the local government decision
24 on the application no later than two days following its issuance;

25 (b) In accordance with this subsection (1)(b), the local government
26 shall issue its decision to grant or deny the permit within twenty-one
27 days of the last day of the comment period specified in (a) of this
28 subsection. If the local government determines, through written
29 findings, that the permit is consistent with the substantive
30 requirements of this chapter, the local government shall grant the
31 permit; and

32 (c) If there is an appeal of the decision to grant or deny the
33 permit to the local government legislative authority, the appeal must
34 be finally determined by the legislative authority within thirty days.

35 (2) For purposes of this section, a "boatyard storm water treatment
36 system" is a small-scale enhanced or advanced storm water treatment
37 system that:

1 (a) Is required for compliance with a national pollutant discharge
2 elimination system storm water general permit under the federal clean
3 water act, 33 U.S.C. 1251 et seq.;

4 (b) Will serve an existing boatyard; and

5 (c) Will not require or include the installation of additional
6 shoreline armoring.

--- END ---