
SUBSTITUTE SENATE BILL 6366

State of Washington

61st Legislature

2010 Regular Session

By Senate Transportation (originally sponsored by Senators Swecker, Haugen, Jacobsen, King, Marr, Ranker, Hatfield, Berkey, Sheldon, Tom, and Stevens)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to permits for certain major transportation
2 corridor projects; amending RCW 90.58.140; adding a new section to
3 chapter 36.70A RCW; adding a new section to chapter 35.21 RCW; adding
4 a new section to chapter 36.01 RCW; adding a new section to chapter
5 35A.21 RCW; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.70A RCW
8 to read as follows:

9 (1) As used in this section, "major transportation corridor
10 project" means a transportation project that is part of a state highway
11 corridor improvement program whose total costs will exceed one billion
12 dollars.

13 (2) For major transportation corridor projects, the following
14 provisions apply:

15 (a) If the project is permitted under critical areas development
16 regulations adopted under this chapter, permits may be appealed to a
17 local hearing officer or through any other local appeal process if the
18 department of transportation consents, but if the department of
19 transportation does not consent, permits must be appealed directly to

1 superior court and local agencies may not require that such permits be
2 first appealed to a local hearing examiner or through any other local
3 appeal process;

4 (b) If the project is permitted under section 404 of the federal
5 clean water act (33 U.S.C. Sec. 1344), a critical area permit issued by
6 a city or county due to critical areas development regulations is not
7 required for any critical areas within the city or county that are the
8 subject of the section 404 permit;

9 (c) A city or county may issue a critical area permit for critical
10 areas that are outside the areas covered by a section 404 permit; and

11 (d) If the project is identified as an essential public facility
12 under RCW 36.70A.200, city street use permits are presumed approved as
13 submitted unless negotiated otherwise within one hundred twenty days of
14 submittal of the permit application. City street use permits may be
15 appealed to a local hearing officer or through any other local appeal
16 process if the department of transportation consents, but if the
17 department of transportation does not consent, city street use permits
18 must be appealed directly to superior court and local agencies may not
19 require that such permits be first appealed to a local hearing examiner
20 or through any other local appeal process. The department of
21 transportation may begin a project while a city street use permit is
22 being appealed.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
24 to read as follows:

25 If a building permit is issued by a city or town as part of a major
26 transportation corridor project, as defined in section 1 of this act,
27 for a building that is temporary in nature and will be removed when no
28 longer necessary to facilitate the project, the building permit may not
29 be appealed by any party other than the permittee or the department of
30 transportation. If an appeal is filed, a third party may intervene in
31 such proceedings by petition.

32 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01 RCW
33 to read as follows:

34 If a building permit is issued by a county as part of a major
35 transportation corridor project, as defined in section 1 of this act,
36 for a building that is temporary in nature and will be removed when no

1 longer necessary to facilitate the project, the building permit may not
2 be appealed by any party other than the permittee or the department of
3 transportation. If an appeal is filed, a third party may intervene in
4 such proceedings by petition.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 35A.21 RCW
6 to read as follows:

7 If a building permit is issued by a code city as part of a major
8 transportation corridor project, as defined in section 1 of this act,
9 for a building that is temporary in nature and will be removed when no
10 longer necessary to facilitate the project, the building permit may not
11 be appealed by any party other than the permittee or the department of
12 transportation. If an appeal is filed, a third party may intervene in
13 such proceedings by petition.

14 **Sec. 5.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
15 read as follows:

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

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

23 A permit shall be granted:

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

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

32 (3) The local government shall establish a program, consistent with
33 rules adopted by the department, for the administration and enforcement
34 of the permit system provided in this section. The administration of
35 the system so established shall be performed exclusively by the local
36 government.

1 (4) Except as otherwise specifically provided in subsection (11) of
2 this section, the local government shall require notification of the
3 public of all applications for permits governed by any permit system
4 established pursuant to subsection (3) of this section by ensuring that
5 notice of the application is given by at least one of the following
6 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 as
19 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 construction
29 pursuant to a permit will not begin or be authorized until twenty-one
30 days from the date the permit decision was filed as provided in
31 subsection (6) of this section; or until all review proceedings are
32 terminated if the proceedings were initiated within twenty-one days
33 from the date of filing as defined in subsection (6) of this section
34 except as follows:

35 (a) In the case of any permit issued to the ~~((state of~~
36 ~~Washington,))~~ department of transportation, for the construction ~~((and~~
37 ~~modification of SR 90 (I-90) on or adjacent to Lake Washington, the~~
38 ~~construction may begin after thirty days from the date of filing, and~~

1 ~~the permits are valid until December 31, 1995))~~ of major transportation
2 corridor projects as defined in section 1 of this act, construction may
3 begin immediately after the date of filing. The department of
4 transportation must make every effort to avoid work that may affect the
5 permitted areas until any permit appeals are resolved;

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

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

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

13 (6) Any decision on an application for a permit under the authority
14 of this section, whether it is an approval or a denial, shall,
15 concurrently with the transmittal of the ruling to the applicant, be
16 filed with the department and the attorney general. With regard to a
17 permit other than a permit governed by subsection (10) of this section,
18 "date of filing" as used herein means the date of actual receipt by the
19 department. With regard to a permit for a variance or a conditional
20 use, "date of filing" means the date a decision of the department
21 rendered on the permit pursuant to subsection (10) of this section is
22 transmitted by the department to the local government. The department
23 shall notify in writing the local government and the applicant of the
24 date of filing.

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 by local
10 government under approved master programs must be submitted to the
11 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 (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.

1 NEW SECTION. **Sec. 6.** This act takes effect June 1, 2011.

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