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HOUSE BILL 2356

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By Representatives Hymes, Koster, Thompson, Sterk, Radcliff, Cairnes, Pelesky, Blanton, Quall, Goldsmith, Hargrove and Mulliken

Read first time 01/10/96. Referred to Committee on Government Operations.

1 AN ACT Relating to review of shoreline development permits; and  
2 amending RCW 90.58.140 and 90.58.180.

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

4 **Sec. 1.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to  
5 read 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  
39 subsection (6) of this section; or until all review proceedings are

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

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

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

36 (c) If the permit is for a substantial development meeting the  
37 requirements of subsection (11) of this section, construction pursuant  
38 to that permit may not begin or be authorized until twenty-one days

1 from the date the permit decision was filed as provided in subsection  
2 (6) of this section.

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

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  
39 permit, the department may petition the hearings board for a rescission

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

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

8 (10) Any permit for a variance or a conditional use by local  
9 government under approved master programs must be submitted to the  
10 department for its approval or disapproval. In issuing its approval or  
11 disapproval, the department may not rely on evidence that is not a part  
12 of the record before the local government.

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

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

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

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

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

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

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

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

1       **Sec. 2.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to  
2 read as follows:

3       (1) Any person aggrieved by the granting, denying, or rescinding of  
4 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
5 review from the shorelines hearings board by filing a petition for  
6 review within twenty-one days of the date of filing as defined in RCW  
7 90.58.140(6).

8       Within seven days of the filing of any petition for review with the  
9 board as provided in this section pertaining to a final decision of a  
10 local government, the petitioner shall serve copies of the petition on  
11 the department and the office of the attorney general. The department  
12 and the attorney general may intervene to protect the public interest  
13 and insure that the provisions of this chapter are complied with at any  
14 time within fifteen days from the date of the receipt by the department  
15 or the attorney general of a copy of the petition for review filed  
16 pursuant to this section. The shorelines hearings board shall schedule  
17 review proceedings on the petition for review without regard as to  
18 whether the period for the department or the attorney general to  
19 intervene has or has not expired.

20       (2) The department or the attorney general may obtain review of any  
21 final decision granting a permit, or granting or denying an application  
22 for a permit issued by a local government by filing a written petition  
23 with the shorelines hearings board and the appropriate local government  
24 within twenty-one days from the date the final decision was filed as  
25 provided in RCW 90.58.140(6).

26       (3) The review proceedings authorized in subsections (1) and (2) of  
27 this section are subject to the provisions of chapter 34.05 RCW  
28 pertaining to procedures in adjudicative proceedings. Judicial review  
29 of such proceedings of the shorelines hearings board is governed by  
30 chapter 34.05 RCW. In its review, the board shall not undertake de  
31 novo review of the decision being reviewed or substitute its judgment  
32 for that of the local government nor rely on evidence that is not a  
33 part of the record before the local government. The board shall give  
34 substantial deference to the local government's interpretation of its  
35 own shoreline master program. The board may invalidate a local  
36 government's decision only if it was predicated upon an interpretation  
37 of this chapter that is clearly erroneous or if the decision is not  
38 supported by substantial evidence. The board may not invalidate a  
39 local government's decision based on any provision of a local

1 government's plan that exceeds the requirements of this chapter. The  
2 board shall issue its decision on the appeal authorized under  
3 subsections (1) and (2) of this section within one hundred eighty days  
4 after the date the petition is filed with the board or a petition to  
5 intervene is filed by the department or the attorney general, whichever  
6 is later. The time period may be extended by the board for a period of  
7 thirty days upon a showing of good cause or may be waived by the  
8 parties.

9 (4) Any person may appeal any rules, regulations, or guidelines  
10 adopted or approved by the department within thirty days of the date of  
11 the adoption or approval. The board shall make a final decision within  
12 sixty days following the hearing held thereon.

13 (5) The board shall find the rule, regulation, or guideline to be  
14 valid and enter a final decision to that effect unless it determines  
15 that the rule, regulation, or guideline:

16 (a) Is clearly erroneous in light of the policy of this chapter; or

17 (b) Constitutes an implementation of this chapter in violation of  
18 constitutional or statutory provisions; or

19 (c) Is arbitrary and capricious; or

20 (d) Was developed without fully considering and evaluating all  
21 material submitted to the department during public review and comment;  
22 or

23 (e) Was not adopted in accordance with required procedures.

24 (6) If the board makes a determination under subsection (5)(a)  
25 through (e) of this section, it shall enter a final decision declaring  
26 the rule, regulation, or guideline invalid, remanding the rule,  
27 regulation, or guideline to the department with a statement of the  
28 reasons in support of the determination, and directing the department  
29 to adopt, after a thorough consultation with the affected local  
30 government and any other interested party, a new rule, regulation, or  
31 guideline consistent with the board's decision.

32 (7) A decision of the board on the validity of a rule, regulation,  
33 or guideline shall be subject to review in superior court, if  
34 authorized pursuant to chapter 34.05 RCW. A petition for review of the  
35 decision of the shorelines hearings board on a rule, regulation, or  
36 guideline shall be filed within thirty days after the date of final  
37 decision by the shorelines hearings board.

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