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ENGROSSED SUBSTITUTE SENATE BILL 6113

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State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Environment & Natural Resources (originally sponsored by Senators Craswell, Owen, Oke and McCaslin)

Read first time 02/07/92.

1 AN ACT Relating to review of local permits under the shoreline  
2 management act; and amending RCW 90.58.180.

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

4 **Sec. 1.** RCW 90.58.180 and 1989 c 175 s 183 are each amended to  
5 read as follows:

6 (1) Any person aggrieved by the granting, denying, or rescinding of  
7 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
8 review from the shorelines hearings board by filing a request for the  
9 same within thirty days of the date of filing as defined in RCW  
10 90.58.140(6).

11 Concurrently with the filing of any request for review with the  
12 board as provided in this section pertaining to a final order of a  
13 local government, the requestor shall file a copy of his request with  
14 the department and the attorney general. If it appears to the

1 department or the attorney general that the requestor has valid reasons  
2 to seek review, either the department or the attorney general may  
3 certify the request within thirty days after its receipt to the  
4 shorelines hearings board following which the board shall then, but not  
5 otherwise, review the matter covered by the requestor: PROVIDED, That  
6 the failure to obtain such certification shall not preclude the  
7 requestor from obtaining a review in the superior court under any right  
8 to review otherwise available to the requestor. The department and the  
9 attorney general may intervene to protect the public interest and  
10 insure that the provisions of this chapter are complied with at any  
11 time within fifteen days from the date of the receipt by the department  
12 or the attorney general of a copy of the request for review filed  
13 pursuant to this section. The shorelines hearings board shall  
14 initially schedule review proceedings on such requests for review  
15 without regard as to whether such requests have or have not been  
16 certified or as to whether the period for the department or the  
17 attorney general to intervene has or has not expired, unless such  
18 review is to begin within thirty days of such scheduling. If at the  
19 end of the thirty day period for certification neither the department  
20 nor the attorney general has certified a request for review, the  
21 hearings board shall remove the request from its review schedule.

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

28 ~~(3) ((The review proceedings authorized in subsections (1) and (2)~~  
29 ~~of this section are subject to the provisions of chapter 34.05 RCW~~  
30 ~~pertaining to procedures in adjudicative proceedings.))~~ (a) Review by

1 the shorelines hearings board shall be based on the record developed by  
2 the local government and supplemented with additional evidence if the  
3 shorelines hearings board determines that such additional evidence  
4 would be necessary or of substantial assistance to the board in  
5 reaching its decision. The local government shall maintain an official  
6 record of the proceeding which substantially conforms to the  
7 requirements for adjudicative proceedings under RCW 34.05.476.  
8 Judicial review of such proceedings of the shorelines hearings board  
9 shall be based upon the record developed by the local government,  
10 together with written and oral argument submitted to the board, and may  
11 be had as provided in chapter 34.05 RCW.

12 (b) Review on the record by the shorelines hearings board shall be  
13 limited to a determination as to whether the local government's action  
14 on the permit application was (i) in accordance with required  
15 procedures, (ii) arbitrary and capricious, or (iii) consistent with the  
16 intent of the shoreline management act and the applicable shoreline  
17 master program.

18 (4) Local government may appeal to the shorelines hearings board  
19 any rules, regulations, or guidelines adopted or approved by the  
20 department within thirty days of the date of the adoption or approval.  
21 The board shall make a final decision within sixty days following the  
22 hearing held thereon.

23 If the board determines that the rule, regulation, or guideline:

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

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

27 (c) Is arbitrary and capricious; or

28 (d) Was developed without fully considering and evaluating all  
29 material submitted to the department by the local government; or

30 (e) Was not adopted in accordance with required procedures;

1 the board shall enter a final decision declaring the rule, regulation,  
2 or guideline invalid, remanding the rule, regulation, or guideline to  
3 the department with a statement of the reasons in support of the  
4 determination, and directing the department to adopt, after a thorough  
5 consultation with the affected local government, a new rule,  
6 regulation, or guideline. Unless the board makes one or more of the  
7 determinations as hereinbefore provided, the board shall find the rule,  
8 regulation, or guideline to be valid and enter a final decision to that  
9 effect.

10 (5) Rules, regulations, and guidelines shall be subject to review  
11 in superior court, if authorized pursuant to RCW ((34.05.538))  
12 34.05.570(2): PROVIDED, That no review shall be granted by a superior  
13 court on petition from a local government unless the local government  
14 shall first have obtained review under subsection (4) of this section  
15 is filed within three months after the date of final decision by the  
16 shorelines hearings board.