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SENATE BILL 6536

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State of Washington

63rd Legislature

2014 Regular Session

By Senator Roach

Read first time 02/03/14. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to permits for variances and conditional uses under  
2 the shoreline management act of 1971; and amending RCW 90.58.140.

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

4 **Sec. 1.** RCW 90.58.140 and 2012 c 84 s 2 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 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

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

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

10 (b)(i) In the case of any permit or decision to issue any permit to  
11 the state of Washington, department of transportation, for the  
12 replacement of the floating bridge and landings of the state route  
13 number 520 Evergreen Point bridge on or adjacent to Lake Washington,  
14 the construction may begin twenty-one days from the date of filing.  
15 Any substantial development permit granted for the floating bridge and  
16 landings is deemed to have been granted on the date that the local  
17 government's decision to grant the permit is issued. This  
18 authorization to construct is limited to only those elements of the  
19 floating bridge and landings that do not preclude the department of  
20 transportation's selection of a four-lane alternative for state route  
21 number 520 between Interstate 5 and Medina. Additionally, the  
22 Washington state department of transportation shall not engage in or  
23 contract for any construction on any portion of state route number 520  
24 between Interstate 5 and the western landing of the floating bridge  
25 until the legislature has authorized the imposition of tolls on the  
26 Interstate 90 floating bridge and/or other funding sufficient to  
27 complete construction of the state route number 520 bridge replacement  
28 and HOV program. For the purposes of this subsection (5)(b), the  
29 "western landing of the floating bridge" means the least amount of new  
30 construction necessary to connect the new floating bridge to the  
31 existing state route number 520 and anchor the west end of the new  
32 floating bridge;

33 (ii) Nothing in this subsection (5)(b) precludes the shorelines  
34 hearings board from concluding that the project or any element of the  
35 project is inconsistent with the goals and policies of the shoreline  
36 management act or the local shoreline master program;

37 (iii) This subsection (5)(b) applies retroactively to any appeals

1 filed after January 1, 2012, and to any appeals filed on or after March  
2 23, 2012, and expires June 30, 2014.

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

30 (d) Except as authorized in (b) of this subsection, if the permit  
31 is for a substantial development meeting the requirements of subsection  
32 (11) of this section, construction pursuant to that permit may not  
33 begin or be authorized until twenty-one days from the date the permit  
34 decision was filed as provided in subsection (6) of this section.

35 If a permittee begins construction pursuant to (a), (b), (c), or  
36 (d) of this subsection, the construction is begun at the permittee's  
37 own risk. If, as a result of judicial review, the courts order the  
38 removal of any portion of the construction or the restoration of any

1 portion of the environment involved or require the alteration of any  
2 portion of a substantial development constructed pursuant to a permit,  
3 the permittee is barred from recovering damages or costs involved in  
4 adhering to such requirements from the local government that granted  
5 the permit, the hearings board, or any appellant or intervener.

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

13 (a) (~~With regard to a permit other than a permit governed by~~  
14 ~~subsection (10) of this section,~~) "Date of filing" as used in this  
15 section refers to the date of actual receipt by the department of the  
16 local government's decision.

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

21 (c) ~~When a local government simultaneously transmits to the~~  
22 ~~department its decision on a shoreline substantial development with its~~  
23 ~~approval of either a shoreline conditional use permit or variance, or~~  
24 ~~both, "date of filing" has the same meaning as defined in (b) of this~~  
25 ~~subsection.~~

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

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

36 (8) Any permit may, after a hearing with adequate notice to the  
37 permittee and the public, be rescinded by the issuing authority upon  
38 the finding that a permittee has not complied with conditions of a

1 permit. If the department is of the opinion that noncompliance exists,  
2 the department shall provide written notice to the local government and  
3 the permittee. If the department is of the opinion that the  
4 noncompliance continues to exist thirty days after the date of the  
5 notice, and the local government has taken no action to rescind the  
6 permit, the department may petition the hearings board for a rescission  
7 of the permit upon written notice of the petition to the local  
8 government and the permittee if the request by the department is made  
9 to the hearings board within fifteen days of the termination of the  
10 thirty-day notice to the local government.

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

14 (10) Any permit for a variance or a conditional use (~~((issued with  
15 approval by a local government under their approved master program must  
16 be submitted to the department for its approval or disapproval))~~) is  
17 subject to the same provisions of this section applicable to permits  
18 for substantial development.

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

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

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

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

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

37 (i) Is categorically exempt under chapter 43.21C RCW for one or

1 more of the following: Natural gas, electricity, telephone, water, or  
2 sewer;  
3 (ii) Will serve an existing use in compliance with this chapter;  
4 and  
5 (iii) Will not extend more than twenty-five hundred linear feet  
6 within the shorelines of the state.

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