
HOUSE BILL 2261

State of Washington 53rd Legislature 1994 Regular Session

By Representatives Kremen, Zellinsky, Johanson, Sheldon and Hansen

Read first time 01/12/94. Referred to Committee on Environmental Affairs.

1 AN ACT Relating to the shoreline management act; and amending RCW
2 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 1992 c 105 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 the provisions of
4 chapter 90.58 RCW.

5 (3) The local government shall establish a program, consistent with
6 rules adopted by the department, for the administration and enforcement
7 of the permit system provided in this section. The administration of
8 the system so established shall be performed exclusively by the local
9 government.

10 (4) (~~Except as otherwise specifically provided in subsection (13)~~
11 ~~of this section,~~) The local government shall require notification of
12 the public of all applications for permits governed by any permit
13 system established pursuant to subsection (3) of this section at least
14 twenty days prior to its approval or disapproval of the application by
15 ensuring that:

16 (a) A notice of such an application is published at least once a
17 week on the same day of the week for two consecutive weeks in a legal
18 newspaper of general circulation within the area in which the
19 development is proposed; and

20 (b) Additional notice of such an application is given by at least
21 one of the following methods:

22 (i) Mailing of the notice to the latest recorded real property
23 owners as shown by the records of the county assessor within at least
24 three hundred feet of the boundary of the property upon which the
25 substantial development is proposed;

26 (ii) Posting of the notice in a conspicuous manner on the property
27 upon which the project is to be constructed; or

28 (iii) Any other manner deemed appropriate by local authorities to
29 accomplish the objectives of reasonable notice to adjacent landowners
30 and the public.

31 The notices shall include a statement that any person desiring to
32 submit written comments concerning an application, or desiring to
33 receive a copy of the final order concerning an application as
34 expeditiously as possible after the issuance of the order, may submit
35 the comments or requests for orders to the local government within
36 (~~thirty~~) twenty days of the (~~last~~) date the notice is to be
37 published pursuant to subsection (a) of this subsection. The local
38 government shall forward, in a timely manner following the issuance of

1 an order, a copy of the order to each person who submits a request for
2 the order.

3 If a hearing is to be held on an application, the notices (~~(of such~~
4 ~~a hearing)~~) shall include the hearing date and a statement that any
5 person may submit oral or written comments on an application at the
6 hearing.

7 (5) The system shall include provisions to assure that construction
8 pursuant to a permit will not begin or be authorized until (~~(thirty)~~)
9 twenty days from the date the final order was filed as provided in
10 subsection (6) of this section; or until all review proceedings are
11 terminated if the proceedings were initiated within (~~(thirty)~~) twenty
12 days from the date of filing as defined in subsection (6) of this
13 section except as follows:

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

19 (b) If a permit is granted by the local government and (i) the
20 granting of the permit is appealed to the shorelines hearings board
21 within (~~(thirty)~~) twenty days of the date of filing, (ii) the hearings
22 board approves the granting of the permit by the local government or
23 approves a portion of the substantial development for which the local
24 government issued the permit, and (iii) an appeal for judicial review
25 of the hearings board decision is filed pursuant to chapter 34.05 RCW,
26 the permittee may request, within ten days of the filing of the appeal
27 with the court, a hearing before the court to determine whether
28 construction may begin pursuant to the permit approved by the hearings
29 board or to a revised permit issued pursuant to the order of the
30 hearings board. If, at the conclusion of the hearing, the court finds
31 that construction pursuant to such a permit would not involve a
32 significant, irreversible damaging of the environment, the court may
33 allow the permittee to begin the construction pursuant to the approved
34 or revised permit as the court deems appropriate. The court may
35 require the permittee to post bonds, in the name of the local
36 government that issued the permit, sufficient to remove the substantial
37 development or to restore the environment if the permit is ultimately
38 disapproved by the courts, or to alter the substantial development if
39 the alteration is ultimately ordered by the courts. Construction

1 pursuant to a permit revised at the direction of the hearings board may
2 begin only on that portion of the substantial development for which the
3 local government had originally issued the permit, and construction
4 pursuant to such a revised permit on other portions of the substantial
5 development may not begin until after all review proceedings are
6 terminated. In such a hearing before the court, the burden of proving
7 whether the construction may involve significant irreversible damage to
8 the environment and demonstrating whether such construction would or
9 would not be appropriate is on the appellant;

10 (c) If a permit is granted by the local government and the granting
11 of the permit is appealed directly to the superior court for judicial
12 review pursuant to the proviso in RCW 90.58.180(1), the permittee may
13 request the court to remand the appeal to the shorelines hearings
14 board, in which case the appeal shall be so remanded and construction
15 pursuant to such a permit shall be governed by the provisions of
16 subsection (b) of this subsection or may otherwise begin after review
17 proceedings before the hearings board are terminated if judicial review
18 is not thereafter requested pursuant to chapter 34.05 RCW;

19 ~~(d) ((If the permit is for a substantial development meeting the
20 requirements of subsection (13) of this section, construction pursuant
21 to that permit may not begin or be authorized until thirty days from
22 the date the final order was filed as provided in subsection (6) of
23 this section.))~~

24 If a permittee begins construction pursuant to ((subsections)) (a),
25 (b), or (c)((, ~~or (d)~~)) of this subsection, the construction is begun
26 at the permittee's own risk. If, as a result of judicial review, the
27 courts order the removal of any portion of the construction or the
28 restoration of any portion of the environment involved or require the
29 alteration of any portion of a substantial development constructed
30 pursuant to a permit, the permittee is barred from recovering damages
31 or costs involved in adhering to such requirements from the local
32 government that granted the permit, the hearings board, or any
33 appellant or intervener.

34 (6) Any ruling on an application for a permit under the authority
35 of this section, whether it is an approval or a denial, shall,
36 concurrently with the transmittal of the ruling to the applicant, be
37 filed with the department and the attorney general. With regard to a
38 permit other than a permit governed by subsection (12) of this section,
39 "date of filing" as used herein means the date of actual receipt by the

1 department. With regard to a permit for a variance or a conditional
2 use, "date of filing" means the date a decision of the department
3 rendered on the permit pursuant to subsection (12) of this section is
4 transmitted by the department to the local government. The department
5 shall notify in writing the local government and the applicant of the
6 date of filing.

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

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

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

29 (10) A permit shall not be required for any development on
30 shorelines of the state included within a preliminary or final plat
31 approved by the applicable state agency or local government before
32 April 1, 1971, if:

33 (a) The final plat was approved after April 13, 1961, or the
34 preliminary plat was approved after April 30, 1969; and

35 (b) The development is completed within two years after June 1,
36 1971.

37 (11) The applicable state agency or local government is authorized
38 to approve a final plat with respect to shorelines of the state
39 included within a preliminary plat approved after April 30, 1969, and

1 before April 1, 1971: PROVIDED, That any substantial development
2 within the platted shorelines of the state is authorized by a permit
3 granted pursuant to this section, or does not require a permit as
4 provided in subsection (10) of this section, or does not require a
5 permit because of substantial development occurred before June 1, 1971.

6 (12) Any permit for a variance or a conditional use by local
7 government under approved master programs must be submitted to the
8 department for its approval or disapproval. The decision by the
9 department to approve or disapprove shall be made within twenty days of
10 the date the department receives the variance or conditional use from
11 local government. The department shall monitor the state environmental
12 policy act register to become informed of shoreline permit applications
13 early in the permitting process to facilitate decision making within
14 the required twenty-day period.

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

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

25 ~~((ii)) (b) The local government shall issue its decision to grant~~
26 ~~or deny the permit within ((twenty one)) twenty days of the last day of~~
27 ~~the comment period specified in ((i)) subsection (4) of this~~
28 ~~((subsection)) section; and~~

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

33 ~~((b) For purposes of this section, a limited utility extension~~
34 ~~means the extension of a utility service that:~~

35 ~~(i) Is categorically exempt under chapter 43.21C RCW for one or~~
36 ~~more of the following: Natural gas, electricity, telephone, water, or~~
37 ~~sewer;~~

38 ~~(ii) Will serve an existing use in compliance with this chapter;~~
39 ~~and~~

1 ~~(iii) Will not extend more than twenty five hundred linear feet~~
2 ~~within the shorelines of the state.))~~

3 **Sec. 2.** RCW 90.58.180 and 1989 c 175 s 183 are each amended to
4 read as follows:

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

10 Concurrently with the filing of any request for review with the
11 board as provided in this section pertaining to a final order of a
12 local government, the requestor shall file a copy of his request with
13 the department and the attorney general. If it appears to the
14 department or the attorney general that the requestor has valid reasons
15 to seek review, either the department or the attorney general may
16 certify the request within thirty days after its receipt to the
17 shorelines hearings board following which the board shall then, but not
18 otherwise, review the matter covered by the requestor: PROVIDED, That
19 the failure to obtain such certification shall not preclude the
20 requestor from obtaining a review in the superior court under any right
21 to review otherwise available to the requestor. The department and the
22 attorney general may intervene to protect the public interest and
23 insure that the provisions of this chapter are complied with at any
24 time within fifteen days from the date of the receipt by the department
25 or the attorney general of a copy of the request for review filed
26 pursuant to this section. The shorelines hearings board shall
27 initially schedule review proceedings on such requests for review
28 without regard as to whether such requests have or have not been
29 certified or as to whether the period for the department or the
30 attorney general to intervene has or has not expired, unless such
31 review is to begin within thirty days of such scheduling. If at the
32 end of the thirty day period for certification neither the department
33 nor the attorney general has certified a request for review, the
34 hearings board shall remove the request from its review schedule.

35 (2) The department or the attorney general may obtain review of any
36 final order granting a permit, or granting or denying an application
37 for a permit issued by a local government by filing a written request
38 with the shorelines hearings board and the appropriate local government

1 within (~~thirty~~) twenty days from the date the final order was filed
2 as provided in RCW 90.58.140(6).

3 (3) The review proceedings authorized in subsections (1) and (2) of
4 this section are subject to the provisions of chapter 34.05 RCW
5 pertaining to procedures in adjudicative proceedings. Judicial review
6 of such proceedings of the shorelines hearings board may be had as
7 provided in chapter 34.05 RCW.

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

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

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

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

17 (c) Is arbitrary and capricious; or

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

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

21 the board shall enter a final decision declaring the rule, regulation,
22 or guideline invalid, remanding the rule, regulation, or guideline to
23 the department with a statement of the reasons in support of the
24 determination, and directing the department to adopt, after a thorough
25 consultation with the affected local government, a new rule,
26 regulation, or guideline. Unless the board makes one or more of the
27 determinations as hereinbefore provided, the board shall find the rule,
28 regulation, or guideline to be valid and enter a final decision to that
29 effect.

30 (5) Rules, regulations, and guidelines shall be subject to review
31 in superior court, if authorized pursuant to RCW (~~34.05.538~~)
32 34.05.570(2): PROVIDED, That no review shall be granted by a superior
33 court on petition from a local government unless the local government
34 shall first have obtained review under subsection (4) of this section
35 is filed within three months after the date of final decision by the
36 shorelines hearings board.

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