
SENATE BILL 6366

State of Washington

61st Legislature

2010 Regular Session

By Senators Swecker, Haugen, Jacobsen, King, Marr, Ranker, Hatfield, Berkey, Sheldon, Tom, and Stevens

Read first time 01/13/10. Referred to Committee on Transportation.

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 47.01 RCW; adding
4 a new section to chapter 35.21 RCW; adding a new section to chapter
5 36.01 RCW; and adding a new section to chapter 35A.21 RCW.

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 must be appealed
17 directly to superior court, and local agencies may not require that
18 such permits be first appealed to a local hearing examiner or through
19 any other local appeal process;

1 (b) If the project is permitted under section 404 of the federal
2 clean water act (33 U.S.C. Sec. 1344), a critical areas permit is not
3 required for any critical areas that are the subject of the section 404
4 permit; and

5 (c) If the project is identified as an essential public facility
6 under RCW 36.70A.200, city street use permits are presumed approved as
7 submitted unless negotiated otherwise within ninety days of submittal
8 of the permit application. City street use permits may be appealed
9 only to superior court, and local agencies may not require that such
10 permits be first appealed to a local hearing examiner or through any
11 other local appeal process.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.01 RCW
13 to read as follows:

14 It is the intent of the legislature to clarify existing law such
15 that, when exercising its authority under RCW 47.01.260, the department
16 is not required to obtain local government master use permits,
17 conditional use permits, special use permits, or other similar local
18 zoning permits for staging areas related to the construction of state
19 highways. This section may not be construed as changing or otherwise
20 altering existing law.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.21 RCW
22 to read as follows:

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

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.01 RCW
30 to read as follows:

31 If a building permit is issued by a county as part of a major
32 transportation corridor project, as defined in section 1 of this act,
33 for a building that is temporary in nature and will be removed when no
34 longer necessary to facilitate the project, the building permit may not

1 be appealed by any party other than the permittee or the department of
2 transportation.

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

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

11 **Sec. 6.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
12 read as follows:

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

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

20 A permit shall be granted:

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

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

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

34 (4) Except as otherwise specifically provided in subsection (11) of
35 this section, the local government shall require notification of the
36 public of all applications for permits governed by any permit system

1 established pursuant to subsection (3) of this section by ensuring that
2 notice of the application is given by at least one of the following
3 methods:

4 (a) Mailing of the notice to the latest recorded real property
5 owners as shown by the records of the county assessor within at least
6 three hundred feet of the boundary of the property upon which the
7 substantial development is proposed;

8 (b) Posting of the notice in a conspicuous manner on the property
9 upon which the project is to be constructed; or

10 (c) Any other manner deemed appropriate by local authorities to
11 accomplish the objectives of reasonable notice to adjacent landowners
12 and the public.

13 The notices shall include a statement that any person desiring to
14 submit written comments concerning an application, or desiring to
15 receive notification of the final decision concerning an application as
16 expeditiously as possible after the issuance of the decision, may
17 submit the comments or requests for decisions to the local government
18 within thirty days of the last date the notice is to be published
19 pursuant to this subsection. The local government shall forward, in a
20 timely manner following the issuance of a decision, a copy of the
21 decision to each person who submits a request for the decision.

22 If a hearing is to be held on an application, notices of such a
23 hearing shall include a statement that any person may submit oral or
24 written comments on an application at the hearing.

25 (5) The system shall include provisions to assure that construction
26 pursuant to a permit will not begin or be authorized until twenty-one
27 days from the date the permit decision was filed as provided in
28 subsection (6) of this section; or until all review proceedings are
29 terminated if the proceedings were initiated within twenty-one days
30 from the date of filing as defined in subsection (6) of this section
31 except as follows:

32 (a) In the case of any permit issued to the (~~state of~~
33 ~~Washington,~~) department of transportation, for the construction (~~and~~
34 ~~modification of SR 90 (I-90) on or adjacent to Lake Washington, the~~
35 ~~construction may begin after thirty days from the date of filing, and~~
36 ~~the permits are valid until December 31, 1995~~) of major transportation
37 corridor projects as defined in section 1 of this act, construction may
38 begin immediately after the date of filing;

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

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

33 If a permittee begins construction pursuant to subsections (a),
34 (b), or (c) of this subsection, the construction is begun at the
35 permittee's own risk. If, as a result of judicial review, the courts
36 order the removal of any portion of the construction or the restoration
37 of any portion of the environment involved or require the alteration of
38 any portion of a substantial development constructed pursuant to a

1 permit, the permittee is barred from recovering damages or costs
2 involved in adhering to such requirements from the local government
3 that granted the permit, the hearings board, or any appellant or
4 intervener.

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

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

23 (8) Any permit may, after a hearing with adequate notice to the
24 permittee and the public, be rescinded by the issuing authority upon
25 the finding that a permittee has not complied with conditions of a
26 permit. If the department is of the opinion that noncompliance exists,
27 the department shall provide written notice to the local government and
28 the permittee. If the department is of the opinion that the
29 noncompliance continues to exist thirty days after the date of the
30 notice, and the local government has taken no action to rescind the
31 permit, the department may petition the hearings board for a rescission
32 of the permit upon written notice of the petition to the local
33 government and the permittee if the request by the department is made
34 to the hearings board within fifteen days of the termination of the
35 thirty-day notice to the local government.

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

1 (10) Any permit for a variance or a conditional use by local
2 government under approved master programs must be submitted to the
3 department for its approval or disapproval.

4 (11)(a) An application for a substantial development permit for a
5 limited utility extension or for the construction of a bulkhead or
6 other measures to protect a single family residence and its appurtenant
7 structures from shoreline erosion shall be subject to the following
8 procedures:

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

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

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

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

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

25 (ii) Will serve an existing use in compliance with this chapter;
26 and

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

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