
SUBSTITUTE HOUSE BILL 2787

State of Washington

62nd Legislature

2012 Regular Session

By House Transportation (originally sponsored by Representatives Clibborn, Armstrong, Moeller, Eddy, Llias, Sells, Sequist, Springer, Hunter, and Maxwell; by request of Department of Transportation)

READ FIRST TIME 02/27/12.

1 AN ACT Relating to permitting for the replacement of certain
2 elements of the state route number 520 Evergreen Point bridge; amending
3 RCW 90.58.140; creating a new section; providing an expiration date;
4 and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** In adopting the shoreline management act in
7 1971, the legislature declared that it is the policy of the state to
8 provide for the management of the shorelines of the state by planning
9 for and fostering all reasonable and appropriate uses, to ensure the
10 development of these shorelines in a manner that will promote and
11 enhance the public interest, and to protect against adverse effects to
12 the public health, the land and its vegetation and wildlife, and the
13 waters of the state and their aquatic life, while protecting generally
14 public rights of navigation and corollary rights incidental thereto.
15 The legislature declares that the policies recognized in 1971 are still
16 vital to the protection of shorelines of the state.

17 The legislature recognizes that the replacement of the Evergreen
18 Point bridge affects shorelines of the state and shorelines of
19 statewide significance. However, the legislature finds that the state

1 route number 520 corridor, including the Evergreen Point bridge, is a
2 critical component of the state highway system and of the Puget Sound
3 region's transportation infrastructure and is essential to maintaining
4 and improving the region's and the state's economy.

5 The legislature further finds that the Evergreen Point bridge and
6 its approaches are in danger of structural failure and that it is
7 highly likely that the bridge will sustain serious structural damage
8 from an earthquake or windstorm over the next fifteen years. The
9 floating span sustained serious damage during the 1993 storm, which
10 required major repair and retrofit. Retrofitting the span has added
11 weight, which causes the floating span to sit lower in the water,
12 increasing the likelihood of waves breaking over the span and causing
13 traffic hazards. The floating span cannot be further retrofitted to
14 withstand severe windstorms. Recent storms have continued to cause
15 damage to the floating span, including cracks in the pontoons that
16 allow water to enter the pontoons.

17 The legislature further finds that replacement of the floating span
18 and its approaches presents unique challenges in that it is subject to
19 narrow windows in which work on Lake Washington can be performed
20 because of weather and environmental constraints.

21 The legislature further finds that significant delays in replacing
22 the floating span and east approach of the Evergreen Point bridge must
23 be avoided in order to: Avoid the catastrophic loss of the bridge;
24 protect the safety of the traveling public; prevent injury, loss of
25 life, and property damage; and provide for a strong economy in the
26 Puget Sound region and in Washington state.

27 **Sec. 2.** RCW 90.58.140 and 2011 c 277 s 3 are each amended to read
28 as follows:

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

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

36 A permit shall be granted:

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

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

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

14 (4) Except as otherwise specifically provided in subsection (11) of
15 this section, the local government shall require notification of the
16 public of all applications for permits governed by any permit system
17 established pursuant to subsection (3) of this section by ensuring that
18 notice of the application is given by at least one of the following
19 methods:

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

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

26 (c) Any other manner deemed appropriate by local authorities to
27 accomplish the objectives of reasonable notice to adjacent landowners
28 and the public.

29 The notices shall include a statement that any person desiring to
30 submit written comments concerning an application, or desiring to
31 receive notification of the final decision concerning an application as
32 expeditiously as possible after the issuance of the decision, may
33 submit the comments or requests for decisions to the local government
34 within thirty days of the last date the notice is to be published
35 pursuant to this subsection. The local government shall forward, in a
36 timely manner following the issuance of a decision, a copy of the
37 decision to each person who submits a request for the decision.

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

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

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

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

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

5 (iii) This subsection (5)(b) applies retroactively to any appeals
6 filed after January 1, 2012, and to any appeals filed on or after the
7 effective date of this section, and expires June 30, 2014.

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

35 ~~((e))~~ (d) Except as authorized in (b) of this subsection, if the
36 permit is for a substantial development meeting the requirements of
37 subsection (11) of this section, construction pursuant to that permit

1 may not begin or be authorized until twenty-one days from the date the
2 permit decision was filed as provided in subsection (6) of this
3 section.

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

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

21 (a) With regard to a permit other than a permit governed by
22 subsection (10) of this section, "date of filing" as used in this
23 section refers to the date of actual receipt by the department of the
24 local government's decision.

25 (b) With regard to a permit for a variance or a conditional use
26 governed by subsection (10) of this section, "date of filing" means the
27 date the decision of the department is transmitted by the department to
28 the local government.

29 (c) When a local government simultaneously transmits to the
30 department its decision on a shoreline substantial development with its
31 approval of either a shoreline conditional use permit or variance, or
32 both, "date of filing" has the same meaning as defined in (b) of this
33 subsection.

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

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

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

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

23 (10) Any permit for a variance or a conditional use issued with
24 approval by a local government under their approved master program must
25 be submitted to the department for its approval or disapproval.

26 (11)(a) An application for a substantial development permit for a
27 limited utility extension or for the construction of a bulkhead or
28 other measures to protect a single-family residence and its appurtenant
29 structures from shoreline erosion shall be subject to the following
30 procedures:

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

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

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

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

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

9 (ii) Will serve an existing use in compliance with this chapter;
10 and

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

13 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately.

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