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HOUSE BILL 2787

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Clibborn, Armstrong, Moeller, Eddy, Liias, Sells, Seaquist, Springer, Hunter, and Maxwell; by request of Department of Transportation

Read first time 02/20/12. Referred to Committee on Local Government.

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 shorelines 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 span and east approach 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, and  
21 any substantial development permit granted for the floating span and  
22 east approach 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 span and east approach 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 including, but not limited  
28 to: Installation of cofferdams, footings, columns, cross-beams,  
29 shoring, retaining walls, and access facilities to support the  
30 construction of the east approach and east end of the floating span;  
31 staging areas and anchors for pontoon assembly; a concrete delivery  
32 system; and anchors, shafts, columns, and cross-beams to support the  
33 west end of the floating span;

34 (ii) Nothing in this subsection (5)(b) precludes the hearings board  
35 from concluding that the project or any element of the project is  
36 inconsistent with the goals and policies of the shorelines management  
37 act or the local shoreline master program. If the hearings board makes  
38 such a finding it may (A) order that further conditions be applied to

1 any permits reviewed pursuant to this subsection (5)(b), or (B) require  
2 the department of transportation to provide an impact mitigation  
3 payment to a fund that would be used to pay for work to mitigate  
4 project impacts, or (C) both. If the hearings board determines that an  
5 impact mitigation payment is justified, the hearings board shall  
6 establish the payment in an amount necessary to provide additional  
7 mitigation for project impacts. The hearings board shall hold a  
8 hearing prior to establishing an impact mitigation payment. An impact  
9 mitigation payment may not exceed one percent of the cost of the  
10 individual project or project phase that is authorized by the permits  
11 that are reviewed under this section and found to be inconsistent with  
12 the shoreline management act and local shoreline master program.

13 (iii) This subsection (5)(b) applies to any appeals filed after  
14 January 1, 2012, and expires June 30, 2014.

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

1 the burden of proving whether the construction may involve significant  
2 irreversible damage to the environment and demonstrating whether such  
3 construction would or would not be appropriate is on the appellant;

4 ~~((e))~~ (d) Except as authorized in (b) of this subsection, if the  
5 permit is for a substantial development meeting the requirements of  
6 subsection (11) of this section, construction pursuant to that permit  
7 may not begin or be authorized until twenty-one days from the date the  
8 permit decision was filed as provided in subsection (6) of this  
9 section.

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

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

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

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

35 (c) When a local government simultaneously transmits to the  
36 department its decision on a shoreline substantial development with its  
37 approval of either a shoreline conditional use permit or variance, or

1 both, "date of filing" has the same meaning as defined in (b) of this  
2 subsection.

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

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

32 (11)(a) An application for a substantial development permit for a  
33 limited utility extension or for the construction of a bulkhead or  
34 other measures to protect a single-family residence and its appurtenant  
35 structures from shoreline erosion shall be subject to the following  
36 procedures:

37 (i) The public comment period under subsection (4) of this section  
38 shall be twenty days. The notice provided under subsection (4) of this

1 section shall state the manner in which the public may obtain a copy of  
2 the local government decision on the application no later than two days  
3 following its issuance;

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

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

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

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

15 (ii) Will serve an existing use in compliance with this chapter;  
16 and

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

19 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 immediately.

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