

SENATE BILL REPORT

SB 6366

As Reported by Senate Committee On:
Transportation, February 1, 2010

Title: An act relating to permits for certain major transportation corridor projects.

Brief Description: Concerning permits for certain major transportation corridor projects.

Sponsors: Senators Swecker, Haugen, Jacobsen, King, Marr, Ranker, Hatfield, Berkey, Sheldon, Tom and Stevens.

Brief History:

Committee Activity: Transportation: 1/19/10, 2/01/10 [DPS].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 6366 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Marr, Vice Chair; Swecker, Ranking Minority Member; Becker, Benton, Berkey, Delvin, Eide, Hatfield, Jacobsen, Kastama, King, Ranker and Sheldon.

Staff: Hayley Gamble (786-7452)

Background: The Department of Transportation (department) is typically required to obtain a number of different permits before it can begin construction on a project. For example, under the Federal Clean Water Act, when the department constructs a project in the vicinity of a navigable waterway or wetland, it is required to obtain certain permits from the Army Corps of Engineers that require mitigation for any impacts the project may have on these aquatic areas. When the department constructs a project that is in the vicinity of an environmentally sensitive area as defined in a local critical areas ordinance (which usually include waterways, wetlands and also non-aquatic sensitive areas) the department is required to obtain critical area permits from the local jurisdiction, and also a Shorelines permit if it is in an aquatic area. Before construction work can begin, a 21-day waiting period is required after a Shorelines permit has been issued.

If the department needs to use any local streets or right-of-way for a state project, for example as a staging area, they must obtain a city street use permit from the relevant jurisdiction.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Temporary building permits, which the department may be required to obtain in order to erect temporary structures during project construction, can currently be appealed by third parties, in addition to the department.

Summary of Bill (Recommended Substitute): A major transportation project is defined as a project that is part of a state highway corridor improvement program, costing in excess of \$1 billion.

If a major transportation project requires a federal Section 404 Clean Water Act permit, a local critical areas permit is not required, if the subject of the federal permit covers the local critical areas. Critical area ordinance permits may only be required for sensitive environmental areas that fall outside of the area covered under the Section 404 Federal permit.

City street use permits applicable to major transportation projects are presumed approved unless negotiated otherwise within 120 days. City street use permits and critical area permits must be appealed to superior court or through a local hearing examiner or other local process, at the choice of the department. The department may begin a project while a city street use permit is being appealed.

Temporary building permits applicable to major transportation projects may be appealed only by the issuing jurisdiction or the department. If an appeal is filed, a third party may intervene by petition.

Upon receiving a Shoreline permit for a major transportation project the department may begin construction work immediately, and the automatic 21-day waiting period is removed. During any permit appeal period, the department must make every effort to avoid work that could effect the environmentally sensitive area that is the subject of the Shoreline permit. If the permit appeal is successful, the department must provide for additional mitigation if the sensitive environmental area has been degraded in any way.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Recommended Substitute): City street use permits and critical area permits must be appealed to superior court or through a local hearing examiner or other local process, at the choice of the department. The department may begin a project while a city street use permit is being appealed. The period in which city street use permits, applicable to major transportation projects, are presumed approved unless negotiated otherwise is extended from 90 to 120 days. The department may now begin a project while a city street use permit is being appealed.

If an appeal is filed against a temporary building permit, a third party may now intervene by petition.

During any Shoreline permit appeal period, the department must make every effort to avoid work that could effect the environmentally sensitive area that is the subject of the Shoreline permit. If the permit appeal is successful, the department must provide for additional mitigation if the sensitive environmental area has been degraded in any way.

Language clarifying current law relating to master use permits is removed.

Appropriation: None.

Fiscal Note: Requested on January 13, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The department strives to deliver mega projects cooperatively. Time is money on mega projects and the department spends a lot of time on the permit process.

CON: This bill weakens environmental protections. We need to think about the precedent this bill sets. Resist the urge to save time and money at the expense of the public process and involvement. Portions of this bill discourage local involvement. Changes to the Shorelines Act preempt the process and may cause an irretrievable loss of resources. There is concern about the removal of dialogue with local agencies. This bill needs more work. Highways are considered essential public facilities and already guaranteed timely permitting under the law.

OTHER: Highway safety is a concern. Design standards need to be incorporated into this bill. Projects are being proposed that do not meet the Washington State Department of Transportation (WSDOT) design manual standards. Superior court appeals do not guarantee a faster appeal process. It would be good to confirm if the federal permits and local critical area permits really cover the same areas. A 90-day automatic approval is a little short for city street use permits. There are no such permits as critical area permits. Multi-agency permitting teams are another option.

Persons Testifying: PRO: Dave Dye, WSDOT.

CON: Susan Black, Arboretum Foundation; David Hiller, Cascade Bicycle Club; Heather Weiner, Sierra Club; Andrew Austin, Transportation Choices Coalition.

OTHER: Christopher Brown, Scott Merriman, Association of Counties; Ashley Probart, Association of Washington Cities.