

HOUSE BILL REPORT

HB 2787

As Reported by House Committee On: Transportation

Title: An act relating to permitting for the replacement of certain elements of the state route number 520 Evergreen Point bridge.

Brief Description: Concerning permitting for the replacement of certain elements of the state route number 520 Evergreen Point bridge.

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

Brief History:

Committee Activity:

Transportation: 2/24/12 [DPS].

Brief Summary of Substitute Bill

- Establishes construction authorization and conditioning provisions for the replacement of the floating bridge and landings of the State Route (SR) 520 Evergreen Point Bridge.
- Prevents the Washington State Department of Transportation (WSDOT) from engaging in construction on any portion of the SR 520 corridor between the western landing of the floating bridge and Interstate 5 until the Legislature has authorized the imposition of tolls on Interstate 90 and/or other funding sufficient to complete construction of the SR 520 bridge replacement and high occupancy vehicle project.
- Declares an emergency.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Eddy, Finn, Hansen, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg,

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.

McCune, Moeller, Morris, Moscoso, Overstreet, Reykdal, Rivers, Rodne, Shea, Takko, Upthegrove and Zeiger.

Minority Report: Without recommendation. Signed by 1 member: Representative Fitzgibbon.

Staff: David Munnecke (786-7315).

Background:

Shoreline Management Act - General Provisions.

Policy.

The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines. The SMA enunciates state policy to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and enjoyment and creates preference criteria listed in prioritized order that must be used by state and local governments in regulating shoreline uses.

Regulations, Permits, and Delayed Authorizations for Commencing Construction.

The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in city and county shoreline master programs (master programs) that regulate land use activities in shoreline areas of the state. Each local government is charged with establishing a program for the administration and enforcement of a shoreline permit system. While the SMA specifies standards for local governments to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Local governments, however, must notify the Department of Ecology (DOE) of all SMA permit decisions.

The SMA requires a property owner or developer to obtain a substantial development permit for substantial developments within shoreline areas. "Substantial developments" are defined to include both developments with a total cost or fair market value exceeding \$5,718 and developments materially interfering with normal public shoreline or water use. Certain exemptions to the substantial development permit requirement are specified in statute.

The permit review and approval standards generally specify that a local permit system must include provisions to assure that construction on a project may not begin or be authorized until 21 days from the date of filing, which is defined as the date of receipt by the DOE of the local government's decision, or until all review proceedings are terminated.

Appeals and Timing – Permits and Construction.

Appeals of substantial development permit decisions and the DOE shoreline rules and regulations are reviewed by the Shorelines Hearings Board (SHB). Any person aggrieved by the granting, denying, or rescinding of a shorelines permit may seek review from the SHB by filing a petition for review within 21 days of the date of receipt of the decision. The DOE or the Attorney General may also obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the SHB and the appropriate local government within 21 days of the

date the final decision was filed. Final decisions of the SHB may be appealed to superior court, and the SHB must issue its decision within 180 days after the date the petition is filed.

If a permit has been granted by a local government, the SMA specifies that construction may, with limited exceptions, be commenced 30 days after the date of an appeal of a decision of the SHB if:

- the granting of the permit is appealed to the SHB within 21 days of the date of filing;
- the SHB approves the granting of the permit or a portion of the substantial development for which the local government issued the permit; and
- an appeal for judicial review of the SHB's decision is filed in accordance with requirements of the Administrative Procedure Act.

Permittees beginning construction on a project prior to the termination of all review proceedings, however, do so at their own risk.

Floating Bridge Construction.

The Legislature has previously authorized the Washington State Department of Transportation (WSDOT) to proceed with construction of floating bridges while shoreline permits were being appealed. The first instance was in 1980 in regards to the permits for the construction of the Hood Canal floating bridge. The second instance was in 1991 in regards to the permits for the construction of the Interstate 90 floating bridge.

Evergreen Point Bridge – Replacement, Permits, and Appeals.

The Governor Albert D. Rosellini Bridge - Evergreen Point (Evergreen Point Bridge) spans the 1.44 mile distance between Interstate 5 (I-5) in the City of Seattle and the City of Medina on the eastern shore of Lake Washington. Originally opened to traffic in 1963, the four-lane floating bridge currently serves approximately 115,000 vehicles each day.

In 2007 the Legislature authorized the WSDOT to replace the existing bridge with a new floating structure. The replacement bridge, which is scheduled to open to traffic by the end of 2014, will have six lanes of traffic, including two general-purpose lanes, one transit/high occupancy vehicle (HOV) lane in each direction, and the ability to accommodate future light rail. In August 2011 the Federal Highway Administration issued the record of decision for the project, and construction on the replacement bridge is scheduled to begin in 2012. The program budget for the State Route (SR) 520 Bridge replacement and HOV Program, as set by the Legislature in 2009, is \$4.65 billion.

Numerous state and federal permits are required for the construction of the replacement bridge. With respect to permits required under the SMA, on January 17, 2012, the City of Seattle issued conditional approvals for the I-5 to Medina shoreline permit applications. On February 8, 2012, the Coalition for a Sustainable 520 (Coalition) filed an appeal of shoreline permits issued by Seattle with the SHB. In accordance with the SMA, the Coalition's actions have resulted in a stay of construction.

Summary of Substitute Bill:

New construction authorization and conditioning provisions for the replacement of the floating bridge and landings of the SR 520 Evergreen Point Bridge are established.

Construction Authorization.

Construction may begin 21 days after the date the WSDOT receives the local government's permit decision, if the local government decision pertains to any permit or a decision to issue any permit to the WSDOT for the replacement of the floating bridge and landings of the SR 520 Evergreen Point Bridge on or adjacent to Lake Washington. A substantial development permit granted for the floating bridge and landings is deemed to have been granted on the date that the local government's decision to grant the permit is issued.

The construction authorization applies to only those elements of the floating bridge and landings that do not preclude the WSDOT's selection of a four-lane alternative for SR 520 between I-5 and the City of Medina.

The WSDOT is prohibited from engaging in construction on any portion of the SR 520 corridor between the western landing of the floating bridge and I-5 until the Legislature has authorized the imposition of tolls on I-90 and/or other funding sufficient to complete construction of the SR 520 bridge replacement and HOV project.

Conditioning Provisions.

The construction authorization does not preclude the SHB from concluding that the project or any element of the project is inconsistent with the goals and policies of the SMA or the applicable master program.

General Limitations and Expiration.

The construction authorization and conditioning provisions expire on June 30, 2014, and apply to appeals filed after January 1, 2012.

Substitute Bill Compared to Original Bill:

The substitute bill applies to permits for the replacement of the floating bridge and landings of the SR 520 Evergreen Point floating bridge rather than the floating span and east approach.

The substitute bill prohibits the WSDOT from engaging in construction on any portion of the SR 520 corridor between the western landing of the floating bridge and I-5 until the Legislature has authorized the imposition of tolls on I-90 and/or other funding sufficient to complete construction of the SR 520 bridge replacement and HOV project.

The substitute bill also removes the description of the types of structures that the WSDOT might install as part of the construction of the floating bridge and landings.

Finally, the substitute bill removes the language regarding the actions that the SHB may take in regards to the project, as well as the cap on mitigation payments that can be required by the SHB.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This language is worked out between people who have concerns about whether we are trying to fully fund the west side of the bridge without adequate discussion. Hopefully, there will be support from the environmental community. While there are environmental concerns, we need to move forward.

The WSDOT supports this legislation. On February 8, the agency received an appeal to the shorelines permit in Seattle, which kicked into gear the agency's need to seek relief. There are large contract considerations, plus job loss. Possible consequences include a year-long delay, 450 positions lost in the Aberdeen area, 175 lost in Tacoma, plus over 265 at the bridge. Up to \$165 million in contract costs could be added.

The WSDOT has a tremendous track record of environmental compliance. This is a narrow exemption. This would allow construction to continue, but would not preclude any other penalties or findings. In history, the WSDOT has only lost one appeal on the shorelines management issue.

Why did the WSDOT already sign a contract? The SR 520 bridge is vulnerable to a seismic event and timing is very important. The two previous exemptions are because bridges sank. The WSDOT wants to be proactive. This is tightly worded and is not setting a precedent.

There are 900 construction jobs that will be yanked out of communities going forward. The hope was to testify in support of a jobs package. Instead, the testimony is in support of not losing existing jobs. Please keep the construction moving.

A number of carpenters in the Aberdeen community were unemployed for some time before the Aberdeen pontoon work began. This legislation is very important. The contractors are hearing the buzz about this issue. This has been great for the community. A number of people would otherwise be out of work. The loss of jobs would be very detrimental. There are 200 mortgage payments that rely on this.

There has been no other industry that has been impacted like the construction industry. Folks need to work. The potential loss of jobs speaks for itself.

The East King County Chambers of Commerce are strongly committed to the process. The SR 520 corridor is vital to many people and jobs in the region. The safety of the bridge is no longer viable and needs to be replaced as quickly as possible. The Seattle Metropolitan Chamber of Commerce believes that this bill is just as important to the west side of the bridge.

For Grays Harbor County, where there is 13.5 percent unemployment, a potential loss of 450 jobs is unacceptable. This is not something that can be absorbed into the local economy.

Automobile Association of America - Washington is, first and foremost, a safety organization. Automobile Association of America - Washington would second Secretary Hammond's comments about the safety of this issue.

The Washington Roundtable supports this. The Roundtable has been a strong supporter of replacing the SR 520 bridge for many years. This has been debated for many years, and another year of delay is unacceptable.

The Microsoft Corporation has supported this for many years. Nothing changes the responsibility of the Legislature and the Governor.

(Opposed) Washington Conservation Voters and the Washington Environmental Council oppose this. These organizations hope to work with the Legislature to make sure that this is not precedent-setting. Earlier, there was a similar bill that was opposed. There are ideas that are less precedent-setting that need to be discussed.

Futurewise opposes this. Futurewise appreciates being included in the conversations and the development of this. This is not about the SR 520 project or the appeals' substance. This very much concerns the precedent: that the WSDOT does not have to comply. The stay is a very important aspect of protections to our shorelines.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; Paula Hammond, Washington State Department of Transportation; Bob Abbott, Laborers' Union 252; Kristine Cole and Scott Jones, Pacific Northwest Regional Council on Carpenters; Randy Loomans, International Union of Operating Engineers Local 302; David Myers, Washington State Building and Construction Trades Council; John Little, Carpenters Union; Kevin Kelley, East King County Chamber of Commerce Legislative Coalition; Brad Boswell, Seattle Metropolitan Chamber of Commerce; Tim Gibbs, Greater Grays Harbor, Inc.; Dave Overstreet, Automobile Association of America - Washington; Neil Strege, Washington Roundtable; and Michael Groesch, Microsoft.

(Opposed) Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; and April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.