

ESSB 5994 - H COMM AMD

By Committee on Environment

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 90.58.355 and 2012 c 169 s 1 are each amended to
4 read as follows:

5 Requirements to obtain a substantial development permit,
6 conditional use permit, ~~((or))~~ variance, letter of exemption, or
7 other review conducted by a local government to implement this
8 chapter shall not apply to ~~((any person))~~:

9 (1) Any person conducting a remedial action at a facility
10 pursuant to a consent decree, order, or agreed order issued pursuant
11 to chapter 70.105D RCW, or to the department of ecology when it
12 conducts a remedial action under chapter 70.105D RCW. The department
13 must ensure compliance with the substantive requirements of this
14 chapter through the consent decree, order, or agreed order issued
15 pursuant to chapter 70.105D RCW, or during the department-conducted
16 remedial action, through the procedures developed by the department
17 pursuant to RCW 70.105D.090; ~~((or))~~

18 (2) Any person installing site improvements for storm water
19 treatment in an existing boatyard facility to meet requirements of a
20 national pollutant discharge elimination system storm water general
21 permit. The department must ensure compliance with the substantive
22 requirements of this chapter through the review of engineering
23 reports, site plans, and other documents related to the installation
24 of boatyard storm water treatment facilities;

25 (3)(a) Subject to the limitations specified in this subsection
26 (3), normal maintenance or repair of existing structures or
27 developments by the department of transportation, including
28 maintenance or repair of damage caused by accident, fire, or the
29 elements.

30 (b) For purposes of this subsection (3), the following
31 definitions apply:

32 (i) "Normal maintenance" includes any usual acts to prevent a
33 decline, lapse, or cessation from a lawfully established condition.

1 (ii) "Normal repair" means to restore a structure or development
2 to a state comparable to its original condition including, but not
3 limited to, restoring the development's size, shape, configuration,
4 location, and external appearance, within a reasonable period after
5 decay or partial destruction. Normal repair of a structure or
6 development may not cause substantial adverse effects to shoreline
7 resources or the shoreline environment. Replacement of a structure or
8 development may be authorized as a normal repair if:

9 (A) Replacement is the common method of repair for the type of
10 structure or development;

11 (B) The replacement structure or development is comparable to the
12 original structure or development including, but not limited to, the
13 size, shape, configuration, location, and external appearance of the
14 original structure or development; and

15 (C) The replacement does not cause substantial adverse effects to
16 shoreline resources or the shoreline environment.

17 (c) Normal maintenance or repair of an existing structure or
18 development under this subsection (3) does not include the expansion
19 of an existing structure or development, or the construction of a new
20 structure or development that does not meet the criteria of a
21 replacement structure or development under (b)(ii) of this subsection
22 (3); or

23 (4) Construction or installation of safety structures and
24 equipment by the department of transportation, including pavement
25 marking, freeway surveillance and control systems, railroad
26 protective devices not including grade-separated crossings, grooving,
27 glare screen, safety barriers, energy attenuators, and hazardous or
28 dangerous tree removal.

29 **Sec. 2.** RCW 90.58.140 and 2012 c 84 s 2 are each amended to read
30 as follows:

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

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

39 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
4 their adoption, the guidelines and rules of the department; and (iii)
5 so far as can be ascertained, the master program being developed for
6 the area;

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

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

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

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

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

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

30 The notices shall include a statement that any person desiring to
31 submit written comments concerning an application, or desiring to
32 receive notification of the final decision concerning an application
33 as expeditiously as possible after the issuance of the decision, may
34 submit the comments or requests for decisions to the local government
35 within thirty days of the last date the notice is to be published
36 pursuant to this subsection. The local government shall forward, in a
37 timely manner following the issuance of a decision, a copy of the
38 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
5 construction pursuant to a permit will not begin or be authorized
6 until twenty-one days from the date the permit decision was filed as
7 provided in subsection (6) of this section; or until all review
8 proceedings are terminated if the proceedings were initiated within
9 twenty-one days from the date of filing as defined in subsection (6)
10 of this section 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
13 of SR 90 (I-90) on or adjacent to Lake Washington, the construction
14 may begin after thirty days from the date of filing, and the permits
15 are valid until December 31, 1995;

16 (b)(i) In the case of any permit or decision to issue any permit
17 to 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
22 and landings is deemed to have been granted on the date that the
23 local 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
30 520 between Interstate 5 and the western landing of the floating
31 bridge until the legislature has authorized the imposition of tolls
32 on the Interstate 90 floating bridge and/or other funding sufficient
33 to complete construction of the state route number 520 bridge
34 replacement and HOV program. For the purposes of this subsection
35 (5)(b), the "western landing of the floating bridge" means the least
36 amount of new construction necessary to connect the new floating
37 bridge to the existing state route number 520 and anchor the west end
38 of the new floating bridge;

39 (ii) Nothing in this subsection (5)(b) precludes the shorelines
40 hearings board from concluding that the project or any element of the

1 project is inconsistent with the goals and policies of the shoreline
2 management act or the local shoreline master program;

3 (iii) This subsection (5)(b) applies retroactively to any appeals
4 filed after January 1, 2012, and to any appeals filed on or after
5 March 23, 2012, and expires June 30, 2014((-));

6 (c)(i) In the case of any permit or decision to issue any permit
7 for a transportation project, construction may begin twenty-one days
8 after the date of filing if the following requirements are met:

9 (A) The project qualifies as water-dependent or water-related as
10 applied in this chapter and described in WAC 173-26-020, and the
11 project, as supported by adequate findings, requires an in-water or
12 over-water location;

13 (B) All components of the project achieve a no net loss of
14 shoreline ecological functions in accordance with WAC 173-26-171
15 through 173-26-251;

16 (C) The department of transportation provides the department with
17 an assessment of how the project affects shoreline ecological
18 functions. This assessment must include specific actions for
19 avoiding, minimizing, and mitigating impacts to shoreline ecological
20 functions that ensure that there is no net loss of ecological
21 functions;

22 (D) The department, after reviewing the assessment required in
23 (c)(i)(C) of this subsection, determines that the project will result
24 in no net loss of ecological functions. The department's
25 determination must be completed before the final issuance of all
26 appropriate shoreline permits and variances; and

27 (E) A performance bond is posted by the project proponent
28 adequate to finance mitigation for impacts to ecological functions
29 resulting from the project, and long-term reporting and monitoring of
30 ecological functions;

31 (ii) Nothing in this subsection (5)(c) precludes the shorelines
32 hearings board from concluding that the shoreline project or any
33 element of the project is inconsistent with the goals and policies of
34 this chapter or the local shoreline master program;

35 (iii) This subsection (5)(c) does not apply to permit decisions
36 for the replacement of the floating bridge and landings of the state
37 route number 520 Evergreen Point bridge on or adjacent to Lake
38 Washington;

39 (d) Except as authorized in (b) and (c) of this subsection,
40 construction may be commenced no sooner than thirty days after the

1 date of the appeal of the board's decision is filed if a permit is
2 granted by the local government and (i) the granting of the permit is
3 appealed to the shorelines hearings board within twenty-one days of
4 the date of filing, (ii) the hearings board approves the granting of
5 the permit by the local government or approves a portion of the
6 substantial development for which the local government issued the
7 permit, and (iii) an appeal for judicial review of the hearings board
8 decision is filed pursuant to chapter 34.05 RCW. The appellant may
9 request, within ten days of the filing of the appeal with the court,
10 a hearing before the court to determine whether construction pursuant
11 to the permit approved by the hearings board or to a revised permit
12 issued pursuant to the order of the hearings board should not
13 commence. If, at the conclusion of the hearing, the court finds that
14 construction pursuant to such a permit would involve a significant,
15 irreversible damaging of the environment, the court shall prohibit
16 the permittee from commencing the construction pursuant to the
17 approved or revised permit until all review proceedings are final.
18 Construction pursuant to a permit revised at the direction of the
19 hearings board may begin only on that portion of the substantial
20 development for which the local government had originally issued the
21 permit, and construction pursuant to such a revised permit on other
22 portions of the substantial development may not begin until after all
23 review proceedings are terminated. In such a hearing before the
24 court, the burden of proving whether the construction may involve
25 significant irreversible damage to the environment and demonstrating
26 whether such construction would or would not be appropriate is on the
27 appellant;

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

34 If a permittee begins construction pursuant to (a), (b), (c),
35 ~~((e))~~ (d), or (e) of this subsection, the construction is begun at
36 the permittee's own risk. If, as a result of judicial review, the
37 courts order the removal of any portion of the construction or the
38 restoration of any portion of the environment involved or require the
39 alteration of any portion of a substantial development constructed
40 pursuant to a permit, the permittee is barred from recovering damages

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

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

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

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

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

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

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

34 (8) Any permit may, after a hearing with adequate notice to the
35 permittee and the public, be rescinded by the issuing authority upon
36 the finding that a permittee has not complied with conditions of a
37 permit. If the department is of the opinion that noncompliance
38 exists, the department shall provide written notice to the local
39 government and the permittee. If the department is of the opinion
40 that the noncompliance continues to exist thirty days after the date

1 of the notice, and the local government has taken no action to
2 rescind the permit, the department may petition the hearings board
3 for a rescission of the permit upon written notice of the petition to
4 the local government and the permittee if the request by the
5 department is made to the hearings board within fifteen days of the
6 termination of the thirty-day notice to the local government.

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

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

13 (11)(a) An application for a substantial development permit for a
14 limited utility extension or for the construction of a bulkhead or
15 other measures to protect a single-family residence and its
16 appurtenant structures from shoreline erosion shall be subject to the
17 following procedures:

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

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

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

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

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

35 (ii) Will serve an existing use in compliance with this chapter;
36 and

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

39 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

(1) Eliminates the exemption from the state environmental policy act for Washington state department of transportation (WSDOT) projects that are exempt from the national environmental policy act.

(2) Eliminates the requirement that cities, counties, and towns issue permits to WSDOT within ninety days, to the extent practicable.

(3) Eliminates the restriction on third-party appeals of permits issued by cities, counties, and towns to WSDOT.

(4) Eliminates the direct appeals of certain growth management act permits to a superior court unless WSDOT consents to a local appeals process.

(5) Defines the normal maintenance and repair activities for WSDOT structures and developments that are made subject to exemptions from SMA permitting requirements. Directs that WSDOT repair and maintenance projects exempt from SMA permitting requirements may not cause substantial adverse effects to shoreline resources or environments.

(6) Authorizes construction activities to begin twenty-one days after the filing of a final permit determination on certain permitted projects or decisions, and without a stay of construction until the termination of review proceedings. These projects must be water-dependent or water-related, must be located in or over waters, must be covered by a performance bond posted by the project proponent adequate to finance ecological mitigation and monitoring, and must receive a department of ecology determination that no net loss of ecology functions will result from the project, in accordance with the department's shoreline management act administrative rules and based on an assessment supplied by WSDOT.

(7) Eliminates the emergency clause and the provision making the act effective upon the enactment of Senate Bill No. 5987.

(8) Eliminates the restriction on the scope of WSDOT projects addressed by the bill to connecting Washington projects funded through the account created in Senate Bill No. 5987.

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