

SSB 5994 - S AMD TO S AMD (S-2239.1/15) 64
By Senator Ericksen

NOT ADOPTED 2/27/2015

1 On page 4, after line 28 of the amendment, insert the following:

2 "NEW SECTION. **Sec. 12.** A new section is added to chapter 47.01
3 RCW to read as follows:

4 For state highway projects, the department must follow the same
5 expedited permitting process that applied to the Interstate 5 Skagit
6 river bridge replacement project. The expedited permitting process
7 must be used with the following permit or environmental exemption
8 applied for on any state highway project:

9 (1) The department must grant or reject a state environmental
10 policy act categorical exemption permit within eight days of
11 application;

12 (2) A local government entity with jurisdiction must grant or
13 reject a written shoreline exemption within eight days of
14 application;

15 (3) The department of ecology must grant or reject a coastal zone
16 management act consistency determination within twelve days of
17 application;

18 (4) The department of fish and wildlife must grant or reject an
19 emergency hydraulic project approval permit within eight days of
20 application;

21 (5) The department of natural resources must grant or reject an
22 aquatic lands right of entry permit within thirteen days of
23 application; and

24 (6) Any other local government or state agency permit or
25 environmental exemption not identified in this section required for a
26 state highway project must be granted or denied within thirteen days
27 of application.

28 NEW SECTION. **Sec. 13.** A new section is added to chapter 35.21
29 RCW to read as follows:

30 Construction may continue during an appeal of a permit issued
31 under this chapter for state highway projects. However, if, as a
32 result of judicial review, the courts order the removal or alteration

1 of any portion of the construction or the restoration of any portion
2 of the environment involved, the permittee is barred from recovering
3 damages or costs involved in adhering to the requirements of the
4 permit.

5 NEW SECTION. **Sec. 14.** A new section is added to chapter 36.01
6 RCW to read as follows:

7 Construction may continue during an appeal of a permit issued
8 under this chapter for state highway projects. However, if, as a
9 result of judicial review, the courts order the removal or alteration
10 of any portion of the construction or the restoration of any portion
11 of the environment involved, the permittee is barred from recovering
12 damages or costs involved in adhering to the requirements of the
13 permit.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 35A.21
15 RCW to read as follows:

16 Construction may continue during an appeal of a permit issued
17 under this chapter for state highway projects. However, if, as a
18 result of judicial review, the courts order the removal or alteration
19 of any portion of the construction or the restoration of any portion
20 of the environment involved, the permittee is barred from recovering
21 damages or costs involved in adhering to the requirements of the
22 permit.

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 36.70A
24 RCW to read as follows:

25 Construction may continue during an appeal of a permit issued
26 under this chapter for state highway projects. However, if, as a
27 result of judicial review, the courts order the removal or alteration
28 of any portion of the construction or the restoration of any portion
29 of the environment involved, the permittee is barred from recovering
30 damages or costs involved in adhering to the requirements of the
31 permit.

32 **Sec. 17.** RCW 90.58.140 and 2012 c 84 s 2 are each amended to
33 read as follows:

34 (1) A development shall not be undertaken on the shorelines of
35 the state unless it is consistent with the policy of this chapter

1 and, after adoption or approval, as appropriate, the applicable
2 guidelines, rules, or master program.

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

7 A permit shall be granted:

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

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

17 (3) The local government shall establish a program, consistent
18 with rules adopted by the department, for the administration and
19 enforcement of the permit system provided in this section. The
20 administration of the system so established shall be performed
21 exclusively by the local government.

22 (4) Except as otherwise specifically provided in subsection (11)
23 of this section, the local government shall require notification of
24 the public of all applications for permits governed by any permit
25 system established pursuant to subsection (3) of this section by
26 ensuring that notice of the application is given by at least one of
27 the following methods:

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

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

34 (c) Any other manner deemed appropriate by local authorities to
35 accomplish the objectives of reasonable notice to adjacent landowners
36 and the public.

37 The notices shall include a statement that any person desiring to
38 submit written comments concerning an application, or desiring to
39 receive notification of the final decision concerning an application
40 as expeditiously as possible after the issuance of the decision, may

1 submit the comments or requests for decisions to the local government
2 within thirty days of the last date the notice is to be published
3 pursuant to this subsection. The local government shall forward, in a
4 timely manner following the issuance of a decision, a copy of the
5 decision to each person who submits a request for the decision.

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

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

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

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

1 amount of new construction necessary to connect the new floating
2 bridge to the existing state route number 520 and anchor the west end
3 of the new floating bridge;

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

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

11 (c) In the case of any permit issued to the state of Washington,
12 department of transportation, for the construction of a state highway
13 project, the construction may begin twenty-one days from the date of
14 filing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (ii) Will serve an existing use in compliance with this chapter;
14 and

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

17 NEW SECTION. **Sec. 18.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected."

21 Renumber the remaining sections consecutively and correct any
22 internal references accordingly.

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23 On page 5, line 2 of the title amendment, after "90.58.355"
24 strike all material through "47.01 RCW" on line 4 and insert "and
25 90.58.140; adding new sections to chapter 36.70A RCW; adding new
26 sections to chapter 47.01 RCW"

EFFECT: Requires WSDOT to follow the same expedited permitting
process for state highway projects that applied to the Interstate 5
Skagit river bridge replacement project. Allows construction to
proceed during appeals of certain local permits.

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