

ESSB 5994 - S AMD 491

By Senators King, Hobbs

ADOPTED 6/28/2015

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that in 2012 the
4 legislature passed Second Engrossed Substitute Senate Bill No. 6406
5 (chapter 1, Laws of 2012 1st sp. sess.), which updated statutory
6 provisions relating to natural resource management and regulatory
7 programs. The legislature finds that opportunities to build upon the
8 updates made in 2012 and to further streamline regulatory processes
9 and achieve program efficiencies while maintaining current levels of
10 natural resource protection exist. The legislature intends to update
11 provisions relating to the review, permitting, and approval of
12 department of transportation projects, particularly those that occur
13 on shorelines of the state, to achieve these opportunities.

14 The legislature further finds that the shoreline management act
15 of 1971, codified in chapter 90.58 RCW, was approved and enacted by a
16 vote of the people, and that the shoreline management act embodies a
17 balance between the protection of state shorelines and development.
18 Recognizing this balance, the legislature intends to facilitate
19 transportation projects while ensuring accountability.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.01
21 RCW to read as follows:

22 (1) To the greatest extent practicable, a city, town, code city,
23 or county must make a final determination on all permits required for
24 a project on a state highway as defined in RCW 46.04.560 no later
25 than ninety days after the department's submission of a complete
26 permit application for a project with an estimated cost of less than
27 five hundred million dollars.

28 (2) The department must report annually to the governor and the
29 transportation committees of the house of representatives and the
30 senate in compliance with RCW 43.01.036 regarding any permit

1 application that takes longer than the number of days identified in
2 subsection (1) of this section to process.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.21
4 RCW to read as follows:

5 A city or town must comply with the requirements of section 2 of
6 this act in making a final determination on a permit as part of a
7 project on a state highway as defined in RCW 46.04.560.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 35A.21
9 RCW to read as follows:

10 A code city must comply with the requirements of section 2 of
11 this act in making a final determination on a permit as part of a
12 project on a state highway as defined in RCW 46.04.560.

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

15 A county must comply with the requirements of section 2 of this
16 act in making a final determination on a permit as part of a project
17 on a state highway as defined in RCW 46.04.560.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.01
19 RCW to read as follows:

20 The department shall coordinate a state agency work group in 2016
21 that will identify issues, laws, and regulations relevant to
22 consolidating and coordinating the review processes under the
23 national environmental policy act, 42 U.S.C. Sec. 4321 et seq. and
24 chapter 43.21C RCW to streamline the review of and avoid delays to
25 projects on state highways as defined in RCW 46.04.560. The
26 department must report the work group's findings to the joint
27 transportation committee in compliance with RCW 43.01.036 by December
28 31, 2016. State agencies in the work group must include the
29 department, the department of ecology, and any other relevant
30 agencies. The report must include: An inventory of federal and state
31 environmental regulatory authority; a discussion of the issues
32 pertaining to the current process and timelines used by state and
33 federal agencies for reviewing projects on state highways as defined
34 in RCW 46.04.560; and recommendations for legislation or rules that
35 would reduce delays and time associated with review by state and

1 federal agencies, including suggestions for new categorical
2 exemptions.

3 **Sec. 7.** RCW 90.58.140 and 2012 c 84 s 2 are each amended to read
4 as follows:

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

9 (2) A substantial development shall not be undertaken on
10 shorelines of the state without first obtaining a permit from the
11 government entity having administrative jurisdiction under this
12 chapter.

13 A permit shall be granted:

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

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

23 (3) The local government shall establish a program, consistent
24 with rules adopted by the department, for the administration and
25 enforcement of the permit system provided in this section. The
26 administration of the system so established shall be performed
27 exclusively by the local government.

28 (4) Except as otherwise specifically provided in subsection (11)
29 of this section, the local government shall require notification of
30 the public of all applications for permits governed by any permit
31 system established pursuant to subsection (3) of this section by
32 ensuring that notice of the application is given by at least one of
33 the following methods:

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

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

1 (c) Any other manner deemed appropriate by local authorities to
2 accomplish the objectives of reasonable notice to adjacent landowners
3 and the public.

4 The notices shall include a statement that any person desiring to
5 submit written comments concerning an application, or desiring to
6 receive notification of the final decision concerning an application
7 as expeditiously as possible after the issuance of the decision, may
8 submit the comments or requests for decisions to the local government
9 within thirty days of the last date the notice is to be published
10 pursuant to this subsection. The local government shall forward, in a
11 timely manner following the issuance of a decision, a copy of the
12 decision to each person who submits a request for the decision.

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

16 (5) The system shall include provisions to assure that
17 construction pursuant to a permit will not begin or be authorized
18 until twenty-one days from the date the permit decision was filed as
19 provided in subsection (6) of this section; or until all review
20 proceedings are terminated if the proceedings were initiated within
21 twenty-one days from the date of filing as defined in subsection (6)
22 of this section except as follows:

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

28 (b)(i) In the case of any permit or decision to issue any permit
29 to the state of Washington, department of transportation, for the
30 replacement of the floating bridge and landings of the state route
31 number 520 Evergreen Point bridge on or adjacent to Lake Washington,
32 the construction may begin twenty-one days from the date of filing.
33 Any substantial development permit granted for the floating bridge
34 and landings is deemed to have been granted on the date that the
35 local government's decision to grant the permit is issued. This
36 authorization to construct is limited to only those elements of the
37 floating bridge and landings that do not preclude the department of
38 transportation's selection of a four-lane alternative for state route
39 number 520 between Interstate 5 and Medina. Additionally, the
40 Washington state department of transportation shall not engage in or

1 contract for any construction on any portion of state route number
2 520 between Interstate 5 and the western landing of the floating
3 bridge until the legislature has authorized the imposition of tolls
4 on the Interstate 90 floating bridge and/or other funding sufficient
5 to complete construction of the state route number 520 bridge
6 replacement and HOV program. For the purposes of this subsection
7 (5)(b), the "western landing of the floating bridge" means the least
8 amount of new construction necessary to connect the new floating
9 bridge to the existing state route number 520 and anchor the west end
10 of the new floating bridge;

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

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

18 (c)(i) In the case of permits for projects addressing significant
19 public safety risks, as defined by the department of transportation,
20 it is not in the public interest to delay construction until all
21 review proceedings are terminated. In the case of any permit issued
22 under this chapter or decision to issue any permit under this chapter
23 for a transportation project of the Washington state department of
24 transportation, construction may begin twenty-one days after the date
25 of filing if all components of the project achieve a no net loss of
26 shoreline ecological functions, as defined by department guidelines
27 adopted pursuant to RCW 90.58.060 and as determined through the
28 following process:

29 (A) The department of transportation, as part of the permit
30 review process, must provide the local government with an assessment
31 of how the project affects shoreline ecological functions. The
32 assessment must include specific actions for avoiding, minimizing,
33 and mitigating impacts to shoreline ecological functions, developed
34 in consultation with the department, that ensure there is no net loss
35 of shoreline ecological functions; and

36 (B) The local government, after reviewing the assessment required
37 in (c)(i)(A) of this subsection and prior to the final issuance of
38 all appropriate shoreline permits and variances, must determine that
39 the project will result in no net loss of shoreline ecological
40 functions.

1 (ii) Nothing in this subsection (5)(c) precludes the shorelines
2 hearings board from concluding that the shoreline project or any
3 element of the project is inconsistent with this chapter, the local
4 shoreline master program, chapter 43.21C RCW and its implementing
5 regulations, or the applicable shoreline regulations.

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

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

39 ~~((d))~~ (e) Except as authorized in (b) and (c) of this
40 subsection, if the permit is for a substantial development meeting

1 the requirements of subsection (11) of this section, construction
2 pursuant to that permit may not begin or be authorized until twenty-
3 one days from the date the permit decision was filed as provided in
4 subsection (6) of this section.

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

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

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

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

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

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

39 (7) Applicants for permits under this section have the burden of
40 proving that a proposed substantial development is consistent with

1 the criteria that must be met before a permit is granted. In any
2 review of the granting or denial of an application for a permit as
3 provided in RCW 90.58.180 (1) and (2), the person requesting the
4 review has the burden of proof.

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

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

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

24 (11)(a) An application for a substantial development permit for a
25 limited utility extension or for the construction of a bulkhead or
26 other measures to protect a single-family residence and its
27 appurtenant structures from shoreline erosion shall be subject to the
28 following procedures:

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

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

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

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

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

6 (ii) Will serve an existing use in compliance with this chapter;
7 and

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

10 NEW SECTION. **Sec. 8.** To ensure that vital maintenance and minor
11 safety upgrades to state transportation facilities are efficiently
12 achieved while still protecting the shoreline environment, the
13 legislature finds that it is in the public interest to exclude state
14 highway maintenance and minor safety upgrade activities from local
15 review and approval processes under the shoreline management act, as
16 provided in sections 9 and 10 of this act.

17 **Sec. 9.** RCW 90.58.355 and 2012 c 169 s 1 are each amended to
18 read as follows:

19 Requirements to obtain a substantial development permit,
20 conditional use permit, ~~((or))~~ variance ~~((shall))~~, letter of
21 exemption, or other review conducted by a local government to
22 implement this chapter do not apply to ~~((any person))~~:

23 (1) Any person conducting a remedial action at a facility
24 pursuant to a consent decree, order, or agreed order issued pursuant
25 to chapter 70.105D RCW, or to the department of ecology when it
26 conducts a remedial action under chapter 70.105D RCW. The department
27 must ensure compliance with the substantive requirements of this
28 chapter through the consent decree, order, or agreed order issued
29 pursuant to chapter 70.105D RCW, or during the department-conducted
30 remedial action, through the procedures developed by the department
31 pursuant to RCW 70.105D.090; ~~((or))~~

32 (2) Any person installing site improvements for storm water
33 treatment in an existing boatyard facility to meet requirements of a
34 national pollutant discharge elimination system storm water general
35 permit. The department must ensure compliance with the substantive
36 requirements of this chapter through the review of engineering
37 reports, site plans, and other documents related to the installation
38 of boatyard storm water treatment facilities; or

1 (3) The department of transportation projects and activities that
2 meet the conditions of section 10 of this act.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.58
4 RCW to read as follows:

5 (1) For purposes of this section, the following definitions
6 apply:

7 (a) "Maintenance" means the preservation of the transportation
8 facility, including surface, shoulders, roadsides, structures, and
9 such traffic control devices as are necessary for safe and efficient
10 utilization of the highway in a manner that substantially conforms to
11 the preexisting design, function, and location as the original except
12 to meet current engineering standards or environmental permit
13 requirements.

14 (b) "Repair" means to restore a structure or development to a
15 state comparable to its original condition including, but not limited
16 to, restoring the development's size, shape, configuration, location,
17 and external appearance, within a reasonable period after decay or
18 partial destruction. Repair of a structure or development may not
19 cause substantial adverse effects to shoreline resources or the
20 shoreline environment. Replacement of a structure or development may
21 be considered a repair if: Replacement is the common method of repair
22 for the type of structure or development; the replacement structure
23 or development is comparable to the original structure or development
24 including, but not limited to, the size, shape, configuration,
25 location, and external appearance of the original structure or
26 development; and the replacement does not cause substantial adverse
27 effects to shoreline resources or the shoreline environment.

28 (c) "Replacement" of any existing transportation facility means
29 to replace in a manner that substantially conforms to the preexisting
30 design, function, and location as the original except to meet current
31 engineering standards or environmental permit requirements.
32 Maintenance or replacement activities do not involve expansion of
33 automobile lanes, and do not result in significant negative shoreline
34 impact.

35 (2) The following department of transportation projects and
36 activities do not require a substantial development permit,
37 conditional use permit, variance, letter of exemption, or other
38 review conducted by a local government:

1 (a) Maintenance, repair, or replacement that occurs within the
2 roadway prism of a state highway as defined in RCW 46.04.560, the
3 lease or ownership area of a state ferry terminal, or the lease or
4 ownership area of a transit facility, including ancillary
5 transportation facilities such as pedestrian paths, bicycle paths, or
6 both, and bike lanes;

7 (b) Construction or installation of safety structures and
8 equipment, including pavement marking, freeway surveillance and
9 control systems, railroad protective devices not including grade
10 separated crossings, grooving, glare screen, safety barriers, energy
11 attenuators, and hazardous or dangerous tree removal;

12 (c) Maintenance occurring within the right-of-way; or

13 (d) Construction undertaken in response to unforeseen,
14 extraordinary circumstances that is necessary to prevent a decline,
15 lapse, or cessation of service from a lawfully established
16 transportation facility.

17 (3) The department of transportation must provide written
18 notification of projects and activities authorized under this section
19 with a cost in excess of one million dollars before the design or
20 plan is finalized to all agencies with jurisdiction, agencies with
21 facilities or services that may be impacted, and adjacent property
22 owners.

23 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately."

ESSB 5994 - S AMD 491

By Senators King, Hobbs

ADOPTED 6/28/2015

27 On page 1, line 1 of the title, after "Relating to" strike the
28 remainder of the title and insert "permits for state transportation
29 projects; amending RCW 90.58.140 and 90.58.355; adding new sections
30 to chapter 47.01 RCW; adding a new section to chapter 35.21 RCW;
31 adding a new section to chapter 35A.21 RCW; adding a new section to
32 chapter 36.01 RCW; adding a new section to chapter 90.58 RCW;
33 creating new sections; and declaring an emergency."

EFFECT: Establishes that, to the greatest extent practicable, local permit decisions must be made within ninety days for highway projects under five hundred million dollars, and establishes a reporting requirement. Establishes a study by the department of transportation to recommend ways to streamline environmental reviews under the state environmental policy act and the national environmental policy act for state transportation projects. Amends the shoreline management act to allow construction within twenty-one days of filing of permit approval on a state highway project. Amends the shoreline management act permitting requirements for transportation projects involving the maintenance, repair, or replacement of a facility. Changes the effective date from July 1, 2015, to immediately upon the governor's signature.

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