
Local Government Committee

HB 1850

Brief Description: Exempting certain department of transportation actions from local review or permit processes under the shoreline management act.

Sponsors: Representatives Hayes, Clibborn, Orcutt, Takko, Harmsworth, Riccelli, Rodne, Bergquist, Wilson, Robinson, Smith, Muri and Magendanz.

Brief Summary of Bill

- Exempts certain projects and activities of the Department of Transportation, which occur within the right-of-way of state highway facilities, or the leased or owned area of ferry terminals, from requirements to obtain a substantial development permit, a conditional use permit, a variance, a letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act of 1971.

Hearing Date: 2/12/15

Staff: Michaela Murdock (786-7289).

Background:

The Shoreline Management Act of 1971.

The Shoreline Management Act of 1971 (SMA) governs uses of the shorelines of the state. With some exceptions, shorelines include all water areas of the state, the land underlying them, and their associated shorelands. The SMA provides for a cooperative regulatory approach between local governments and the state. At the local level, regulations related to the SMA are developed in mandatory city and county shoreline master programs (SMPs), which regulate land use activities in shoreline areas. At the state level, the Department of Ecology (DOE) is charged with reviewing the locally-adopted SMPs for compliance with statutory provisions and agency guidelines.

Substantial Development Permits.

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.

Prior to undertaking any substantial development on shorelines of the state, the SMA requires a property owner or developer to first obtain a substantial development permit. A "substantial development" is any development with a total cost or fair market value exceeding \$5,000, or any development that materially interferes with the normal public use of the water or shorelines of the state.

Certain types of developments are not considered "substantial developments" under the SMA and are exempt from the requirement to obtain a substantial development permit. For example, normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements, is not considered a substantial development.

Letter of Exemption.

Some projects conducted on shorelines of the state require review and approval by federal agencies. The DOE is the coordinating agency for the state with regard to permits issued by the United States Army Corps of Engineers. To facilitate the DOE's coordination of local actions with federal permit review, a local government must prepare a letter of exemption whenever: (1) it determines that a development is exempt from the substantial development permit requirements; and (2) the development is subject to one or more specified federal permit requirements. The letter must indicate the specific exemption and provide a summary of the local government's analysis of the consistency of the project with the local SMP and the SMA.

Variance or Conditional Use Permits.

Under rules adopted by the DOE, a development or use that is listed as a conditional use pursuant to a local SMP, or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional, and performance standards of the SMP, such development or use can only be authorized by approval of a variance. Any permit for a variance or conditional use issued with the approval of a local government under its SMP must be submitted to the DOE for approval or disapproval.

Persons Not Required to Obtain Permits or Variances.

Persons specified in statute are not required to obtain a substantial development permit, conditional use permit, or variance under the SMA. "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government.

The following persons are exempt under the statute:

- any person conducting remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to the Model Toxic Control Act;
- the DOE conducting remedial action under the Model Toxic Control Act; and
- any person installing site improvements for storm water treatment in an existing boatyard facility to meet applicable permit requirements.

Summary of Bill:

Statutory provisions that exempt certain persons from the requirement to obtain a substantial development permit, conditional use permit, or variance under the SMA are modified. Such

persons are also exempted from the requirement to obtain a letter of exemption or other review conducted by a local government to implement the SMA.

In addition, projects and activities of the Department of Transportation (DOT), which meet certain criteria, are specifically exempted from requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local government review.

The following DOT projects and activities, which occur within the right-of-way of state highway facilities or leased or owned areas of a ferry terminal, are exempt:

- maintenance, repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility, including ancillary transportation facilities; and
- construction or installation of safety structures and equipment, not including new travel lanes or the expansion of transportation facilities

The replacement of structures must be comparable to the original structure, including size, shape, configuration, and location, except as necessary to meet current engineering standards or environmental permit requirements.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.