

HOUSE BILL REPORT

HB 2036

As Reported by House Committee On:
Local Government

Title: An act relating to improving permit and approval efficiencies under the shoreline management act.

Brief Description: Improving permit and approval efficiencies under the shoreline management act.

Sponsors: Representative Fitzgibbon.

Brief History:

Committee Activity:

Local Government: 2/17/15, 2/19/15 [DP].

Brief Summary of Bill

- Requires the Department of Ecology (DOE), by December 31, 2016, to develop two general permits, one each for eastern and western Washington, for use by counties and cities for development proposals that are within the shorelines of the state and exempt from substantial development permit (SDP) requirements of the Shoreline Management Act of 1971 (SMA).
- Specifies criteria for development, issuance, and enforcement of the general permits.
- Requires counties and cities, by July 1, 2017, to adopt and implement the general permits developed by the DOE for normal maintenance or repair activities for roads, streets, and highways that are exempt from SDP requirements of the SMA.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 8 members: Representatives Takko, Chair; Gregerson, Vice Chair; Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McCaslin, Peterson and Pike.

Minority Report: Do not pass. Signed by 1 member: Representative McBride.

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.

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, which regulate land use activities in shoreline areas. Local governments are also responsible for establishing a program for the administration and enforcement of a permit system to regulate developments undertaken on shorelines of the state, consistent with rules adopted by the Department of Ecology (DOE).

At the state level, the DOE is charged with reviewing the locally adopted master programs for compliance with statutory provisions and agency guidelines. Additionally, the DOE adopts rules and regulations governing implementation of the SMA, including establishing criteria for review of permits such as shoreline development permits (SDP), conditional use permits, and variance permits.

Substantial Development Permits.

Prior to undertaking any substantial development on shorelines of the state, the SMA requires a property owner or developer to first obtain a SDP. 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 SDP. For example, the following activities are exempt:

- normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
- construction of the normal protective bulkhead common to single family residences;
- emergency construction necessary to protect property from damage by the elements; and
- construction of a dock designed for pleasure craft only, for the private noncommercial use of single or multifamily residences with a value that does not exceed certain dollar thresholds.

Shorelines Hearings Board.

The Shorelines Hearings Board (Board) is established under the SMA within the Environmental and Land Use Hearings Office. Any person aggrieved by the grant, denial, or rescinding of a permit concerning shorelines of the state pursuant to the SMA may seek review from the Board. In addition, any person may appeal to the Board any rules, regulations, or guidelines adopted or approved by the DOE.

Summary of Bill:

By December 31, 2016, the DOE must develop two general permits for use by counties and cities for proposed development activities within the shorelines of the state that are exempt from the SDP requirements of the SMA. One of the permits must apply to activities located in eastern Washington, and the other permit must apply to activities located in western Washington.

The general permits:

- must prioritize the avoidance and mitigation of damage to shoreline ecological functions;
- must, at a minimum, be for the maintenance or repair of streets, roads, and highways, and construction of docks or normal protective bulkheads; and
- may be reviewed and periodically revised by the DOE.

The general permits are governed by, and must be issued and enforced in accordance with, the permit system established, administered, and enforced by local governments under the SMA. The general permits are appealable to the Board.

Except for normal maintenance or repair activities for roads, streets, or highways, counties and cities may choose to use the general permits adopted by the DOE or may use locally adopted procedures for addressing proposed development activities that are exempt from the SDP requirements. For normal maintenance or repair activities for roads, streets, and highways that are exempt from the SDP, counties and cities must adopt and implement the general permits developed by the DOE by July 1, 2017. Effective July 1, 2017, normal maintenance or repair activities for roads, streets, and highways may not start without first obtaining approval through a general permit.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) Local governments around the state interpret categorical exemptions under the SMA in different ways. For example, King County charges over \$700 to review an exemption and the review takes a couple of weeks. In other jurisdictions, no review of an exemption is conducted. For state agencies, like the Department of Transportation (DOT), which conduct activities across multiple jurisdictions, a common set of standards would be advantageous. This bill provides for those common standards by requiring the DOE to develop general permits. Unlike patchwork local regulations, a common set of standards will provide predictability for projects.

Adoption of the general permits by local governments for some projects, like docks or bulkheads, will be optional. Local governments can provide their own process or adopt the common standards. This bill is intended to start a conversation about ways to improve administration and implementation of the SMA. Compared to other recent bills that have proposed new or different exemptions from permitting or review, this bill is a good alternative.

(With concerns) Over many years, the DOE and the DOT have considered adoption of a general permit to cover maintenance activities, specifically to address problems associated with linear projects that cross multiple jurisdictions. However, in recent years, this issue has largely been addressed through stormwater permits or National Pollutant Discharge Elimination System Permits. There is no longer a need for a general permit for road maintenance. The DOT provides environmental safeguards as part of conducting maintenance activities in accordance with other environmental requirements and best practices.

This bill will create a new permit requirement. General permits require extensive staff resources and long timeframes to develop. The level of effort to develop the permit outweighs any benefits from permit coverage. New permit conditions will restrict the DOT's ability to efficiently maintain highways, and will add process, time, and new requirements to projects.

Protecting and restoring shoreline habitat is a goal of the state. Docks, and in particular bulkheads, have an adverse impact on shorelines and disrupt natural processes of erosion. Applying general permits to docks and bulkheads, which by their nature vary based on location and construction, is concerning. These types of projects are not appropriate for general permits and standards, because particularized review is needed. The DOE would like to implement more particularized review for docks and bulkheads.

Changing local control under the SMA is concerning. Stakeholders are supportive of measures that streamline review under the SMA, and are willing to be part of an ongoing dialogue about this issue.

(Opposed) None.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; and Bryce Yadon, Futurewise.

(With concerns) Tom Clingman, Department of Ecology; Christina Martinez, Department of Transportation; Laura Merrill, Washington State Association of Counties; and Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.