

HOUSE BILL REPORT

ESSB 5994

As Reported by House Committee On:

Environment
Transportation

Title: An act relating to permits for state transportation corridor projects.

Brief Description: Concerning permits for state transportation corridor projects.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King, Hobbs, Fain, Lias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, Hewitt, Becker, Brown and Bailey).

Brief History:

Committee Activity:

Environment: 3/26/15, 3/30/15 [DPA];

Transportation: 4/6/15, 4/7/15 [DPA(ENVI & TR)].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Exempts certain activities of the Washington State Department of Transportation 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 (SMA).
- Authorizes construction to begin on certain transportation projects 21 days after receiving an SMA permit and without regard to the status of any review proceedings.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Farrell, Goodman, McBride and Taylor.

Minority Report: Do not pass. Signed by 4 members: Representatives Shea, Ranking Minority Member; Short, Assistant Ranking Minority Member; Harris and Pike.

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: Jacob Lipson (786-7196).

Background:

The Shoreline Management Act (SMA) of 1971 requires that most developments near state shorelines be consistent with shoreline master programs, which are plans developed by local governments for the uses of its shoreline areas. Certain projects require a substantial development permit that is reviewed by the local government and filed with the Department of Ecology (ECY); projects that require a substantial development permit include developments exceeding a cost of \$6,416 (as adjusted for inflation by the Office of Financial Management in July 2012), or any development that materially interferes with the normal public use of the water or shorelines of the state. In certain property-specific circumstances, variance permits or conditional use permits may be issued by a local government that allow for development that is not consistent with the local shoreline master program. Certain other types of development, such as single-family residences and bulkheads to protect single-family residences, are exempt from permit requirements under the SMA. Many types of transportation projects are subject to the SMA permitting requirements. Local governments must submit letters of exemption to the ECY for developments that require federal approval but that are exempt from the SMA substantial development permit requirements.

Construction on projects permitted under the SMA may begin either 21 days after the filing of the permit decision or upon the completion of review proceedings related to the permit. For projects related to the Interstate-90 and State Route 520 bridges on Lake Washington, state law has established certain now-expired exemptions to the stay on construction until the end of permit review proceedings.

The Shorelines Hearings Board (Board) is a quasi-judicial board with jurisdiction to review the SMA permitting decisions. Persons aggrieved by an SMA permit decision may file a review petition with the Board within 21 days of the filing of the permit decision, and the ECY or the attorney general may also file to intervene in a permit review. The Board must issue a decision within 180 days of the filing by aggrieved person, the ECY, or the attorney general, unless there is a showing of good cause or if the parties otherwise agree to waive the time limit. Board decisions are appealable to the superior court within 30 days of the filing of a final decision.

Summary of Amended Bill:

Certain Washington State Department of Transportation (WSDOT) projects and activities are exempt from substantial development permits, conditional use permits, variance permits, letters of exemption, and other local government reviews under the SMA. The following WSDOT projects and activities are exempt:

- normal maintenance or repair of existing structures or developments; and
- construction or installation of safety structures and equipment, not including new travel lanes or the expansion of transportation facilities.

Replacement of a structure by the WSDOT may be authorized as a "normal repair" if: (a) replacement is the common method of repair for the type of structure or development; (b) the replacement structure or development is comparable to the original; and (c) the replacement does not cause substantial adverse effects to shoreline resources or the shoreline environment. Exempt normal maintenance or repair undertaken by the WSDOT does not include expansion of an existing structure or development, or construction of a new structure or development.

The terms "normal maintenance" and "normal repair" are defined.

Certain hazardous waste cleanup activities and stormwater improvements in boatyard facilities that are currently exempt from the SMA conditional use, variance, and substantial development permit requirements are also exempted from letter of exemption processes and other SMA local government review requirements.

Construction activities on certain transportation projects may begin 21 days after the filing of a final SMA permit determination, and without a stay of construction until the termination of review proceedings. To be exempt from the stay on construction until the termination of the SMA permit review proceedings, a transportation project must be water-dependent or water-related, must be located in or over waters, and must be covered by a performance bond posted by the project proponent adequate to finance ecological mitigation and monitoring. In addition, the WSDOT must submit an assessment of the project's effect on ecological functions, and the ECY must determine that the project will not result in a net loss of ecological functions. This ECY determination must be in accordance with the ECY's SMA administrative rules and must occur before the final issuance of SMA permits and variances.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment makes the following changes to the engrossed substitute senate bill:

1. eliminates the exemption from the State Environmental Policy Act (SEPA) for WSDOT projects that are exempt from the National Environmental Policy Act (NEPA);
2. eliminates the requirement that cities, counties, and towns issue permits to the WSDOT within 90 days, to the extent practicable;
3. eliminates the restriction on third-party appeals of permits issued by cities, counties, and towns to the WSDOT;
4. eliminates the direct appeals of certain GMA permits to a superior court unless the WSDOT consents to a local appeals process;
5. defines the normal maintenance and repair activities for the WSDOT structures and developments that are made subject to exemptions from the SMA permitting requirements and directs that WSDOT repair and maintenance projects exempt from the SMA permitting requirements may not cause substantial adverse effects to shoreline resources or environments;
6. authorizes construction activities to begin 21 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 an ECY determination that no net loss of ecology functions will result from the project, in accordance with the ECY's SMA administrative rules and based on an assessment supplied by the WSDOT;
7. eliminates the emergency clause and the provision making the act effective upon the enactment of Senate Bill 5987; and
 8. eliminates the restriction on the scope of the WSDOT projects addressed by the bill to Connecting Washington projects funded through the account created in Senate Bill 5987.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The goal of this bill is to retain environmental protections while making the transportation permitting process more efficient and effective, and to reduce pre-construction delays. This bill has bipartisan support, and is necessary in order to enact the transportation revenue package.

(With concerns) Many parties have an interest in ensuring that permitting processes for transportation projects are streamlined. However, exempting projects from the SEPA that are exempt from the NEPA could entirely eliminate any environmental review on many aspects of projects that are subject to a narrow federal review, rather than just eliminating duplication of permitting processes. The sections in the bill addressing the SMA should be harmonized with a similar bill that recently passed the House.

(Opposed) The SMA exemption is too broad and would exempt major projects, like the construction of a new bridge, from any SMA permitting. The version of this SMA exemption that recently passed the House is preferable because it is tailored to small-scale transportation maintenance and repair projects. This bill might exempt smaller-scale projects that are exempt from the NEPA from undergoing state environmental review.

Persons Testifying: (In support) Senator King, prime sponsor; and Mike Ennis, Association of Washington Business.

(With concerns) Tom Clingman, Department of Ecology.

(Opposed) Bruce Wishart, Sierra Club and Sound Action; and Bryce Yadon, Futurewise.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended by Committee on Environment as further amended by Committee on Transportation. Signed by 24 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Gregerson, Harmsworth, Hayes, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Rodne, Sells, Takko, Tarleton, Wilson, Young and Zeiger.

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

Staff: David Munnecke (786-7315).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Environment:

The amended bill states that the public interest is not served by delaying permits for the Washington State Department of Transportation (WSDOT) projects addressing significant safety risks, limits the exemption from the automatic stay under the Shoreline Management Act (SMA) created by the bill to the WSDOT projects, and requires that findings regarding a project must be supported by evidence in the record.

The amended bill also requires that the no-net-loss of shoreline ecological function be according to Department of Ecology (ECY) guidelines, allows the project assessment to come from the project proponent rather than the WSDOT, and includes the State Environmental Policy Act, its implementing regulations, and applicable shoreline regulations in the list of items that the Shorelines Hearings Board may consider.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The funding package needs to be passed, not just to meet road maintenance and preservation needs, but also to help the unemployed in Washington. People are leaving the state in order to find work, and we need to provide them with work now.

This bill should be passed because it streamlines the permitting process.

(With concerns) The WSDOT works very hard to protect the shorelines of the state, and is supportive of the SMA. The replacements of the Hood Canal Bridge, the Interstate-90 Floating Bridge, and the State Route 520 Floating Bridge were all exempted from the SMA's stay on construction, which is what this bill would allow for certain other WSDOT projects.

The WSDOT is concerned about the performance bond requirements and some of the other definitions in the bill.

The ECY shares the WSDOT's concerns with the language in the bill, but not the concept. The SMA stays all projects until the appeals are exhausted, which is not appropriate when there are safety risks.

The exemption from the SMA for certain WSDOT project activities is acceptable, but there are problems with limiting the automatic stay under the SMA.

(Opposed) None.

Persons Testifying: (In support) Duke Schaub, Associated General Contractors of Washington; and Sheri Call, Washington Trucking Association.

(With concerns) Tom Pierson, Tacoma-Pierce County Chamber of Commerce; Lynn Peterson, Washington State Department of Transportation; Tom Clingman, Department of Ecology; and Bruce Yadon, Futurewise.

Persons Signed In To Testify But Not Testifying: None.