

HOUSE BILL REPORT

2ESSB 5994

As of Second Reading

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

Brief Description: Concerning permits for state transportation projects.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King, Hobbs, Fain, Liias, 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 Second Engrossed Substitute Bill

- Requires cities, towns, and counties to issue permits to the Washington State Department of Transportation (WSDOT) for transportation projects that cost less than \$500 million within 90 days of the completion of the permit application, to the greatest extent practicable.
- Directs the WSDOT to coordinate a state agency work group in 2016 to evaluate the consolidation and coordination of review processes that apply to WSDOT projects under the State Environmental Policy Act and National Environmental Policy Act.
- Exempts certain projects and activities of the WSDOT 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 WSDOT transportation projects 21 days after the filing date for an SMA permit and without regard to the status of any review proceedings.

Staff: Jacob Lipson (786-7196).

Background:

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.

Shoreline Management Act.

The Shoreline Management Act (SMA) of 1971 governs uses of the shorelines of the state. Shorelines of the state are, with some exceptions, all water areas of the state, the land underlying them, and their associated shorelands (*i.e.*, lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark, wetlands, and river deltas). Under the SMA, most developments near state shorelines must be consistent with local shoreline master programs, which are plans developed by counties, cities, and towns that regulate the uses of their shoreline areas.

Certain shoreline projects, such as developments exceeding a cost of \$6,416 (as adjusted for inflation by the Office of Financial Management in July 2012) and any development that materially interferes with the normal public use of the water or shorelines of the state, must obtain a substantial development permit. Substantial development permits are reviewed by the local government and filed with the Department of Ecology (ECY). Also, under certain property-specific circumstances, a local government may issue variance permits or conditional use permits to allow for developments that are not consistent with the local shoreline master program.

Other types of developments, such as single-family residences and bulkheads that protect single-family residences, are exempt from permit requirements under the SMA. For developments that require federal approval but that are exempt from the SMA substantial development permit requirements, local governments must submit letters of exemption to the ECY.

Construction on a project pursuant to a permit issued under the SMA may not begin until 21 days after the filing of the permit decision. However, if any review proceeding is initiated during the 21-day period, construction may not begin until all review proceedings are terminated. 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. The ECY or the attorney general may also file to intervene in a permit review before the Board. The Board must issue a decision within 180 days of the filing by an 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 superior court within 30 days of the filing of a final decision.

Projects of the Washington State Department of Transportation.

The Washington State Department of Transportation (WSDOT) must obtain various state and local permits associated with many of the transportation projects it oversees, including permits issued under the SMA. Certain WSDOT projects and activities are also subject to evaluative review under the State Environmental Policy Act (SEPA) or the National Environmental Policy Act (NEPA), or both.

The National and State Environmental Policy Acts.

The National Environmental Policy Act (NEPA) establishes a review process to identify environmental impacts of certain decisions by the federal government, including for projects that require the issuance of a permit. Likewise, the State Environmental Policy Act (SEPA) establishes a review process for state and local governments to evaluate environmental impacts from project permits and other government decisions. Both the NEPA and the SEPA exempt certain actions from requirements to submit an environmental checklist or to prepare an environmental impact statement. An agency conducting a SEPA review may adopt a NEPA environmental analysis if the NEPA analysis is consistent with SEPA requirements, including the scope of environmental elements analyzed under the SEPA. Certain activities of the WSDOT are exempt from NEPA requirements, SEPA requirements, or requirements of both NEPA and SEPA.

Summary of Second Engrossed Substitute Bill:

Local Permits for State Highway Projects.

For all projects on a state highway with an estimated cost of less than \$500 million, cities, towns, code cities, and counties must, to the greatest extent practicable, make a final determination on all permits required for the project no later than 90 days after the WSDOT submits a complete permit application. The WSDOT must report annually to the Governor and the transportation committees of the Legislature any permit application that takes longer than 90 days to process.

Work Group on Environmental Review Processes.

In 2016 the WSDOT must coordinate a state agency work group to identify issues, laws, and regulations relevant to consolidating and coordinating the review processes under the NEPA and the SEPA to streamline the review of and avoid delays to state highway projects. The work group must include the WSDOT and the ECY. The findings and recommendations of the work group must be reported to the Joint Transportation Committee by December 31, 2016.

The Shoreline Management Act - Stay of Construction.

If all components of a transportation project of the WSDOT achieve no net loss of shoreline ecological functions, construction on the project pursuant to a permit issued under the SMA may begin 21 days after the date of filing, regardless of the status of any review proceedings. The determination that the project will result in no net loss of shoreline ecological functions must meet guidelines adopted by the ECY and must be demonstrated through a two-part process.

First, during the permit application and review process, the WSDOT must prepare an assessment of how the project affects shoreline ecological functions and provide the assessment to the county, city, or town making the permit decision. The assessment must include specific actions, developed in consultation with the ECY, for avoiding, minimizing, and mitigating impacts to shoreline ecological functions to ensure no net loss of shoreline ecological functions result from the project. Second, the local government must review the assessment provided by the WSDOT and determine that the project will result in no net loss of shoreline ecological functions.

Although construction may commence on a project that demonstrates no net loss of shoreline ecological functions notwithstanding the pendency of any review proceedings, the Shorelines Hearings Board is not precluded from subsequently determining that the project or any element of the project is inconsistent with the SMA, the local shoreline master program, the SEPA, or any applicable regulations.

The Shoreline Management Act - Exemptions from Permits and Approvals.

Persons who are exempt from requirements to obtain a substantial development permit, conditional use permit, or variance under the SMA are also exempted from the requirement to obtain a letter of exemption or other review conducted by a local government to implement the SMA. Additionally, projects and activities of the WSDOT that meet certain criteria are similarly exempted from requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local government review conducted to implement the SMA.

The following WSDOT projects and activities are exempted:

- maintenance, repair, or replacement activities that occur within: (a) the roadway prism of a state highway; (b) the lease or ownership area of a state ferry terminal; or (c) the lease or ownership area of a transit facility (including pedestrian paths, bicycle paths, and bike lanes);
- construction or installation of safety structures and equipment;
- maintenance occurring within the right-of-way; or
- construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

For exempt projects and activities with a cost in excess of \$1 million, the WSDOT must provide written notification to agencies with jurisdiction, agencies with facilities and services that may be impacted, and adjacent property owners prior to finalizing the design or plan. Maintenance and replacement activities may not involve expansion of automobile lanes or significant negative shoreline impact. The terms "maintenance," "repair," and "replacement" as used in the bill are defined.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Engrossed Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

Public testimony on SSB 5994 in House Environment Committee on March 26, 2015.

(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.

Public testimony on SSB 5994 in House Transportation Committee on April 6, 2015

(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: *Persons testifying on SSB 5994 in House Environment Committee on March 26, 2015.*

(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 testifying on SSB 5994 in House Transportation Committee on April 6, 2015

(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.