
Local Government Committee

ESSB 6170

Brief Description: Establishing the working waterfront redevelopment jobs act.

Sponsors: Senate Committee on Energy, Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Hargrove, King, Hatfield, Harper, Shin and Conway).

Brief Summary of Engrossed Substitute Bill

- Establishes a permit review and approval process for qualifying redevelopment and restoration projects located on or adjacent to certain marine shorelines.
- Designates the Department of Fish and Wildlife (DFW) as the reviewing agency and approving authority for marine areas redevelopment and restoration project permits.
- Directs the DFW to submit a report to the Senate and House of Representatives by September 1, 2014, on the marine areas redevelopment and restoration project permitting process.
- Exempts the installation of qualifying site improvements for storm water treatment in an existing facility from the procedural requirements of the Shoreline Management Act.

Hearing Date: 2/15/12

Staff: Ethan Moreno (786-7386).

Background:

Hydraulic Project Approvals.

With limited exceptions, any person or government agency seeking to undertake a project that will use, divert, obstruct, or change the natural flow or bed of any salt or freshwaters of the state must obtain an hydraulic project approval (HPA) permit from the Department of Fish and Wildlife (DFW). An hydraulic project permit, which is applied for through a joint aquatic resources permit application, may only be denied or conditioned based upon the protection of fish life. Upon receiving a completed application for an HPA, the DFW is generally required to

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grant or deny the request within 45 days. Permit decisions regarding an HPA may be informally appealed to the DFW or formally appealed to the Pollution Control Hearings Board.

Shoreline Management Act.

The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines and involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in city and county shoreline master programs (master programs) that regulate land use activities in shoreline areas of the state. At the state level, the Department of Ecology (DOE) is charged with reviewing the locally-adopted master programs and approving those that comply with statutory provisions and agency guidelines governing their adoption.

No development may be undertaken on shorelines of the state unless it is consistent with the SMA, applicable rules, and the pertinent master program. Persons seeking to undertake a “substantial development” on the shoreline generally must obtain a permit from the local government within which the project is located prior to undertaking the development.

The SMA includes limited exemptions. Public or private projects that meet specific requirements and are designed to improve fish or wildlife habitat or fish passage are exempt from the substantial development requirements of the SMA. Additionally, certain remedial actions by the DOE and others are exempt from the procedural requirements of the SMA. The exemption requirements, however, obligate the DOE to ensure that the remedial actions comply with the SMA's substantive requirements. While neither "procedural" nor "substantive" is defined in the SMA, the DOE has indicated that it considers procedural requirements to be actions necessary to implement the SMA and substantive requirements to be regulations and standards adopted in master programs.

National Pollutant Discharge Elimination System Permits.

The federal Clean Water Act (CWA) sets effluent limitations for discharges of pollutants. "Pollutant" is defined in the CWA to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. The DOE is the delegated federal CWA authority by the United States Environmental Protection Agency and is responsible for implementing all federal and state water pollution control laws and regulations.

The CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernible, discrete, and confined conveyances from which pollutant discharges can or do occur. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. The NPDES permits also are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria.

In state and NPDES permit programs, the DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers). These permits include limits on the quantity and concentrations of contaminants that may be discharged. These permits also may require wastewater treatment or impose operating or other conditions.

Summary of Bill:

Alternate Process for Qualifying Marine Shorelines Projects.

A new permit review and approval process for qualifying redevelopment and restoration projects located on or adjacent to certain marine shorelines is established as an alternative to the hydraulic project approval (HPA) process. To be eligible for the alternate permit review and approval process, a marine areas redevelopment and restoration project (MARRP) must meet specified criteria, including:

- being located on a site adjacent to or including marine shorelands upon which commercial and industrial uses are permitted under the applicable master program;
- generating 10 or more jobs on an ongoing basis;
- involving the redevelopment and reuse of lands on which previous uses have substantially degraded shoreline ecological functions;
- not requiring the preparation of an environmental impact statement under the State Environmental Policy Act; and
- being consistent with fish protection requirements and shoreline regulations.

Persons seeking to use the alternate review and approval process for a MARRP must file a joint aquatic resources permit application with the DFW and any information the agency may require. The applicant also must submit copies of the completed application form to the Department of Natural Resources (DNR), the DOE, the Department of Health, and the applicable county or city.

The DFW must provide a 30-day comment period on the application. During this comment period and a subsequent review period, the DFW must solicit comments from, and coordinate with, state agencies and local governments with expertise relevant to a MARRP application. Following the conclusion of the comment period, the DFW must approve the application with or without mitigation conditions, deny approval, or determine that the alternate permit review and approval process is not appropriated for the proposed MARRP.

If the DFW determines that the proposed MARRP meets all required criteria and approves the project, the county or city within which the MARRP is located may not require a substantial development permit under the SMA, a permit required by a shoreline master program, or a permit or other approval under the Growth Management Act. Additionally if the DFW approves the MARRP, the project is exempt from provisions otherwise requiring an HPA.

The DFW must determine that the alternate permit review and approval process for a MARRP is not appropriate for a proposal if:

- upon consideration of submitted comments, it identifies public health and safety concerns or environmental impacts that cannot be mitigated; or
- a local government finds the proposal to be inconsistent with goals and objectives of the applicable master plan and development regulations.

If the DFW determines that the alternate permit review and approval process for a MARRP is not appropriate for a proposal, the applicant may seek approval for the project through standard permit review and approval processes. Additionally, a person aggrieved by a permit decision under the alternate review and approval process for a MARRP may appeal the decision to the Pollution Control Hearings Board.

The DNR is directed to provide a priority in processing requests for the use of lease of state-owned aquatic lands for MARRP projects that are permitted or are under review. Applications for aquatic use authorizations or leases generally must be processed in 60 days.

Shoreline Management Act - Exemption for Qualifying Site Improvements.

The procedural requirements of the SMA do not apply to the installation of site improvements for storm water treatment in an existing facility if the improvements are conducted to meet requirements of a national pollutant discharge elimination system storm water general permit. The local government and the DOE are obligated to ensure that the site improvements comply with the substantive requirements of the SMA.

Report to the Legislature.

The DFW must submit a report to the appropriate standing committees of the Senate and the House of Representatives on the implementation of the MARRP permitting process by September 1, 2014. The report must include a summary of permitted projects, the disposition of applications conditioned, denied, or deemed inappropriate for review under the process, and any legislative recommendations.

Appropriation: None.

Fiscal Note: Available on original bill.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 7 relating to the Pollution Control Hearings Board, which takes effect June 30, 2019.