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SENATE BILL 5855

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State of Washington

64th Legislature

2015 Regular Session

By Senators Ericksen and Baumgartner

Read first time 02/05/15. Referred to Committee on Transportation.

1 AN ACT Relating to permitting processes applicable to state  
2 highway projects; amending RCW 90.58.140; adding a new section to  
3 chapter 47.01 RCW; adding a new section to chapter 35.21 RCW; adding  
4 a new section to chapter 36.01 RCW; adding a new section to chapter  
5 35A.21 RCW; and adding a new section to chapter 36.70A RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.01  
8 RCW to read as follows:

9 For state highway projects, the department must follow the same  
10 expedited permitting process that applied to the Interstate 5 Skagit  
11 river bridge replacement project. The expedited permitting process  
12 must be used with the following permit or environmental exemption  
13 applied for on any state highway project:

14 (1) The department must grant or reject a state environmental  
15 policy act categorical exemption permit within eight days of  
16 application;

17 (2) A local government entity with jurisdiction must grant or  
18 reject a written shoreline exemption within eight days of  
19 application;

1 (3) The department of ecology must grant or reject a coastal zone  
2 management act consistency determination within twelve days of  
3 application;

4 (4) The department of fish and wildlife must grant or reject an  
5 emergency hydraulic project approval permit within eight days of  
6 application;

7 (5) The department of natural resources must grant or reject an  
8 aquatic lands right of entry permit within thirteen days of  
9 application; and

10 (6) Any other local government or state agency permit or  
11 environmental exemption not identified in this section required for a  
12 state highway project must be granted or denied within thirteen days  
13 of application.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21  
15 RCW to read as follows:

16 Construction may continue during an appeal of a permit issued  
17 under this chapter for state highway projects. However, if, as a  
18 result of judicial review, the courts order the removal or alteration  
19 of any portion of the construction or the restoration of any portion  
20 of the environment involved, the permittee is barred from recovering  
21 damages or costs involved in adhering to the requirements of the  
22 permit.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01  
24 RCW to read as follows:

25 Construction may continue during an appeal of a permit issued  
26 under this chapter for state highway projects. However, if, as a  
27 result of judicial review, the courts order the removal or alteration  
28 of any portion of the construction or the restoration of any portion  
29 of the environment involved, the permittee is barred from recovering  
30 damages or costs involved in adhering to the requirements of the  
31 permit.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 35A.21  
33 RCW to read as follows:

34 Construction may continue during an appeal of a permit issued  
35 under this chapter for state highway projects. However, if, as a  
36 result of judicial review, the courts order the removal or alteration  
37 of any portion of the construction or the restoration of any portion

1 of the environment involved, the permittee is barred from recovering  
2 damages or costs involved in adhering to the requirements of the  
3 permit.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A  
5 RCW to read as follows:

6 Construction may continue during an appeal of a permit issued  
7 under this chapter for state highway projects. However, if, as a  
8 result of judicial review, the courts order the removal or alteration  
9 of any portion of the construction or the restoration of any portion  
10 of the environment involved, the permittee is barred from recovering  
11 damages or costs involved in adhering to the requirements of the  
12 permit.

13 **Sec. 6.** RCW 90.58.140 and 2012 c 84 s 2 are each amended to read  
14 as follows:

15 (1) A development shall not be undertaken on the shorelines of  
16 the state unless it is consistent with the policy of this chapter  
17 and, after adoption or approval, as appropriate, the applicable  
18 guidelines, rules, or master program.

19 (2) A substantial development shall not be undertaken on  
20 shorelines of the state without first obtaining a permit from the  
21 government entity having administrative jurisdiction under this  
22 chapter.

23 A permit shall be granted:

24 (a) From June 1, 1971, until such time as an applicable master  
25 program has become effective, only when the development proposed is  
26 consistent with: (i) The policy of RCW 90.58.020; and (ii) after  
27 their adoption, the guidelines and rules of the department; and (iii)  
28 so far as can be ascertained, the master program being developed for  
29 the area;

30 (b) After adoption or approval, as appropriate, by the department  
31 of an applicable master program, only when the development proposed  
32 is consistent with the applicable master program and this chapter.

33 (3) The local government shall establish a program, consistent  
34 with rules adopted by the department, for the administration and  
35 enforcement of the permit system provided in this section. The  
36 administration of the system so established shall be performed  
37 exclusively by the local government.

1 (4) Except as otherwise specifically provided in subsection (11)  
2 of this section, the local government shall require notification of  
3 the public of all applications for permits governed by any permit  
4 system established pursuant to subsection (3) of this section by  
5 ensuring that notice of the application is given by at least one of  
6 the following methods:

7 (a) Mailing of the notice to the latest recorded real property  
8 owners as shown by the records of the county assessor within at least  
9 three hundred feet of the boundary of the property upon which the  
10 substantial development is proposed;

11 (b) Posting of the notice in a conspicuous manner on the property  
12 upon which the project is to be constructed; or

13 (c) Any other manner deemed appropriate by local authorities to  
14 accomplish the objectives of reasonable notice to adjacent landowners  
15 and the public.

16 The notices shall include a statement that any person desiring to  
17 submit written comments concerning an application, or desiring to  
18 receive notification of the final decision concerning an application  
19 as expeditiously as possible after the issuance of the decision, may  
20 submit the comments or requests for decisions to the local government  
21 within thirty days of the last date the notice is to be published  
22 pursuant to this subsection. The local government shall forward, in a  
23 timely manner following the issuance of a decision, a copy of the  
24 decision to each person who submits a request for the decision.

25 If a hearing is to be held on an application, notices of such a  
26 hearing shall include a statement that any person may submit oral or  
27 written comments on an application at the hearing.

28 (5) The system shall include provisions to assure that  
29 construction pursuant to a permit will not begin or be authorized  
30 until twenty-one days from the date the permit decision was filed as  
31 provided in subsection (6) of this section; or until all review  
32 proceedings are terminated if the proceedings were initiated within  
33 twenty-one days from the date of filing as defined in subsection (6)  
34 of this section except as follows:

35 (a) In the case of any permit issued to the state of Washington,  
36 department of transportation, for the construction and modification  
37 of SR 90 (I-90) on or adjacent to Lake Washington, the construction  
38 may begin after thirty days from the date of filing, and the permits  
39 are valid until December 31, 1995;

1 (b)(i) In the case of any permit or decision to issue any permit  
2 to the state of Washington, department of transportation, for the  
3 replacement of the floating bridge and landings of the state route  
4 number 520 Evergreen Point bridge on or adjacent to Lake Washington,  
5 the construction may begin twenty-one days from the date of filing.  
6 Any substantial development permit granted for the floating bridge  
7 and landings is deemed to have been granted on the date that the  
8 local government's decision to grant the permit is issued. This  
9 authorization to construct is limited to only those elements of the  
10 floating bridge and landings that do not preclude the department of  
11 transportation's selection of a four-lane alternative for state route  
12 number 520 between Interstate 5 and Medina. Additionally, the  
13 Washington state department of transportation shall not engage in or  
14 contract for any construction on any portion of state route number  
15 520 between Interstate 5 and the western landing of the floating  
16 bridge until the legislature has authorized the imposition of tolls  
17 on the Interstate 90 floating bridge and/or other funding sufficient  
18 to complete construction of the state route number 520 bridge  
19 replacement and HOV program. For the purposes of this subsection  
20 (5)(b), the "western landing of the floating bridge" means the least  
21 amount of new construction necessary to connect the new floating  
22 bridge to the existing state route number 520 and anchor the west end  
23 of the new floating bridge;

24 (ii) Nothing in this subsection (5)(b) precludes the shorelines  
25 hearings board from concluding that the project or any element of the  
26 project is inconsistent with the goals and policies of the shoreline  
27 management act or the local shoreline master program;

28 (iii) This subsection (5)(b) applies retroactively to any appeals  
29 filed after January 1, 2012, and to any appeals filed on or after  
30 March 23, 2012, and expires June 30, 2014((-));

31 (c) In the case of any permit issued to the state of Washington,  
32 department of transportation, for the construction of a state highway  
33 project, the construction may begin twenty-one days from the date of  
34 filing;

35 (d) Except as authorized in (b) and (c) of this subsection,  
36 construction may be commenced no sooner than thirty days after the  
37 date of the appeal of the board's decision is filed if a permit is  
38 granted by the local government and (i) the granting of the permit is  
39 appealed to the shorelines hearings board within twenty-one days of  
40 the date of filing, (ii) the hearings board approves the granting of

1 the permit by the local government or approves a portion of the  
2 substantial development for which the local government issued the  
3 permit, and (iii) an appeal for judicial review of the hearings board  
4 decision is filed pursuant to chapter 34.05 RCW. The appellant may  
5 request, within ten days of the filing of the appeal with the court,  
6 a hearing before the court to determine whether construction pursuant  
7 to the permit approved by the hearings board or to a revised permit  
8 issued pursuant to the order of the hearings board should not  
9 commence. If, at the conclusion of the hearing, the court finds that  
10 construction pursuant to such a permit would involve a significant,  
11 irreversible damaging of the environment, the court shall prohibit  
12 the permittee from commencing the construction pursuant to the  
13 approved or revised permit until all review proceedings are final.  
14 Construction pursuant to a permit revised at the direction of the  
15 hearings board may begin only on that portion of the substantial  
16 development for which the local government had originally issued the  
17 permit, and construction pursuant to such a revised permit on other  
18 portions of the substantial development may not begin until after all  
19 review proceedings are terminated. In such a hearing before the  
20 court, the burden of proving whether the construction may involve  
21 significant irreversible damage to the environment and demonstrating  
22 whether such construction would or would not be appropriate is on the  
23 appellant;

24 ~~((d))~~ (e) Except as authorized in (b) and (c) of this  
25 subsection, if the permit is for a substantial development meeting  
26 the requirements of subsection (11) of this section, construction  
27 pursuant to that permit may not begin or be authorized until twenty-  
28 one days from the date the permit decision was filed as provided in  
29 subsection (6) of this section.

30 If a permittee begins construction pursuant to (a), (b), (c),  
31 ~~((e))~~ (d), or (e) of this subsection, the construction is begun at  
32 the permittee's own risk. If, as a result of judicial review, the  
33 courts order the removal of any portion of the construction or the  
34 restoration of any portion of the environment involved or require the  
35 alteration of any portion of a substantial development constructed  
36 pursuant to a permit, the permittee is barred from recovering damages  
37 or costs involved in adhering to such requirements from the local  
38 government that granted the permit, the hearings board, or any  
39 appellant or intervener.

1 (6) Any decision on an application for a permit under the  
2 authority of this section, whether it is an approval or a denial,  
3 shall, concurrently with the transmittal of the ruling to the  
4 applicant, be filed with the department and the attorney general.  
5 This shall be accomplished by return receipt requested mail. A  
6 petition for review of such a decision must be commenced within  
7 twenty-one days from the date of filing of the decision.

8 (a) With regard to a permit other than a permit governed by  
9 subsection (10) of this section, "date of filing" as used in this  
10 section refers to the date of actual receipt by the department of the  
11 local government's decision.

12 (b) With regard to a permit for a variance or a conditional use  
13 governed by subsection (10) of this section, "date of filing" means  
14 the date the decision of the department is transmitted by the  
15 department to the local government.

16 (c) When a local government simultaneously transmits to the  
17 department its decision on a shoreline substantial development with  
18 its approval of either a shoreline conditional use permit or  
19 variance, or both, "date of filing" has the same meaning as defined  
20 in (b) of this subsection.

21 (d) The department shall notify in writing the local government  
22 and the applicant of the date of filing by telephone or electronic  
23 means, followed by written communication as necessary, to ensure that  
24 the applicant has received the full written decision.

25 (7) Applicants for permits under this section have the burden of  
26 proving that a proposed substantial development is consistent with  
27 the criteria that must be met before a permit is granted. In any  
28 review of the granting or denial of an application for a permit as  
29 provided in RCW 90.58.180 (1) and (2), the person requesting the  
30 review has the burden of proof.

31 (8) Any permit may, after a hearing with adequate notice to the  
32 permittee and the public, be rescinded by the issuing authority upon  
33 the finding that a permittee has not complied with conditions of a  
34 permit. If the department is of the opinion that noncompliance  
35 exists, the department shall provide written notice to the local  
36 government and the permittee. If the department is of the opinion  
37 that the noncompliance continues to exist thirty days after the date  
38 of the notice, and the local government has taken no action to  
39 rescind the permit, the department may petition the hearings board  
40 for a rescission of the permit upon written notice of the petition to

1 the local government and the permittee if the request by the  
2 department is made to the hearings board within fifteen days of the  
3 termination of the thirty-day notice to the local government.

4 (9) The holder of a certification from the governor pursuant to  
5 chapter 80.50 RCW shall not be required to obtain a permit under this  
6 section.

7 (10) Any permit for a variance or a conditional use issued with  
8 approval by a local government under their approved master program  
9 must be submitted to the department for its approval or disapproval.

10 (11)(a) An application for a substantial development permit for a  
11 limited utility extension or for the construction of a bulkhead or  
12 other measures to protect a single-family residence and its  
13 appurtenant structures from shoreline erosion shall be subject to the  
14 following procedures:

15 (i) The public comment period under subsection (4) of this  
16 section shall be twenty days. The notice provided under subsection  
17 (4) of this section shall state the manner in which the public may  
18 obtain a copy of the local government decision on the application no  
19 later than two days following its issuance;

20 (ii) The local government shall issue its decision to grant or  
21 deny the permit within twenty-one days of the last day of the comment  
22 period specified in (a)(i) of this subsection; and

23 (iii) If there is an appeal of the decision to grant or deny the  
24 permit to the local government legislative authority, the appeal  
25 shall be finally determined by the legislative authority within  
26 thirty days.

27 (b) For purposes of this section, a limited utility extension  
28 means the extension of a utility service that:

29 (i) Is categorically exempt under chapter 43.21C RCW for one or  
30 more of the following: Natural gas, electricity, telephone, water, or  
31 sewer;

32 (ii) Will serve an existing use in compliance with this chapter;  
33 and

34 (iii) Will not extend more than twenty-five hundred linear feet  
35 within the shorelines of the state.

36 NEW SECTION. **Sec. 7.** If any provision of this act or its  
37 application to any person or circumstance is held invalid, the



1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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