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SECOND ENGROSSED SUBSTITUTE SENATE BILL 5994

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State of Washington

64th Legislature

2015 Regular Session

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

READ FIRST TIME 02/24/15.

1 AN ACT Relating to permits for state transportation projects;  
2 amending RCW 90.58.140 and 90.58.355; adding new sections to chapter  
3 47.01 RCW; adding a new section to chapter 35.21 RCW; adding a new  
4 section to chapter 35A.21 RCW; adding a new section to chapter 36.01  
5 RCW; adding a new section to chapter 90.58 RCW; creating new  
6 sections; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that in 2012 the  
9 legislature passed Second Engrossed Substitute Senate Bill No. 6406  
10 (chapter 1, Laws of 2012 1st sp. sess.), which updated statutory  
11 provisions relating to natural resource management and regulatory  
12 programs. The legislature finds that opportunities to build upon the  
13 updates made in 2012 and to further streamline regulatory processes  
14 and achieve program efficiencies while maintaining current levels of  
15 natural resource protection exist. The legislature intends to update  
16 provisions relating to the review, permitting, and approval of  
17 department of transportation projects, particularly those that occur  
18 on shorelines of the state, to achieve these opportunities.

19 The legislature further finds that the shoreline management act  
20 of 1971, codified in chapter 90.58 RCW, was approved and enacted by a  
21 vote of the people, and that the shoreline management act embodies a

1 balance between the protection of state shorelines and development.  
2 Recognizing this balance, the legislature intends to facilitate  
3 transportation projects while ensuring accountability.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.01  
5 RCW to read as follows:

6 (1) To the greatest extent practicable, a city, town, code city,  
7 or county must make a final determination on all permits required for  
8 a project on a state highway as defined in RCW 46.04.560 no later  
9 than ninety days after the department's submission of a complete  
10 permit application for a project with an estimated cost of less than  
11 five hundred million dollars.

12 (2) The department must report annually to the governor and the  
13 transportation committees of the house of representatives and the  
14 senate in compliance with RCW 43.01.036 regarding any permit  
15 application that takes longer than the number of days identified in  
16 subsection (1) of this section to process.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.21  
18 RCW to read as follows:

19 A city or town must comply with the requirements of section 2 of  
20 this act in making a final determination on a permit as part of a  
21 project on a state highway as defined in RCW 46.04.560.

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

24 A code city must comply with the requirements of section 2 of  
25 this act in making a final determination on a permit as part of a  
26 project on a state highway as defined in RCW 46.04.560.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.01  
28 RCW to read as follows:

29 A county must comply with the requirements of section 2 of this  
30 act in making a final determination on a permit as part of a project  
31 on a state highway as defined in RCW 46.04.560.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.01  
33 RCW to read as follows:

34 The department shall coordinate a state agency work group in 2016  
35 that will identify issues, laws, and regulations relevant to

1 consolidating and coordinating the review processes under the  
2 national environmental policy act, 42 U.S.C. Sec. 4321 et seq. and  
3 chapter 43.21C RCW to streamline the review of and avoid delays to  
4 projects on state highways as defined in RCW 46.04.560. The  
5 department must report the work group's findings to the joint  
6 transportation committee in compliance with RCW 43.01.036 by December  
7 31, 2016. State agencies in the work group must include the  
8 department, the department of ecology, and any other relevant  
9 agencies. The report must include: An inventory of federal and state  
10 environmental regulatory authority; a discussion of the issues  
11 pertaining to the current process and timelines used by state and  
12 federal agencies for reviewing projects on state highways as defined  
13 in RCW 46.04.560; and recommendations for legislation or rules that  
14 would reduce delays and time associated with review by state and  
15 federal agencies, including suggestions for new categorical  
16 exemptions.

17 **Sec. 7.** RCW 90.58.140 and 2012 c 84 s 2 are each amended to read  
18 as follows:

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

23 (2) A substantial development shall not be undertaken on  
24 shorelines of the state without first obtaining a permit from the  
25 government entity having administrative jurisdiction under this  
26 chapter.

27 A permit shall be granted:

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

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

37 (3) The local government shall establish a program, consistent  
38 with rules adopted by the department, for the administration and  
39 enforcement of the permit system provided in this section. The

1 administration of the system so established shall be performed  
2 exclusively by the local government.

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

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

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

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

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

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

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

37 (a) In the case of any permit issued to the state of Washington,  
38 department of transportation, for the construction and modification  
39 of SR 90 (I-90) on or adjacent to Lake Washington, the construction

1 may begin after thirty days from the date of filing, and the permits  
2 are valid until December 31, 1995;

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

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

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

33 (c)(i) In the case of permits for projects addressing significant  
34 public safety risks, as defined by the department of transportation,  
35 it is not in the public interest to delay construction until all  
36 review proceedings are terminated. In the case of any permit issued  
37 under this chapter or decision to issue any permit under this chapter  
38 for a transportation project of the Washington state department of  
39 transportation, construction may begin twenty-one days after the date  
40 of filing if all components of the project achieve a no net loss of

1 shoreline ecological functions, as defined by department guidelines  
2 adopted pursuant to RCW 90.58.060 and as determined through the  
3 following process:

4 (A) The department of transportation, as part of the permit  
5 review process, must provide the local government with an assessment  
6 of how the project affects shoreline ecological functions. The  
7 assessment must include specific actions for avoiding, minimizing,  
8 and mitigating impacts to shoreline ecological functions, developed  
9 in consultation with the department, that ensure there is no net loss  
10 of shoreline ecological functions; and

11 (B) The local government, after reviewing the assessment required  
12 in (c)(i)(A) of this subsection and prior to the final issuance of  
13 all appropriate shoreline permits and variances, must determine that  
14 the project will result in no net loss of shoreline ecological  
15 functions.

16 (ii) Nothing in this subsection (5)(c) precludes the shorelines  
17 hearings board from concluding that the shoreline project or any  
18 element of the project is inconsistent with this chapter, the local  
19 shoreline master program, chapter 43.21C RCW and its implementing  
20 regulations, or the applicable shoreline regulations.

21 (iii) This subsection (5)(c) does not apply to permit decisions  
22 for the replacement of the floating bridge and landings of the state  
23 route number 520 Evergreen Point bridge on or adjacent to Lake  
24 Washington;

25 (d) Except as authorized in (b) and (c) of this subsection,  
26 construction may be commenced no sooner than thirty days after the  
27 date of the appeal of the board's decision is filed if a permit is  
28 granted by the local government and (i) the granting of the permit is  
29 appealed to the shorelines hearings board within twenty-one days of  
30 the date of filing, (ii) the hearings board approves the granting of  
31 the permit by the local government or approves a portion of the  
32 substantial development for which the local government issued the  
33 permit, and (iii) an appeal for judicial review of the hearings board  
34 decision is filed pursuant to chapter 34.05 RCW. The appellant may  
35 request, within ten days of the filing of the appeal with the court,  
36 a hearing before the court to determine whether construction pursuant  
37 to the permit approved by the hearings board or to a revised permit  
38 issued pursuant to the order of the hearings board should not  
39 commence. If, at the conclusion of the hearing, the court finds that  
40 construction pursuant to such a permit would involve a significant,

1 irreversible damaging of the environment, the court shall prohibit  
2 the permittee from commencing the construction pursuant to the  
3 approved or revised permit until all review proceedings are final.  
4 Construction pursuant to a permit revised at the direction of the  
5 hearings board may begin only on that portion of the substantial  
6 development for which the local government had originally issued the  
7 permit, and construction pursuant to such a revised permit on other  
8 portions of the substantial development may not begin until after all  
9 review proceedings are terminated. In such a hearing before the  
10 court, the burden of proving whether the construction may involve  
11 significant irreversible damage to the environment and demonstrating  
12 whether such construction would or would not be appropriate is on the  
13 appellant;

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

20 If a permittee begins construction pursuant to (a), (b), (c),  
21 ~~((e))~~ (d), or (e) of this subsection, the construction is begun at  
22 the permittee's own risk. If, as a result of judicial review, the  
23 courts order the removal of any portion of the construction or the  
24 restoration of any portion of the environment involved or require the  
25 alteration of any portion of a substantial development constructed  
26 pursuant to a permit, the permittee is barred from recovering damages  
27 or costs involved in adhering to such requirements from the local  
28 government that granted the permit, the hearings board, or any  
29 appellant or intervener.

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

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

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

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

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

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

20 (8) Any permit may, after a hearing with adequate notice to the  
21 permittee and the public, be rescinded by the issuing authority upon  
22 the finding that a permittee has not complied with conditions of a  
23 permit. If the department is of the opinion that noncompliance  
24 exists, the department shall provide written notice to the local  
25 government and the permittee. If the department is of the opinion  
26 that the noncompliance continues to exist thirty days after the date  
27 of the notice, and the local government has taken no action to  
28 rescind the permit, the department may petition the hearings board  
29 for a rescission of the permit upon written notice of the petition to  
30 the local government and the permittee if the request by the  
31 department is made to the hearings board within fifteen days of the  
32 termination of the thirty-day notice to the local government.

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

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

39 (11)(a) An application for a substantial development permit for a  
40 limited utility extension or for the construction of a bulkhead or



1 other measures to protect a single-family residence and its  
2 appurtenant structures from shoreline erosion shall be subject to the  
3 following procedures:

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

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

12 (iii) If there is an appeal of the decision to grant or deny the  
13 permit to the local government legislative authority, the appeal  
14 shall be finally determined by the legislative authority within  
15 thirty days.

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

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

21 (ii) Will serve an existing use in compliance with this chapter;  
22 and

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

25 NEW SECTION. **Sec. 8.** To ensure that vital maintenance and minor  
26 safety upgrades to state transportation facilities are efficiently  
27 achieved while still protecting the shoreline environment, the  
28 legislature finds that it is in the public interest to exclude state  
29 highway maintenance and minor safety upgrade activities from local  
30 review and approval processes under the shoreline management act, as  
31 provided in sections 9 and 10 of this act.

32 **Sec. 9.** RCW 90.58.355 and 2012 c 169 s 1 are each amended to  
33 read as follows:

34 Requirements to obtain a substantial development permit,  
35 conditional use permit, ~~((or))~~ variance ~~((shall))~~, letter of  
36 exemption, or other review conducted by a local government to  
37 implement this chapter do not apply to ((any person)):

1 (1) Any person conducting a remedial action at a facility  
2 pursuant to a consent decree, order, or agreed order issued pursuant  
3 to chapter 70.105D RCW, or to the department of ecology when it  
4 conducts a remedial action under chapter 70.105D RCW. The department  
5 must ensure compliance with the substantive requirements of this  
6 chapter through the consent decree, order, or agreed order issued  
7 pursuant to chapter 70.105D RCW, or during the department-conducted  
8 remedial action, through the procedures developed by the department  
9 pursuant to RCW 70.105D.090; ((~~or~~))

10 (2) Any person installing site improvements for storm water  
11 treatment in an existing boatyard facility to meet requirements of a  
12 national pollutant discharge elimination system storm water general  
13 permit. The department must ensure compliance with the substantive  
14 requirements of this chapter through the review of engineering  
15 reports, site plans, and other documents related to the installation  
16 of boatyard storm water treatment facilities; or

17 (3) The department of transportation projects and activities that  
18 meet the conditions of section 10 of this act.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.58  
20 RCW to read as follows:

21 (1) For purposes of this section, the following definitions  
22 apply:

23 (a) "Maintenance" means the preservation of the transportation  
24 facility, including surface, shoulders, roadsides, structures, and  
25 such traffic control devices as are necessary for safe and efficient  
26 utilization of the highway in a manner that substantially conforms to  
27 the preexisting design, function, and location as the original except  
28 to meet current engineering standards or environmental permit  
29 requirements.

30 (b) "Repair" means to restore a structure or development to a  
31 state comparable to its original condition including, but not limited  
32 to, restoring the development's size, shape, configuration, location,  
33 and external appearance, within a reasonable period after decay or  
34 partial destruction. Repair of a structure or development may not  
35 cause substantial adverse effects to shoreline resources or the  
36 shoreline environment. Replacement of a structure or development may  
37 be considered a repair if: Replacement is the common method of repair  
38 for the type of structure or development; the replacement structure  
39 or development is comparable to the original structure or development

1 including, but not limited to, the size, shape, configuration,  
2 location, and external appearance of the original structure or  
3 development; and the replacement does not cause substantial adverse  
4 effects to shoreline resources or the shoreline environment.

5 (c) "Replacement" of any existing transportation facility means  
6 to replace in a manner that substantially conforms to the preexisting  
7 design, function, and location as the original except to meet current  
8 engineering standards or environmental permit requirements.  
9 Maintenance or replacement activities do not involve expansion of  
10 automobile lanes, and do not result in significant negative shoreline  
11 impact.

12 (2) The following department of transportation projects and  
13 activities do not require a substantial development permit,  
14 conditional use permit, variance, letter of exemption, or other  
15 review conducted by a local government:

16 (a) Maintenance, repair, or replacement that occurs within the  
17 roadway prism of a state highway as defined in RCW 46.04.560, the  
18 lease or ownership area of a state ferry terminal, or the lease or  
19 ownership area of a transit facility, including ancillary  
20 transportation facilities such as pedestrian paths, bicycle paths, or  
21 both, and bike lanes;

22 (b) Construction or installation of safety structures and  
23 equipment, including pavement marking, freeway surveillance and  
24 control systems, railroad protective devices not including grade  
25 separated crossings, grooving, glare screen, safety barriers, energy  
26 attenuators, and hazardous or dangerous tree removal;

27 (c) Maintenance occurring within the right-of-way; or

28 (d) Construction undertaken in response to unforeseen,  
29 extraordinary circumstances that is necessary to prevent a decline,  
30 lapse, or cessation of service from a lawfully established  
31 transportation facility.

32 (3) The department of transportation must provide written  
33 notification of projects and activities authorized under this section  
34 with a cost in excess of one million dollars before the design or  
35 plan is finalized to all agencies with jurisdiction, agencies with  
36 facilities or services that may be impacted, and adjacent property  
37 owners.

38 NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

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