

SENATE BILL REPORT

E2SHB 1850

As of March 30, 2015

Title: An act relating to improving the efficiency of conducting certain department of transportation actions by exempting these actions from obtaining local reviews or permits under the shoreline management act.

Brief Description: Exempting certain department of transportation actions from local review or permit processes under the shoreline management act.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Hayes, Clibborn, Orcutt, Takko, Harmsworth, Riccelli, Rodne, Bergquist, Wilson, Robinson, Smith, Muri and Magendanz).

Brief History: Passed House: 3/10/15, 98-0.

Committee Activity: Energy, Environment & Telecommunications: 3/24/15, 3/25/15.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jeff Olsen (786-7428)

Background: The Shoreline Management Act of 1971 (SMA). SMA governs uses of the shorelines of the state. SMA provides for a cooperative regulatory approach between local governments and the state. At the local level, regulations related to SMA are developed in mandatory city and county shoreline master programs (SMPs), which regulate land use activities in shoreline areas. At the state level, the Department of Ecology (Ecology) is charged with reviewing the locally adopted SMPs for compliance with statutory provisions and agency guidelines.

Substantial Development Permits. Prior to undertaking any substantial development on shorelines of the state, SMA requires a property owner or developer to first obtain a substantial development permit. A substantial development is any development with a total cost or fair market value exceeding \$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. Certain types of developments are not considered substantial developments under SMA and are exempt from the requirement to obtain a substantial development permit. For example, normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements, is not considered a substantial development.

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.

Letter of Exemption. Some projects conducted on shorelines of the state require review and approval by federal agencies. Ecology is the coordinating agency for the state with regard to permits issued by the United States Army Corps of Engineers. To facilitate Ecology's coordination of local actions with federal permit review, a local government must prepare a letter of exemption whenever: (1) it determines that a development is exempt from substantial development permit requirements; and (2) the development is subject to one or more specified federal permit requirements. The letter must indicate the specific exemption and provide a summary of the local government's analysis of the consistency of the project with the local SMP and SMA.

Variance or Conditional Use Permits. Under rules adopted by Ecology, a conditional use permit must be obtained for any development or use that is listed as a conditional use under a local SMP, or is an unlisted use. Also, a variance must be obtained for any proposed development or use that does not comply with the bulk, dimensional, and performance standards of a local SMP. Permits for a variance or conditional use, issued with the approval of a local government, pursuant to its SMP, must be submitted to Ecology for approval or disapproval.

Persons Not Required to Obtain Permits or Variances. Persons conducting certain activities are not required to obtain a substantial development permit, conditional use permit, or variance under the SMA. Person means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government.

The following are exempt under the statute:

- any person conducting remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to the Model Toxic Control Act;
- Ecology conducting remedial action under the Model Toxic Control Act; and
- any person installing site improvements for stormwater treatment in an existing boatyard facility to meet applicable permit requirements.

Summary of Bill: Existing exemptions from the requirement to obtain a substantial development permit, conditional use permit, or variance under the SMA are expanded to include requirements to obtain a letter of exemption or other local government review to implement the SMA. In addition, normal maintenance and repair activities of the Department of Transportation (DOT) that meet certain criteria are now exempt from these same SMA requirements. The following DOT 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 DOT may be authorized as a normal repair if: (1) replacement is the common method of repair for the type of structure or development; (2) the replacement structure or development is comparable to the original; and (3) the replacement does not cause substantial adverse effects to the shoreline. In any event, exempt normal maintenance or repair undertaken by DOT does not include expansion of an existing structure or development, or construction of a new structure or development.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There is a need for streamlining the permitting process for normal maintenance and repair activities of DOT. The current SMA permits for DOT may involve multiple permits from several jurisdictions for a simple re-pavement project. This bill uses definitions for maintenance and repair that have already been established in rule and have been in use by local governments. While the bill provides permit exemptions, there is no loss of environmental protection. This bill would be an important streamlining of processes and save time and money for both DOT and local governments.

Persons Testifying: PRO: Representative Hayes, prime sponsor; Bryce Yadon, Futurewise; Tom Clingman, Ecology; Christina Martinez, DOT.

Persons Signed in to Testify But Not Testifying: Duke Schaub, Associated General Contractors of WA; Carl Schroeder, Assn. of WA Cities.