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HOUSE BILL 2814

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Clibborn, Armstrong, Eddy, and Springer

1 AN ACT Relating to the replacement of certain elements of the state  
2 route number 520 corridor; amending RCW 90.58.140; creating a new  
3 section; providing an expiration date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** In adopting the shoreline management act in  
6 1971, the legislature declared that it is the policy of the state to  
7 provide for the management of the shorelines of the state by planning  
8 for and fostering all reasonable and appropriate uses, to ensure the  
9 development of these shorelines in a manner that will promote and  
10 enhance the public interest, and to protect against adverse effects to  
11 the public health, the land and its vegetation and wildlife, and the  
12 waters of the state and their aquatic life, while protecting generally  
13 public rights of navigation and corollary rights incidental thereto.  
14 The legislature declares that the policies recognized in 1971 are still  
15 vital to the protection of shorelines of the state.

16 The legislature recognizes that the replacement of the Evergreen  
17 Point bridge affects shorelines of the state and shorelines of  
18 statewide significance. However, the legislature finds that the state  
19 route number 520 corridor, including the Evergreen Point bridge, is a

1 critical component of the state highway system and of the Puget Sound  
2 region's transportation infrastructure and is essential to maintaining  
3 and improving the region's and the state's economy.

4 The legislature further finds that the Evergreen Point bridge and  
5 its approaches are in danger of structural failure and that it is  
6 highly likely that the bridge will sustain serious structural damage  
7 from an earthquake or windstorm over the next fifteen years. The  
8 floating span sustained serious damage during the 1993 storm, which  
9 required major repair and retrofit. Retrofitting the span has added  
10 weight, which causes the floating span to sit lower in the water,  
11 increasing the likelihood of waves breaking over the span and causing  
12 traffic hazards. The floating span cannot be further retrofitted to  
13 withstand severe windstorms. Recent storms have continued to cause  
14 damage to the floating span, including cracks in the pontoons that  
15 allow water to enter the pontoons.

16 The legislature further finds that replacement of the floating span  
17 and its approaches presents unique challenges in that it is subject to  
18 narrow windows in which work on Lake Washington can be performed  
19 because of weather and environmental constraints.

20 The legislature further finds that significant delays in replacing  
21 the floating span and east approach of the Evergreen Point bridge must  
22 be avoided in order to: Avoid the catastrophic loss of the bridge;  
23 protect the safety of the traveling public; prevent injury, loss of  
24 life, and property damage; and provide for a strong economy in the  
25 Puget Sound region and in Washington state.

26 **Sec. 2.** RCW 90.58.140 and 2011 c 277 s 3 are each amended to read  
27 as follows:

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

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

35 A permit shall be granted:

36 (a) From June 1, 1971, until such time as an applicable master  
37 program has become effective, only when the development proposed is

1 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their  
2 adoption, the guidelines and rules of the department; and (iii) so far  
3 as can be ascertained, the master program being developed for the area;

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

7 (3) The local government shall establish a program, consistent with  
8 rules adopted by the department, for the administration and enforcement  
9 of the permit system provided in this section. The administration of  
10 the system so established shall be performed exclusively by the local  
11 government.

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

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

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

24 (c) Any other manner deemed appropriate by local authorities to  
25 accomplish the objectives of reasonable notice to adjacent landowners  
26 and the public.

27 The notices shall include a statement that any person desiring to  
28 submit written comments concerning an application, or desiring to  
29 receive notification of the final decision concerning an application as  
30 expeditiously as possible after the issuance of the decision, may  
31 submit the comments or requests for decisions to the local government  
32 within thirty days of the last date the notice is to be published  
33 pursuant to this subsection. The local government shall forward, in a  
34 timely manner following the issuance of a decision, a copy of the  
35 decision to each person who submits a request for the decision.

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

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

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

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

36 (ii) Nothing in this subsection (5)(b) precludes the shorelines  
37 hearings board from concluding that the project or any element of the

1 project is inconsistent with the goals and policies of the shoreline  
2 management act or the local shoreline master program;

3 (iii) This subsection (5)(b) applies retroactively to any appeals  
4 filed after January 1, 2012, and to any appeals filed on or after the  
5 effective date of this section, and expires June 30, 2014.

6 (c) Except as authorized in (b) of this subsection, construction  
7 may be commenced no sooner than thirty days after the date of the  
8 appeal of the board's decision is filed if a permit is granted by the  
9 local government and (i) the granting of the permit is appealed to the  
10 shorelines hearings board within twenty-one days of the date of filing,  
11 (ii) the hearings board approves the granting of the permit by the  
12 local government or approves a portion of the substantial development  
13 for which the local government issued the permit, and (iii) an appeal  
14 for judicial review of the hearings board decision is filed pursuant to  
15 chapter 34.05 RCW. The appellant may request, within ten days of the  
16 filing of the appeal with the court, a hearing before the court to  
17 determine whether construction pursuant to the permit approved by the  
18 hearings board or to a revised permit issued pursuant to the order of  
19 the hearings board should not commence. If, at the conclusion of the  
20 hearing, the court finds that construction pursuant to such a permit  
21 would involve a significant, irreversible damaging of the environment,  
22 the court shall prohibit the permittee from commencing the construction  
23 pursuant to the approved or revised permit until all review proceedings  
24 are final. Construction pursuant to a permit revised at the direction  
25 of the hearings board may begin only on that portion of the substantial  
26 development for which the local government had originally issued the  
27 permit, and construction pursuant to such a revised permit on other  
28 portions of the substantial development may not begin until after all  
29 review proceedings are terminated. In such a hearing before the court,  
30 the burden of proving whether the construction may involve significant  
31 irreversible damage to the environment and demonstrating whether such  
32 construction would or would not be appropriate is on the appellant;

33 ~~((+e))~~ (d) Except as authorized in (b) of this subsection, if the  
34 permit is for a substantial development meeting the requirements of  
35 subsection (11) of this section, construction pursuant to that permit  
36 may not begin or be authorized until twenty-one days from the date the  
37 permit decision was filed as provided in subsection (6) of this  
38 section.

1        If a permittee begins construction pursuant to (a), (b), ~~((c))~~  
2        (c), or (d) of this subsection, the construction is begun at the  
3        permittee's own risk. If, as a result of judicial review, the courts  
4        order the removal of any portion of the construction or the restoration  
5        of any portion of the environment involved or require the alteration of  
6        any portion of a substantial development constructed pursuant to a  
7        permit, the permittee is barred from recovering damages or costs  
8        involved in adhering to such requirements from the local government  
9        that granted the permit, the hearings board, or any appellant or  
10        intervener.

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

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

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

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

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

35        (7) Applicants for permits under this section have the burden of  
36        proving that a proposed substantial development is consistent with the  
37        criteria that must be met before a permit is granted. In any review of

1 the granting or denial of an application for a permit as provided in  
2 RCW 90.58.180 (1) and (2), the person requesting the review has the  
3 burden of proof.

4 (8) Any permit may, after a hearing with adequate notice to the  
5 permittee and the public, be rescinded by the issuing authority upon  
6 the finding that a permittee has not complied with conditions of a  
7 permit. If the department is of the opinion that noncompliance exists,  
8 the department shall provide written notice to the local government and  
9 the permittee. If the department is of the opinion that the  
10 noncompliance continues to exist thirty days after the date of the  
11 notice, and the local government has taken no action to rescind the  
12 permit, the department may petition the hearings board for a rescission  
13 of the permit upon written notice of the petition to the local  
14 government and the permittee if the request by the department is made  
15 to the hearings board within fifteen days of the termination of the  
16 thirty-day notice to the local government.

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

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

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

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

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

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

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

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

6 (ii) Will serve an existing use in compliance with this chapter;  
7 and

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

10 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of the  
12 state government and its existing public institutions, and takes effect  
13 immediately.

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