

HOUSE BILL REPORT

E2SHB 1850

As Passed House:
March 10, 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:

Committee Activity:

Local Government: 2/12/15, 2/19/15 [DPS];

Transportation: 2/24/15, 2/26/15 [DP2S(w/o sub LG)].

Floor Activity:

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

Brief Summary of Engrossed Second Substitute Bill

- Exempts certain activities of the Washington State Department of Transportation from requirements to obtain a substantial development permit, a conditional use permit, a variance, a letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act of 1971.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Takko, Chair; Gregerson, Vice Chair; Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McCaslin, Peterson and Pike.

Minority Report: Do not pass. Signed by 1 member: Representative McBride.

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.

Staff: Michaela Murdock (786-7289).

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 15 members: Representatives Clibborn, Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Harmsworth, Hayes, Kochmar, Morris, Pike, Rodne, Shea, Takko, Wilson, Young and Zeiger.

Minority Report: Do not pass. Signed by 7 members: Representatives Farrell, Vice Chair; Gregerson, McBride, Moeller, Riccelli, Sells and Tarleton.

Minority Report: Without recommendation. Signed by 3 members: Representatives Fey, Vice Chair; Moscoso, Vice Chair; Ortiz-Self.

Staff: Alyssa Ball (786-7140).

Background:

The Shoreline Management Act of 1971.

The Shoreline Management Act of 1971 (SMA) governs uses of the shorelines of the state. With some exceptions, shorelines include all water areas of the state, the land underlying them, and their associated shorelands. The SMA provides for a cooperative regulatory approach between local governments and the state. At the local level, regulations related to the 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 (DOE) 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, the 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 the 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.

Letter of Exemption.

Some projects conducted on shorelines of the state require review and approval by federal agencies. The DOE is the coordinating agency for the state with regard to permits issued by the United States Army Corps of Engineers. To facilitate the DOE'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 the SMA.

Variance or Conditional Use Permits.

Under rules adopted by the DOE, 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 the DOE for approval or disapproval.

Persons Not Required to Obtain Permits or Variances.

Persons conducting certain activities, as specified in statute, 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 persons 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;
- the DOE conducting remedial action under the Model Toxic Control Act; and
- any person installing site improvements for storm water treatment in an existing boatyard facility to meet applicable permit requirements.

Summary of Engrossed Second Substitute Bill:

Statutory provisions exempting persons that conduct certain activities from requirements to obtain a substantial development permit, conditional use permit, or variance under the SMA are modified to include additional exemptions from requirements to obtain a letter of exemption or other local government review to implement the SMA.

In addition, exemptions for activities of the Department of Transportation (DOT) are added to the statute. Activities of the DOT that meet certain criteria are now exempt from requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local government review. 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 the DOT may be authorized as a "normal repair" if: (a) replacement is the common method of repair for the type of structure or development; (b) the replacement structure or development is comparable to the original; and (c) the replacement does not cause substantial adverse effects to shoreline resources or the shoreline environment. In any event, exempt normal maintenance or repair undertaken by the DOT

does not include expansion of an existing structure or development, or construction of a new structure or development.

The terms "normal maintenance" and "normal repair" are defined.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Local Government):

(In support) This bill is based on legislation proposed last year to streamline permitting for state highway maintenance projects. The concept was worked on over the summer and improved. This bill addresses the problem of linear projects that are subject to multiple, different local review processes and permitting requirements. For example, a highway on Camano Island goes through three different jurisdictions and is subject to three different local review processes.

The process for obtaining exemptions varies greatly between jurisdictions. Some jurisdictions provide informal electronic mail or letters with no attached conditions or fees; other jurisdictions require submission of applications, payment of fees, and additional time to review exemptions. This bill will save substantial staff time at the state and local level for work that does not impact the shoreline.

Currently, the DOT must obtain permit exemptions for any work conducted within 200 feet of a shoreline, even if that work is identified as exempt and does not impact the shoreline. Approvals for maintenance work and minor safety upgrades conducted by the DOT within the right-of-way of facilities will be streamlined. Only maintenance, like stripping or resurfacing the roadway, will be exempted, and lane expansions or construction that goes beyond the existing footprint will not be allowed. Although the local review portion of the permit process will be removed, local jurisdictions will still have early input on projects and will not be left entirely out of the loop.

Because of work done by the DOE and the DOT during at least the past 10 years, good standards governing maintenance or replacement of the DOT facilities are in place. For example, the NPDES [National Pollutant Discharge Elimination System] stormwater permits are specifically designed for the DOT, a specific set of standards address water quality and habitat concerns, and other programmatic standards are tailored to the DOT. The DOT is a unique, large agency that puts a lot of emphasis on employing best practice standards and has a large number of staff working on environmental compliance. This bill will not damage the shoreline environment, but rather will help support the state's largest infrastructure, the state highway system.

(Opposed) Although this bill purports to limit exemptions to vital maintenance and minor safety upgrades, which is fine, it is clear that major projects, such as replacement of bridges

and ferry docks, will also be exempt from review. Exempting replacement of a bridge, such as replacement of the 520 bridge, could have major impacts on the environment and state resources. Many replacement projects are more damaging than maintaining the existing structure, because the existing structure must be deconstructed before the replacement can be built. These are the sorts of projects that need to be permitted and subject to review under the SMA. The SMA is a unique, local program that looks at a range of impacts that other permits do not consider. An amendment to scale back the scope of the bill to exempt only minor projects is appropriate and supported.

Currently, local governments must track projects to determine whether the shoreline master programs are achieving no net loss of shorelines. This bill will exempt projects of the DOT from review, as well prohibit local governments from issuing letters of exemption or conducting other review to determine whether a loss of shoreline has occurred. In Washington, letters of exemption are the method used to secure certification necessary for obtaining certain federal permits. This bill may prevent agencies from obtaining appropriate certifications for federal permitting and funding.

(Other) Cities are not opposed to the concept proposed in the bill, and appreciate the need to streamline permitting and remove duplicate layers of review. However, additional work with the bill's sponsors is needed to ensure that non-duplicative environmental review processes are not affected or removed by the bill.

Staff Summary of Public Testimony (Transportation):

(In support) This bill is the product of a few years of work. The Washington State Department of Transportation (WSDOT) has recognized that this is a large step for them in saving time and money in moving these maintenance projects forward. The types of projects the bill applies to are largely resurfacing, restriping, installation of safety mechanisms, and so forth. The bill as amended removed the replacement of structures. This bill will expedite the permitting process and be beneficial to the state.

The Department of Ecology (DOE) is comfortable with this bill because it addresses work within existing, not new, facilities. From the DOE's perspective, there are permits that oversee the conduct of these types of maintenance projects to ensure that the Shoreline Management Act (SMA) is being followed and that the projects will not create any threat to the environment.

The WSDOT has a strong record protecting the environment, including shorelines. This bill streamlines permit approvals for maintenance projects and minor safety upgrades. Currently, the SMA requires the WSDOT to get a written exemption any time there is work performed within 200 feet of the shoreline. For example, the WSDOT recently had to obtain four shoreline permits for a single pavement rehabilitation project, even though all work was on existing pavement. The project spanned multiple jurisdictions, so staff had to get exemptions from four different counties, all of which have different exemption policies. The WSDOT supports the bill because it provides substantial streamlining and will save staff time at both the state and local level, and allows the WSDOT to more efficiently maintain the system. The WSDOT will continue to obtain all other required federal, state, and local permits.

(In support with amendment(s)) The Association of Washington Cities has been working for a number of years to figure out how to streamline the permitting process and effectively figure out where there are duplicative layers of review that can be removed, but still provide the same level of environmental protection. Adding an exemption to getting a permit under the SMA does not exempt the project from following the SMA. An idea to address some of the concerns around the bill would be to have a designated, outside person to review projects to ensure that the SMA is still being followed.

(Opposed) It is appreciated that the substitute bill clarifies that the exemption does not apply to new construction; however, there continues to be a problem with the definition of what reconstruction means now. Reconstruction would appear to be synonymous with replacement. Counties and cities must track shoreline development to ensure there is no net loss in shoreline resources, and since this bill exempts review from local government, this bill could still create some sort of loss. This bill expands activities under the SMA somewhat significantly and eliminates all local review from projects.

Persons Testifying (Local Government): (In support) Representative Hayes, prime sponsor; Tom Clingman, Department of Ecology; and Christina Martinez, Department of Transportation.

(Opposed) Bruce Wishart, Sound Action; and Bryce Yadon, Futurewise.

(Other) Carl Schroeder, Association of Washington Cities.

Persons Testifying (Transportation): (In support) Representative Hayes, prime sponsor; Tom Clingman, Department of Ecology; and Christina Martinez, Washington State Department of Transportation.

(In support with amendment(s)) Carl Schrader, Association of Washington Cities.

(Opposed) Bryce Yadon, Futurewise; and Bruce Wishart, Sierra Club.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Transportation): None.