

2 SSB 5765 - S AMD 215

3 By Senators Prentice and Swecker

4 ADOPTED 04/04/01

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT AND FINDINGS. The  
8 legislature finds that the public health and safety of its citizens,  
9 natural resources, and the environment are vital interests of the state  
10 that need to be protected and preserved. The legislature further finds  
11 that the safety of the traveling public and the state's economic well-  
12 being are vital interests that depend upon the development of cost-  
13 effective and efficient transportation systems planned, designed,  
14 constructed, and maintained through expedited permit decision-making  
15 processes.

16 It is the intent of the legislature to achieve transportation  
17 permit reform to expedite the delivery of statewide significant  
18 transportation projects through a streamlined approach to environmental  
19 permit decision making while improving environmental benefits through  
20 a watershed-based approach to aquatic and natural resource management.  
21 In order to optimize the limited resources available for transportation  
22 system improvements and environmental protection, state regulatory and  
23 natural resource agencies, public and private sector interests, Indian  
24 tribes, and the department of transportation must work cooperatively to  
25 establish common goals, minimize project delays, develop consistency in  
26 the application of environmental standards, maximize environmental  
27 benefits through coordinated investment strategies, and eliminate  
28 duplicative processes through delegation of selected permit drafting  
29 and compliance activities between state and federal agencies.

30 Therefore, the transportation permit efficiency and accountability  
31 committee is created. The committee must conduct three environmental  
32 permit streamlining pilot programs. The committee must also identify  
33 and develop general permits and a programmatic consultation process.  
34 Finally, the committee must explore other permit streamlining  
35 opportunities by designating transportation projects of statewide  
36 significance and selected delegation of permit authority.

1        NEW SECTION.    **Sec. 2.**    DEFINITIONS.    The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1) "Best available information" means the existing sources of  
5 data, including limiting factors analyses required under chapter 77.85  
6 RCW that can be used to make informed decisions regarding environmental  
7 conditions within a watershed.

8        (2) "Best management practices" means currently available and  
9 generally accepted techniques, including new technologies or strategies  
10 that seek to reduce the negative impacts of transportation facilities,  
11 projects, and services on communities and the environment, and promote  
12 more efficient and effective use of transportation facilities.  
13 Examples include transportation demand management, transportation  
14 systems management, and compensatory mitigation.

15        (3) "Committee" means the transportation permit efficiency and  
16 accountability committee created in section 3 of this act.

17        (4) "General permit" means a permit that covers a geographic area  
18 and applies to a project activity. A general permit allows actions to  
19 proceed without individual review by each permit decision-making  
20 agency.

21        (5) "Larger-impacting projects" means projects that are likely to  
22 affect a species or its habitat and must be examined for ways to  
23 mitigate or reduce the impact to avoid harm.

24        (6) "Least cost planning" means the use of best available  
25 information within a watershed basin applied to transportation decision  
26 making in the planning, permit decision making, and mitigation phases  
27 of a project.

28        (7) "Low-impact development project" means an activity or series of  
29 actions that conform to a comprehensive land-use planning and  
30 engineering design approach with a goal of maintaining or restoring  
31 existing natural habitat functions and hydrologic regime of urban and  
32 developing watersheds. These projects incorporate strategic watershed  
33 planning with site-specific management techniques to reduce development  
34 impacts to better replicate natural watershed hydrology and water  
35 quality, while allowing for development or infrastructure  
36 rehabilitation to occur.

37        (8) "One-stop permit decision making" means a coordinated permit  
38 decision-making process that streamlines environmental review and  
39 permit decision making for transportation projects by providing

1 concurrent, consolidated review by each agency required to review the  
2 project.

3 (9) "Programmatic agreement" means a regulatory instrument that  
4 outlines permit conditions and obligations under which a variety of  
5 identified project activities for an agency program or other actions  
6 may be conducted within a watershed or other geographically defined  
7 territory, without the necessity of obtaining individual permits.

8 (10) "Transportation project of statewide significance" means a  
9 surface transportation project or combination of surface transportation  
10 projects, that crosses multiple city or county jurisdictional  
11 boundaries or connects major state destinations in support of the  
12 state's economy and is so designated by the department of  
13 transportation and approved by the transportation committees of the  
14 senate and house of representatives. The transportation committees of  
15 the senate and house of representatives may also designate such  
16 projects. The pilot projects established in section 4 of this act are  
17 examples of transportation projects of statewide significance, but  
18 transportation projects of statewide significance are not limited to  
19 the pilot projects.

20 NEW SECTION. **Sec. 3.** TRANSPORTATION PERMIT EFFICIENCY AND  
21 ACCOUNTABILITY COMMITTEE--CREATED. The transportation permit  
22 efficiency and accountability committee is created.

23 (1) The committee will consist of fifteen voting members, including  
24 two members of the house of representatives from each of the two  
25 largest caucuses and two members of the senate from each of the two  
26 largest caucuses; one member designated by the secretary of  
27 transportation; one member designated by the director of fish and  
28 wildlife; one member designated by the director of ecology; one member  
29 designated by the state commissioner of public lands; one member  
30 designated by the Northwest Indian Fisheries Commission; one member  
31 designated by the Columbia River Intertribal Fisheries Commission; two  
32 members appointed by the state transportation commission or its  
33 successor agency, upon consultation with the Association of Washington  
34 Cities and the Washington Association of Counties, to represent local  
35 government interests; one member appointed by the state transportation  
36 commission or its successor agency, upon consultation with the  
37 Consulting Engineers Council of Washington, the Associated General  
38 Contractors of Washington, and the Washington Construction Industry

1 Council, to represent the construction industry; one member appointed  
2 by the state transportation commission or its successor agency, upon  
3 consultation with statewide environmental organizations, to represent  
4 environmental interests; and one member appointed by the state  
5 transportation commission or its successor agency, upon consultation  
6 with the state fish and wildlife commission, to represent the interests  
7 of citizens engaged in fish and wildlife recovery. The committee shall  
8 elect a chair from the four legislators appointed to the committee.

9 (2) Representatives from federal regulatory and transportation  
10 agencies, including the Environmental Protection Agency, National  
11 Marine Fisheries Service, Army Corps of Engineers, Federal Highways  
12 Administration, and United States Fish and Wildlife Service must be  
13 invited to participate in committee deliberations as nonvoting members.

14 (3) The committee may create technical subcommittees for the pilot  
15 projects designated in section 4 of this act and transportation  
16 projects of statewide significance. The technical subcommittees must  
17 include, but are not limited to, representatives of local governments  
18 from jurisdictions that have transportation projects of statewide  
19 significance. Decisions made by the technical subcommittee must be  
20 approved by a majority of the transportation permit efficiency and  
21 accountability committee.

22 (4) Nonvoting members will not be compensated but will receive  
23 reimbursement for travel expenses in accordance with RCW 43.03.050 and  
24 43.03.060.

25 (5) The department of transportation office of environmental  
26 affairs shall provide administrative and clerical assistance to the  
27 committee.

28 NEW SECTION. **Sec. 4.** PILOT PROJECTS. (1) It is the expectation  
29 of the legislature that a comprehensive approach to environmental  
30 permit decision making for transportation projects created between  
31 agencies, public and private sector interests, and tribes that focuses  
32 on concise design standards and a commitment to expedited permit  
33 decisions will minimize duplicative and time-consuming permit processes  
34 and achieve a greater potential for benefit to the environment. Pilot  
35 efforts designed to delegate selected permit drafting and compliance  
36 activities to the department when agreement on standards are achieved  
37 and when compliance safeguards are implemented should be tested. To

1 this end, the legislature directs the committee to select and conduct  
2 three permit reform pilot programs.

3 (2) The committee must select one permit reform pilot program that  
4 includes a mix of projects from each of the following geographic areas:

5 (a) The Translake and I-405 congestion relief study areas to test  
6 the application of permit reform to near built-out conditions in urban  
7 areas within the Cedar-Sammamish, Duwamish-Green, and other applicable  
8 adjoining watersheds agreed to by the committee;

9 (b) Transportation projects that can be grouped for geographic  
10 permit decision making related to western Washington watersheds and  
11 salmon recovery areas for the Willapa, Grays-Elochoman, Lewis,  
12 Salmon-Washougal, Wind-White Salmon, Klickitat, and other applicable  
13 adjoining watersheds agreed to by the committee; and

14 (c) Transportation projects that can be grouped for geographic  
15 permit decision making related to eastern Washington watersheds and  
16 salmon recovery areas for the Walla Walla, Middle Snake, Lower Snake,  
17 Rock-Glade, and other applicable adjoining watersheds agreed to by the  
18 committee.

19 NEW SECTION. **Sec. 5.** COMMITTEE--RESPONSIBILITIES FOR  
20 TRANSPORTATION PROJECTS OF STATEWIDE SIGNIFICANCE. (1) The committee  
21 and its authorized technical subcommittees shall develop a one-stop  
22 permit decision-making process that uses interdisciplinary review of  
23 transportation projects of statewide significance to streamline and  
24 expedite permit decision making. The one-stop permitting process must  
25 include early review and coordination between state regulatory agencies  
26 and the department in order to develop common environmental goals and  
27 strategies, and minimize subsequent changes to conditions.

28 (2) The committee must use a one-stop permitting process and other  
29 components identified in this chapter to:

30 (a) Link expedited permit decision making to best available  
31 information for a watershed; and

32 (b) Link investment strategy and priorities of the pilot watershed  
33 areas with the mitigation needs of the department along a geographic  
34 based approach.

35 (3) The committee must use an interdisciplinary permit review  
36 approach for each pilot project in order to:

37 (a) Provide coordinated and consolidated review and approval of  
38 permit applications;

1 (b) Provide coordinated and consolidated public hearings where  
2 required by one or more regulatory agencies under state law;

3 (c) Establish timelines for permit decision making;

4 (d) Allow delegation of selected permit drafting and compliance  
5 activities to the department.

6 (5) The committee shall seek federal delegation authorities to the  
7 state where appropriate to streamline permit processes for  
8 transportation projects of statewide significance including:  
9 Delegation of section 404 permit authority under the Clean Water Act;  
10 nonfederal lead agency status under the federal Endangered Species Act;  
11 section 106 cultural resource designation under the National Historic  
12 Preservation Act; and other appropriate authority that when delegated  
13 should result in permit streamlining.

14 (6) The committee shall develop and prioritize a list of permit  
15 streamlining opportunities, specifically identifying substantive and  
16 procedural duplications and suggestions for resolving those  
17 duplications, and standard development needs. Based on the list of  
18 permit streamlining opportunities, the committee shall designate  
19 transportation projects of statewide significance and submit those  
20 projects to the transportation committees of the house of  
21 representatives and the senate.

22 (7) The committee must provide to the legislative authority of each  
23 county and city a list of the projects that the committee has  
24 designated as pilot projects or transportation projects of statewide  
25 significance. The committee must also provide each county and city  
26 with a list of projects designated as transportation projects of  
27 statewide significance by the transportation committees of the  
28 legislature.

29 (8) The committee must provide a summary report to the legislature  
30 every six months beginning September 15, 2001.

31 NEW SECTION. **Sec. 6.** COMMITTEE RESPONSIBILITIES FOR PROGRAMMATIC  
32 AGREEMENTS AND GENERAL PERMITS. The committee shall:

33 (1) Identify and develop general permits and programmatic  
34 consultation processes for low-impacting projects and for larger-  
35 impacting projects. The committee must develop general permits for  
36 evaluating low-impacting projects in three to six months from the  
37 effective date of this act and for larger-impacting projects in six to  
38 nine months from the effective date of this act. The committee must

1 develop a programmatic consultation process for low-impacting projects  
2 in three to six months from the effective date of this act and for  
3 larger-impacting projects in six to nine months from the effective date  
4 of this act;

5 (2) Develop and implement a general permit program. At a minimum  
6 this program must require that decisions on minor variations to the  
7 requirements of the general permit or programmatic conditions must be  
8 provided by the permit decision-making agencies within fifteen business  
9 days of submittal; and

10 (3) Review the department's construction project list to determine  
11 which projects can be included in programmatic or general permit  
12 agreements. The committee shall develop agreements to cover those  
13 projects.

14 NEW SECTION. **Sec. 7.** GENERAL COMMITTEE RESPONSIBILITIES. The  
15 committee must:

16 (1) Evaluate the use of planning and permit decision-making  
17 standards that encourage low-impact alternatives;

18 (2) Seek to accelerate the permit process for projects that use  
19 low-impact development standards;

20 (3) Develop preliminary models and strategies to test how best to  
21 maximize the environmental investment of transportation funds within  
22 the framework of sections 1 through 6 of this act;

23 (4) Develop a uniform methodology for the timely and predictable  
24 submittal and evaluation of completed plans and specifications  
25 detailing project elements that impact environmental resources as well  
26 as proposed mitigation measures during the preliminary specifications  
27 and engineering phase of project development;

28 (5) Develop a least-cost methodology for analyzing environmental  
29 impacts and applying compensatory mitigation consistent with a  
30 watershed-based approach before final design;

31 (6) Assess models to collate and access watershed data to support  
32 early agency involvement in transportation planning and reviews under  
33 the national Environmental Policy Act and the State Environmental  
34 Policy Act;

35 (7) In consultation with the department, identify projects that do  
36 not qualify as transportation projects of statewide significance or for  
37 programmatic review or general permit agreements, and develop a  
38 streamlined permit decision-making process for them;

1 (8) Collaborate with appropriate agencies and parties to develop  
2 concise environmental standards and best management practices for  
3 transportation projects that can be applied with certainty,  
4 consistency, and assurance of swift permit action, while taking into  
5 account the varying climate, geomorphologic, and hydrologic conditions  
6 throughout the state. The standards and best management practices may  
7 use prescriptive or performance standards and must meet all current  
8 relevant federal, state, and local environmental and land use  
9 regulations;

10 (9) Create a streamlined permit decision-making and consultation  
11 process for transportation projects for section 404 federal Clean Water  
12 Act permits and section 10 permits issued by the United States Army  
13 Corps of Engineers, section 401 and 402 permits issued by the  
14 department of ecology, shoreline approvals reviewed by the department  
15 of ecology, hydraulic project approvals issued by the department of  
16 fish and wildlife, and any other applicable permit issued for  
17 transportation projects;

18 (10) Use existing best available information from watershed  
19 planning efforts, lead entities, regional fisheries enhancement groups,  
20 and other recognized entities as deemed appropriate by the committee,  
21 to determine potential mitigation requirements for projects within a  
22 watershed. Priority consideration should be given to the use of the  
23 state's alternative mitigation to best link transportation mitigation  
24 needs with local watershed and lead entity project lists;

25 (11) Give consideration to flexible approaches that maximize  
26 transportation and environmental interests;

27 (12) Work with the department of ecology to develop a virtual one-  
28 stop environmental permitting center to provide interested parties and  
29 citizens with information regarding environmental permitting  
30 requirements; and

31 (13) Develop a dispute resolution process to resolve conflicts in  
32 interpretation of environmental standards and best management  
33 practices, mitigation requirements, permit requirements, and other  
34 related issues by September 15, 2001. Every effort to include federal  
35 agencies in the dispute resolution process must be made. A list of  
36 ongoing disputed issues must be included in the committee's report to  
37 the legislature.

1        NEW SECTION.    **Sec. 8.**    DEPARTMENT ORGANIZATION AND ADMINISTRATIVE  
2 ACTIONS.    The legislature finds that an essential component of  
3 streamlined permit decision making is the ability of the department to  
4 demonstrate the capacity to meet environmental responsibilities.  
5 Therefore, the legislature directs that:

6        (1) Qualified environmental staff within the department shall lead  
7 the development of all environmental documentation associated with  
8 department projects and permit activities in accordance with the  
9 department's project delivery tools.

10       (2) The department shall conduct special prebid meetings for  
11 projects that are environmentally complex. In addition, the department  
12 shall review environmental considerations related to these projects  
13 during the preconstruction meeting held with the contractor who is  
14 awarded the bid.

15       (3) Environmental staff at the department shall conduct field  
16 inspections to ensure that project activities are performed under  
17 permit conditions. These inspectors must:

18       (a) Have the ability to issue stop work orders when compliance with  
19 permit standards are not being met;

20       (b) For this portion of their job duties, be accountable to the  
21 director of the office of environmental services of the department.

22       (4) Failure to comply with a stop work order may result in civil  
23 penalties being assessed against the department and individuals  
24 involved. Willful violation of a stop work notice issued by the  
25 department is subject to civil penalties assessed on the agency as well  
26 as the individuals involved. Persistent violations by the department  
27 may result in loss of permit drafting and program management  
28 responsibilities.

29       NEW SECTION.    **Sec. 9.**    TRAINING AND COMPLIANCE.    The legislature  
30 expects the department to continue its efforts to improve training and  
31 compliance.    The department shall:

32       (1) Provide training in environmental procedures and permit  
33 requirements for those responsible for project delivery activities;

34       (2) Require wetland mitigation sites to be designed by trained  
35 biologist or landscape architects, qualified by the department of  
36 ecology's wetland program. Environmental mitigation site improvements  
37 must have oversight conducted by environmental staff;

1 (3) Develop an environmental compliance data system to track all  
2 permit conditions;

3 (4) Report all noncompliance activities to applicable agencies of  
4 jurisdiction along with a remedy plan;

5 (5) Fund the departments of ecology, natural resources, and fish  
6 and wildlife, operating under their permit-granting authority to  
7 conduct audits of the department's permit drafting and compliance  
8 activities. The department of ecology shall collate the audits in an  
9 annual report to the legislature;

10 (6) Fund dedicated technical staff at federal permit decision-  
11 making entities and the state departments of ecology, natural  
12 resources, community, trade, and economic development, and fish and  
13 wildlife to implement the requirements of this chapter;

14 (7) Fund a technical specialist at the Northwest Indian Fisheries  
15 Commission and the Columbia River Intertribal Fisheries Commission for  
16 the purpose of implementing this chapter;

17 (8) Reimburse local jurisdictions for costs associated with local  
18 participation on the committee and technical subcommittees.

19 NEW SECTION. **Sec. 10.** Captions used in this act are not part of  
20 the law.

21 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
22 constitute a new chapter in Title 47 RCW."

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24 By Senators Prentice and Swecker

25 ADOPTED 04/04/01

26 In line 3 of the title, after "projects;" strike the remainder of  
27 the title and insert "adding a new chapter to Title 47 RCW; and  
28 prescribing penalties."

EFFECT: Creates the Transportation Efficiency and Accountability  
Committee. The Committee must designate transportation projects of  
statewide significance that would be eligible for a streamlined  
environmental permitting approach. At a minimum, the transportation  
projects of statewide significance must include three pilot programs in  
the following geographic areas: The Translake and I-405 congestion  
relief study areas, Western Washington, and Eastern Washington. The

committee must also establish general permits and programmatic consultation processes. Finally, the committee must work with appropriate agencies to develop concise environmental standards and best management practices for transportation projects.

--- END ---