
SUBSTITUTE HOUSE BILL 2070

State of Washington 63rd Legislature 2014 Regular Session

By House Transportation (originally sponsored by Representatives O'Ban, Clibborn, and Zeiger)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to Washington state department of transportation
2 projects; amending RCW 47.01.300; adding a new section to chapter 90.58
3 RCW; adding a new section to chapter 43.21C RCW; adding a new section
4 to chapter 47.01 RCW; adding a new chapter to Title 47 RCW; and
5 creating a new section.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 achieve transportation regulatory reform that expedites the delivery of
9 transportation projects through a streamlined approach to environmental
10 decision making. The department of transportation should work
11 cooperatively and proactively with state regulatory and natural
12 resource agencies, public and private sector interests, and Indian
13 tribes to avoid project delays. The department and state regulatory
14 and natural resource agencies should continue to implement and improve
15 upon the successful policies, guidance, tools, and procedures that were
16 created as a result of transportation permit efficiency and
17 accountability committee efforts. The department should expedite
18 project delivery and routine maintenance activities through the use of

1 programmatic agreements and permits where possible and seek new
2 opportunities to eliminate duplicative processes.

3 NEW SECTION. **Sec. 2.** The department must use the following
4 expedited environmental review and approval process for any
5 transportation project requiring the preparation of an environmental
6 impact statement under the national environmental policy act (42 U.S.C.
7 Sec. 4321 et seq.). State and local agencies with relevant
8 jurisdiction, to the extent practicable and appropriate, as determined
9 by the agencies, must provide technical assistance to the department on
10 accomplishing the project review and coordination activities described
11 in this section.

12 (1) Step 1: Public and agency involvement in defining the project
13 purpose and scope of environmental review. The department must provide
14 notice to the public that environmental review for the project is being
15 initiated. This notice must reference the notice of intent under the
16 national environmental policy act and explain that this replaces the
17 need for a threshold determination under chapter 43.21C RCW. The
18 department must invite the public, agencies, and tribes to provide
19 input on the project purpose and scope of environmental review. The
20 department must provide a thirty-day comment period. The department
21 may hold one or more meetings to collect input. The department must
22 complete step 1 by: (a) Providing a summary of the results of step 1,
23 including a statement that the department considers step 1 to be
24 complete; and (b) making the summary available to the public. The
25 department must consider the input from the public, agencies, and
26 tribes before finalizing the project purpose and scope of environmental
27 review.

28 (2) Step 2: Identify participating agencies and convene meetings
29 with an interdisciplinary team.

30 (a) The department must identify any federal, state, tribal,
31 regional, and local governmental agencies that may have an interest in
32 the project. The department must invite these agencies to serve as
33 participating agencies. The roles and responsibilities of
34 participating agencies include, but are not limited to, identifying
35 potential environmental or socioeconomic impacts that could
36 substantially delay or prevent an agency from granting a permit or
37 other approval that is needed for the project. Participating agencies

1 must provide input to the department as the department develops: The
2 scope of environmental analysis, a purpose and need statement, a range
3 of alternatives, methodologies, and the level of detail for the
4 analysis of alternatives. Designation as a participating agency does
5 not indicate project support, but it does give invited agencies
6 opportunities to provide input at key decision points in the process.

7 (b) The department must form an interdisciplinary team composed of
8 participating agency staff and key technical specialists from the
9 department. Participating agencies must identify key technical or
10 regulatory experts to participate on the project interdisciplinary
11 team. The department must convene at least one meeting with the
12 interdisciplinary team at each of the subsequent steps in order to
13 collaborate on project decisions and milestones.

14 (3) Step 3: Participating agency involvement during the screening
15 of alternatives.

16 (a) The department must initiate step 3 by providing notice to
17 participating agencies that the screening of project alternatives has
18 begun. Within thirty days of receiving notification, participating
19 state, county, and city agencies must, and federal agencies are
20 encouraged to, identify:

21 (i) For each identified alternative: (A) The specific features
22 that the agency considers significant with respect to the agency's role
23 in environmental reviews, permits, or other approvals for the project;
24 (B) the reasons these features are significant; and (C) any concerns
25 the agency may have about the alternative because of potential
26 significant adverse impacts of these features on resources or social
27 policies within the agency's jurisdiction;

28 (ii) For each feature for which the agency raises concerns: (A)
29 Recommendations on how the potential adverse impacts could be avoided,
30 minimized, and mitigated; and (B) an assessment of the relative ranking
31 of each alternative with respect to whether and to what extent these
32 concerns apply; and

33 (iii) Other information the participating agency requests the
34 department to consider in deciding whether, when, where, or how to
35 proceed with the project.

36 (b) The department must consider the input from the participating
37 agencies prior to selecting a preferred project alternative.

1 (4) Step 4: Participating agency involvement during the
2 identification of environmental permits and approvals, application
3 procedures, and decision standards.

4 (a) The department, in consultation with the participating
5 agencies, must identify all permits and other approvals the agencies
6 might require for each project alternative.

7 (b) After consulting with all participating agencies, the
8 department must complete step 4 by compiling a list of all
9 environmental permits and approvals it believes are needed for the
10 project under each alternative being considered.

11 (5) Step 5: Complete an environmental analysis and issue a draft
12 environmental impact statement. The department must initiate step 5 by
13 providing notice of the availability of the draft environmental impact
14 statement to participating agencies, tribal governments, and the
15 public. Notification must include posting on the state environmental
16 policy act register. State, county, and city agencies must, and
17 federal agencies are encouraged to, provide written comments on the
18 draft environmental impact statement no later than forty-five days
19 after the department posts notice in the state environmental policy act
20 register.

21 (6) Step 6: Develop a final environmental impact statement. The
22 department must work with the federal lead agency to consider and
23 respond to all substantive comments received during the comment period.
24 The department must evaluate public and agency comments on the draft
25 environmental impact statement to determine if the statement
26 sufficiently identifies and analyzes the impacts and mitigation of the
27 proposed action. The department must engage participating agencies in
28 refining alternatives and completing the environmental review.

29 (7) Step 7: Issue a final environmental impact statement. The
30 final environmental impact statement must contain: The department's
31 final recommendation and preferred alternative, a summary of the
32 comments received on the draft environmental impact statement and the
33 response, and a description of the procedures required to ensure that
34 mitigation measures are implemented. The department must provide
35 notice of the final environmental impact statement and the federal lead
36 agency's record of decision in the state environmental policy act
37 register.

1 NEW SECTION. **Sec. 3.** (1) The legislature recognizes the value
2 that tribal governments provide in the review of transportation
3 projects. The legislature expects the department to continue its
4 efforts to provide consistent consultation and communication during the
5 environmental review of proposed transportation projects.

6 (2) For projects described in section 2 of this act, the department
7 must invite affected tribes to be participating agencies. If tribal
8 governments elect not to participate, the department must make a
9 reasonable effort to: Meet with representatives of affected tribes to
10 review broad issues during scoping, engage in both formal and technical
11 consultation with tribal staff, and seek to resolve issues in parallel
12 with project planning and permitting activities.

13 NEW SECTION. **Sec. 4.** The department must streamline the
14 permitting process by developing and maintaining positive relationships
15 with the regulatory agencies and the Indian tribes. The department can
16 reduce the time it takes to obtain permits by incorporating impact
17 avoidance and minimization measures into project design and by
18 developing complete permit applications. To streamline the permitting
19 process, the department must:

20 (1) Continue a multiagency permit program consisting of appropriate
21 regulatory agency staff with oversight and management from the
22 department.

23 (a) The multiagency permit program must provide early project
24 coordination, expedited project review, project status updates,
25 technical and regulatory guidance, and construction support to ensure
26 compliance.

27 (b) The multiagency permit program staff must assist department
28 project teams with developing complete permit applications, provide
29 suggestions for how the project can avoid and minimize impacts, and
30 provide input regarding mitigation for unavoidable impacts;

31 (2) Establish, implement, and maintain programmatic agreements and
32 permits with federal and state agencies to expedite the process of
33 ensuring compliance with the endangered species act, section 106 of the
34 national historic preservation act, hydraulic project approvals, the
35 clean water act, and other federal acts as appropriate;

36 (3) Collaborate with permitting staff from the United States army
37 corps of engineers, Seattle district, department of ecology, and

1 department of fish and wildlife to develop, implement, and maintain
2 complete permit application guidance. The guidance must identify the
3 information that is required for agencies to consider a permit
4 application complete; and

5 (4) Perform internal quality assurance and quality control to
6 ensure that permit applications are complete before submitting them to
7 the regulatory agencies.

8 NEW SECTION. **Sec. 5.** The legislature finds that an essential
9 component of streamlined permit decision making is the ability of the
10 department to demonstrate the capacity to meet environmental
11 responsibilities. Therefore, the legislature directs that:

12 (1) Qualified environmental staff within the department must
13 supervise the development of all environmental documentation in
14 accordance with the department's project delivery tools;

15 (2) When appropriate, the department must conduct special prebid
16 meetings for projects that are environmentally complex. In addition,
17 the department must review environmental requirements related to these
18 projects during the preconstruction meeting held with the contractor
19 who is awarded the bid;

20 (3) Environmental staff at the department, or consultant staff
21 hired directly by the department, must conduct field inspections to
22 ensure that project activities comply with permit conditions and
23 environmental commitments. These inspectors:

24 (a) Must notify the department's project engineer when compliance
25 with permit conditions or environmental regulations are not being met;
26 and

27 (b) Must immediately notify the regulatory agencies with
28 jurisdiction over the nonconforming work; and

29 (4) When a project is not complying with a permit or environmental
30 regulation, the project engineer must immediately order the contractor
31 to stop all nonconforming work and implement measures necessary to
32 bring the project into compliance with permits and regulations.

33 NEW SECTION. **Sec. 6.** The legislature expects the department to
34 continue its efforts to improve training and compliance. The
35 department must:

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

3 (2) Require wetland mitigation sites to be designed by qualified
4 technical specialists that meet training requirements developed by the
5 department in consultation with the department of ecology.
6 Environmental mitigation site improvements must have oversight by
7 environmental staff;

8 (3) Develop, implement, and maintain an environmental compliance
9 data system to track permit conditions, environmental commitments, and
10 violations;

11 (4) Continue to implement the environmental compliance assurance
12 procedure to ensure that appropriate agencies are notified and that
13 action is taken to remedy noncompliant work as soon as possible. When
14 work occurs that does not comply with environmental permits or
15 regulations, the project engineer must document the lessons learned to
16 make other project teams within the department aware of the violation
17 to prevent reoccurrence; and

18 (5) Provide an annual report summarizing violations of
19 environmental permits and regulations to the legislature on March 1st
20 of each year for violations occurring during the preceding year.

21 NEW SECTION. **Sec. 7.** Nothing in this chapter may be interpreted
22 to create a private right of action or right of review. Judicial
23 review of the department's environmental review is limited to that
24 available under chapter 43.21C RCW or applicable federal law.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 90.58 RCW
26 to read as follows:

27 The maintenance, repair, replacement of structures, minor safety
28 upgrades, and signage installation within the right-of-way of state
29 highway facilities are not subject to review or approval by a local
30 government under this chapter, including the approval of shoreline
31 exemptions and other reviews conducted by local governments to
32 implement this chapter. Examples of such actions include, but are not
33 limited to: Pavement rehabilitation; luminaire and sign associated
34 maintenance and replacement; bank protection and scour repair on
35 existing structures and facilities; replacement of structurally
36 deficient bridges; culvert cleanout and minor repair; storm water

1 facility maintenance and repair; shoulders and slope repair;
2 hazard/danger tree removal; traffic barrier installation, including
3 cable barrier, guardrail, and landforms; rumble strip grinding;
4 installation of intelligent transportation systems; and weigh-in-motion
5 facilities. For purposes of this section, "minor safety upgrades" and
6 "replacement of structures" do not include new travel lanes or the
7 expansion of transportation facilities. The replacement of structures
8 must be comparable to the original structure, including size, shape,
9 configuration, and location, except to meet current engineering
10 standards or environmental permit requirements.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.21C RCW
12 to read as follows:

13 (1) The legislature recognizes the opportunity to gain efficiencies
14 by reducing duplication between national and state environmental policy
15 act compliance for state transportation projects.

16 (2) The repair, reconstruction, restoration, retrofitting, or
17 replacement of any road, highway, bridge, tunnel, ferry dock, or
18 transit facility (such as a bus transfer station), including ancillary
19 transportation facilities (such as pedestrian/bicycle paths and bike
20 lanes), when undertaken by the state department of transportation are
21 exempt from compliance with this chapter, as long as the actions: (a)
22 Occur within the existing right-of-way and in a manner that
23 substantially conforms to the preexisting design, function, and
24 location as the original, except to meet current engineering standards
25 or environmental permit requirements, or both; and (b) do not result in
26 the addition of automobile lanes, a change in capacity, or a change in
27 functional use of the facility. The issuance of applicable state and
28 local agency permits or approvals associated with the repair or
29 replacement of these facilities is also included in the exemption from
30 compliance with this chapter.

31 **Sec. 10.** RCW 47.01.300 and 2012 c 62 s 1 are each amended to read
32 as follows:

33 The department shall, in cooperation with environmental regulatory
34 authorities:

35 (1) Identify and document environmental resources in the
36 development of the statewide multimodal plan under RCW 47.06.040;

1 (2) Allow for public comment regarding changes to the criteria used
2 for prioritizing projects under chapter 47.05 RCW before final adoption
3 of the changes by the commission;

4 (3) Use an environmental review as part of the project prospectus
5 identifying potential environmental impacts, mitigation, the
6 utilization of the mitigation option available in RCW 90.74.040, and
7 costs during the early project identification and selection phase,
8 submit the prospectus to the relevant environmental regulatory
9 authorities, and maintain a record of comments and proposed revisions
10 received from the authorities;

11 (4) Actively work with the relevant environmental regulatory
12 authorities during the design alternative analysis process and seek
13 written concurrence from the authorities that they agree with the
14 preferred design alternative selected;

15 (5) Develop a uniform methodology, in consultation with relevant
16 environmental regulatory authorities, for submitting plans and
17 specifications detailing project elements that impact environmental
18 resources, and proposed mitigation measures including the mitigation
19 option available in RCW 90.74.040, to the relevant environmental
20 regulatory authorities during the preliminary specifications and
21 engineering phase of project development;

22 (6) Use available technologies to minimize permit delays for,
23 inform and interact with interested parties including relevant
24 environmental regulatory authorities regarding, and optimize the
25 effectiveness of proposed compensatory mitigation projects;

26 (7)(a) In addition to the mitigation programs specified in RCW
27 90.74.040(1)(a), the correction of fish passage barriers on city
28 streets and county roads located within the same watershed as the
29 proposed project must be considered for compensatory mitigation. The
30 department shall consult with the department of fish and wildlife, the
31 appropriate local government, and interested tribes to prioritize fish
32 passage barrier projects that: Maximize the value of investment;
33 correct multiple fish passage barriers in whole streams rather than
34 through individual, isolated projects; and maximize habitat recovery
35 through coordination.

36 (b) The department shall submit a report to the transportation
37 committees of the legislature by December 1, 2015, regarding the use

1 and effectiveness of the mitigation option created in this subsection
2 as well as recommendations for improvements;

3 (8) Screen construction projects to determine which projects will
4 require complex or multiple permits. The permitting authorities shall
5 develop methods for initiating review of the permit applications for
6 the projects before the final design of the projects;

7 ~~((+7))~~ (9) Conduct special prebid meetings for those projects that
8 are environmentally complex; and

9 ~~((+8))~~ (10) Review environmental considerations related to
10 particular projects during the preconstruction meeting held with the
11 contractor who is awarded the bid.

12 NEW SECTION. Sec. 11. A new section is added to chapter 47.01 RCW
13 to read as follows:

14 (1) The department shall submit a report to the transportation
15 committees of the legislature detailing engineering errors on highway
16 construction projects resulting in project cost increases in excess of
17 five hundred thousand dollars. The department must submit an initial
18 report of an engineering error within thirty days upon recognition of
19 the engineering error occurring. A full report must be submitted
20 within ninety days of the submission of the initial report.

21 (2) The department's full report must include an assessment and
22 review of:

23 (a) How the engineering error happened;

24 (b) The department of the employee or employees responsible for the
25 engineering error, without disclosing the name of the employee or
26 employees;

27 (c) What corrective action was taken;

28 (d) The estimated total cost of the engineering error and how the
29 department plans to mitigate that cost;

30 (e) Whether the cost of the engineering error will impact the
31 overall project financial plan; and

32 (f) What action the secretary has recommended to avoid similar
33 engineering errors in the future.

34 NEW SECTION. Sec. 12. (1) The legislature finds that "right-
35 sizing" is a lean, metric-based approach to determining project
36 investments. This concept entails a compromise between project cost

1 and design, incorporating local community needs, desired outcomes, and
2 available funding. Furthermore, the legislature finds that the
3 concepts and principles that the department of transportation has
4 utilized in the safety analyst program have been effective tools to
5 prioritize projects and reduce project costs.

6 (2) The department of transportation shall report to the house of
7 representatives and senate transportation committees on right-sizing by
8 January 1, 2015. This report must include:

9 (a) When and where the concept has been applied or is intended to
10 be applied within the department; and

11 (b) An assessment of the feasibility of extending the concept to
12 all department of transportation capital programs, including costs and
13 implications.

14 NEW SECTION. **Sec. 13.** Sections 1 through 7 of this act constitute
15 a new chapter in Title 47 RCW.

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