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HOUSE BILL 2241

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State of Washington

57th Legislature

2001 Regular Session

By Representative Ericksen

Read first time . Referred to Committee on .

1 AN ACT Relating to transportation permit efficiency; amending RCW  
2 47.01.290; adding a new section to chapter 77.55 RCW; adding a new  
3 chapter to Title 47 RCW; creating a new section; and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 47.01.290 and 1994 c 258 s 3 are each amended to read  
7 as follows:

8 The legislature recognizes that environmental review of  
9 transportation projects is a continuous process that should begin at  
10 the earliest stages of planning and continue through final project  
11 construction. ~~((Early and extensive involvement of the relevant  
12 environmental regulatory authorities is critical in order to avoid  
13 significant changes in substantially completed project design and  
14 engineering-))~~ Streamlining the permit approval process is essential  
15 for reducing project delays and for making the most efficient use of  
16 every transportation dollar. It is the expectation of the legislature  
17 that if a comprehensive environmental approach is integrated throughout  
18 various transportation processes, onerous, duplicative, and time-  
19 consuming permit processes will be minimized. To this end, the

1 legislature directs that substantive standards and best management  
2 practices governing the construction of transportation projects be  
3 jointly agreed upon by both the department and Washington's natural  
4 resource agencies. After these substantive standards have been agreed  
5 upon, the legislature finds that the greatest efficiency and  
6 effectiveness in both protecting our environmental resources and in  
7 constructing the transportation infrastructure required to serve  
8 Washington's growing population will come from the implementation of  
9 these standards by the department itself, with appropriate oversight,  
10 as defined in this act, by both natural resource agencies and local  
11 governments.

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

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

19 (2) "Best management practices" means currently available and  
20 generally accepted techniques, including new technologies or strategies  
21 that seek to reduce the negative impacts of transportation facilities,  
22 projects, and services on communities and the environment.

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

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

28 (5) "Programmatic permit" means a regulatory instrument that  
29 outlines permit conditions and obligations for a variety of similar  
30 project activities spanning a watershed ecosystem or geographically  
31 defined boundary, that once entered into by parties, delineates an  
32 applicant's proposed actions over a specific period of time, that may  
33 be conducted without the necessity of obtaining individual permits for  
34 the types of projects identified.

35 (6) "Transportation project of statewide significance" means a  
36 project or combination of projects that crosses two or more city or  
37 county jurisdictional boundaries.

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

4        (1) The committee will consist of seven voting members, including  
5 two members from the house of representatives, one each selected by  
6 either each of the co-speakers or the speaker and the minority leader  
7 of the house; two members of the senate, one each selected by the  
8 senate majority leader and the senate minority leader; one member  
9 designated by the secretary of transportation; one member designated by  
10 the director of fish and wildlife; and one member designated by the  
11 director of ecology. The committee shall elect a chair from the four  
12 legislators appointed to the committee. The committee shall strive to  
13 work on a consensus basis; however, decisions may be made by a simple  
14 majority of the committee.

15        (2) Representatives of additional organizations or groups,  
16 including but not limited to the following organizations and groups,  
17 may be invited by the committee to appear before the committee and  
18 advise and provide input to the committee: The state commissioner of  
19 public lands; the Northwest Indian Fisheries Commission; the Columbia  
20 River Intertribal Fisheries Commission; the Association of Washington  
21 Cities; the Washington State Association of Counties; the Consulting  
22 Engineers Council of Washington; the Associated General Contractors of  
23 Washington; the Washington Construction Industry Council; the  
24 Association of Washington Business; the Building Industry Association  
25 of Washington; any statewide environmental organization; the state fish  
26 and wildlife commission; the federal Environmental Protection Agency;  
27 the National Marine Fisheries Service; the Federal Highways  
28 Administration; and the United States Fish and Wildlife Service.

29        (3) The committee may create technical subcommittees to assist with  
30 drafting of and advice on decisions to adopt the standards described in  
31 section 4(1)(a) of this act. In order to use the broadest range of  
32 expertise available in writing the substantive standards, the committee  
33 may appoint any individual or any representative from any organization  
34 or agency as nonvoting members of these technical subcommittees to  
35 assist in developing standards governing specific topics.

36        (4) Legislative members of the committee will be reimbursed for  
37 travel expenses as provided in RCW 44.04.120.

1 (5) The department of transportation office of environmental  
2 affairs shall provide administrative and clerical assistance to the  
3 committee.

4 NEW SECTION. **Sec. 4.** COMMITTEE--RESPONSIBILITIES. (1) Within  
5 twelve months of the effective date of this act, the committee shall:

6 (a) Develop concise environmental standards and best management  
7 practices for transportation projects that can be applied with  
8 certainty, consistency, and assurance of swift permit action, while  
9 taking into account the varying climate, geomorphologic, and hydrologic  
10 conditions throughout the state. The standards and best management  
11 practices must conform to all current relevant federal and state  
12 environmental regulations, and must be sufficient to protect critical  
13 areas as defined in chapter 36.70A RCW. Actions to achieve this goal  
14 must include identification and development of standards to govern both  
15 programmatic permits and individual project permits. Actions to  
16 achieve this goal may include the adoption of existing environmental  
17 standards, such as existing storm water manuals or other existing  
18 sources of standards and best management practices, if the committee  
19 decides that these existing resources meet or constitute state or  
20 federal environmental standards. These existing resources may be  
21 incorporated by reference into the standards developed by the  
22 committee. Nothing in this chapter may be interpreted as providing the  
23 committee any authority to engage in rule making other than for the  
24 purpose of drafting or adopting the standards specified in this  
25 subsection. Nothing in this act may be interpreted as expanding the  
26 rule-making authority of any state agency or as providing rule-making  
27 authority for any state agency, including those agencies participating  
28 on the committee;

29 (b) Create a streamlined consultation process for transportation  
30 projects for section 404 federal Clean Water Act and section 10 permits  
31 issued by the United States Army Corps of Engineers;

32 (c) Develop a least-cost methodology for analyzing environmental  
33 impacts and applying compensatory mitigation consistent with a  
34 watershed-based approach before final design;

35 (d) Assess models to collate and access watershed data to support  
36 early agency involvement in transportation planning and reviews under  
37 the federal Environmental Protection Act and the State Environmental  
38 Protection Act;

1 (e) Develop procedures to use existing best available information  
2 from a variety of sources including, but not limited to, watershed  
3 planning efforts, lead entities, regional fisheries enhancement groups,  
4 the salmon and steelhead inventory assessment project (SSIAHP), and  
5 other recognized entities as deemed appropriate by the committee, in  
6 order to determine potential mitigation site requirements for project  
7 actions within a watershed. Priority consideration should be given to  
8 the use of the state's alternative mitigation strategy to best link  
9 transportation mitigation needs with local watershed and lead entity  
10 project lists;

11 (f) Ensure that the department seeks federal delegation authorities  
12 to the state where appropriate to streamline permit processes  
13 including: Delegation of section 404 permit authority under the  
14 federal Clean Water Act; nonfederal lead agency status under the  
15 federal Endangered Species Act; section 106 cultural resource  
16 designation under the National Historic Preservation Act; and other  
17 appropriate authority that when delegated should result in permit  
18 streamlining.

19 (2) By January 1, 2002, the committee shall issue an interim report  
20 to the legislature detailing its progress toward drafting or adopting  
21 the standards as required by subsection (1)(a) of this section. The  
22 committee may publicly issue this report by posting it on the  
23 department of transportation's web site on the Internet pages dedicated  
24 to the office of environmental affairs. The committee may transmit  
25 this report to the legislature via electronic mail, and at a minimum  
26 shall e-mail a copy of the report to every member of the house and  
27 senate transportation committees, along with the co-speakers of the  
28 house and the majority and minority leaders of the senate.

29 (3) Upon completion of the drafting and adoption of the standards  
30 referred to in subsection (1)(a) of this section, the committee shall  
31 suspend its operation until it is reconvened to amend existing  
32 standards or draft or adopt additional standards as provided by section  
33 8(4) of this act, or until it is required to draft a remediation plan  
34 as provided by section 8(3) of this act.

35 NEW SECTION. **Sec. 5.** (1) Upon completion of the standard drafting  
36 or adoption process specified in section 4(1)(a) of this act, the  
37 department of ecology and the department of fish and wildlife shall  
38 delegate, to the maximum extent consistent with federal law, all

1 environmental permitting authority currently exercised by these  
2 agencies, including, but not limited to, chapters 90.48, 90.58, and  
3 77.55 RCW. The department of ecology and the department of fish and  
4 wildlife shall delegate authority by certifying the department to self-  
5 permit with regard to all state environmental permits currently issued,  
6 approved, or consulted upon by the department of ecology and the  
7 department of fish and wildlife.

8 (2) As part of the department's self-permitting process, the  
9 department shall, before issuing the final permit for a transportation  
10 project of statewide significance, send a draft copy of the permit to  
11 both the department of ecology and the department of fish and wildlife  
12 for review and comment. The departments of ecology and fish and  
13 wildlife shall limit their comments to whether the department has  
14 complied with the substantive standards and best management practices  
15 developed under section 4(1)(a) of this act. The departments of  
16 ecology and fish and wildlife have thirty days to review and comment on  
17 the draft permit.

18 (3) Upon completion of the drafting or adoption process specified  
19 in section 4(1)(a) of this act, the department shall review the  
20 department's construction project list to determine which projects can  
21 be included in programmatic or general permits under the standards  
22 adopted under section 4(1)(a) of this act. The department shall  
23 maximize the use of the programmatic and general permits consistent  
24 with the standards.

25 NEW SECTION. **Sec. 6.** (1) Upon the certification or  
26 recertification provided for by section 5 or 8 of this act, the  
27 department is exempt from obtaining any permit issued by a county,  
28 city, or town, regarding a transportation project of statewide  
29 significance, including, but not limited to, any permit issued under  
30 chapter 90.58 RCW, any permit related to regulation of critical areas  
31 under chapter 36.70A RCW, and any permit required for filling, grading,  
32 building, or construction, or any other permit required for a  
33 transportation project of statewide significance, that would otherwise  
34 be issued under a local ordinance meeting the definition of a  
35 development regulation under chapter 35.63, 35A.63, 36.70, 36.70A, or  
36 36.70B RCW.

37 (2) For transportation projects of statewide significance, the  
38 department shall serve as the lead entity for all review required under

1 the State Environmental Protection Act (SEPA), chapter 43.21C RCW.  
2 Nothing in this section may be construed as limiting the ability of  
3 local governments to participate in the SEPA process as provided for in  
4 chapter 43.21C RCW.

5 (3) In addition to local government participation in the SEPA  
6 process and as part of the self-permitting process set forth in this  
7 chapter, the department shall, before issuing the final permit for a  
8 transportation project of statewide significance, send a draft copy of  
9 the permit to each local government in whose jurisdiction the project  
10 is being constructed for review and comment. Each local government  
11 will have thirty days to review and comment on the draft permit.

12 NEW SECTION. **Sec. 7.** Every two years the department shall send to  
13 the legislature, the governor, the department of ecology, and the  
14 department of fish and wildlife a report detailing its self-permitting  
15 activities over the previous two years. The report must include a  
16 detailed description of all permits issued during the previous two  
17 years and must include detailed analysis of all instances of  
18 noncompliance with the standards developed under section 4(1)(a) of  
19 this act, as well as all measures taken to prevent any future  
20 noncompliance.

21 NEW SECTION. **Sec. 8.** (1) Every seven years, the department of  
22 fish and wildlife and the department of ecology shall jointly conduct  
23 a review of the department's self-permitting practices over the  
24 previous six years. The department of ecology and the department of  
25 fish and wildlife shall submit a report on the performance of the  
26 department to the legislature and the governor. The report must  
27 include a recommendation as to whether the department should be  
28 decertified from self-permitting. The department of ecology and the  
29 department of fish and wildlife may recommend that the department be  
30 decertified from self-permitting only if they find that the department  
31 has engaged in repeated substantial noncompliance with the substantive  
32 standards developed and adopted under section 4(1)(a) of this act. The  
33 department of ecology and the department of fish and wildlife shall  
34 specifically identify all instances of substantial noncompliance, and  
35 shall additionally identify measures that could be implemented to  
36 prevent the substantial noncompliance in the future. For purposes of  
37 this section, "repeated substantial noncompliance" means repeated

1 failure to meet the substantive standards and best management practices  
2 developed and adopted under section 4(1)(a) of this act that causes  
3 more than de minimis actual harm to fish and wildlife or their  
4 associated habitat.

5 (2) Upon a joint finding by the department of ecology and the  
6 department of fish and wildlife that the department has engaged in  
7 repeated substantial noncompliance with the substantive standards  
8 developed under section 4(1)(a) of this act, the governor may decertify  
9 the department from self-permitting. The notice of decertification by  
10 the governor to the department must include written findings that  
11 support the basis for decertification. Upon decertification, all  
12 delegation of permitting authority from the departments of ecology and  
13 fish and wildlife, and the department's exemption from the requirements  
14 to obtain local permits as provided for in section 6(1) of this act, is  
15 suspended until the committee has developed and imposed a remediation  
16 plan as governed by subsection (3) of this section.

17 (3) Upon decertification of the department by the governor under  
18 subsection (2) of this section, the committee shall meet and develop a  
19 remediation plan to identify and correct department procedures that  
20 were responsible for, or contributed to, the department's substantial  
21 noncompliance with the standards. The department shall implement the  
22 remediation plan developed by the committee. Upon full implementation  
23 of the remediation plan, the department of ecology and the department  
24 of fish and wildlife shall recertify the department to self-permit.

25 (4) Following the seven-year review specified in subsection (1) of  
26 this section, the department of ecology, the department of fish and  
27 wildlife, or the department of transportation may reconvene the  
28 committee and propose amendments or additions to the substantive  
29 standards adopted under section 4(1)(a) of this act. The committee  
30 shall use the same process for amending standards or adopting  
31 additional standards as were used to draft or adopt the initial  
32 standards as specified in section 3 of this act.

33 NEW SECTION. **Sec. 9.** DEPARTMENT ORGANIZATION AND ADMINISTRATIVE  
34 ACTIONS. The legislature finds that an essential component of  
35 delegated federal or state permitting authority to the department is  
36 the ability of the department to demonstrate the capacity to meet  
37 environmental responsibilities. Therefore, the legislature directs  
38 that:



1 (1) Environmental staff within the department shall lead the  
2 development of all environmental documentation associated with  
3 department projects and permit activities in accordance with the  
4 department's managing project delivery tools.

5 (2) Certified environmental staff or certified consultants shall be  
6 given the responsibility to draft environmental permits for the  
7 department.

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

13 (4) Environmental staff at the department shall conduct field  
14 inspections to ensure that project activities are performed under  
15 permit conditions. These inspectors may issue stop work orders when  
16 compliance with permit standards are not being met. For this portion  
17 of their job duties, the inspectors are accountable to the director of  
18 the office of environmental services of the department.

19 (5) Failure to comply with a stop work order may result in civil  
20 penalties being assessed against the department and individuals  
21 involved. Willful violation by an agency or individual of a stop work  
22 notice issued by the department is subject to civil penalties.  
23 Continued failure to comply or willful violations by the department may  
24 result in loss of permit writing and program management  
25 responsibilities.

26 NEW SECTION. **Sec. 10.** TRAINING AND COMPLIANCE. The legislature  
27 expects the department to continue its efforts to improve training and  
28 compliance. The department shall:

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

31 (2) Provide resource agency-approved certification training for  
32 permit writers and environmental inspectors;

33 (3) Require wetland mitigation sites to be designed by biologists  
34 or landscape architects certified by the department of ecology's  
35 wetland program. Environmental mitigation site improvements must have  
36 oversight conducted by environmental staff;

37 (4) Develop an environmental compliance data system to track all  
38 permit conditions; and

1 (5) Keep detailed records of all noncompliance activities.

2 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55 RCW  
3 to read as follows:

4 Where the department of fish and wildlife has delegated hydraulic  
5 project permit approval authority contained in this chapter to the  
6 department of transportation under chapter 47.--- RCW (sections 2  
7 through 10 of this act), the department of transportation will be  
8 substituted for the department of fish and wildlife in an appeal of the  
9 approval of a permit concerning a hydraulic project that is a  
10 transportation project of statewide significance as defined in section  
11 2 of this act. The appeal process for the permits issued by the  
12 department of transportation under authority delegated by the  
13 department of fish and wildlife will operate in the same manner as for  
14 permits granted by the department of fish and wildlife under this  
15 chapter.

16 NEW SECTION. **Sec. 12.** Section captions used in this act are not  
17 part of the law.

18 NEW SECTION. **Sec. 13.** Sections 2 through 10 of this act  
19 constitute a new chapter in Title 47 RCW.

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