

ESB 5279 - H AMD 327

By Representative Ericksen

FAILED 03/28/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 47.01.290 and 1994 c 258 s 3 are each amended to read
4 as follows:

5 The legislature recognizes that environmental review of
6 transportation projects is a continuous process that should begin at
7 the earliest stages of planning and continue through final project
8 construction. (~~Early and extensive involvement of the relevant
9 environmental regulatory authorities is critical in order to avoid
10 significant changes in substantially completed project design and
11 engineering.~~) Streamlining the permit approval process is essential
12 for reducing project delays and for making the most efficient use of
13 every transportation dollar. It is the expectation of the legislature
14 that if a comprehensive environmental approach is integrated throughout
15 various transportation processes, onerous, duplicative, and time-
16 consuming permit processes will be minimized. To this end, the
17 legislature directs that substantive standards and best management
18 practices governing the construction of transportation projects be
19 jointly agreed upon by both the department and Washington's natural
20 resource agencies. After these substantive standards have been agreed
21 upon, the legislature finds that the greatest efficiency and
22 effectiveness in both protecting our environmental resources and in
23 constructing the transportation infrastructure required to serve
24 Washington's growing population will come from the implementation of
25 these standards by the department itself, with appropriate oversight,
26 as defined in this act, by both natural resource agencies and local
27 governments.

28 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this

1 section apply throughout this chapter unless the context clearly
2 requires otherwise.

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

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

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

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

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

23 (6) "Transportation project of statewide significance" means a
24 project or combination of projects that crosses two or more city or
25 county jurisdictional boundaries.

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

29 (1) The committee will consist of nine voting members, including
30 two members from the house of representatives, one each selected by the
31 speaker and the minority leader of the house; two members of the
32 senate, one each selected by the senate majority leader and the senate
33 minority leader; one member designated by the secretary of
34 transportation; one member designated by the director of fish and
35 wildlife; one member designated by the director of ecology; one member
36 designated by the Association of Washington Cities, and one member

1 designated by the Washington State Association of Counties. The
2 committee shall elect a chair from the four legislators appointed to
3 the committee.

4 (2) Representatives of additional organizations or groups,
5 including but not limited to the following organizations and groups,
6 may be invited by the committee to appear before the committee and
7 advise and provide input to the committee: The state commissioner of
8 public lands; the Northwest Indian Fisheries Commission; the Columbia
9 River Intertribal Fisheries Commission; the Consulting Engineers
10 Council of Washington; the Associated General Contractors of
11 Washington; the Washington Construction Industry Council; the
12 Association of Washington Business; the Building Industry Association
13 of Washington; any statewide environmental organization; the state fish
14 and wildlife commission; the federal Environmental Protection Agency;
15 the National Marine Fisheries Service; the Federal Highway
16 Administration; and the United States Fish and Wildlife Service.

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

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

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

29 NEW SECTION. **Sec. 4.** COMMITTEE--RESPONSIBILITIES. (1) By
30 December 31, 2003, the committee shall:

31 (a) Develop concise environmental standards and best management
32 practices for transportation projects that can be applied with
33 certainty, consistency, and assurance of swift permit action, while
34 taking into account the varying climate, geomorphologic, and hydrologic
35 conditions throughout the state. The standards and best management
36 practices must conform to all current relevant federal and state

1 environmental regulations, and must be sufficient to protect critical
2 areas as defined in chapter 36.70A RCW. Actions to achieve this goal
3 must include identification and development of standards to govern both
4 programmatic permits and individual project permits. Actions to
5 achieve this goal may include the adoption of existing environmental
6 standards, such as existing storm water manuals or other existing
7 sources of standards and best management practices, if the committee
8 decides that these existing resources meet or constitute state or
9 federal environmental standards. These existing resources may be
10 incorporated by reference into the standards developed by the
11 committee. Nothing in this chapter may be interpreted as providing the
12 committee any authority to engage in rule making other than for the
13 purpose of drafting or adopting the standards specified in this
14 subsection. Nothing in this chapter may be interpreted as expanding
15 the rule-making authority of any state agency or as providing rule-
16 making authority for any state agency, including those agencies
17 participating on the committee;

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

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

24 (d) Assess models to collate and access watershed data to support
25 early agency involvement in transportation planning and reviews under
26 the federal Environmental Protection Act and the State Environmental
27 Protection Act;

28 (e) Develop procedures to use existing best available information
29 from a variety of sources including, but not limited to, watershed
30 planning efforts, lead entities, regional fisheries enhancement groups,
31 the salmon and steelhead inventory assessment project (SSIAHP), and
32 other recognized entities as deemed appropriate by the committee, in
33 order to determine potential mitigation site requirements for project
34 actions within a watershed. Priority consideration should be given to
35 the use of the state's alternative mitigation strategy to best link
36 transportation mitigation needs with local watershed and lead entity
37 project lists;

1 (f) Ensure that the department seeks federal delegation authorities
2 to the state where appropriate to streamline permit processes
3 including: Delegation of section 404 permit authority under the
4 federal Clean Water Act; nonfederal lead agency status under the
5 federal Endangered Species Act; section 106 cultural resource
6 designation under the National Historic Preservation Act; and other
7 appropriate authority that when delegated should result in permit
8 streamlining.

9 (2) Upon completion of the drafting and adoption of the standards
10 referred to in subsection (1)(a) of this section, the committee shall
11 suspend its operation until it is reconvened to amend existing
12 standards or draft or adopt additional standards as provided by section
13 9(4) of this act, or until it is required to draft a remediation plan
14 as provided by section 9(3) of this act.

15 NEW SECTION. **Sec. 5.** (1) Upon completion of the standard drafting
16 or adoption process specified in section 4(1)(a) of this act, the
17 department of ecology and the department of fish and wildlife shall
18 delegate, to the maximum extent consistent with federal law, all
19 environmental permitting authority currently exercised by these
20 agencies, including, but not limited to, chapters 90.48, 90.58, and
21 77.55 RCW. The department of ecology and the department of fish and
22 wildlife shall delegate authority by certifying the department to self-
23 permit with regard to all state environmental permits currently issued,
24 approved, or consulted upon by the department of ecology and the
25 department of fish and wildlife.

26 (2) As part of the department's self-permitting process, the
27 department shall, before issuing the final permit for a transportation
28 project of statewide significance, send a draft copy of the permit to
29 both the department of ecology and the department of fish and wildlife
30 for review and comment. The departments of ecology and fish and
31 wildlife shall limit their comments to whether the department has
32 complied with the substantive standards and best management practices
33 developed under section 4(1)(a) of this act. The departments of
34 ecology and fish and wildlife have thirty days to review and comment on
35 the draft permit.

1 (3) Upon completion of the drafting or adoption process specified
2 in section 4(1)(a) of this act, the department shall review the
3 department's construction project list to determine which projects can
4 be included in programmatic or general permits under the standards
5 adopted under section 4(1)(a) of this act. The department shall issue
6 seventy percent of delegated permits through use of the programmatic
7 and general permits consistent with the standards.

8 NEW SECTION. **Sec. 6.** (1) Upon the certification provided for by
9 section 5 of this act or recertification provided for by section 9 of
10 this act, the department is exempt from obtaining any permit issued by
11 a county, city, or town, regarding a transportation project of
12 statewide significance, including, but not limited to, any permit
13 issued under chapter 90.58 RCW, any permit related to regulation of
14 critical areas under chapter 36.70A RCW, and any permit required for
15 filling, grading, building, or construction, or any other permit
16 required for a transportation project of statewide significance, that
17 would otherwise be issued under a local ordinance meeting the
18 definition of a development regulation under chapter 35.63, 35A.63,
19 36.70, 36.70A, or 36.70B RCW.

20 (2) For transportation projects of statewide significance, the
21 department shall serve as the lead entity for all review required under
22 the State Environmental Protection Act (SEPA), chapter 43.21C RCW.
23 Nothing in this section may be construed as limiting the ability of
24 local governments to participate in the SEPA process as provided for in
25 chapter 43.21C RCW.

26 (3) In addition to local government participation in the SEPA
27 process and as part of the self-permitting process set forth in this
28 chapter, the department shall, before issuing the final permit for a
29 transportation project of statewide significance, send a draft copy of
30 the permit to each local government in whose jurisdiction the project
31 is being constructed for review and comment. Each local government
32 will have thirty days to review and comment on the draft permit.

33 NEW SECTION. **Sec. 7.** The department of ecology and the department
34 of fish and wildlife may conduct inspections of projects performed by
35 the department of transportation where the department of transportation

1 has issued permits under authority delegated by the department of
2 ecology or the department of fish and wildlife. If an inspector from
3 the department of ecology or the department of fish and wildlife
4 discovers an example of substantial noncompliance with the standards
5 developed under section 4 of this act, the inspector shall document
6 that example and issue a detailed report of that example, which shall
7 be transmitted to the department of transportation. The department of
8 transportation may issue a formal response to the report addressing
9 whether it believes that the department or its contractors failed to
10 substantially comply with the standards developed under section 4 of
11 this act.

12 NEW SECTION. **Sec. 8.** 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. 9.** (1) Every four years, the department of fish
22 and wildlife and the department of ecology shall jointly conduct a
23 review of the department's self-permitting practices. The department
24 of ecology and the department of fish and wildlife shall submit a
25 report on the performance of the department to the legislature and the
26 governor. The report must include a recommendation as to whether the
27 department should be decertified from self-permitting. The department
28 of ecology and the department of fish and wildlife may recommend that
29 the department be decertified from self-permitting only if they find
30 that the department has engaged in repeated substantial noncompliance
31 with the substantive standards developed and adopted under section
32 4(1)(a) of this act. The department of ecology and the department of
33 fish and wildlife shall specifically identify all instances of
34 substantial noncompliance, and shall additionally identify measures
35 that could be implemented to prevent the substantial noncompliance in

1 the future. For purposes of this section, "repeated substantial
2 noncompliance" means repeated failure to meet the substantive standards
3 and best management practices developed and adopted under section
4 4(1)(a) of this act that causes more than de minimis actual harm to
5 fish and wildlife or their associated habitat.

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

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

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

34 NEW SECTION. **Sec. 10.** DEPARTMENT ORGANIZATION AND ADMINISTRATIVE
35 ACTIONS. The legislature finds that an essential component of
36 delegated federal or state permitting authority to the department is

1 the ability of the department to demonstrate the capacity to meet
2 environmental responsibilities. Therefore, the legislature directs
3 that:

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

8 (2) Certified environmental staff or certified consultants shall be
9 given the responsibility to draft environmental permits for the
10 department.

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

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

22 (5) 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 by an agency or individual of a stop work
25 notice issued by the department is subject to civil penalties.
26 Continued failure to comply or willful violations by the department may
27 result in loss of permit writing and program management
28 responsibilities.

29 NEW SECTION. **Sec. 11.** 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) Provide resource agency-approved certification training for
35 permit writers and environmental inspectors;

- 1 (3) Require wetland mitigation sites to be designed by biologists
- 2 or landscape architects certified by the department of ecology's
- 3 wetland program. Environmental mitigation site improvements must have
- 4 oversight conducted by environmental staff;
- 5 (4) Develop an environmental compliance data system to track all
- 6 permit conditions; and
- 7 (5) Keep detailed records of all noncompliance activities.

8 NEW SECTION. **Sec. 12.** A new section is added to chapter 77.55 RCW
9 to read as follows:

10 Where the department of fish and wildlife has delegated hydraulic
11 project permit approval authority contained in this chapter to the
12 department of transportation under chapter 47.--- RCW (sections 2
13 through 11 of this act), the department of transportation will be
14 substituted for the department of fish and wildlife in an appeal of the
15 approval of a permit concerning a hydraulic project that is a
16 transportation project of statewide significance as defined in section
17 2 of this act. The appeal process for the permits issued by the
18 department of transportation under authority delegated by the
19 department of fish and wildlife will operate in the same manner as for
20 permits granted by the department of fish and wildlife under this
21 chapter.

22 NEW SECTION. **Sec. 13.** Captions used in this act are not part of
23 the law.

24 NEW SECTION. **Sec. 14.** Sections 2 through 11 of this act
25 constitute a new chapter in Title 47 RCW."

26 Correct the title.

EFFECT: TPEAC is created but nonvoting members on former TPEAC
are no longer members but may be invited. The Department of
Transportation Office of Environmental Affairs provides administrative
support for the TPEAC.
By December 31, 2003, the TPEAC is to:

Develop concise environmental standards and BMP for transportation projects.

Create a streamlined consultation process for projects for Section 404 of the Federal Clean Water Act and section 10 permits issued by the Corps of Engineers;

Develop a least-cost methodology for analyzing impacts and apply watershed based mitigation before final project design;

Assess models to support early DOT involvement in watershed planning and reviews under NEPA and SEPA;

Develop procedures to use best available information to determine watershed mitigation sites; and

Ensure that the DOT seeks federal delegation authority to streamline permit processes.

The DOT may self-permit, to the extent permitted by federal law, all DOE and DFW. As the TPEAC adopts standards, the DOE and the DFW are to delegate to the maximum extent of federal law, all environmental permitting authority that they exercise by certifying the DOT to self-permit.

The DOT is to issue 70 percent of delegated permits through programmatic and general permits.

The DOT is exempt from any permit issued by a local government regarding a project of statewide significance. DOT is to serve as lead entity for review under SEPA. Local governments may participate in this process.

The DOE and the DFW may inspect projects where the DOT is self-permitting. Substantial noncompliance with standards must be reported to the DOT. The DOT may issue a formal response to the report.

Every four years, the DOE and the DFW are to review DOT's permitting practices and report on the DOT performance to the Governor and the Legislature. The report is to address whether to recertify the DOT for self-permitting. A recommendation to decertify the DOT may only be for repeated substantial noncompliance with the substantive standards that causes more than de minimis actual harm to fish and wildlife or their associated habitat. Upon decertification by the Governor, the DOT must comply with all applicable state and local permits until the agency is "recertified" by the DFW and the DOE. TPEAC is reconvened to develop a remediation plan for the DOT. When the plan is implemented, the DOE and the DFW shall recertify the DOT.

Reporting dates are established. The DOT staff is to act as lead for developing environmental documentation, compliance field inspections, and the issuance of stop work orders. Violation of a stop work order is subject to civil penalties. The DOT is to train staff in environmental procedures and permit writing.

--- END ---