
Transportation Committee

HB 1384

Brief Description: Increasing transportation permit efficiency.

Sponsors: Representatives Ericksen, Anderson, Woods, Schindler, McDonald, Bush, Jarrett, Shabro, Ahern, Talcott, Clements, Chandler, Sehlin, Buck, Mielke, Boldt, Schoesler, Kristiansen, Nixon, Pearson, Pflug, Holmquist and McMahan.

Brief Summary of Bill

- Authorizes the Department of Transportation (DOT) to issue environmental permits based on standards developed by a committee made up of the DOT, the Department of Ecology and the Department of Fish and Wildlife, four legislators, and cities and counties.
- The Department of Transportation projects of statewide significance are exempt from local permits.
- The Departments of Ecology and Fish and Wildlife monitor compliance.

Hearing Date: 2/25/03

Staff: Gene Baxstrom (786-7303).

Background:

The development of capital transportation projects requires numerous environmental related permits. The permit issuance process is intended to assess the environmental impact of a project and mitigate those impacts. Agencies from which permits are required vary with the type of project. The permit process for large projects, or those affecting fish habitat or wetlands can be lengthy, with permits required from numerous local, state and federal agencies, and requirements to address the State Environmental Protection Act (SEPA) and the National Environmental Protection Act (NEPA). Recurring activities for maintaining transportation facilities can also require permit issuance.

With the enactment of Senate Bill 6188 in 2001, the Legislature established an evaluation of the transportation permitting process, with the goal of streamlining the issuance of permits, while maintaining or improving environmental benefits. The legislation created the

Transportation Permit Efficiency and Accountability Committee (TPEAC). The TPEAC's objective was to achieve transportation permit reform that expedites the delivery of transportation projects through a streamlined approach to environmental permit decision making. The TPEAC was directed to conduct three environmental permit streamlining projects, develop a one-stop permit decision-making process, seek federal delegation of permitting where appropriate, develop a dispute resolution process, develop environmental standards and best management practices, and establish a watershed-based approach to mitigation. The TPEAC has completed some of its tasks and numerous other tasks are not yet complete.

The TPEAC includes nine voting members: four members of the state Legislature; three members from state agencies (DOT, DOE, and DFW), and city and county representatives. Eight non-voting members include business, tribal, trade and environmental organizations. Federal agencies also participate. TPEAC expires March 31, 2003.

Summary of Bill:

The Legislature recognizes that streamlining the permit approval process is essential for reducing transportation project delays. It declares that this can be best accomplished by the Department of Transportation (DOT) and natural resource agencies agreeing upon standards and practices in construction of transportation projects and that the DOT should be charged with implementing those standards, with oversight from natural resource agencies and local governments.

A Transportation Permit Efficiency and Accountability Committee (TPEAC) is created. The TPEAC's nine voting members, consist of four legislators (one from each caucus of both the House and Senate), representatives from the Departments of Transportation (DOT), Ecology (DOE), and Fish and Wildlife (DFW), and a representative from cities and from counties. One of the four legislators is chair. The TPEAC may invite representatives from identified agencies for input and may create technical subcommittees to assist with developing standards. 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 best management practices for transportation projects. These standards must conform with current federal and state environment regulations. The TPEAC is granted rule-making authority only for these standards and practices;
- 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 environmental impacts and apply mitigation with a water-shed based approach before final project design;
- Assess models to manage watershed data to support early DOT involvement in planning and reviews under NEPA and SEPA;
- Develop procedures to use existing best available information to determine potential mitigation sites in a watershed; and
- Ensure that the DOT seeks federal delegation authority where appropriate to streamline

permit processes.

The DOT may self-permit, to the extent permitted by federal law, all permits issued by the DOE and the 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 with regard to all environmental permits currently issued by those agencies. Before issuing itself the final permit on projects of statewide significance (a project that crosses two or more city or county boundaries), the DOT must provide the DOE and DFW with a draft copy for comment within 30 days as to whether the DOT has complied with the adopted standards.

The DOT is to review its project lists to determine those projects that can be included in programmatic or general permits under the standards developed by the TPEAC. 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 county, city or town regarding a project of statewide significance. For projects of statewide significance, the DOT is to serve as lead entity for review under SEPA. Local governments may participate in this process and the DOT must provide copies of permits for their comment within 30 days.

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. Biannually, the DOT will report to the Governor, the Legislature and the DOE and the DFW a report on its self-permitting activities including permits issued, reports of noncompliance, and measures to address noncompliance.

Every four years, the DOE and the DFW will jointly conduct a review of the 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. The Governor must provide written findings for decertification. Upon decertification, the DOT must comply with all applicable state and local permits until the agency is "recertified" by the DFW and the DOE. .

Upon decertification by the Governor, 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. TPEAC may also be reconvened at the request of the DOE, the DFW or the DOT following the four-year review to amend or supplement standards.

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 and to utilize appropriately trained personnel for wetland mitigation design and environmental inspections.

Appropriation: None.

Fiscal Note: Requested on February 18, 2003.

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