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HOUSE BILL 1384

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State of Washington

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By 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

Read first time 01/24/2003. Referred to Committee on Transportation.

1 AN ACT Relating to incentives to increase transportation revenues  
2 by increasing transportation permit efficiency; amending RCW 47.01.290;  
3 adding a new section to chapter 77.55 RCW; adding a new chapter to  
4 Title 47 RCW; creating a new section; and prescribing 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 nine voting members, including  
5 two members from the house of representatives, one each selected by the  
6 speaker and the minority leader of the house; two members of the  
7 senate, one each selected by the senate majority leader and the senate  
8 minority leader; one member designated by the secretary of  
9 transportation; one member designated by the director of fish and  
10 wildlife; one member designated by the director of ecology; one member  
11 designated by the Association of Washington Cities, and one member  
12 designated by the Washington State Association of Counties. The  
13 committee shall elect a chair from the four legislators appointed to  
14 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 Consulting Engineers  
21 Council of Washington; the Associated General Contractors of  
22 Washington; the Washington Construction Industry Council; the  
23 Association of Washington Business; the Building Industry Association  
24 of Washington; any statewide environmental organization; the state fish  
25 and wildlife commission; the federal Environmental Protection Agency;  
26 the National Marine Fisheries Service; the Federal Highway  
27 Administration; and the United States Fish and Wildlife Service.

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

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

37           (5) The department of transportation office of environmental

1 affairs shall provide administrative and clerical assistance to the  
2 committee.

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

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

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

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

34 (d) Assess models to collate and access watershed data to support  
35 early agency involvement in transportation planning and reviews under  
36 the federal Environmental Protection Act and the State Environmental  
37 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) Upon completion of the drafting and adoption of the standards  
20 referred to in subsection (1)(a) of this section, the committee shall  
21 suspend its operation until it is reconvened to amend existing  
22 standards or draft or adopt additional standards as provided by section  
23 9(4) of this act, or until it is required to draft a remediation plan  
24 as provided by section 9(3) of this act.

25 NEW SECTION. **Sec. 5.** (1) Upon completion of the standard drafting  
26 or adoption process specified in section 4(1)(a) of this act, the  
27 department of ecology and the department of fish and wildlife shall  
28 delegate, to the maximum extent consistent with federal law, all  
29 environmental permitting authority currently exercised by these  
30 agencies, including, but not limited to, chapters 90.48, 90.58, and  
31 77.55 RCW. The department of ecology and the department of fish and  
32 wildlife shall delegate authority by certifying the department to self-  
33 permit with regard to all state environmental permits currently issued,  
34 approved, or consulted upon by the department of ecology and the  
35 department of fish and wildlife.

36 (2) As part of the department's self-permitting process, the  
37 department shall, before issuing the final permit for a transportation

1 project of statewide significance, send a draft copy of the permit to  
2 both the department of ecology and the department of fish and wildlife  
3 for review and comment. The departments of ecology and fish and  
4 wildlife shall limit their comments to whether the department has  
5 complied with the substantive standards and best management practices  
6 developed under section 4(1)(a) of this act. The departments of  
7 ecology and fish and wildlife have thirty days to review and comment on  
8 the draft permit.

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

16 NEW SECTION. **Sec. 6.** (1) Upon the certification provided for by  
17 section 5 of this act or recertification provided for by section 9 of  
18 this act, the department is exempt from obtaining any permit issued by  
19 a county, city, or town, regarding a transportation project of  
20 statewide significance, including, but not limited to, any permit  
21 issued under chapter 90.58 RCW, any permit related to regulation of  
22 critical areas under chapter 36.70A RCW, and any permit required for  
23 filling, grading, building, or construction, or any other permit  
24 required for a transportation project of statewide significance, that  
25 would otherwise be issued under a local ordinance meeting the  
26 definition of a development regulation under chapter 35.63, 35A.63,  
27 36.70, 36.70A, or 36.70B RCW.

28 (2) For transportation projects of statewide significance, the  
29 department shall serve as the lead entity for all review required under  
30 the State Environmental Protection Act (SEPA), chapter 43.21C RCW.  
31 Nothing in this section may be construed as limiting the ability of  
32 local governments to participate in the SEPA process as provided for in  
33 chapter 43.21C RCW.

34 (3) In addition to local government participation in the SEPA  
35 process and as part of the self-permitting process set forth in this  
36 chapter, the department shall, before issuing the final permit for a  
37 transportation project of statewide significance, send a draft copy of

1 the permit to each local government in whose jurisdiction the project  
2 is being constructed for review and comment. Each local government  
3 will have thirty days to review and comment on the draft permit.

4 NEW SECTION. **Sec. 7.** The department of ecology and the department  
5 of fish and wildlife may conduct inspections of projects performed by  
6 the department of transportation where the department of transportation  
7 has issued permits under authority delegated by the department of  
8 ecology or the department of fish and wildlife. If an inspector from  
9 the department of ecology or the department of fish and wildlife  
10 discovers an example of substantial noncompliance with the standards  
11 developed under section 4 of this act, the inspector shall document  
12 that example and issue a detailed report of that example, which shall  
13 be transmitted to the department of transportation. The department of  
14 transportation may issue a formal response to the report addressing  
15 whether it believes that the department or its contractors failed to  
16 substantially comply with the standards developed under section 4 of  
17 this act.

18 NEW SECTION. **Sec. 8.** Every two years the department shall send to  
19 the legislature, the governor, the department of ecology, and the  
20 department of fish and wildlife a report detailing its self-permitting  
21 activities over the previous two years. The report must include a  
22 detailed description of all permits issued during the previous two  
23 years and must include detailed analysis of all instances of  
24 noncompliance with the standards developed under section 4(1)(a) of  
25 this act, as well as all measures taken to prevent any future  
26 noncompliance.

27 NEW SECTION. **Sec. 9.** (1) Every four years, the department of fish  
28 and wildlife and the department of ecology shall jointly conduct a  
29 review of the department's self-permitting practices. The department  
30 of ecology and the department of fish and wildlife shall submit a  
31 report on the performance of the department to the legislature and the  
32 governor. The report must include a recommendation as to whether the  
33 department should be decertified from self-permitting. The department  
34 of ecology and the department of fish and wildlife may recommend that  
35 the department be decertified from self-permitting only if they find

1 that the department has engaged in repeated substantial noncompliance  
2 with the substantive standards developed and adopted under section  
3 4(1)(a) of this act. The department of ecology and the department of  
4 fish and wildlife shall specifically identify all instances of  
5 substantial noncompliance, and shall additionally identify measures  
6 that could be implemented to prevent the substantial noncompliance in  
7 the future. For purposes of this section, "repeated substantial  
8 noncompliance" means repeated failure to meet the substantive standards  
9 and best management practices developed and adopted under section  
10 4(1)(a) of this act that causes more than de minimis actual harm to  
11 fish and wildlife or their associated habitat.

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

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

32 (4) Following the four-year review specified in subsection (1) of  
33 this section, the department of ecology, the department of fish and  
34 wildlife, or the department of transportation may reconvene the  
35 committee and propose amendments or additions to the substantive  
36 standards adopted under section 4(1)(a) of this act. The committee  
37 shall use the same process for amending standards or adopting



1 additional standards as were used to draft or adopt the initial  
2 standards as specified in section 4 of this act.

3 NEW SECTION. **Sec. 10.** DEPARTMENT ORGANIZATION AND ADMINISTRATIVE  
4 ACTIONS. The legislature finds that an essential component of  
5 delegated federal or state permitting authority to the department is  
6 the ability of the department to demonstrate the capacity to meet  
7 environmental responsibilities. Therefore, the legislature directs  
8 that:

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

13 (2) Certified environmental staff or certified consultants shall be  
14 given the responsibility to draft environmental permits for the  
15 department.

16 (3) The department shall conduct special prebid meetings for  
17 projects that are environmentally complex. In addition, the department  
18 shall review environmental considerations related to these projects  
19 during the preconstruction meeting held with the contractor who is  
20 awarded the bid.

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

27 (5) Failure to comply with a stop work order may result in civil  
28 penalties being assessed against the department and individuals  
29 involved. Willful violation by an agency or individual of a stop work  
30 notice issued by the department is subject to civil penalties.  
31 Continued failure to comply or willful violations by the department may  
32 result in loss of permit writing and program management  
33 responsibilities.

34 NEW SECTION. **Sec. 11.** TRAINING AND COMPLIANCE. The legislature  
35 expects the department to continue its efforts to improve training and  
36 compliance. The department shall:

- 1 (1) Provide training in environmental procedures and permit  
2 requirements for those responsible for project delivery activities;  
3 (2) Provide resource agency-approved certification training for  
4 permit writers and environmental inspectors;  
5 (3) Require wetland mitigation sites to be designed by biologists  
6 or landscape architects certified by the department of ecology's  
7 wetland program. Environmental mitigation site improvements must have  
8 oversight conducted by environmental staff;  
9 (4) Develop an environmental compliance data system to track all  
10 permit conditions; and  
11 (5) Keep detailed records of all noncompliance activities.

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

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

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

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

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