
Transportation Committee

HB 2968

Brief Description: Increasing transportation permit efficiency.

Sponsors: Representatives Woods, Bailey, Hankins, Alexander, Buck, Kristiansen, Skinner, Shabro, Serben, McCune, Ahern, Rodne and Dunn.

Brief Summary of Bill

- Re-authorizing the Transportation Permit Efficiency and Accountability Committee (TPEAC), to develop environmental standards and best management practices for transportation projects.
- Expanding the duties of the Department of Transportation (DOT) to include self-permitting of state environmental permits.

Hearing Date: 2/1/06

Staff: David Bowman (786-7339).

Background:

The TPEAC was first established in 2001 and re-authorized in 2003 to evaluate the transportation permitting process, with the goal of expediting the delivery of transportation projects through a streamlined approach to environmental permit decision making, while maintaining or improving environmental benefits.

The TPEAC includes nine voting members: four members of the Legislature; three members, one of each from the Department of Transportation (DOT), Department of Ecology (DOE), and Department of Fish and Wildlife (DFW); and city and county representatives. Eight non-voting members include business, tribal, trade and environmental organizations. Federal agencies also participate.

The TPEAC has several objectives, about which it must report its progress annually to the Legislature:

- Enable the DOT, through the TPEAC work plan, to propose permit terms and conditions for permitting agency review and approval. The TPEAC must identify barriers and opportunities for concurrent public review processes and hearings, as well as a unified appeals process.

- Promote a goal that at least 70 percent of the DOT construction projects be addressed with programmatic permits. "Programmatic permit" refers to a variety of similar project activities spanning a watershed ecosystem or other geographically-defined boundary, setting out proposed actions over a specific period of time that do not require obtaining individual permits for each project along the way.
- Identify permits for which uniform standards could be developed for local governments, and identify strategies to adapt these standards and best practices for those permits.
- Develop a watershed characterization method of analyzing the DOT's mitigation projects, completing a mitigation policy, and testing and implementing policies and procedures into projects.
- Based on reports submitted to it by the DOT, the DOE, and the DFW, assess the extent to which delegation of the agencies' respective federal permitting authorities is possible. The TPEAC must act on that report and report every six months on the status of delegation efforts.

The DOE and the DFW each have authority to issue permits, and to deny or modify applications for such permits, relating to construction projects that affect the environment. Specifically, the DFW is authorized to issue hydraulic project permits for irrigation, stock watering, or streambank stabilization, and for off-site mitigation to protect fish life. The Hydraulic Appeals Board (HAB) has all powers and duties to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic project approval issued by the DFW.

The DOT has had certain functions and duties to further the objectives of streamlined permit decision making. Qualified environmental staff within the DOT must develop all environmental documentation relating to the DOT's project and permit activities, and the DOT environmental staff has other duties including conducting field inspections to ensure that project activities are performed under permit conditions and issue stop work orders.

The TPEAC expires March 31, 2006. In December 2005, the TPEAC passed a resolution calling for permit efficiency improvement efforts to continue after the TPEAC's expiration, and identifying the Office of Regulatory Assistance as an agency that could continue those efforts.

Summary of Bill:

The TPEAC is re-authorized for purposes of carrying out specified duties relating to environmental standards and best management practices for transportation projects. The TPEAC's expiration date is eliminated; however, upon completing its prescribed duties, the TPEAC must suspend its operations until it is reconvened to amend existing standards, adopt additional standards, or draft a remediation plan.

The TPEAC governance provisions are modified. Non-voting membership is eliminated. The TPEAC may, however, invite other appropriate organizations or groups, including federal agencies, to advise and provide input from time to time. The TPEAC may also create technical subcommittees comprised of any persons deemed appropriate by the TPEAC, to assist with developing standards. Travel expense reimbursement for legislative members is prescribed.

TPEAC Duties. By December 31, 2006, the TPEAC must:

- (a) develop concise environmental standards and best management practices for transportation projects, including, at a minimum, identification and development of standards to govern both programmatic permits and individual project permits;
- (b) create a streamlined consultation process for federal permitting;
- (c) develop a least-cost methodology, based on best available information within a watershed basin, for analyzing environmental impacts and applying compensatory mitigation;
- (d) assess models to collate and access watershed data to support early agency involvement in EPA and SEPA review of transportation planning;
- (e) develop procedures to use existing best available information from a variety of sources; and
- (f) ensure that the DOT seeks appropriate federal delegation authority to streamline permit processes.

DOE and DFW Delegation of Permitting.

Once the TPEAC has adopted the standards described above, the DOE, the DFW, and the DOT must carry out additional duties to allow the DOT to self-permit state environmental permits required for transportation projects. The DOE and the DFW must delegate to the DOT all of their authority to approve, deny, condition, or modify state environmental permits, to the extent permitted by law, by certifying the DOT to self-permit all state environmental permits issued, approved, or consulted upon by the DOE and the DFW.

DOT Self-Permitting Duties; DOE and DFW Oversight

After the DOT receives the resource agency certifications, the DOT becomes the lead governing entity for all review under the State Environmental Protection Act (SEPA), and is exempt from obtaining local permits for any transportation project of statewide significance. The DOT is substituted for the DFW in any appeal of the approval of a hydraulic project that is a transportation project of statewide significance. The DOT must operate the appeal process for such hydraulic projects in the same manner as for permits granted by the DFW.

Prior to issuing the final permit for a transportation project of statewide significance, the DOT must obtain review and comment from the DOE and the DFW specifically as to whether the DOT has complied with the substantive standards and best management practices. The DOE and the DFW may inspect DOT projects to report on any substantial noncompliance. Every two years, the DOT must detail its self-permitting activities and explain any noncompliance in a report to the Legislature, the Governor, and the natural resource agencies. Every four years, the DOE and the DFW must conduct a joint review of the DOT's self-permitting practices and report their findings to the Legislature and the Governor, at which time the Governor may decertify the DOT from self-permitting upon a finding that the DOT has engaged in repeated substantial noncompliance with the TPEAC standards.

Several other duties of the DOT are expanded or re-implemented. First, the DOT must review its project list to determine which projects to include in programmatic or general permits under the new standards adopted by the TPEAC. Of those permits it has been delegated from the DOE and the DFW, the DOT must issue 70 percent through use of programmatic and general permits consistent with the TPEAC's standards. Second, the DOT must continue to supply environmental staffing; however, the drafting of the DOT's environmental permits must be performed by certified

environmental staff or certified consultants. Third, the DOT must continue to fulfill specific requirements regarding training and compliance.

Appropriation: None.

Fiscal Note: Requested on January 23, 2006.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.