
HOUSE BILL 2968

State of Washington 59th Legislature 2006 Regular Session

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

Read first time 01/17/2006. Referred to Committee on Transportation.

1 AN ACT Relating to increasing transportation permit efficiency;
2 amending RCW 47.01.290; adding a new section to chapter 77.55 RCW;
3 adding a new chapter to Title 47 RCW; creating a new section; and
4 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, 2006, 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.

--- END ---