

HOUSE BILL REPORT

ESHB 1957

As Passed House:
June 25, 2013

Title: An act relating to department of transportation project delivery.

Brief Description: Concerning department of transportation project delivery.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Clibborn, Lias, Moscoso and Fey).

Brief History:

Committee Activity:

Transportation: 3/18/13, 4/8/13 [DPS].

Floor Activity:

Passed House: 4/18/13, 90-5.

Second Special Session

Floor Activity:

Passed House: 6/25/13, 83-5.

Brief Summary of Engrossed Substitute Bill

- Requires the Washington State Department of Transportation (WSDOT) to seek approval for specific project changes and specifies the process for how project changes are approved.
- Sets baselines for staffing levels in the highway construction program and for the ferry vessel terminal construction program.
- Requires the WSDOT to submit a report to the Governor and Transportation Committees of the Legislature on the progress made towards delivery of all projects and activities subject to the bill.
- Creates expert review panels for the Alaskan Way Viaduct project, the State Route 520 Bridge project, and the Columbia River Crossing project.
- Requires the WSDOT to use available technologies to minimize permit delays for, inform and interact with interested parties regarding, and optimize effectiveness of compensatory mitigation projects.
- Requires the WSDOT to consider the correction of fish-passage barriers on city streets and county roads within the same watershed as a proposed project

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for compensatory mitigation and requires that the WSDOT submit a report to the Legislature regarding the use, effectiveness, and suggested improvements to the mitigation option by December 1, 2014.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Clibborn, Chair; Fey, Vice Chair; Liias, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Farrell, Fitzgibbon, Freeman, Habib, Hayes, Johnson, Klippert, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Sells, Takko, Tarleton, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 4 members: Representatives Overstreet, Assistant Ranking Minority Member; Angel, Rodne and Shea.

Staff: Alyssa Ball (786-7140).

Background:

The Section 603 Process.

The Transportation 2003 (Nickel) Act was passed in 2003, increasing the fuel tax rate by 5 cents. A bond bill was also enacted, supporting a \$4.2 billion program of projects over the course of 10 years and underwritten by Nickel Act revenues. In 2005 the Legislature enacted the Transportation Partnership Act (TPA) providing an increase in the motor vehicle fuel tax rate of 9.5 cents, phased in over several years. Like the Nickel package, the TPA was enacted along with a bond bill that allowed for the early spending of \$8.5 billion in capital projects over 16 years. For both the Nickel and TPA packages, the funds were appropriated by project, by amount, and by fund type.

Section 603 of Engrossed Substitute House Bill 2190 (2012) was put in place to allow the Washington State Department of Transportation (WSDOT) a limited amount of flexibility to assist in the delivery and completion of all Nickel and TPA projects. Section 603 allows the Director of the Office of Financial Management (OFM) to authorize a transfer of appropriation authority between projects funded by either the Nickel or TPA accounts. The WSDOT may make transfers between projects without the OFM approval if the transfer does not exceed \$250,000 or 10 percent of the total project, whichever is less.

Expert Review Panels.

In 2006 the Legislature authorized expert review panels (ERPs) for the Alaskan Way Viaduct project and the State Route 520 (SR 520) Bridge project, and required the respective panels to report their findings by September 1, 2006. In 2011 the Legislature authorized an ERP to reconvene for the Alaskan Way Viaduct project. This ERP is currently authorized through a budget proviso.

Wetland Mitigation.

Both the state and federal governments require a proponent of a project that will diminish the function of an existing wetland to mitigate that loss of function. This duty is called compensatory wetland mitigation. The project proponent has a number of options available to him or her for mitigating wetland loss; however, any mitigation plan must be approved by the state (primarily through the Department of Ecology (DOE)) and the United States Army Corps of Engineers.

Projects that disturb wetlands are expected to undergo a sequencing review. Actual compensation for wetland loss does not occur unless the loss cannot be avoided or minimized through project planning. Once mitigation requirements are triggered, a project proponent must develop a mitigation plan that either restores the damaged wetland, creates new wetland functions at a new site, enhances an existing wetland, or preserves an at-risk wetland.

The WSDOT is required to develop a uniform methodology, in consultation with relevant environmental regulatory authorities, for submitting proposed mitigation measures to the relevant environmental regulatory authorities. The WSDOT is allowed to coordinate with the DOE or the Department of Fish and Wildlife and pair the mitigation investment made by the project proponent with the funding needs of one of three existing state programs: the Forestry Riparian Easement Program, the Riparian Open Space Program, and the Family Forest Fish Passage Program.

Summary of Engrossed Substitute Bill:

This bill updates the section 603 process and allows the WSDOT flexibility to deliver projects in an efficient and expeditious manner. Under this bill, the WSDOT must submit project changes to the OFM as they arise for approval. The WSDOT must submit a quarterly report to the Legislature detailing changes that were submitted and approved by the OFM. The following project changes are subject to the approval process outlined in the bill if: (1) the most recent engineer's estimate differs from the previous one by 10 percent or \$250,000 (whichever is greater); (2) there is a material change to the scope of a project; and (3) there is a change to the capital delivery plan schedule.

It is the intention of the Legislature that the WSDOT develop a management approach that minimizes the need for additional permanent engineering or other professional staff in any of the capital construction programs. The bill specifies the following baselines for staffing levels: (1) for the highway construction program, the level is based on the Secretary of the WSDOT's (Secretary) business plan for the end of fiscal year 2015; and (2) for the ferry vessel and terminal construction program, the level is the positions at the end of fiscal year 2012.

Beginning January 1, 2015, the WSDOT is required to submit a report to the Governor and Transportation Committees on the progress made toward the delivery of all projects and activities subject to this bill. The Secretary is required to certify the completion of the project package subject to this bill. This section will expire January 30, 2023, or the date the Secretary certifies completion, whichever is later.

The WSDOT is required to convene three ERPs of no more than three members to provide independent financial and technical review for the development of a finance plan and project

implementation plan for the Columbia River Crossing project, the SR 520 Bridge project, and the Alaskan Way Viaduct project. The ERPs must report their findings annually to the Legislature until the projects are operationally complete.

The WSDOT is required to use available technologies to minimize permit delays for, inform, and interact with interested parties regarding, and optimize the effectiveness of proposed compensatory mitigation projects. The WSDOT is also required to consider the correction of fish-passage barriers on city streets and county roads within the same watershed as a proposed project for compensatory mitigation. The WSDOT must report to the Legislature on the use, effectiveness, and suggested improvements to the new mitigation option by December 1, 2014.

This bill is contingent on the passage of Senate House Bill 1954.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) As the Legislature moves forward with new revenue, it is the Legislature's intention to make sure the WSDOT is given enough flexibility. The Legislature is looking at the Section 603 process (which can be very limiting) and loosening the strings a little bit so it can keep track of things by list instead of by project. The Legislature wants to make sure the WSDOT continues with the business plan it has in place to right-size the agency – ensuring the WSDOT has the right staff and the best staff, but does not want them to hire up the way they did with new revenue in 2003 and 2005. There is new leadership in place at the WSDOT and this bill is helping the new leadership understand the Legislature's priorities. There is an ERP for the Alaskan Way Viaduct and they have been coming in every year to give the Legislature very extensive reports on the risks on the project. They have done a wonderful job on the tunnel and there should be similar risk management going on for the SR 520 Bridge project and the Columbia River Crossing project.

The American Council of Engineering Companies Washington (ACECW) supports the bill and the intent of improved project delivery. The WSDOT and the private sector have developed a strong relationship over the years and it is critical that the WSDOT maintain the staffing levels it needs to be the strong owner of projects as it has been. Continued balance between in-house and private consultants is necessary, and effective use of consultants can combat the "roller-coaster" staffing seen over the years. The ACECW suggests that there is a specific date reference to the business plan in the bill.

The Association of Washington Business supports the bill.

(In support with concerns) The Professional Technical Employees Local 17 (Local 17) generally supports the bill, but has two concerns. In section 3 of the bill, Local 17 supports

the perceived intent to affirm the current project delivery process. In section 4 of the bill, Local 17 would like to recognize the need for the WSDOT to update their workforce projections to take into account new revenue.

(Opposed) None.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; Jared Smith, American Council of Engineering Companies Washington; and Mike Ennis, Association of Washington Business.

(In support with concerns) Vince Oliveri, Professional Technical Employees Local 17.

Persons Signed In To Testify But Not Testifying: None.