

SENATE BILL REPORT

SHB 1957

As of April 22, 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: Passed House: 4/18/13, 90-5.

Committee Activity: Transportation:

SENATE COMMITTEE ON TRANSPORTATION

Staff: Clint McCarthy (786-7319)

Background: Flexibility to Deliver Highway Capital Construction Projects. The Transportation 2003 (Nickel) Act was passed in 2003, increasing the fuel-tax rate by \$0.05. In 2005, the Legislature enacted the Transportation Partnership Act (TPA), providing an increase in the motor-vehicle fuel-tax rate of \$0.095 to be phased in over several years. Most of these revenues were used to support the capital highway construction program at the Washington Department of Transportation (WSDOT). These funds were appropriated by project, amount, and fund type. The Legislature appropriated Nickel and TPA funds at a project level for the purpose of transparency.

The Legislature is generally not in session when WSDOT is constructing highway improvements, between April and October of each year. To provide flexibility to WSDOT to deliver the capital construction plan in an efficient manner, the Legislature gave the Office of Financial Management (OFM) the limited authority to authorize a transfer of appropriation between projects funded by either the Nickel or TPA accounts. WSDOT may make transfers between projects without OFM approval if the transfer does not exceed \$250,000 or 10 percent of the total project, whichever is less.

Expert Review Panels. The Legislature historically authorized expert review panels (ERPs) to study various aspects of the state's most complicated construction projects. Examples include ERPs authorized by the Legislature in 2006 on the Alaskan Way Viaduct project and the State Route 520 Bridge. In 2011, the Legislature authorized an ERP to review the Alaskan Way Viaduct through a budget proviso in ESHB 1175.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 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.

WSDOT must develop a uniform methodology, in consultation with relevant environmental regulatory authorities, for submitting proposed mitigation measures to the relevant environmental regulatory authorities. WSDOT is allowed to coordinate with 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, or the Family Forest Fish Passage Program.

Summary of Bill: This bill codifies a process that was previously a budget proviso to allow WSDOT flexibility in delivering its highway capital construction program. Under this bill, WSDOT must submit project changes to OFM as they arise for approval. WSDOT must submit a quarterly report to the Legislature detailing changes that were submitted and approved by 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 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 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 determined by the positions present at the end of fiscal year 2012.

Beginning January 1, 2015, WSDOT must submit a report to the Governor and transportation committees of the Legislature on the progress made toward the delivery of all projects and activities subject to this bill. The Secretary must 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.

WSDOT must convene three ERPs of no more than three members to provide an 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.

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

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.