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HOUSE BILL 1978

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By Representatives Zeiger, Clibborn, Orcutt, O'Ban, Hargrove, Lias, Fey, Moscoso, and Morrell

Read first time 03/06/13. Referred to Committee on Transportation.

1 AN ACT Relating to permitting certain transportation projects;  
2 adding a new chapter to Title 47 RCW; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
5 achieve transportation permit reform that expedites the delivery of  
6 transportation projects through a streamlined approach to environmental  
7 permit decision making. To optimize the limited resources available  
8 for transportation system improvements and environmental protection,  
9 state regulatory and natural resources agencies, public and private  
10 sector interests, Indian tribes, and the department of transportation  
11 should work cooperatively to establish common goals, minimize project  
12 delays, develop consistency in the application of environmental  
13 standards, maximize environmental benefits through coordinated  
14 investment strategies, and eliminate duplicative processes through  
15 assigned responsibilities of selected permit drafting and compliance  
16 activities between state and federal agencies. Therefore, a  
17 streamlined permitting process is created for large transportation  
18 projects.

1        NEW SECTION.    **Sec. 2.**    The department must use the following  
2 permitting process for any transportation project of at least five  
3 million dollars:

4        (1) Step 1: Conceptual description. The department must identify  
5 project purposes, the approximate project location or alternative  
6 locations, and the federal, state, and local agencies that might have  
7 the authority to review and approve the project or portions of it at  
8 any such locations, and must compile a preliminary interagency  
9 communication list identifying agencies that may be interested in the  
10 proposed project and, where known, contact persons in such agencies.  
11 If the department is going to proceed with step 2 or to abandon the  
12 project, it must complete step 1 by: (a) Providing a summary of the  
13 outcome to all agencies on the list; and (b) making the summary  
14 available to the public.

15        (2) Step 2: Early involvement of other agencies. (a) At any time  
16 after completing step 1, the department must provide notice to all  
17 agencies on the interagency communication list and the public. Within  
18 thirty days, or a longer time if specified by the department, each  
19 state, local, and federal agency must be encouraged to identify:

20        (i) A primary contact person to coordinate future communications  
21 with the department and other interested agencies regarding the  
22 project, or indicate that the agency has no interest in the project and  
23 need not remain on the interagency communication list;

24        (ii) The agency's role with respect to the proposed project;

25        (iii) Additional alternative locations the department should  
26 consider and the roles the agency would expect to have with the project  
27 at those locations;

28        (iv) Other agencies the agency believes should be added to the list  
29 for the project; and

30        (v) Other information the agency requests the department to  
31 consider.

32        (b) After all state and local agencies on the interagency  
33 communication list have responded, or at least ten days after  
34 expiration of the specified response time, the department must complete  
35 step 2 by: (i) Proposing one or more conceptual designs for the  
36 project at a proposed location and any alternative locations then being  
37 considered; (ii) providing a summary of the results of step 2,  
38 including a statement that the department considers step 2 to be

1 complete or complete except for specified issues remaining to be  
2 resolved with specified agencies, to all agencies on the interagency  
3 communication list; and (iii) making the summary available to the  
4 public.

5 (3) Step 3: Identify environmental reviews, permits, and other  
6 approvals, application procedures, and decision standards. (a) At any  
7 time after completing step 2, the department must initiate step 3 by  
8 providing notice to all agencies on the interagency communication list  
9 and the public. This notice may include a threshold determination on  
10 whether an environmental impact statement or supplemental environmental  
11 impact statement will be prepared or an environmental checklist and a  
12 request for comments on what steps should be taken to comply with  
13 chapter 43.21C RCW. Within thirty days, or a longer time if specified  
14 by the department, each state, local, and federal agency must be  
15 encouraged to identify:

16 (i) The procedures under which the agency expects environmental  
17 reviews of the project to occur;

18 (ii) All permits and other approvals the agency might require for  
19 the project at each alternative location and conceptual design;

20 (iii) What is needed for the department to file a complete  
21 application for each permit or other approval;

22 (iv) The laws, rules, regulations, ordinances, and policies the  
23 agency would administer with respect to the project at each alternative  
24 location and conceptual design; and

25 (v) Other information the agency requests the department to  
26 consider in deciding whether, when, where, or how to proceed with the  
27 project.

28 (b) After all state and local agencies on the interagency  
29 communication list have responded, or at least ten days after  
30 expiration of the specified response time, the department must complete  
31 step 3 by:

32 (i) Compiling a list of all environmental reviews, permits, and  
33 other approvals it believes are needed for the project under each  
34 alternative being considered;

35 (ii) Providing all agencies on the interagency communication list  
36 a copy of the list compiled under (b)(i) of this subsection and a  
37 summary of the other results of step 3, including a statement that the

1 department considers step 3 to be complete or complete except for  
2 specified issues remaining to be resolved with specified agencies; and  
3 (iii) Making the list compiled under (b)(i) of this subsection and  
4 summary available to the public.

5 (c) The list compiled under (b)(i) of this subsection and summary  
6 provided under (b)(ii) of this subsection are presumed to accurately  
7 identify all environmental reviews, permits, and other approvals needed  
8 for each alternative described, what is required for applications to be  
9 considered complete, and the standards under which applications will be  
10 reviewed and approved, unless an aggrieved agency or person files  
11 objections within thirty days after the list and summary are  
12 distributed.

13 (4) Step 4: Tentative selection of preferred alternative. (a) At  
14 any time after completing step 3, the department must initiate step 4  
15 by providing notice to all agencies on the interagency communication  
16 list and the public. This notice may be accompanied by a scoping  
17 notice for an environmental impact statement or supplemental  
18 environmental impact statement or, if available, a draft environmental  
19 impact statement or supplemental environmental impact statement. This  
20 notice also may be accompanied by the department's preliminary analysis  
21 of the advantages and disadvantages of each identified alternative, or  
22 other information that may be helpful to other interested agencies and  
23 the public in identifying advantages and disadvantages. Within  
24 fourteen days, or a longer time if specified by the department, each  
25 state, local, and federal agency must be encouraged to identify:

26 (i) For each identified alternative, the specific features the  
27 agency considers significant with respect to the agency's role in  
28 environmental reviews, permits, or other approvals for the project; the  
29 reasons these features are significant; and any concerns the agency may  
30 have about the alternative because of potential adverse impacts of  
31 these features on resources or social policies within the agency's  
32 jurisdiction;

33 (ii) For each feature for which the agency raises concerns,  
34 recommendations on how the potential adverse impacts could be avoided,  
35 minimized, and mitigated;

36 (iii) For each feature for which the agency raises concerns, an  
37 assessment of the relative ranking of each alternative with respect to  
38 whether and to what extent these concerns apply;

1 (iv) Recommendations the agency may have as to which alternatives  
2 should be retained or dropped from further consideration, and ways in  
3 which alternatives might be modified or combined to address the  
4 agency's concerns, recognizing that final decisions can be made only  
5 through the applicable environmental review, permit, and other approval  
6 processes and that the agency making them is not bound with respect to  
7 any future decisions it may make regarding the project; and

8 (v) Other information the agency requests the department to  
9 consider in deciding whether, when, where, or how to proceed with the  
10 project.

11 (b) After all state and local agencies on the interagency  
12 communication list have responded, or at least ten days after  
13 expiration of the specified response time, the department must complete  
14 step 4 by:

15 (i) Selecting a preferred alternative for purposes of all  
16 environmental reviews, permits, and other approvals needed for the  
17 project;

18 (ii) Providing all agencies on the interagency communication list  
19 a description of the preferred alternative and summary of the other  
20 results of step 4, including a statement that the department considers  
21 step 4 to be complete or complete except for specified issues remaining  
22 to be resolved with specified agencies; and

23 (iii) Making the preferred alternative and summary available to the  
24 public. The preferred alternative must be identified in all  
25 environmental reviews, permits, and other approvals needed for the  
26 project.

27 (5) Step 5: Completing environmental reviews and applications for  
28 permits and other approvals. (a) At any time after completing step 4,  
29 the department must initiate step 5 by providing notice to all agencies  
30 on the interagency communication list and the public. A draft  
31 environmental impact statement or supplemental environmental impact  
32 statement, the department's draft plans and specifications for the  
33 project, and draft applications for some or all permits and other  
34 approvals may be provided with the notice or when they subsequently  
35 become available. Within thirty days, or a longer time if specified by  
36 the department, each state, local, and federal agency must be  
37 encouraged to identify:

1 (i) All concerns the agency previously raised regarding the  
2 alternative, and other alternatives still under consideration, that  
3 have not been resolved to the agency's satisfaction;

4 (ii) Additional concerns the agency may have, particularly concerns  
5 resulting from additional information about the project location and  
6 design, and other new information received since the completion of step  
7 4;

8 (iii) Additional environmental reviews, permits, or other approvals  
9 needed for the preferred alternative because of changes in laws, rules,  
10 regulations, or policies or changes in the project location or design  
11 since these issues were last reviewed in step 3 or 4;

12 (iv) Changes in applicable requirements for complete applications  
13 for permits or other approvals under the agency's jurisdiction since  
14 these issues were last reviewed in step 3 or 4;

15 (v) Other changes in applicable laws, rules, regulations,  
16 ordinances, or policies administered by the agency since these issues  
17 were last reviewed in step 3 or 4; and

18 (vi) Whether a draft application proposed by the department for a  
19 permit or other approval from the agency is complete and, if not, what  
20 additional information or other changes are needed for the draft  
21 application to be complete.

22 (b) When all state and local agencies on the interagency  
23 communication list have responded, or at least ten days after  
24 expiration of the specified response time, the department must complete  
25 step 5 by:

26 (i) Completing some or all environmental review processes and draft  
27 application forms for permits and other approvals that it reasonably  
28 believes to be complete;

29 (ii) Providing all agencies on the interagency communication list  
30 with environmental review and application documents and a summary of  
31 the other results of step 5, including a statement that the department  
32 considers step 5 to be complete or complete except for specified issues  
33 remaining to be resolved with specified agencies; and

34 (iii) Making the completed environmental review documents and  
35 summary available to the public. The preferred alternative must be  
36 identified in all environmental reviews, permits, and other approvals  
37 needed for the project.

1 (c) However, if an interested agency or aggrieved person files  
2 objections within fourteen days after the preferred alternative and  
3 summary are distributed, the objections must be addressed in subsequent  
4 environmental reviews and agency decisions regarding the project.

5 (6) Step 6: Completing the environmental review, permit, and other  
6 approval processes. (a) At any time after completing step 5, the  
7 department must initiate step 6 by providing notice to all agencies on  
8 the interagency communication list and the public and filing  
9 applications for some or all permits and other approvals needed for the  
10 project. Within thirty days, or a longer time if specified by the  
11 department, each state, local, and federal agency must be encouraged  
12 to:

13 (i) Acknowledge receipt of draft environmental review documents  
14 provided to the agency and to provide comments on them;

15 (ii) Acknowledge receipt of final environmental review documents  
16 and determine that they are adequate for purposes of their roles  
17 regarding the project or specify what additional information or changes  
18 are needed for them to be considered adequate;

19 (iii) Acknowledge receipt of each application filed with the agency  
20 and determine that the application is complete or specify what  
21 additional information or changes are needed for the application to be  
22 considered complete;

23 (iv) Acknowledge that the applications submitted to the agency will  
24 be processed under the laws, rules, regulations, ordinances, and  
25 policies previously identified under steps 3, 4, and 5 or specify what  
26 changes have occurred in the governing standards that were in effect on  
27 the date a complete application was filed and, as a result, apply to  
28 the project;

29 (v) Identify the significant steps necessary for the agency to  
30 reach a final decision on applications and the estimated time needed  
31 for each step; and

32 (vi) Identify ways its decision-making process might be made more  
33 efficient and effective through additional coordination with other  
34 agencies, with any recommendations for such methods as joint  
35 solicitation and review of public comments and jointly conducting  
36 public hearings.

37 (b) It is recognized that step 6 may require an iterative process  
38 with several drafts of various environmental review documents and

1 applications being considered and revised, and that changes in project  
2 location or design resulting from the permit decisions of one agency  
3 may require revising applications or even reopening permit decisions of  
4 other agencies. All state and local agencies are expected, and federal  
5 agencies are encouraged, to communicate and cooperate to minimize the  
6 number of iterations required and make the process as efficient and  
7 effective as possible. Unless significant new information is obtained,  
8 decisions made under step 6 should not be reopened except at the  
9 request of the department, and the most recent information available  
10 under steps 3, 4, and 5 should be presumed accurate until significant  
11 new information becomes available.

12 (c) If all environmental reviews have not been completed and all  
13 permits and other approvals obtained within forty-five days after step  
14 6 are initiated, the department, by providing notice to all agencies on  
15 the interagency communication list and the public, may set a deadline  
16 for completing reviews and decisions. At any time after the deadline,  
17 the department may terminate the coordination process of this section  
18 as to some or all of the reviews and decisions that are still not  
19 completed.

20 NEW SECTION. **Sec. 3.** (1) This section establishes procedures for  
21 city, town, and county governments to participate in the processes  
22 identified in this chapter to provide for coordinated,  
23 multijurisdictional environmental review and permitting decisions for  
24 transportation projects of at least five million dollars.

25 (2) Each city, town, and county, within its boundaries is located  
26 or partially located one or more projects identified in subsection (1)  
27 of this section, must elect whether or not to participate in  
28 coordinated processes for environmental review and permitting of those  
29 projects as required in this chapter. If the city, town, or county  
30 elects to participate, it may do so as either a participating entity or  
31 as an assigning entity.

32 (a) If a city, town, or county elects to be considered as a  
33 participating entity, the department must include a representative  
34 designated by the city, town, or county in the coordinated review of  
35 the project. The department must compensate the jurisdiction for  
36 technical support required for participation in the process. The



1 jurisdiction is also eligible for reimbursement for permit fees set by  
2 local ordinances and other agreed upon costs associated with the  
3 issuance of project permits.

4 (b) For the purposes of expediting the permit process, a city,  
5 town, or county may elect to assign its permit responsibilities under  
6 chapter 39.34 RCW to the department simultaneously with its  
7 notification to the department as specified in subsection (4) of this  
8 section. The city, town, or county electing to assign its  
9 responsibilities must enter into an agreement with the department to  
10 define the local permit requirements that must be met. Permits issued  
11 under the agreement are presumed to at least meet local environmental  
12 permit requirements. A city, town, or county choosing to use this  
13 option is eligible for a permit fee set by local ordinances associated  
14 with the issuance of the project permits.

15 (3) If the city, town, or county elects not to participate in the  
16 coordinated processes for transportation projects of at least five  
17 million dollars, the department must issue the locally required  
18 permits, when allowable. The department must comply with all city,  
19 town, and county ordinances, and the department permit approval is  
20 presumed to at least meet the local environmental review and permit  
21 requirements.

22 (4) Any city, town, or county must notify the department within  
23 sixty days of receipt of the department's notification of project  
24 designation, as to whether it elects to be considered as a  
25 participating entity or an assigning entity, or elects not to  
26 participate in the coordinated process provided in this chapter.

27 (5) The department must review and evaluate the process by which  
28 local governments review and approve transportation projects of at  
29 least five million dollars, and must provide recommendations to the  
30 legislature, by January 1, 2014, to improve the coordination of the  
31 local process with state and federal reviews as part of the reports  
32 required under this chapter.

33 (6) A city, town, or county is not liable for decisions made by the  
34 department that result in a failure to comply with city, town, or  
35 county ordinances except as provided in the interlocal agreements, and  
36 the department must defend and answer to any actions or complaints  
37 challenging the validity of permits issued under this section.

1        NEW SECTION.    **Sec. 4.**    The legislature finds that an essential  
2 component of streamlined permit decision making is the ability of the  
3 department to demonstrate the capacity to meet environmental  
4 responsibilities. Therefore, the legislature directs that:

5        (1) Qualified environmental staff within the department must lead  
6 the development of all environmental documentation associated with  
7 department projects and permit activities in accordance with the  
8 department's project delivery tools;

9        (2) The department must conduct special prebid meetings for  
10 projects that are environmentally complex. In addition, the department  
11 must review environmental considerations related to these projects  
12 during the preconstruction meeting held with the contractor who is  
13 awarded the bid;

14        (3) Environmental staff at the department must conduct field  
15 inspections to ensure that project activities are performed under  
16 permit conditions. These inspectors:

17        (a) May issue stop work orders when compliance with permit  
18 standards are not being met; and

19        (b) For this portion of their job duties, are accountable to the  
20 director of the department of ecology; and

21        (4) Failure to comply with a stop work order may result in civil  
22 penalties being assessed against the department and individuals  
23 involved. Willful violation of a stop work notice issued by the  
24 department is subject to civil penalties assessed on the agency as well  
25 as the individuals involved. Persistent violations by the department  
26 may result in loss of permit drafting and program management  
27 responsibilities.

28        NEW SECTION.    **Sec. 5.**    The legislature expects the department to  
29 continue its efforts to improve training and compliance. The  
30 department must:

31        (1) Provide training in environmental procedures and permit  
32 requirements for those responsible for project delivery activities;

33        (2) Require wetland mitigation sites to be designed by a qualified  
34 interdisciplinary team that meets training requirements developed by  
35 the department in consultation with the department of ecology.  
36 Environmental mitigation site improvements must have oversight by  
37 environmental staff;

1 (3) Develop an environmental compliance data system to track all  
2 permit conditions;

3 (4) Report all noncompliance activities to applicable agencies of  
4 jurisdiction along with a remedy plan;

5 (5) Fund the departments of ecology, natural resources, and fish  
6 and wildlife operating under their permit-granting authority to conduct  
7 audits of the department's permit drafting and compliance activities.  
8 The department of ecology must collate the audits in an annual report  
9 to the legislature, beginning January 1, 2014;

10 (6) Seek federal funding for dedicated technical staff at federal  
11 permit decision-making agencies and for state costs associated with  
12 implementation of this chapter;

13 (7) Fund dedicated technical staff at federal permit decision-  
14 making entities, as appropriate, and the departments of ecology,  
15 natural resources, commerce, and fish and wildlife to implement the  
16 requirements of this chapter; and

17 (8) Fund a technical specialist at the northwest Indian fisheries  
18 commission and the Columbia river inter-tribal fish commission for the  
19 purpose of implementing this chapter.

20 NEW SECTION. **Sec. 6.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

28 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
29 a new chapter in Title 47 RCW.

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