
HOUSE BILL 2070

State of Washington 63rd Legislature 2013 1st Special Session

By Representatives O'Ban, Clibborn, and Zeiger

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1 AN ACT Relating to Washington state department of transportation
2 projects; amending RCW 47.01.300; adding a new section to chapter 47.04
3 RCW; adding new sections to chapter 47.01 RCW; adding a new chapter to
4 Title 47 RCW; creating a new section; and providing a contingent
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 achieve transportation regulatory reform that expedites the delivery of
9 transportation projects through a streamlined approach to environmental
10 decision making. The department of transportation should work
11 cooperatively and proactively with state regulatory and natural
12 resource agencies, public and private sector interests, and Indian
13 tribes to avoid project delays. The department and state regulatory
14 and natural resource agencies should continue to implement and improve
15 upon the successful policies, guidance, tools, and procedures that were
16 created as a result of transportation permit efficiency and
17 accountability committee efforts. The department should expedite
18 project delivery and routine maintenance activities through the use of

1 programmatic agreements and permits where possible and seek new
2 opportunities to eliminate duplicative processes.

3 NEW SECTION. **Sec. 2.** (1)(a) The legislature recognizes the
4 opportunity to gain efficiencies by reducing duplication between
5 national and state environmental policy act compliance for state
6 transportation projects.

7 (b) The department of ecology is directed to update the rules in
8 WAC 197-11-610 for integrating use of national environmental policy act
9 documents in decisions under chapter 43.21C RCW.

10 (2)(a) The legislature finds that rule-based categorical exemptions
11 to chapter 43.21C RCW applying to transportation maintenance activities
12 have not been updated in recent years.

13 (b) The department of ecology is directed to update, but not
14 decrease, the rule-based categorical exemptions for transportation
15 maintenance activities in WAC 197-11-800 and 197-11-860.

16 NEW SECTION. **Sec. 3.** The department must use the following
17 expedited environmental review and approval process for any
18 transportation project requiring the preparation of an environmental
19 impact statement under the national environmental policy act (42 U.S.C.
20 Sec. 4321 et seq.). State and local agencies with relevant
21 jurisdiction, to the extent practicable and appropriate, as determined
22 by the agencies, must provide technical assistance to the department on
23 accomplishing the project review and coordination activities described
24 in this section.

25 (1) Step 1: Public and agency involvement in defining the project
26 purpose and scope of environmental review. The department must provide
27 notice to the public that environmental review for the project is being
28 initiated. This notice must reference the notice of intent under the
29 national environmental policy act and explain that this replaces the
30 need for a threshold determination under chapter 43.21C RCW. The
31 department must invite the public, agencies, and tribes to provide
32 input on the project purpose and scope of environmental review. The
33 department must provide a thirty-day comment period. The department
34 may hold one or more meetings to collect input. The department must
35 complete step 1 by: (a) Providing a summary of the results of step 1,
36 including a statement that the department considers step 1 to be

1 complete; and (b) making the summary available to the public. The
2 department must consider the input from the public, agencies, and
3 tribes before finalizing the project purpose and scope of environmental
4 review.

5 (2) Step 2: Identify participating agencies and convene meetings
6 with an interdisciplinary team.

7 (a) The department must identify any federal, state, tribal,
8 regional, and local governmental agencies that may have an interest in
9 the project. The department must invite these agencies to serve as
10 participating agencies. The roles and responsibilities of
11 participating agencies include, but are not limited to, identifying
12 potential environmental or socioeconomic impacts that could
13 substantially delay or prevent an agency from granting a permit or
14 other approval that is needed for the project. Participating agencies
15 must provide input to the department as the department develops: The
16 scope of environmental analysis, a purpose and need statement, a range
17 of alternatives, methodologies, and the level of detail for the
18 analysis of alternatives. Designation as a participating agency does
19 not indicate project support, but it does give invited agencies
20 opportunities to provide input at key decision points in the process.

21 (b) The department must form an interdisciplinary team composed of
22 participating agency staff and key technical specialists from the
23 department. Participating agencies must identify key technical or
24 regulatory experts to participate on the project interdisciplinary
25 team. The department must convene at least one meeting with the
26 interdisciplinary team at each of the subsequent steps in order to
27 collaborate on project decisions and milestones.

28 (3) Step 3: Participating agency involvement during the screening
29 of alternatives.

30 (a) The department must initiate step 3 by providing notice to
31 participating agencies that the screening of project alternatives has
32 begun. Within thirty days of receiving notification, participating
33 state, county, and city agencies must, and federal agencies are
34 encouraged to, identify:

35 (i) For each identified alternative: (A) The specific features
36 that the agency considers significant with respect to the agency's role
37 in environmental reviews, permits, or other approvals for the project;
38 (B) the reasons these features are significant; and (C) any concerns

1 the agency may have about the alternative because of potential
2 significant adverse impacts of these features on resources or social
3 policies within the agency's jurisdiction;

4 (ii) For each feature for which the agency raises concerns: (A)
5 Recommendations on how the potential adverse impacts could be avoided,
6 minimized, and mitigated; and (B) an assessment of the relative ranking
7 of each alternative with respect to whether and to what extent these
8 concerns apply; and

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

12 (b) The department must consider the input from the participating
13 agencies prior to selecting a preferred project alternative.

14 (4) Step 4: Participating agency involvement during the
15 identification of environmental permits and approvals, application
16 procedures, and decision standards.

17 (a) The department, in consultation with the participating
18 agencies, must identify all permits and other approvals the agencies
19 might require for each project alternative.

20 (b) After consulting with all participating agencies, the
21 department must complete step 4 by compiling a list of all
22 environmental permits and approvals it believes are needed for the
23 project under each alternative being considered.

24 (5) Step 5: Complete an environmental analysis and issue a draft
25 environmental impact statement. The department must initiate step 5 by
26 providing notice of the availability of the draft environmental impact
27 statement to participating agencies, tribal governments, and the
28 public. Notification must include posting on the state environmental
29 policy act register. State, county, and city agencies must, and
30 federal agencies are encouraged to, provide written comments on the
31 draft environmental impact statement no later than forty-five days
32 after the department posts notice in the state environmental policy act
33 register.

34 (6) Step 6: Develop a final environmental impact statement. The
35 department must work with the federal lead agency to consider and
36 respond to all substantive comments received during the comment period.
37 The department must evaluate public and agency comments on the draft
38 environmental impact statement to determine if the statement

1 sufficiently identifies and analyzes the impacts and mitigation of the
2 proposed action. The department must engage participating agencies in
3 refining alternatives and completing the environmental review.

4 (7) Step 7: Issue a final environmental impact statement. The
5 final environmental impact statement must contain: The department's
6 final recommendation and preferred alternative, a summary of the
7 comments received on the draft environmental impact statement and the
8 response, and a description of the procedures required to ensure that
9 mitigation measures are implemented. The department must provide
10 notice of the final environmental impact statement and the federal lead
11 agency's record of decision in the state environmental policy act
12 register.

13 NEW SECTION. **Sec. 4.** (1) The legislature recognizes the value
14 that tribal governments provide in the review of transportation
15 projects. The legislature expects the department to continue its
16 efforts to provide consistent consultation and communication during the
17 environmental review of proposed transportation projects.

18 (2) For projects described in section 3 of this act, the department
19 must invite affected tribes to be participating agencies. If tribal
20 governments elect not to participate, the department must make a
21 reasonable effort to: Meet with representatives of affected tribes to
22 review broad issues during scoping, engage in both formal and technical
23 consultation with tribal staff, and seek to resolve issues in parallel
24 with project planning and permitting activities.

25 NEW SECTION. **Sec. 5.** The department must streamline the
26 permitting process by developing and maintaining positive relationships
27 with the regulatory agencies and the Indian tribes. The department can
28 reduce the time it takes to obtain permits by incorporating impact
29 avoidance and minimization measures into project design and by
30 developing complete permit applications. To streamline the permitting
31 process, the department must:

32 (1) Continue a multiagency permit program consisting of appropriate
33 regulatory agency staff with oversight and management from the
34 department.

35 (a) The multiagency permit program must provide early project

1 coordination, expedited project review, project status updates,
2 technical and regulatory guidance, and construction support to ensure
3 compliance.

4 (b) The multiagency permit program staff must assist department
5 project teams with developing complete biological assessments and
6 permit applications, provide suggestions for how the project can avoid
7 and minimize impacts, and provide input regarding mitigation for
8 unavoidable impacts;

9 (2) Establish, implement, and maintain programmatic agreements and
10 permits with federal and state agencies to expedite the process of
11 ensuring compliance with the endangered species act, section 106 of the
12 national historic preservation act, hydraulic project approvals, the
13 clean water act, and other federal acts as appropriate;

14 (3) Collaborate with permitting staff from the United States army
15 corps of engineers, Seattle district, department of ecology, and
16 department of fish and wildlife to develop, implement, and maintain
17 complete permit application guidance. The guidance must identify the
18 information that is required for agencies to consider a permit
19 application complete; and

20 (4) Perform internal quality assurance and quality control to
21 ensure that permit applications are complete before submitting them to
22 the regulatory agencies.

23 NEW SECTION. **Sec. 6.** The legislature finds that an essential
24 component of streamlined permit decision making is the ability of the
25 department to demonstrate the capacity to meet environmental
26 responsibilities. Therefore, the legislature directs that:

27 (1) Qualified environmental staff within the department must
28 supervise the development of all environmental documentation in
29 accordance with the department's project delivery tools;

30 (2) The department must conduct special prebid meetings for
31 projects that are environmentally complex. In addition, the department
32 must review environmental requirements related to these projects during
33 the preconstruction meeting held with the contractor who is awarded the
34 bid;

35 (3) Environmental staff at the department, or consultant staff
36 hired directly by the department, must conduct field inspections to

1 ensure that project activities comply with permit conditions and
2 environmental commitments. These inspectors:

3 (a) Must notify the department's project engineer when compliance
4 with permit conditions or environmental regulations are not being met;
5 and

6 (b) Must immediately notify the regulatory agencies with
7 jurisdiction over the nonconforming work; and

8 (4) When a project is not complying with a permit or environmental
9 regulation, the project engineer must immediately order the contractor
10 to stop all nonconforming work and implement measures necessary to
11 bring the project into compliance with permits and regulations.

12 NEW SECTION. **Sec. 7.** The legislature expects the department to
13 continue its efforts to improve training and compliance. The
14 department must:

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

17 (2) Require wetland mitigation sites to be designed by qualified
18 technical specialists that meet training requirements developed by the
19 department in consultation with the department of ecology.
20 Environmental mitigation site improvements must have oversight by
21 environmental staff;

22 (3) Develop, implement, and maintain an environmental compliance
23 data system to track permit conditions, environmental commitments, and
24 violations;

25 (4) Continue to implement the environmental compliance assurance
26 procedure to ensure that appropriate agencies are notified and that
27 action is taken to remedy noncompliant work as soon as possible. When
28 work occurs that does not comply with environmental permits or
29 regulations, the project engineer must document the lessons learned to
30 make other project teams within the department aware of the violation
31 to prevent reoccurrence; and

32 (5) Provide an annual report summarizing violations of
33 environmental permits and regulations to the department of ecology and
34 the legislature on March 1st of each year for violations occurring
35 during the preceding year.

1 NEW SECTION. **Sec. 8.** The legislature finds that local land use
2 reviews under chapter 90.58 RCW need to be harmonized with the
3 efficient accomplishment of necessary maintenance and improvement to
4 state transportation facilities. Local land use review procedures are
5 highly variable and pose distinct challenges for linear facility
6 maintenance and improvement projects sponsored by the department. In
7 particular, clearer procedures for local permitting under chapter 90.58
8 RCW are needed to meet the objectives of chapter 36.70A RCW regarding
9 department facilities designated as essential public facilities.
10 Therefore, the legislature directs that:

11 (1) The department of ecology must convene a work group including
12 the department and local governments to identify procedures to more
13 effectively achieve the objectives of this section.

14 (2) The work group is tasked with identifying procedures that
15 effectively and efficiently address policy objectives of local
16 shoreline master programs, while avoiding unnecessary time delay and
17 expense for state transportation facility maintenance and improvement.

18 (3) The work group must consider the widely varying scale and scope
19 of department facility maintenance and improvement projects in
20 identifying appropriate shoreline review procedures.

21 (4) By December 1, 2013, the department of ecology must provide a
22 report on the outcome of the work group to the appropriate committees
23 of the legislature.

24 NEW SECTION. **Sec. 9.** Nothing in this chapter may be interpreted
25 to create a private right of action or right of review. Judicial
26 review of the department's environmental review is limited to that
27 available under chapter 43.21C RCW or applicable federal law.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 47.04 RCW
29 to read as follows:

30 (1) The legislature intends the department to deliver the projects
31 and activities listed in LEAP Transportation Document 2013-4, as
32 developed May 2013, as funded by new revenues provided in chapter . . .
33 (Substitute House Bill No. 1954), Laws of 2013, and for which
34 appropriations of such funds are provided every two years in the
35 omnibus transportation appropriations act, in a manner that exemplifies
36 the stewardship goal in RCW 47.04.280.

1 (2) To allow the department the flexibility to deliver the projects
2 in the most expeditious and efficient manner, while at the same time
3 honoring the intent of the legislature under chapter . . . (Substitute
4 House Bill No. 1954), Laws of 2013, the department's stewardship in
5 delivering the projects and activities under this section is subject to
6 the following limitations:

7 (a) The department must allocate funding to projects in a manner
8 that optimizes efficient management of project spending and delivery.
9 If the most recent engineer's estimate of a project cost differs from
10 the most recent project budget approved by the legislature by ten
11 percent or two hundred fifty thousand dollars, whichever is greater,
12 the department must seek approval before proceeding as provided in this
13 subsection (2).

14 (b) The legislative scope of a project may not be changed to a
15 material degree except:

16 (i) By the legislature; or

17 (ii) When a more efficient, less expensive, or more expeditious
18 scope would provide an equivalent functional outcome. If such an
19 alternative scope is identified, the department must seek approval
20 before proceeding as provided in this subsection (2).

21 (c)(i) To the extent possible within budgetary and financial
22 planning constraints, the department must adhere to the capital
23 delivery plan schedule adopted by the legislature and as referenced in
24 the LEAP transportation document identified in subsection (1) of this
25 section.

26 (ii) If adherence to the original capital delivery plan schedule
27 would result in failure to substantively meet the stewardship,
28 efficiency, and expediency objectives of this section, the department
29 may seek approval of reasonable changes in project scheduling so as to
30 meet the objectives as provided in this subsection (2).

31 (d) To seek approval of project changes under this subsection (2),
32 the department must submit a request to the office of financial
33 management. At the time the department submits a request to transfer
34 funds under this section, a copy of the request must be submitted to
35 the transportation committees of the legislature. The office of
36 financial management must work with legislative staff of the house of
37 representatives and senate transportation committees to review the
38 requested transfers in a timely manner.

1 (e) The department must develop by the end of each calendar quarter
2 a report with updates of any changes under (a), (b), or (c) of this
3 subsection. The report must be submitted to the office of financial
4 management and the transportation committees of the legislature.

5 (3) The legislature intends for the department to utilize a design-
6 build or similar alternative public works contracting procedure
7 whenever appropriate in highway construction, ferry vessel, or ferry
8 terminal construction contracts on projects and activities under this
9 section.

10 (4) For the delivery of projects and activities under this section,
11 the legislature intends for the department to develop a management
12 approach that minimizes the need to add additional permanent
13 engineering staff and other permanent professional staff in the highway
14 construction and ferry vessel and terminal construction programs. The
15 baseline for staffing levels should be:

16 (a) For highway construction, the full-time equivalent level for
17 such positions outlined by the secretary in the business plan for the
18 department at the end of fiscal year 2015; and

19 (b) For the ferry vessel and terminal construction program, the
20 full-time equivalent level for such positions at the end of fiscal year
21 2012.

22 (5)(a) In January of each year that precedes the next fiscal
23 biennium, beginning January 1, 2015, the department must submit a
24 report to the governor and to the transportation committees of the
25 legislature on progress made toward the delivery of all projects and
26 activities subject to this section.

27 (b) The secretary must certify to the governor and the legislature
28 the completion of the project package identified in the LEAP
29 transportation document identified in subsection (1) of this section,
30 or the most recent version approved by the legislature or the office of
31 financial management under subsection (2)(d) of this section, on the
32 date that the delivery of the projects and activities subject to this
33 section is substantively complete.

34 (6) The changes for which the department may seek approval under
35 subsection (2)(a), (b), or (c) of this section are changes to the cost,
36 scope, or schedule of a project relative to the cost, scope, or
37 schedule of the project in the LEAP transportation document identified

1 in subsection (1) of this section or the most recent version approved
2 by the legislature or the office of financial management under
3 subsection (2)(d) of this section.

4 (7) This section expires June 30, 2023, or the date the secretary
5 certifies that the delivery of the projects and activities listed in
6 the LEAP transportation document identified in subsection (1) of this
7 section, or the most recent version approved by the legislature or the
8 office of financial management under subsection (2)(d) of this section,
9 is substantively complete, whichever is later.

10 NEW SECTION. **Sec. 11.** A new section is added to chapter 47.01 RCW
11 to read as follows:

12 (1) The department must convene three expert review panels of no
13 more than three members to provide independent financial and technical
14 review for the development of a finance plan and project implementation
15 plan for the Columbia river crossing project, the state route number
16 520 bridge replacement and HOV project, and the Alaskan Way viaduct
17 replacement project.

18 (2) The expert review panels must be selected cooperatively by the
19 chairs of the senate and house of representatives transportation
20 committees, the secretary of transportation, and the governor.

21 (3) The expert review panels must, with respect to completion of
22 the project alternatives as described in the draft environmental impact
23 statement of each project:

24 (a) Review the finance plan for the project to ensure that it
25 clearly identifies secured and anticipated funding sources and is
26 feasible and sufficient; and

27 (b) Review the project implementation plan covering all state and
28 local permitting and mitigation approvals that ensure the most
29 expeditious and cost-effective delivery of the project.

30 (4) The expert review panels must report their findings and
31 recommendations on the items described under subsection (3) of this
32 section to the transportation committees of the legislature by October
33 2013, and annually thereafter, until the projects are operationally
34 complete.

35 (5) When convening the expert review panels, the department must be
36 attentive to cost and consider ways to minimize expert review panel

1 expenditures. Anticipated expenditures related to the expert review
2 panels must be included in the panel's findings and recommendation
3 reports.

4 **Sec. 12.** RCW 47.01.300 and 2012 c 62 s 1 are each amended to read
5 as follows:

6 The department shall, in cooperation with environmental regulatory
7 authorities:

8 (1) Identify and document environmental resources in the
9 development of the statewide multimodal plan under RCW 47.06.040;

10 (2) Allow for public comment regarding changes to the criteria used
11 for prioritizing projects under chapter 47.05 RCW before final adoption
12 of the changes by the commission;

13 (3) Use an environmental review as part of the project prospectus
14 identifying potential environmental impacts, mitigation, the
15 utilization of the mitigation option available in RCW 90.74.040, and
16 costs during the early project identification and selection phase,
17 submit the prospectus to the relevant environmental regulatory
18 authorities, and maintain a record of comments and proposed revisions
19 received from the authorities;

20 (4) Actively work with the relevant environmental regulatory
21 authorities during the design alternative analysis process and seek
22 written concurrence from the authorities that they agree with the
23 preferred design alternative selected;

24 (5) Develop a uniform methodology, in consultation with relevant
25 environmental regulatory authorities, for submitting plans and
26 specifications detailing project elements that impact environmental
27 resources, and proposed mitigation measures including the mitigation
28 option available in RCW 90.74.040, to the relevant environmental
29 regulatory authorities during the preliminary specifications and
30 engineering phase of project development;

31 (6) Use available technologies to minimize permit delays for,
32 inform and interact with interested parties including relevant
33 environmental regulatory authorities regarding, and optimize the
34 effectiveness of proposed compensatory mitigation projects;

35 (7)(a) In addition to the mitigation programs specified in RCW
36 90.74.040(1)(a), the correction of fish passage barriers on city
37 streets and county roads located within the same watershed as the

1 proposed project must be considered for compensatory mitigation. The
2 department shall consult with the department of fish and wildlife, the
3 appropriate local government, and interested tribes to identify the
4 existing fish passage barriers that, upon removal, will result in the
5 greatest habitat benefit.

6 (b) The department shall submit a report to the transportation
7 committees of the legislature by December 1, 2014, regarding the use
8 and effectiveness of the mitigation option created in this subsection
9 as well as recommendations for improvements;

10 (8) Screen construction projects to determine which projects will
11 require complex or multiple permits. The permitting authorities shall
12 develop methods for initiating review of the permit applications for
13 the projects before the final design of the projects;

14 ~~((+7))~~ (9) Conduct special prebid meetings for those projects that
15 are environmentally complex; and

16 ~~((+8))~~ (10) Review environmental considerations related to
17 particular projects during the preconstruction meeting held with the
18 contractor who is awarded the bid.

19 NEW SECTION. Sec. 13. A new section is added to chapter 47.01 RCW
20 to read as follows:

21 (1) The department shall submit a report to the transportation
22 committees of the legislature detailing engineering errors on highway
23 construction projects resulting in project cost increases in excess of
24 five hundred thousand dollars. The department must submit an initial
25 report of an engineering error within thirty days of the engineering
26 error occurring. A full report must be submitted within ninety days of
27 the engineering error occurring.

28 (2) The department's full report must include an assessment and
29 review of:

30 (a) How the engineering error happened;

31 (b) The department of the employee or employees responsible for the
32 engineering error, without disclosing the name of the employee or
33 employees;

34 (c) What corrective action was taken;

35 (d) The estimated total cost of the engineering error and how the
36 department plans to mitigate that cost;

1 (e) Whether the cost of the engineering error will impact the
2 overall project financial plan; and

3 (f) What action the secretary has recommended to avoid similar
4 engineering errors in the future. If the legislature finds that the
5 actions taken by the secretary were inadequate, the legislature may
6 take additional action to correct the problem.

7 (3) Within ninety days of the effective date of this section, a
8 report must be submitted on engineering errors that have occurred on
9 projects that are currently under construction and not yet
10 operationally complete.

11 NEW SECTION. **Sec. 14.** (1) The legislature finds that "right-
12 sizing" is a lean, metric-based approach to determining project
13 investments. This concept entails a compromise between project cost
14 and design, incorporating local community needs, desired outcomes, and
15 available funding. Furthermore, the legislature finds that the
16 concepts and principles that the department of transportation has
17 utilized in the safety analyst program have been effective tools to
18 prioritize projects and reduce project costs.

19 (2) In collaboration with the Washington state transportation
20 commission, the department of transportation shall report to the house
21 of representatives and senate transportation committees on right-sizing
22 by January 1, 2014. This report must include:

23 (a) When and where the concept has been applied or is intended to
24 be applied within the department; and

25 (b) An assessment of the feasibility of extending the concept to
26 all capital programs, including costs and implications.

27 NEW SECTION. **Sec. 15.** Sections 1 through 9 of this act constitute
28 a new chapter in Title 47 RCW.

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