
SENATE BILL 6051

State of Washington

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By Senators O'Ban, Eide, Baumgartner, King, Brown, Becker, Dandel, Bailey, Rivers, Schoesler, Padden, Honeyford, Fain, Tom, Angel, Parlette, Braun, and Hill

Read first time 01/15/14. Referred to Committee on Transportation.

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

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

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

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

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

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

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

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

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

1 tribes before finalizing the project purpose and scope of environmental
2 review.

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

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

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

26 (3) Step 3: Participating agency involvement during the screening
27 of alternatives.

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

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

1 significant adverse impacts of these features on resources or social
2 policies within the agency's jurisdiction;

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

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

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

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

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

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

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

33 (6) Step 6: Develop a final environmental impact statement. The
34 department must work with the federal lead agency to consider and
35 respond to all substantive comments received during the comment period.
36 The department must evaluate public and agency comments on the draft
37 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 July 1, 2014, 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 47.01 RCW
29 to read as follows:

30 (1) The department must convene two expert review panels of no more
31 than three members to provide independent financial and technical
32 review for the development of a finance plan and project implementation
33 plan for the state route number 520 bridge replacement and HOV project
34 and the Alaskan Way viaduct replacement project.

35 (2) The expert review panels must be selected cooperatively by the

1 chairs of the senate and house of representatives transportation
2 committees, the secretary of transportation, and the governor.

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

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

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

12 (4) The expert review panels must report their findings and
13 recommendations on the items described under subsection (3) of this
14 section to the transportation committees of the legislature by March 1,
15 2014, and annually thereafter, until the projects are operationally
16 complete.

17 (5) When convening the expert review panels, the department must be
18 attentive to cost and consider ways to minimize expert review panel
19 expenditures. Anticipated expenditures related to the expert review
20 panels must be included in the panel's findings and recommendation
21 reports.

22 **Sec. 11.** RCW 47.01.300 and 2012 c 62 s 1 are each amended to read
23 as follows:

24 The department shall, in cooperation with environmental regulatory
25 authorities:

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

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

31 (3) Use an environmental review as part of the project prospectus
32 identifying potential environmental impacts, mitigation, the
33 utilization of the mitigation option available in RCW 90.74.040, and
34 costs during the early project identification and selection phase,
35 submit the prospectus to the relevant environmental regulatory
36 authorities, and maintain a record of comments and proposed revisions
37 received from the authorities;

1 (4) Actively work with the relevant environmental regulatory
2 authorities during the design alternative analysis process and seek
3 written concurrence from the authorities that they agree with the
4 preferred design alternative selected;

5 (5) Develop a uniform methodology, in consultation with relevant
6 environmental regulatory authorities, for submitting plans and
7 specifications detailing project elements that impact environmental
8 resources, and proposed mitigation measures including the mitigation
9 option available in RCW 90.74.040, to the relevant environmental
10 regulatory authorities during the preliminary specifications and
11 engineering phase of project development;

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

16 (7)(a) In addition to the mitigation programs specified in RCW
17 90.74.040(1)(a), the correction of fish passage barriers on city
18 streets and county roads located within the same watershed as the
19 proposed project must be considered for compensatory mitigation. The
20 department shall consult with the department of fish and wildlife, the
21 appropriate local government, and interested tribes to identify the
22 existing fish passage barriers that, upon removal, will result in the
23 greatest habitat benefit.

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

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

32 ((+7)) (9) Conduct special prebid meetings for those projects that
33 are environmentally complex; and

34 ((+8)) (10) Review environmental considerations related to
35 particular projects during the preconstruction meeting held with the
36 contractor who is awarded the bid.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.01 RCW
2 to read as follows:

3 (1) The department shall submit a report to the transportation
4 committees of the legislature detailing engineering errors on highway
5 construction projects resulting in project cost increases in excess of
6 five hundred thousand dollars. The department must submit an initial
7 report of an engineering error within thirty days of the engineering
8 error occurring. A full report must be submitted within ninety days of
9 the engineering error occurring.

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

12 (a) How the engineering error happened;

13 (b) The department of the employee or employees responsible for the
14 engineering error, without disclosing the name of the employee or
15 employees;

16 (c) What corrective action was taken;

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

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

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

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

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

1 (2) In collaboration with the Washington state transportation
2 commission, the department of transportation shall report to the house
3 of representatives and senate transportation committees on right-sizing
4 by January 1, 2015. This report must include:

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

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

9 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act constitute
10 a new chapter in Title 47 RCW.

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