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**SECOND ENGROSSED SUBSTITUTE SENATE BILL 5996**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Transportation (originally sponsored by Senators King, Hobbs, Fain, Liias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker, and Brown)

AN ACT Relating to Washington state department of transportation projects; adding new sections to chapter 47.01 RCW; adding a new section to chapter 77.95 RCW; adding a new chapter to Title 47 RCW; and declaring an emergency.

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

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

NEW SECTION. **Sec.**  The legislature recognizes the value that tribal governments provide in the review of transportation projects. The legislature expects the department to continue its efforts to provide consistent consultation and communication during the environmental review of proposed transportation projects.

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

(1) Implement a multiagency permit program, commensurate with program funding levels, consisting of appropriate regulatory agency staff with oversight and management from the department.

(a) The multiagency permit program must provide early project coordination, expedited project review, project status updates, technical and regulatory guidance, and construction support to ensure compliance.

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

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

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

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

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

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

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

(3) Environmental staff at the department, or consultant staff hired directly by the department, must conduct field inspections to ensure that project activities comply with permit conditions and environmental commitments. These inspectors:

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

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

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

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

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

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

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

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

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

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

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

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

(1) The department shall submit a report to the transportation committees of the legislature detailing engineering errors on highway construction projects resulting in project cost increases in excess of five hundred thousand dollars. The department must submit a full report within ninety days of the negotiated change order resulting from the engineering error.

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

(a) How the engineering error happened;

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

(c) What corrective action was taken;

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

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

(f) What action the secretary has recommended to avoid similar engineering errors in the future.

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

Beginning in 2015-2017, the department shall include in its "Grey Notebook" (the department's data driven performance-based reporting structure) and provide an annual agency "LEAN & Performance & Accountability Report." A summary of this report must be provided annually to the office of financial management and the joint transportation committee of the legislature. This report must include progress made on achieving:

(1) Criteria to prioritize asset management for maintenance, preservation, and capital improvements according to the legislatively mandated transportation goals;

(2) The agency's strategic core values, goals, and outcomes to meet the legislatively mandated goals;

(3) Results of LEAN efforts;

(4) Challenges in sustainable approaches to meeting statutory policy goals;

(5) Status on specific reforms initiated by the secretary of transportation and operational effectiveness; and

(6) Completion of a Baldrige assessment every three years with a goal of achieving a score of sixty percent within seven years of the first assessment.

NEW SECTION. **Sec.**  A new section is added to chapter 77.95 RCW to read as follows:

(1) The department of transportation, the department of ecology, and the department of fish and wildlife must use their existing authorities and guidance to provide a preference for the removal of existing fish passage barriers owned by cities and counties as compensatory mitigation for environmental impacts of transportation projects where appropriate.

(2)(a) The department of transportation, the department of ecology, and the department of fish and wildlife must consult with other relevant entities to develop a framework for encouraging off-site and out-of-kind local fish passage barrier mitigation that provides results that are consistent with habitat protection priorities and are ecologically preferable to on-site mitigation.

(b) The implementation of this framework must:

(i) Not delay transportation project delivery;

(ii) Not be additive to the amount or cost of mitigation required under existing regulations;

(iii) Not preclude on-site or off-site and in-kind mitigation when that is the most ecologically appropriate means to address project impacts;

(iv) Not alter the mitigation sequencing principles of first avoidance and then minimization of impacts before compensatory mitigation;

(v) Provide for a mechanism that identifies whether environmental impacts from projects are appropriate for local fish passage barrier mitigation;

(vi) Provide a mechanism for affected parties, including tribes, to determine when and how to use off-site and out-of-kind mitigation to address fish passage barriers in particular watersheds;

(vii) Consult the statewide fish passage barrier removal strategy developed by the fish passage barrier removal board created in RCW 77.95.160 and information provided by affected tribes, salmon recovery regional organizations, and local entities to identify specific priority locations where removal of local barriers would provide a net resource gain; and

(viii) Consistent with existing mitigation regulations and guidelines, provide a preference, where appropriate, for investment in local fish passage barrier removal where greater environmental benefit can be achieved with off-site and out-of-kind mitigation.

(c) In addition to the framework developed in (b) of this subsection, the department of transportation, the department of ecology, and the department of fish and wildlife must develop and implement an umbrella statewide in lieu fee program or other formal means to provide a streamlined mechanism to undertake priority local fish passage barrier corrections throughout the watersheds of the state as a preferred means of compensatory mitigation where appropriate for state transportation that is consistent with the principles in (a) and (b) of this subsection.

(3) Nothing in this section is intended to create or expand the state's obligation for fish passage barrier correction according to existing law or court ruling. Nothing in this section is intended to decrease funding or otherwise impede the state's efforts to meet its obligation for fish passage barrier correction according to existing law or court ruling.

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

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

**--- END ---**