

ESSB 5996 - H COMM AMD

By Committee on Transportation

1 Strike everything after the enacting clause and insert the
2 following:

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

17 NEW SECTION. **Sec. 2.** The legislature recognizes the value that
18 tribal governments provide in the review of transportation projects.
19 The legislature expects the department to continue its efforts to
20 provide consistent consultation and communication during the
21 environmental review of proposed transportation projects.

22 NEW SECTION. **Sec. 3.** The department must streamline the
23 permitting process by developing and maintaining positive
24 relationships with the regulatory agencies and the Indian tribes. The
25 department can reduce the time it takes to obtain permits by
26 incorporating impact avoidance and minimization measures into project
27 design and by developing complete permit applications. To streamline
28 the permitting process, the department must:

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

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

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

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

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

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

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

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

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

37 (3) Environmental staff at the department, or consultant staff
38 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
5 met; 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
9 environmental regulation, the project engineer must immediately order
10 the contractor to stop all nonconforming work and implement measures
11 necessary to bring the project into compliance with permits and
12 regulations.

13 NEW SECTION. **Sec. 5.** The legislature expects the department to
14 continue its efforts to improve training and compliance. The
15 department must:

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

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

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

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

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

37 NEW SECTION. **Sec. 6.** The legislature finds that local land use
38 reviews under chapter 90.58 RCW need to be harmonized with the

1 efficient accomplishment of necessary maintenance and improvement to
2 state transportation facilities. Local land use review procedures are
3 highly variable and pose distinct challenges for linear facility
4 maintenance and improvement projects sponsored by the department. In
5 particular, clearer procedures for local permitting under chapter
6 90.58 RCW are needed to meet the objectives of chapter 36.70A RCW
7 regarding department facilities designated as essential public
8 facilities.

9 NEW SECTION. **Sec. 7.** Nothing in this chapter may be interpreted
10 to create a private right of action or right of review. Judicial
11 review of the department's environmental review is limited to that
12 available under chapter 43.21C RCW or applicable federal law.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.01
14 RCW to read as follows:

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

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

23 (a) How the engineering error happened;

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

27 (c) What corrective action was taken;

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

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

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

34 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act
35 constitute a new chapter in Title 47 RCW.

1 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect July 1, 2015.

5 NEW SECTION. **Sec. 11.** This act takes effect only if chapter ...
6 (Engrossed Substitute Senate Bill No. 5987), Laws of 2015 is enacted
7 by June 30, 2015."

8 Correct the title.

EFFECT: Eliminates various reporting requirements for the
department of transportation. Removes the application of the act to
only projects identified as connecting Washington projects and
supported by revenues generated under ESSB 5987.

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