

ESSB 5996 - S AMD 493

By Senators King, Hobbs

ADOPTED 6/28/2015

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 6.** 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
8 90.58 RCW are needed to meet the objectives of chapter 36.70A RCW
9 regarding department facilities designated as essential public
10 facilities.

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

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

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

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

25 (a) How the engineering error happened;

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

29 (c) What corrective action was taken;

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

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

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

36 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.01
37 RCW to read as follows:

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

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

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

13 (3) Results of LEAN efforts;

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

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

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

21 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.95
22 RCW to read as follows:

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

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

35 (b) The implementation of this framework must:

36 (i) Not delay transportation project delivery;

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

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

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

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

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

13 (vii) Consult the statewide fish passage barrier removal strategy
14 developed by the fish passage barrier removal board created in RCW
15 77.95.160 and information provided by affected tribes, salmon
16 recovery regional organizations, and local entities to identify
17 specific priority locations where removal of local barriers would
18 provide a net resource gain; and

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

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

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

38 NEW SECTION. **Sec. 11.** Sections 1 through 7 of this act
39 constitute a new chapter in Title 47 RCW.

1 NEW SECTION. **Sec. 12.** 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 immediately."

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5 On page 1, line 2 of the title, after "projects;" strike the
6 remainder of the title and insert "adding new sections to chapter
7 47.01 RCW; adding a new section to chapter 77.95 RCW; adding a new
8 chapter to Title 47 RCW; and declaring an emergency."

EFFECT: (1) Requires the department of transportation, the department of ecology, and the department of fish and wildlife to provide a preference for the removal of existing fish passage barriers owned by cities and counties as compensatory environmental mitigation, and 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. The state's obligation for fish passage barrier correction is not expanded.

(2) Removes the requirement that the provisions of the bill be applicable only to connecting Washington projects supported by revenues generated by ESSB 5987.

(3) Removes the requirement making the bill contingent on the enactment of ESSB 5987.

(4) Changes the effective date from July 1, 2015, to immediately upon the governor's signature.

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