

# HOUSE BILL REPORT

## 2ESSB 5996

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**As Passed House:**  
June 30, 2015

**Title:** An act relating to Washington state department of transportation projects.

**Brief Description:** Concerning Washington state department of transportation projects.

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators King, Hobbs, Fain, Lias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker and Brown).

**Brief History:**

**Committee Activity:**

Transportation: 4/6/15, 4/7/15 [DPA].

**Third Special Session**

**Floor Activity:**

Passed House: 6/30/15, 98-0.

**Brief Summary of Second Engrossed Substitute Bill**

- Directs the Washington State Department of Transportation (WSDOT) to continue using the multiagency permit program and places various requirements upon the staff and the program.
- Requires the WSDOT environmental staff to develop all environmental documentation and oversee project work in order to insure environmental compliance.
- Creates various training, design, and funding requirements related to environmental permitting.
- Requires the WSDOT to report regarding design errors with a cost of greater than \$500,000.
- Requires the WSDOT to report regarding Lean, performance, and accountability.

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### HOUSE COMMITTEE ON TRANSPORTATION

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass as amended. Signed by 25 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Gregerson, Harmsworth, Hayes, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Rodne, Sells, Shea, Takko, Tarleton, Wilson, Young and Zeiger.

**Staff:** David Munnecke (786-7315).

### **Background:**

#### The National and State Environmental Policy Acts.

The National Environmental Policy Act (NEPA) establishes a review process to identify environmental impacts of certain decisions by the federal government, including for projects that require the issuance of a permit. Likewise, the State Environmental Policy Act (SEPA) establishes a review process for state and local governments to evaluate environmental impacts from project permits and other government decisions. The NEPA and the SEPA both exempt certain actions from requirements for the submission of an environmental checklist or the development of an environmental impact statement. An agency conducting a SEPA review may adopt a NEPA environmental analysis if the NEPA analysis is consistent with SEPA requirements, including the scope of environmental elements analyzed under the SEPA. Certain WSDOT activities are exempt from NEPA requirements, SEPA requirements, or both.

#### Shoreline Management Act Permits.

The Shoreline Management Act (SMA) of 1971 requires that most developments near state shorelines be consistent with shoreline master programs, which are plans developed by local governments for the uses of its shoreline areas. Certain projects, including most projects exceeding a cost or fair market value of \$5,000, require a substantial development permit that is reviewed by the local government and filed with the Department of Ecology (ECY). In certain property-specific circumstances, variance permits or conditional use permits may be issued by a local government that allow for development that is not consistent with the local shoreline master program. Certain other types of development, such as single-family residences and bulkheads to protect single-family residences, are exempt from permit requirements under the SMA. Local governments must submit letters of exemption to the ECY for developments that require federal approval but are exempt from SMA substantial development permit requirements.

#### Error Reporting.

The Washington State Department of Transportation (WSDOT) website tracks construction change orders, which may include costs due to design errors, that exceed \$500,000 in compliance with Section 603 of the 2014 Supplemental Transportation Budget—Engrossed Substitute Senate Bill 6001.

### **Summary of Amended Bill:**

The WSDOT is directed to streamline its permitting process by developing and maintaining positive relationships with permitting agencies and the Indian tribes. The Legislature recognizes the value that tribal governments provide in the review of transportation projects,

and directs the WSDOT to continue to communicate and consult during environmental reviews.

The WSDOT is directed to continue using the multiagency permit program, which must provide early project coordination, expedited project review, project status updates, technical and regulatory guidance, and construction support. The multiagency permit program staff is required to assist with project mitigation and assessments, establish programmatic agreements, develop permit application guidance, and perform quality assurance regarding these functions. The multiagency permit program staff is also required to collaborate with federal staff from various agencies to develop, implement, and maintain complete permit application guidance.

The WSDOT environmental staff are required to develop all environmental documentation, conduct prebid meetings for environmentally complex projects, review environmental considerations with the selected contractor, and oversee project work in order to insure environmental compliance. These staff must notify the WSDOT project engineer of noncompliance with permit conditions or environmental regulations and notify regulatory agencies of noncompliance. Upon notification, the WSDOT project engineer must order the contractor to halt nonconforming work and bring the project into compliance.

The WSDOT is also required to provide training in environmental procedures and permit requirements, require wetland mitigation sites to be designed by a qualified interdisciplinary team, develop an environmental compliance data system, continue to implement the environmental compliance assurance procedure, and report noncompliance. The WSDOT must provide an annual report summarizing violations of environmental permits and regulations to ECY and the Legislature on March 1 of each year for violations occurring during the preceding year.

The Legislature finds that clearer procedures for local permitting under the SMA are needed, and in particular to meet the objectives of the Growth Management Act regarding the WSDOT essential public facilities.

The bill creates a new chapter in Title 47. Nothing in the chapter created by the bill creates a private right of action or review.

The WSDOT must 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 \$500,000. An initial report is due within 30 days of the engineering error occurring. A full report must be submitted within 90 days of the engineering error occurring. The full report must include an assessment of how the engineering error happened, what employees made the error, without disclosing the name of the employee or employees, and what corrective action was taken.

The WSDOT must report annually and in each Grey Notebook on progress on achieving:

- criteria to prioritize asset management;
- strategic core values, goals, and outcomes;
- results of Lean efforts;
- challenges to meeting statutory policy goals;

- status on reforms; and
- completion of a Baldrige assessment every three years with a goal of 60 percent after seven years.

The department of transportation, the department of ecology, and the department of fish and wildlife are required 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) The funding package needs to be passed, not just to meet road maintenance and preservation needs, but also to help the unemployed in Washington. People are leaving the state in order to find work, and the state needs to provide them with work now.

This bill should be passed because it streamlines the permitting process.

(In support with concerns) The WSDOT has made great progress in reforming the WSDOT and saving money in the process. Programmatic permits have already streamlined many projects.

The WSDOT is concerned about section 9 and its performance management requirements. The Grey Notebook is a national model, and the WSDOT is already implementing Lean efforts and Results Washington.

The WSDOT is already required to meet new federal reporting requirements, and the Baldrige assessment would cost \$2 million every three years.

(Opposed) None.

**Persons Testifying:** (In support) Tom Pierson, Tacoma-Pierce County Chamber of Commerce; Duke Schaub, Associated General Contractors of Washington; Sheri Call, Washington Trucking Association; and Bruce Yadon, Futurewise.

(In support with concerns) Lynn Peterson, Washington State Department of Transportation.

**Persons Signed In To Testify But Not Testifying:** None.