

# HOUSE BILL REPORT

## ESB 6044

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### As Reported by House Committee On: Transportation

**Title:** An act relating to the construction of transportation facilities adjacent to or across a waterway.

**Brief Description:** Requiring the consideration of public access when designing a transportation facility adjacent to or across a waterway.

**Sponsors:** Senators Ericksen and Hobbs.

#### **Brief History:**

##### **Committee Activity:**

Transportation: 3/23/15, 3/31/15 [DPA].

#### **Brief Summary of Engrossed Bill (As Amended by Committee)**

- Requires the Washington State Department of Transportation (WSDOT) to report on the feasibility of providing waterway access for recreational purposes when conducting an environmental review of major improvement projects, document whether such a project is in an area identified in any state or local plan as a priority for such access, and ensure consistency with any such plan.
- Requires that any costs to a state highway project, including a major improvement project, due to providing public access to a waterway must be paid for using non-transportation funding, which is defined as funding that has not been collected by the state for a transportation purpose.
- Requires the WSDOT, to the greatest extent practicable, to not adversely impact preexisting public access to a waterway when constructing a state highway project.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended. Signed by 24 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority

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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.*

Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Gregerson, Harmsworth, Hayes, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Sells, Shea, Takko, Tarleton, Wilson, Young and Zeiger.

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

**Background:**

The Washington State Department of Transportation (WSDOT) is not generally required to consider or report on the feasibility of providing a means of public access to a navigable river or waterway for public recreational purposes when constructing a state highway project that is adjacent to or crosses a waterway. However, projects that are required to document the environmental impacts of the project through either an environmental impact statement or an environmental assessment would likely be required to consider the issue of public access as part of that process.

The National Environmental Policy Act.

The National Environmental Policy Act (NEPA) establishes a review process to determine the environmental impact of federal undertakings. There are three levels of analysis that can be undertaken pursuant to the NEPA:

- categorical exclusion determination, which determines if the project meets certain criteria which have been previously determined to indicate that the project will have no significant environmental impact;
- environmental assessment, which requires the preparation of a written assessment of whether the project will have a significant impact on the environment; and
- environmental impact assessment, which is a more detailed evaluation of the proposed project and potential alternatives.

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**Summary of Amended Bill:**

The intent section directs the WSDOT to explore the feasibility of providing access for water-related recreation when planning and designing highway facilities. The WSDOT is required to report on the feasibility of providing waterway access for recreational purposes when conducting an environmental review of major improvement projects, document whether such a project is in an area identified in any state or local plan as a priority for such access, and ensure consistency with any such plan.

Any costs to a state highway project, including a major improvement project, due to providing public access to a waterway must be paid for using non-transportation funding, which is defined as funding that has not been collected by the state for a transportation purpose. The WSDOT, to the greatest extent practicable, is required to not adversely impact preexisting public access to a waterway when constructing a state highway project.

A major improvement project is defined as a project that requires an environmental impact statement or an environmental assessment under the NEPA, excluding ferry terminals and fully controlled limited access highways.

A consideration of feasibility is required to include a description of the suitability of the area for public use and the implications of the access, but a consideration of feasibility may not alter the purpose and need for the proposed project or create a legal obligation to modify access. Any public access provided must be deemed to be recreational.

The act must not be interpreted to delay decision making or approvals on a project or limit the WSDOT's entitlement to recreational immunity.

**Amended Bill Compared to Engrossed Bill:**

The amended bill strikes the entirety of the underlying bill and adds an intent section directing the WSDOT to explore the feasibility of providing access for water-related recreation when planning and designing highway facilities. The amended bill also requires the WSDOT to report on the feasibility of providing waterway access for recreational purposes when conducting an environmental review of major improvement projects, document whether such a project is in an area identified in any state or local plan as a priority for such access, and ensure consistency with any such plan.

The amended bill requires that any costs to a state highway project, including a major improvement project, due to providing public access to a waterway must be paid for using non-transportation funding, which is defined as funding that has not been collected by the state for a transportation purpose. It also requires the WSDOT, to the greatest extent practicable, to not adversely impact preexisting public access to a waterway when constructing a state highway project.

The amended bill defines major improvement projects as projects that require an environmental impact statement or an environmental assessment under the NEPA, excluding ferry terminals and fully controlled limited access highways.

The amended bill requires a consideration of feasibility to include a description of the suitability of the area for public use and the implications of the access, but a consideration of feasibility may not alter the purpose and need for the proposed project or create a legal obligation to modify access. Any public access provided must be deemed to be recreational.

The amended bill indicates that the act must not be interpreted to delay decision making or approvals on a project or limit the WSDOT's entitlement to recreational immunity.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) In recent years there have been WSDOT bridge projects near important access points to state waterways. The WSDOT often, but not always, makes access a part of the landscaping for the project.

This bill would require that access to waterways be considered, as is already done in certain other states and for trails in Washington. This requirement would apply to all areas of the state, but would only require consideration of access, which could be infeasible in some areas.

Olympic athletes have already trained on Washington waterways thanks to existing highway access. People need to be able to get on and off the waterway in order to use it, and can choose which areas to access if there are more options to do so. Expanded access can be used by emergency responders as well, so it makes sense for the WSDOT to take access into consideration.

(With concerns) New bridges are already required to take a variety of factors into consideration, and access could be included. People already know where the access points are, but the WSDOT would like to know what the access priorities are.

This bill requires various rehabilitation activities to also consider access, and this could be a problem because of the access complexity in otherwise simple projects.

The WSDOT is required to follow the American with Disabilities Act, which could be a challenge for waterway access. Access on the interstates is also a concern due to federal law, and the WSDOT is also concerned about potential liability.

(Opposed) None.

**Persons Testifying:** (In support) Thomas O'Keefe, American Whitewater; and Jennie Goldberg, League of Northwest Whitewater Racers.

(With concerns) Pasco Bakotich, Washington State Department of Transportation.

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