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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, Lias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker, and Brown)

READ FIRST TIME 02/24/15.

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

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

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

1        NEW SECTION.    **Sec. 2.**    The legislature recognizes the value that  
2 tribal governments provide in the review of transportation projects.  
3 The legislature expects the department to continue its efforts to  
4 provide consistent consultation and communication during the  
5 environmental review of proposed transportation projects.

6        NEW SECTION.    **Sec. 3.**    The department must streamline the  
7 permitting process by developing and maintaining positive  
8 relationships with the regulatory agencies and the Indian tribes. The  
9 department can reduce the time it takes to obtain permits by  
10 incorporating impact avoidance and minimization measures into project  
11 design and by developing complete permit applications. To streamline  
12 the permitting process, the department must:

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

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

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

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

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

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

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

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

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

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

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

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

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

27        NEW SECTION.    **Sec. 5.**    The legislature expects the department to  
28 continue its efforts to improve training and compliance. The  
29 department must:

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

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

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

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

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

12 NEW SECTION. **Sec. 6.** The legislature finds that local land use  
13 reviews under chapter 90.58 RCW need to be harmonized with the  
14 efficient accomplishment of necessary maintenance and improvement to  
15 state transportation facilities. Local land use review procedures are  
16 highly variable and pose distinct challenges for linear facility  
17 maintenance and improvement projects sponsored by the department. In  
18 particular, clearer procedures for local permitting under chapter  
19 90.58 RCW are needed to meet the objectives of chapter 36.70A RCW  
20 regarding department facilities designated as essential public  
21 facilities.

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

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

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

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

36 (a) How the engineering error happened;

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

4 (c) What corrective action was taken;

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

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

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

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

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

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

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

25 (3) Results of LEAN efforts;

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

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

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

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

35 (1) The department of transportation, the department of ecology,  
36 and the department of fish and wildlife must use their existing  
37 authorities and guidance to provide a preference for the removal of  
38 existing fish passage barriers owned by cities and counties as

1 compensatory mitigation for environmental impacts of transportation  
2 projects where appropriate.

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

9 (b) The implementation of this framework must:

10 (i) Not delay transportation project delivery;

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

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

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

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

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

25 (vii) Consult the statewide fish passage barrier removal strategy  
26 developed by the fish passage barrier removal board created in RCW  
27 77.95.160 and information provided by affected tribes, salmon  
28 recovery regional organizations, and local entities to identify  
29 specific priority locations where removal of local barriers would  
30 provide a net resource gain; and

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

35 (c) In addition to the framework developed in (b) of this  
36 subsection, the department of transportation, the department of  
37 ecology, and the department of fish and wildlife must develop and  
38 implement an umbrella statewide in lieu fee program or other formal  
39 means to provide a streamlined mechanism to undertake priority local  
40 fish passage barrier corrections throughout the watersheds of the

1 state as a preferred means of compensatory mitigation where  
2 appropriate for state transportation that is consistent with the  
3 principles in (a) and (b) of this subsection.

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

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

12 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of  
14 the state government and its existing public institutions, and takes  
15 effect immediately.

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