
Transportation Committee

HB 1978

Brief Description: Addressing the permitting of certain transportation projects.

Sponsors: Representatives Zeiger, Clibborn, Orcutt, O'Ban, Hargrove, Lias, Fey, Moscoso and Morrell.

Brief Summary of Bill

- Creates a six-step required permitting process for all transportation projects costing more than \$5 million that are undertaken by the Washington State Department of Transportation (WSDOT).
- Establishes procedures for cities, towns, and counties to participate in the new permitting process.
- 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.

Hearing Date: 3/18/13

Staff: David Munnecke (786-7315).

Background:

The Legislature and the Governor formed the Blue Ribbon Commission on Transportation (Commission) in 1998 to assess the local, regional, and state transportation system; ensure that current and future money was spent wisely; make the system more accountable and predictable; and prepare a 20-year plan for funding and investing in the transportation system. The Commission consisted of 46 members representing business, labor, agriculture, tribes, government, ports, shipping, trucking, transit, rail, environmental interests, and the general public. The Commission made 18 recommendations to the Governor and the Legislature.

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.

Recommendation 11 directed the Washington State Department of Transportation (WSDOT) to work toward a goal of one-stop environmental permitting for transportation projects. Pursuant to this recommendation, in 2001 the following projects were made eligible for a streamlined environmental permitting process: designated pilot projects, transportation projects of statewide significance, and projects selected for a programmatic approach by the Transportation Permit Efficiency and Accountability Committee (TPEAC) created in that same act.

The TPEAC was required to assess the application of then current environmental standards and integrate those standards where appropriate. The TPEAC was also required to designate three pilot projects and use a streamlined process for permitting those projects. An interim process for permitting transportation projects of statewide significance applied until the TPEAC adopted integrated standards and best management practices. This process was optional for the WSDOT and specified a six-step process including early involvement of affected agencies, identification of permit requirements, selection of preferred alternatives, coordinated reviews and hearings, and timelines for completing reviews and decisions.

Local governments were given three options for participating in the streamlined process. If a local government elected to be a participating entity, a representative from the local government would be part of the coordinated review of the project. If a local government elected to be an assigning entity, the local government would enter into an agreement with the WSDOT to define the local permit requirements that must be met. If a local government elected not to participate in the coordinated process, the WSDOT would conduct the local permitting process and comply with the provisions of the city and county ordinances.

The legislation establishing TPEAC and the various environmental permitting processes described above expired in 2006.

Summary of Bill:

A required permitting process is created for all transportation projects costing more than \$5 million that are undertaken by the WSDOT. The process consists of the following six steps:

Step 1 – Conceptual Description.

The WSDOT is required to identify project purposes, project locations, and agencies that may have authority to review and approve portions of the project. The WSDOT is also required to develop a preliminary interagency communication list of interested agencies. The first step is completed by providing a summary of the outcome to all agencies on the list and the public.

Step 2 – Early Involvement of Agencies.

Within 30 days of completing step one, each agency involved must be encouraged to identify a primary contact person for the project, its role in the project, alternative project locations for the WSDOT to consider, other agencies that may have an interest, and any other information. The second step is completed by proposing within 10 days after expiration of the 30-day communication period:

- one or more conceptual project designs;
- providing a summary of results including a statement that step two is complete; and
- providing this information to the public.

- Step 3 – Identify Environmental Reviews, Permits and Other Approvals Needed for the Project. After completing step two, the WSDOT must provide notice to agencies and the public and may include a determination of the level of environmental review under the State Environmental Policy Act – an environmental impact statement (EIS), a supplemental environmental impact statement, or an environmental checklist. Within 30 days, each agency involved must be encouraged to identify environmental review procedures, all permits needed, what information the WSDOT must provide for a complete permit application, and all applicable laws, regulations, ordinances, and policies the agency will use in the environmental approval process.

After all the effected agencies have replied, the WSDOT completes step three by adopting within 10 days after expiration of the 30-day communication period:

- a list of all reviews, permits, and approvals needed for the project; and
- providing this information to all involved agencies including a statement that step three is complete, and making the information available to the public.

The list of needed reviews, permits, and approvals is deemed accurate unless a party objects within 30 days of the WSDOT's determination that step three is complete.

Step 4 – Tentative Selection of Preferred Alternative.

At any time after completing step three, the WSDOT must initiate step four by publishing a list of alternatives being considered under the EIS process. Within 14 days, each agency involved must be encouraged to identify, for each alternative, the following:

- its role in approving the project;
- concerns it has regarding each alternative under consideration; and
- recommendations for how its concerns can be addressed, each alternative's rank according to its concerns, and recommendations for which alternatives should be eliminated or carried forward for further review.

The fourth step is completed by the WSDOT selecting a preferred alternative within 10 days after expiration of the comment period, providing all agencies involved a description of the preferred alternative and a determination that step four is complete, and making the information available to the public.

Step 5 – Completing Environmental Reviews and Applications for Permits and Approvals.

At any time after completing step four, the WSDOT must initiate step five by providing notice to effected agencies and the public, and by publishing a draft EIS or supplemental EIS, draft plans and specifications for the project, and draft permit applications. Within 30 days, each agency involved must be encouraged to identify:

- all concerns that have not been resolved to its satisfaction;
- any additional concerns about the project;
- any additional environmental reviews, permits, or approvals needed for the preferred alternative because of changes in laws, regulations, or policies since the last review in step three or four;
- changes in requirements for permit applications; and
- whether the draft permit application is complete, and what additional information, if any, is needed.

The fifth step is completed by finishing some or all environmental review processes and permit applications within 10 days after the 30-day comment period, making the completed documents available to all agencies involved including a statement that step five is complete, and making the completed environmental review documents, including the preferred alternative, available to the public. If objections are filed within 14 days after the information is distributed, the objections must be addressed in subsequent environmental reviews and agency decisions regarding the project.

Step 6 – Completing the Environmental Review, Permit, and Approval Process.

At any time after completing step five, the WSDOT must initiate step six by providing notice to effected agencies and the public, and by filing permit applications and applications for other needed approvals for the project. Within 30 days, each agency involved must be encouraged to:

- acknowledge receipt of each draft and final environmental review document, provide comments, and determine the documents adequacy;
- acknowledge receipt of each application and determine whether it is complete;
- acknowledge that the documents will be processed under the laws, regulations, ordinances, and policies identified in previous steps or specify any changes;
- identify the steps necessary for the agency to reach a final decision on the applications and estimated time needed for processing; and
- identify ways to make the decision-making process more efficient.

Step six is recognized as an iterative process, and all agencies involved are expected and encouraged to communicate on outstanding issues and information needed to approve the project. If all environmental reviews, permits and application approvals are not obtained within 45 days after step six is initiated, the WSDOT may set a deadline for completing these reviews and decisions. At any time after the deadline, the WSDOT can terminate the coordination process if the reviews or decisions are still not complete.

Local Government Participation.

Local governments are given three options for participating in the permitting process. If a local government elects to be a participating entity, a representative from the local government will be part of the coordinated review of the project. If a local government elects to be an assigning entity, the local government will enter into an agreement with the WSDOT to define the local permit requirements that must be met. If a local government elects not to participate in the coordinated process, the WSDOT will conduct the local permitting process, if allowable, and must comply with the provisions of the city and county ordinances. Cities, towns, and counties are not liable for decisions made by the WSDOT that result in failure to comply with any ordinance, except as provided in any interlocal agreement.

Washington State Department of Transportation Requirements.

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. 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, and report noncompliance to applicable agencies. Finally, the WSDOT is required to fund dedicated technical staff at various permit granting departments for both permit granting and auditing.

Appropriation: None.

Fiscal Note: Requested on March 17, 2013.

Effective Date: The bill contains an emergency clause and takes effect immediately.