

# HOUSE BILL REPORT

## HB 1986

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### As Reported by House Committee On: Transportation

**Title:** An act relating to the reporting of highway construction project errors.

**Brief Description:** Requiring the reporting of highway construction project errors.

**Sponsors:** Representatives O'Ban, Rodne, Magendanz, Zeiger, Kristiansen, Klippert and Hayes.

#### **Brief History:**

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

Transportation: 3/18/13, 4/2/13 [DPS].

#### **Brief Summary of Substitute Bill**

- Requires the Washington State Department of Transportation to submit a report to the Legislature on engineering errors in excess of \$500,000.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Clibborn, Chair; Fey, Vice Chair; Liias, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Angel, Bergquist, Farrell, Fitzgibbon, Habib, Hayes, Johnson, Klippert, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Rodne, Sells, Shea, Takko, Tarleton and Zeiger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ryu and Upthegrove.

**Staff:** Alyssa Ball (786-7140).

#### **Background:**

A change order happens when the Washington State Department of Transportation (WSDOT) determines it is necessary to make a change to a contract during the performance of the contract. Typically, change orders are initiated in the following circumstances: (1) as a

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response to unexpected conditions; (2) if there are plan deficiencies, such as errors or omissions; (3) extra or unanticipated necessary work is required; or (4) there are design criteria changes. There is a detailed change order process that the WSDOT must follow outlined in the WSDOT Construction Change Order Process Guide manual. This manual includes provisions on contracting implications, negotiating agreed prices and timing, required documentation, and so forth.

The WSDOT differentiates between minor and major change orders. A minor change is defined as a change value of \$15,000 or less, or any change in working days of 10 days or less, whereas a major change is defined as variations in quantity up to 25 percent above or below proposal quantities. Minor changes follow the regular change order process outlined in the manual. In the case of major overruns, renegotiation of price is available to either party and only units measured in excess of 125 percent of the proposal quantity are eligible for renegotiation.

There is currently no statutory requirement that the WSDOT report errors.

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#### **Summary of Substitute Bill:**

The WSDOT is required to submit a report to the Legislature detailing engineering errors on highway construction projects resulting in errors in excess of \$500,000. An initial report must be submitted within 30 days of an error occurring and a full report must be submitted within 90 days. The full report must include how the error happened, the department of the responsible employee or employees, what corrective action was taken, and what action the Secretary of the WSDOT recommends to avoid similar errors. The Legislature is authorized to take additional correctional action if necessary.

The WSDOT is required to submit a report within 90 days of the bill's effective date of engineering errors on projects currently under construction.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill requires the WSDOT to submit an initial report within 30 days of an error occurring and a full report within 90 days, clarifies that an employee's name cannot be disclosed when providing who was responsible for the engineering error, and requires the WSDOT to submit a report within 90 days of the bill's effective date of engineering errors on projects currently under construction.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute 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) There are competent, fine people working on design engineering at the WSDOT. This bill is about transparency and trying to encourage a real level of accountability at the WSDOT. There are several issues that show why this bill is needed. The public has heard a lot about the State Route 520 Floating Bridge (SR 520) pontoon issue – large cracks were found in the pontoons that are estimated to cost the tax payers an additional \$100 million to retrofit the pontoons and keep them from sinking. Secretary Hammond has stated these were technical design problems by department engineers. There was a design error several years ago on the SR 16/Sprague Exit project where the off ramp was poorly designed and did not meet up with the other side of the bridge. This error cost the tax payers almost \$1 million. The Columbia River Crossing (CRC) has a design defect on the height of the bridge that will block access to the Army Corps of Engineers and other commercial traffic. The design error will cost the tax payers at least \$30 million. There is no requirement for the WSDOT to keep track of the design errors, how much they cost, what corrective action was taken, and how the error can be prevented from happening again. According to information provided from the WSDOT, over the last 10 years, design errors have cost the tax payer \$29 million. These do not include SR 520 or the CRC – if included, the total is \$160 million over the last 10 years. There is a duty to spend the tax payers' dollars in a reasonable and effective manner.

(Neutral) The WSDOT is neutral on the bill, but offers the following observations:

1. The WSDOT actively tracks all changes on a project. In reality, there are relatively few changes on the WSDOT projects which would meet this bill's criteria.
2. The WSDOT already shares issues on projects through the quarterly project reports as well as the Gray Notebook and project websites.
3. The requirements in this bill are all largely in place currently within the WSDOT.
4. The construction change order process requires design errors to be identified. The WSDOT is providing a list of all design-error change orders which have occurred over the past 10 years.
5. The "Lessons Learned" component is largely focused on preventing errors from reoccurring.

(Opposed) Professional Technical Employees Local 17 (Local 17) has concerns on the bill as written, but recognizes, acknowledges, and supports the need for transparency and accountability in these projects. Local 17 would support a process to review errors in order to revise procedures to ensure these errors do not occur again; however, there are concerns with the proposed bill as written in regards to how it addresses disciplinary action. Both the Washington Administrative Code and the collective bargaining process provide for due process for discipline, performance management, and workplace conduct. These are based on progressive discipline with a philosophy to improve performance, yet these provisions also allow for immediate suspension, demotion, or termination should the violation be of an egregious nature, and this has happened within the agency. Local 17 does not support disclosure of the identity of an employee or legislative involvement in completed disciplinary action. Subjecting the already disciplined employee to a second, legislative action is subjecting the employee to some type of double jeopardy.

**Persons Testifying:** (In support) Representative O'Ban, prime sponsor.

(Neutral) Pasco Bakotich, Washington State Department of Transportation.

(Opposed) Vince Oliveri, Professional Technical Employees Local 17.

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