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**SENATE BILL 5996**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators King, Hobbs, Fain, Liias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker, and Brown

AN ACT Relating to Washington state department of transportation projects; amending RCW 47.01.300; adding a new section to chapter 47.01 RCW; adding a new chapter to Title 47 RCW; providing an effective date; providing a contingent effective date; and declaring an emergency.

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

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

NEW SECTION. **Sec.**  (1)(a) The legislature recognizes the opportunity to gain efficiencies by reducing duplication between national and state environmental policy act compliance for state transportation projects.

(b) The department of ecology is directed to update the rules in WAC 197-11-610 for integrating use of national environmental policy act documents in decisions under chapter 43.21C RCW.

(2)(a) The legislature finds that rule-based categorical exemptions to chapter 43.21C RCW applying to transportation maintenance activities have not been updated in recent years.

(b) The department of ecology is directed to update, but not decrease, the rule-based categorical exemptions for transportation maintenance activities in WAC 197-11-800 and 197-11-860.

NEW SECTION. **Sec.**  The department must use the following expedited environmental review and approval process for any transportation project requiring the preparation of an environmental impact statement under the national environmental policy act (42 U.S.C. Sec. 4321 et seq.). State and local agencies with relevant jurisdiction, to the extent practicable and appropriate, as determined by the agencies, must provide technical assistance to the department on accomplishing the project review and coordination activities described in this section.

(1) Step 1: Public and agency involvement in defining the project purpose and scope of environmental review. The department must provide notice to the public that environmental review for the project is being initiated. This notice must reference the notice of intent under the national environmental policy act and explain that this replaces the need for a threshold determination under chapter 43.21C RCW. The department must invite the public, agencies, and tribes to provide input on the project purpose and scope of environmental review. The department must provide a thirty-day comment period. The department may hold one or more meetings to collect input. The department must complete step 1 by: (a) Providing a summary of the results of step 1, including a statement that the department considers step 1 to be complete; and (b) making the summary available to the public. The department must consider the input from the public, agencies, and tribes before finalizing the project purpose and scope of environmental review.

(2) Step 2: Identify participating agencies and convene meetings with an interdisciplinary team.

(a) The department must identify any federal, state, tribal, regional, and local governmental agencies that may have an interest in the project. The department must invite these agencies to serve as participating agencies. The roles and responsibilities of participating agencies include, but are not limited to, identifying potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project. Participating agencies must provide input to the department as the department develops: The scope of environmental analysis, a purpose and need statement, a range of alternatives, methodologies, and the level of detail for the analysis of alternatives. Designation as a participating agency does not indicate project support, but it does give invited agencies opportunities to provide input at key decision points in the process.

(b) The department must form an interdisciplinary team composed of participating agency staff and key technical specialists from the department. Participating agencies must identify key technical or regulatory experts to participate on the project interdisciplinary team. The department must convene at least one meeting with the interdisciplinary team at each of the subsequent steps in order to collaborate on project decisions and milestones.

(3) Step 3: Participating agency involvement during the screening of alternatives.

(a) The department must initiate step 3 by providing notice to participating agencies that the screening of project alternatives has begun. Within thirty days of receiving notification, participating state, county, and city agencies must, and federal agencies are encouraged to, identify:

(i) For each identified alternative: (A) The specific features that the agency considers significant with respect to the agency's role in environmental reviews, permits, or other approvals for the project; (B) the reasons these features are significant; and (C) any concerns the agency may have about the alternative because of potential significant adverse impacts of these features on resources or social policies within the agency's jurisdiction;

(ii) For each feature for which the agency raises concerns: (A) Recommendations on how the potential adverse impacts could be avoided, minimized, and mitigated; and (B) an assessment of the relative ranking of each alternative with respect to whether and to what extent these concerns apply; and

(iii) Other information the participating agency requests the department to consider in deciding whether, when, where, or how to proceed with the project.

(b) The department must consider the input from the participating agencies prior to selecting a preferred project alternative.

(4) Step 4: Participating agency involvement during the identification of environmental permits and approvals, application procedures, and decision standards.

(a) The department, in consultation with the participating agencies, must identify all permits and other approvals the agencies might require for each project alternative.

(b) After consulting with all participating agencies, the department must complete step 4 by compiling a list of all environmental permits and approvals it believes are needed for the project under each alternative being considered.

(5) Step 5: Complete an environmental analysis and issue a draft environmental impact statement. The department must initiate step 5 by providing notice of the availability of the draft environmental impact statement to participating agencies, tribal governments, and the public. Notification must include posting on the state environmental policy act register. State, county, and city agencies must, and federal agencies are encouraged to, provide written comments on the draft environmental impact statement no later than forty-five days after the department posts notice in the state environmental policy act register.

(6) Step 6: Develop a final environmental impact statement. The department must work with the federal lead agency to consider and respond to all substantive comments received during the comment period. The department must evaluate public and agency comments on the draft environmental impact statement to determine if the statement sufficiently identifies and analyzes the impacts and mitigation of the proposed action. The department must engage participating agencies in refining alternatives and completing the environmental review.

(7) Step 7: Issue a final environmental impact statement. The final environmental impact statement must contain: The department's final recommendation and preferred alternative, a summary of the comments received on the draft environmental impact statement and the response, and a description of the procedures required to ensure that mitigation measures are implemented. The department must provide notice of the final environmental impact statement and the federal lead agency's record of decision in the state environmental policy act register.

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

(2) For projects described in section 3 of this act, the department must invite affected tribes to be participating agencies. If tribal governments elect not to participate, the department must make a reasonable effort to: Meet with representatives of affected tribes to review broad issues during scoping, engage in both formal and technical consultation with tribal staff, and seek to resolve issues in parallel with project planning and permitting activities.

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

(1) Continue a multiagency permit program consisting of appropriate regulatory agency staff with oversight and management from the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The department of ecology must convene a work group including the department and local governments to identify procedures to more effectively achieve the objectives of this section.

(2) The work group is tasked with identifying procedures that effectively and efficiently address policy objectives of local shoreline master programs, while avoiding unnecessary time delay and expense for state transportation facility maintenance and improvement.

(3) The work group must consider the widely varying scale and scope of department facility maintenance and improvement projects in identifying appropriate shoreline review procedures.

(4) By August 1, 2015, the department of ecology must provide a report on the outcome of the work group to the appropriate committees of the legislature.

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

**Sec.**  RCW 47.01.300 and 2012 c 62 s 1 are each amended to read as follows:

The department shall, in cooperation with environmental regulatory authorities:

(1) Identify and document environmental resources in the development of the statewide multimodal plan under RCW 47.06.040;

(2) Allow for public comment regarding changes to the criteria used for prioritizing projects under chapter 47.05 RCW before final adoption of the changes by the commission;

(3) Use an environmental review as part of the project prospectus identifying potential environmental impacts, mitigation, the utilization of the mitigation option available in RCW 90.74.040, and costs during the early project identification and selection phase, submit the prospectus to the relevant environmental regulatory authorities, and maintain a record of comments and proposed revisions received from the authorities;

(4) Actively work with the relevant environmental regulatory authorities during the design alternative analysis process and seek written concurrence from the authorities that they agree with the preferred design alternative selected;

(5) Develop a uniform methodology, in consultation with relevant environmental regulatory authorities, for submitting plans and specifications detailing project elements that impact environmental resources, and proposed mitigation measures including the mitigation option available in RCW 90.74.040, to the relevant environmental regulatory authorities during the preliminary specifications and engineering phase of project development;

(6) Use available technologies to minimize permit delays for, inform and interact with interested parties including relevant environmental regulatory authorities regarding, and optimize the effectiveness of proposed compensatory mitigation projects. In addition to the mitigation programs specified in RCW 90.74.040(1)(a), the correction of fish passage barriers on city streets and county roads located within the same watershed as the proposed project must be considered for compensatory mitigation. The department shall consult with the department of fish and wildlife, the appropriate local government, and interested tribes to identify the existing fish passage barriers that, upon removal, will result in the greatest habitat benefit. The department shall submit a report to the transportation committees of the legislature by December 1, 2015, regarding the use and effectiveness of the mitigation option created in this subsection as well as recommendations for improvements;

(7) Screen construction projects to determine which projects will require complex or multiple permits. The permitting authorities shall develop methods for initiating review of the permit applications for the projects before the final design of the projects;

((~~(7)~~)) (8) Conduct special prebid meetings for those projects that are environmentally complex; and

((~~(8)~~)) (9) Review environmental considerations related to particular projects during the preconstruction meeting held with the contractor who is awarded the bid.

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

(1) The department shall 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 five hundred thousand dollars. The department must submit an initial report of an engineering error within thirty days of the engineering error occurring. A full report must be submitted within ninety days of the engineering error occurring.

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

(a) How the engineering error happened;

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

(c) What corrective action was taken;

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

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

(f) What action the secretary has recommended to avoid similar engineering errors in the future. If the legislature finds that the actions taken by the secretary were inadequate, the legislature may take additional action to correct the problem.

(3) Within ninety days of the effective date of this section, a report must be submitted on engineering errors that have occurred on projects that are currently under construction and not yet operationally complete.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 47 RCW.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

NEW SECTION. **Sec.**  This act takes effect only if chapter ... (Senate Bill No. ... (S-1301/15)), Laws of 2015 is enacted by June 30, 2015.

**--- END ---**