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HOUSE BILL 2229

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Romero, Rockefeller, Cooper and Fisher

Read first time 03/30/2001. Referred to Committee on Transportation.

1            AN ACT Relating to environmental permit streamlining for  
2 transportation projects; adding a new section to chapter 43.21A RCW;  
3 adding a new chapter to Title 47 RCW; creating new sections; providing  
4 an expiration date; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    LEGISLATIVE INTENT AND FINDINGS.    The  
7 legislature finds that the public health and safety of its citizens,  
8 natural resources, and the environment are vital interests of the state  
9 that need to be protected and preserved. The legislature further finds  
10 that the safety of the traveling public and the state's economic well-  
11 being are vital interests that depend upon the development of cost-  
12 effective transportation systems that are planned, designed,  
13 constructed, and maintained in an efficient manner.

14            It is the intent of the legislature to demonstrate that state  
15 environmental objectives can be achieved while improving the decision  
16 making and delivery processes of transportation projects. This can be  
17 achieved by improving the working relationship between those charged  
18 with transportation project delivery and those working in resource  
19 agencies charged with environmental protection. It is further the

1 intent of the legislature to both achieve transportation permit reform  
2 to expedite the delivery of transportation projects of statewide  
3 significance and to strive to increase environmental benefits through  
4 a watershed-based approach to aquatic and natural resource management.  
5 In order to optimize the limited resources available for transportation  
6 system improvements and environmental protection, state regulatory and  
7 natural resource agencies, public and private sector interests, Indian  
8 tribes, and the department of transportation must work cooperatively  
9 and with greater trust to establish common goals, minimize project  
10 delays, develop agreed upon standards, and maximize environmental  
11 benefits through coordinated investment strategies, increased certainty  
12 and consistency of actions through the development of agreed upon  
13 environmental standards, and the elimination of duplicative processes.

14 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
15 section apply throughout this chapter unless the context clearly  
16 requires otherwise.

17 (1) "Best available information" means the existing sources of  
18 data, including limiting factors analyses required under chapter 77.85  
19 RCW that can be used to make informed decisions regarding environmental  
20 conditions within a watershed.

21 (2) "Best management practices" means currently available and  
22 generally accepted techniques, including new technologies or strategies  
23 that seek to reduce the negative impacts of transportation facilities,  
24 projects, and services on communities and the environment, and promote  
25 more efficient and effective use of transportation facilities.  
26 Examples include transportation demand management, transportation  
27 systems management, and compensatory mitigation.

28 (3) "Department" means the state department of transportation.

29 (4) "Least cost environmental planning" means the efficient  
30 gathering and use of best available information within a watershed  
31 basin applied to transportation decision making in the planning,  
32 permitting, and mitigation phases of a project.

33 (5) "Low-impact development standards" means techniques,  
34 technologies, or strategies that seek to reduce the negative impact of  
35 transportation facilities, projects, and services on communities and  
36 the environment, and promote more efficient and effective use of  
37 transportation facilities. Examples include transportation demand  
38 management, transportation system management, and smart growth.

1 (6) "One-stop permitting" means a coordinated permitting process  
2 that streamlines environmental review and decision making for  
3 transportation projects by providing concurrent, consolidated review by  
4 each agency required to review and approve the project.

5 (7) "Programmatic agreement" or "general permit" means a regulatory  
6 instrument that outlines permit conditions and obligations for a  
7 variety of similar project activities spanning a watershed ecosystem or  
8 geographically defined boundary that, once entered into by parties,  
9 delineates an applicant's proposed actions over a specific period of  
10 time, and that may be conducted without the necessity of obtaining  
11 individually developed permits for the types of projects identified.  
12 The instruments must comply with all relevant local, state, and federal  
13 standards.

14 (8) "Transportation permit coordination task force" or "task force"  
15 means the task force created in section 3 of this act.

16 (9) "Transportation project of statewide significance" means a  
17 project or combination of projects that transverse multiple city or  
18 county jurisdictional boundaries and are so designated by the  
19 legislature.

20 NEW SECTION. **Sec. 3.** TRANSPORTATION PERMIT COORDINATION TASK  
21 FORCE--CREATED. The transportation permit coordination task force is  
22 created.

23 (1) The task force will consist of one representative appointed by  
24 the secretary of transportation, one member appointed by the director  
25 of ecology, one member appointed by the director of fish and wildlife,  
26 and one member appointed by the governor who will also serve as the  
27 chair of the task force.

28 (2) The task force may seek advice from other persons and may  
29 appoint subcommittees, on an ad hoc basis, to assist with its work.  
30 These appointments may include, but are not limited to, representatives  
31 from interest groups, local governments, tribes, federal regulatory and  
32 transportation agencies, and other governmental entities.

33 (3) The department shall provide administrative and clerical  
34 assistance to the task force. Department of ecology staff costs  
35 associated with the task force are reimbursable under RCW 43.21A.690  
36 and 90.03.265. Department of fish and wildlife staff costs are  
37 reimbursable under RCW 43.300.080.

1        NEW SECTION.    **Sec. 4.**    TASK FORCE--RESPONSIBILITIES.    The task  
2 force shall:

3        (1) Develop concise programmatic environmental standards and best  
4 management practices for low-impact transportation projects that can be  
5 applied with certainty, consistency, and assurance of swift permit  
6 action, while taking into account the varying climate, geomorphologic,  
7 and hydrologic conditions throughout the state and protecting  
8 environmental quality. To achieve this goal, the task force shall:

9        (a) Identify categories of low-impact projects appropriate for  
10 general permits;

11        (b) By March 1, 2002, develop general permits and programmatic  
12 consultation processes for the list of projects developed in (a) of  
13 this subsection;

14        (c) Evaluate the use of planning and permitting standards that  
15 encourage low-impact alternatives and reduce the permit process for  
16 projects that use low-impact development standards;

17        (d) Develop preliminary models and strategies to test how best to  
18 maximize the environmental investment of transportation funds within  
19 the framework of this chapter;

20        (2) Develop and prioritize a list of permit streamlining  
21 opportunities, specifically identifying substantive and procedural  
22 duplications and suggestions for resolving those duplications, and  
23 standard development needs such as developing agreement on state  
24 transportation storm water standards;

25        (3) Assess models to collate and access watershed data to support  
26 early agency involvement and improve environmental protection in  
27 transportation planning and National Environmental Policy Act and State  
28 Environmental Policy Act reviews. At a minimum, this model should use  
29 existing best available information from watershed planning efforts,  
30 lead entities, and regional fisheries enhancement groups to determine  
31 potential mitigation site requirements for project actions within a  
32 watershed. Priority consideration should be given to the use of the  
33 state's alternative mitigation strategy to best link transportation  
34 mitigation needs with local watershed and lead entity project lists;

35        (4) Develop least cost methodology for analyzing environmental  
36 impacts and applying compensatory mitigation consistent with a  
37 watershed-based approach before final design;

38        (5) Review the department's construction project list to determine  
39 which projects can be included in programmatic or general permit

1 agreements. The task force will develop a template for an agreement to  
2 cover those projects;

3 (6) Provide reports to the transportation and environment  
4 committees of the senate and house of representatives by December 1,  
5 2001, and for the next two years.

6 The task force is dissolved and this section expires June 30, 2004.

7 NEW SECTION. **Sec. 5.** REGULATION LIMITS. The departments of  
8 transportation, ecology, and fish and wildlife shall implement  
9 standards of the task force through rules or policy guidance as  
10 appropriate, under existing regulatory authorities. The purpose of  
11 this section is not to increase regulatory requirements or to expand  
12 the jurisdiction of the departments.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21A RCW  
14 to read as follows:

15 ONE-STOP PERMITS PROCESS. (1) By January 1, 2002, the permit  
16 assistance center at the department of ecology, working with the task  
17 force established in section 3 of this act, shall develop and  
18 coordinate a one-stop permitting process for transportation projects.  
19 The process must use interdisciplinary review of transportation  
20 projects to streamline and expedite decision making concerning required  
21 permits. The process must allow sufficient flexibility to be  
22 consistent with the consolidated project permit process required of  
23 local governments under RCW 36.70B.060. The permit assistance center  
24 shall consult with local governments in developing the process that  
25 will address subsections (2), (3), and (4) of this section. Federal  
26 permits identified in this section must be incorporated into the one-  
27 stop process to the maximum extent possible.

28 (2) The one-stop process must include guidelines that address  
29 permit timelines, coordination of environmental analyses under chapter  
30 43.21C RCW (SEPA), coordination of local government reviews and permits  
31 with state and federal requirements, and other measures significant for  
32 expediting and coordinating review of transportation projects of  
33 statewide significance. The process must maximize the flexibility  
34 under current statutes to expedite reviews, eliminate duplicative  
35 processes, integrate concurrent permit reviews, and must address:

36 (a) Developing a uniform methodology for plan submittal that  
37 details project elements that impact environmental resources and

1 proposed mitigation measures for use during the preliminary  
2 specifications and engineering phase of project development;

3 (b) Coordinating public notice and comment procedures with the  
4 objective of providing a single notice and a consolidated public  
5 hearing on all applicable state permits and right-of-way agreements;

6 (c) Specified time frames, including time limits for screening the  
7 application for completeness and for other critical milestones;

8 (d) Providing for concurrent rather than sequential review of  
9 permits and agreements; and

10 (e) Funding or other assistance to the permitting agencies to avoid  
11 increasing permitting delays for other applicants.

12 (3) At a minimum, the one-stop permitting process for  
13 transportation projects must address permits or leases issued under the  
14 following: Permit or certifications under the Federal Clean Water Act,  
15 sections 401, 402, and 404; section 10 of the Rivers and Harbors Act;  
16 substantial development permits under chapter 90.58 RCW; water quality  
17 permits under chapter 90.48 RCW; hydraulic project approvals under  
18 chapter 77.55 RCW; applicable permits issued under the Growth  
19 Management Act, chapter 36.70A RCW; and aquatic leases issued under  
20 chapter 79.94 RCW.

21 (4) The permit assistance center shall develop a dispute resolution  
22 process to resolve conflicts in interpretation of environmental  
23 standards and best management practices, mitigation requirements,  
24 permit requirements, and other related issues. Every effort to include  
25 federal agencies in the dispute resolution process must be made. A  
26 list of ongoing disputed issues must be included in the task force's  
27 report to the legislature.

28 (5) If a project is designated by the legislature as a  
29 transportation project of statewide significance, all local governments  
30 and state agencies with regulatory or leasing authority must  
31 participate in the one-stop permitting process for that project. Local  
32 governments participating in the one-stop permitting process are  
33 eligible for cost reimbursement.

34 (6) The department of transportation or other sponsor of a major  
35 transportation project shall be given a high priority when the sponsor  
36 seeks to enter a cost-reimbursement agreement to accomplish permit or  
37 lease coordination and expedited review by the following state  
38 agencies:

1 (a) The department of ecology, under the cost-reimbursement  
2 authority of RCW 43.21A.690 and 90.03.265;

3 (b) The department of natural resources, under the cost-  
4 reimbursement authority of RCW 43.30.420; and

5 (c) The department of fish and wildlife, under the cost-  
6 reimbursement authority of RCW 43.300.080.

7 NEW SECTION. **Sec. 7.** PILOT PROJECTS. The legislature finds that  
8 comprehensive environmental permitting between agencies, tribes, and  
9 other interested parties that focuses on concise design standards and  
10 a commitment to expedited permit decisions will minimize duplicative  
11 and time-consuming permit processes while achieving enhanced  
12 environmental benefit. To this end, the permit assistance center at  
13 the department of ecology shall coordinate teams to conduct three  
14 permit reform pilot projects. The pilot projects must:

15 (1) Include a mix of projects and areas to encompass:

16 (a) A significant project in a congested urbanized area that is  
17 nearly fully built upon;

18 (b) Projects that can be grouped for geographic permitting related  
19 to a watershed or watersheds and salmon recovery area in an area  
20 located west of the Cascade range;

21 (c) Projects that can be grouped for geographic permitting related  
22 to eastern Washington watersheds and salmon recovery area in an area  
23 located east of the Cascade range;

24 (2) Implement and monitor the one-stop permit process to:

25 (a) Link expedited permit decision making to best available  
26 information in a basin;

27 (b) Link the investment strategy and priorities of the department  
28 with the mitigation needs of the watersheds in the pilot areas;

29 (3) Give consideration to flexible approaches that maximize the  
30 benefits of transportation and environmental investments;

31 (4) Provide a preliminary report to the legislature by December 1,  
32 2001, a second report by December 1, 2002, and a final report by  
33 December 1, 2003, on the policies developed and actions taken under  
34 this section and section 6 of this act.

35 NEW SECTION. **Sec. 8.** DELEGATION OF FEDERAL PERMITTING AUTHORITY.

36 (1) The governor shall seek federal delegation to the state of the  
37 following authority: Section 404 permit authority under the federal

1 Clean Water Act; nonfederal lead agency status under the Federal  
2 Endangered Species Act, 16 U.S.C. Sec. 1535; and other appropriate  
3 authority.

4 (2) The governor shall provide a report to the transportation and  
5 environment committees of the senate and house of representatives by  
6 December 1, 2001, regarding the requirements and implications of the  
7 state receipt of delegated authority to administer the wetlands  
8 discharge permit program under section 404 of the federal Clean Water  
9 Act, 33 U.S.C. Sec. 1344. The report must address:

10 (a) What authorities for a state-administered wetlands regulatory  
11 permit program are required for approval of the delegation, and  
12 legislation needed to implement the authority;

13 (b) The fiscal and staff resources necessary to administer such a  
14 program, including permit fees or other funding sources;

15 (c) Implications of seeking delegation for certain categories of  
16 projects; and

17 (d) Alternatives to full delegation that may accomplish the primary  
18 objective of coordinating expediting concurrent state and federal  
19 regulatory approvals of transportation projects affecting waters of the  
20 state.

21 NEW SECTION. **Sec. 9.** Sections 1 through 5 of this act constitute  
22 a new chapter in Title 47 RCW.

23 NEW SECTION. **Sec. 10.** The department of transportation shall use  
24 funds appropriated in the 2001-2003 biennial transportation budget to  
25 implement this act to fund or provide other assistance for permitting  
26 agencies, both state and local, for activities to carry out the  
27 purposes of this act.

28 NEW SECTION. **Sec. 11.** Section captions used in this act are not  
29 any part of the law.

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

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