
SUBSTITUTE SENATE BILL 5742

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Vognild, Newhouse, Snyder, Bauer, Barr, Owen, Sellar, Loveland, Jesernig, Anderson, Winsley, Hochstatter, West, Sutherland, Sheldon, M. Rasmussen, Haugen, Hargrove, Moore, Bluechel and Oke)

Read first time 03/03/93.

1 AN ACT Relating to transportation facilities crossing boundaries of
2 multiple jurisdictions; adding new sections to chapter 47.04 RCW;
3 adding a new section to chapter 44.40 RCW; adding a new section to
4 chapter 18.104 RCW; adding a new section to chapter 36.70 RCW; adding
5 a new section to chapter 36.70A RCW; adding a new section to chapter
6 43.20A RCW; adding a new section to chapter 43.21A RCW; adding a new
7 section to chapter 43.27A RCW; adding a new section to chapter 70.94
8 RCW; adding a new section to chapter 70.105 RCW; adding a new section
9 to chapter 75.20 RCW; adding a new section to chapter 76.04 RCW; adding
10 a new section to chapter 76.09 RCW; adding a new section to chapter
11 78.44 RCW; adding a new section to chapter 86.16 RCW; adding a new
12 section to chapter 90.03 RCW; adding a new section to chapter 90.14
13 RCW; adding a new section to chapter 90.16 RCW; adding a new section to
14 chapter 90.22 RCW; adding a new section to chapter 90.44 RCW; adding a
15 new section to chapter 90.48 RCW; adding a new section to chapter 90.54
16 RCW; adding a new section to chapter 90.58 RCW; and creating a new
17 section.

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

1 NEW SECTION. **Sec. 1.** It is the intent of the legislature that
2 state transportation projects be constructed in such a way as to
3 preserve the natural environment to the greatest extent practical.
4 This goal is best achieved when environmental concerns are considered
5 at an early stage of planning state transportation projects. Early
6 incorporation of environmental considerations is currently difficult
7 due to lack of consistency and coordination between the numerous state
8 and local agencies issuing permits to the department of transportation.
9 Permit requirements are often duplicative, conflicting, and time-
10 consuming, which result in costly delays of transportation projects.

11 Further, early incorporation of environmental factors in project
12 development is difficult since many permitting agencies do not consider
13 permit applications until a project has been substantially designed.
14 On average, seventy-five percent of project development is complete at
15 the time a permit is applied for. At this stage, project alterations
16 required by permitting agencies result in costly delays.

17 Therefore, the legislature finds it necessary to provide for more
18 efficient and expeditious environmental review of state transportation
19 projects. The legislature intends that a series of processes be
20 developed to ensure timely and coordinated issuance of state and local
21 permits. These include: (1) Earlier and more extensive involvement by
22 affected regulatory agencies in the project selection process; (2)
23 earlier and more extensive involvement by affected regulatory agencies
24 in project design alternatives; (3) development and adoption of
25 environmental policies and procedures; and (4) development of a
26 conditional permit application process.

27 NEW SECTION. **Sec. 2.** For purposes of sections 3 through 8 of this
28 act, a "conditional permit" means the application made by the
29 department to all affected regulatory agencies in the early design
30 stages of project development. The department must obtain conditional
31 permit approval for those projects requiring formal permit application.
32 The contents of a conditional permit are set forth in section 8 of this
33 act.

34 NEW SECTION. **Sec. 3.** The department shall convene an
35 environmental policies committee comprised of a multidisciplined body
36 of environmental and transportation experts. Members of the committee
37 shall include, but not necessarily be limited to, the directors or

1 designees of the departments of transportation, ecology, fisheries,
2 wildlife, and natural resources, the Puget Sound water quality
3 authority, representatives from urban and rural cities and counties,
4 representatives from regional transportation planning organizations,
5 and tribal governments.

6 NEW SECTION. **Sec. 4.** The environmental policies committee shall:

7 (1) Develop environmental policies and procedures that shall be
8 incorporated into the construction and maintenance programs of the
9 department. These policies and procedures may be tailored to meet the
10 environmental and transportation needs of a particular region;

11 (2) Develop policies and procedures for, but not be limited to,
12 erosion controls; geotechnical investigations; wetlands mitigation and
13 enhancement; management of storm water runoff; flood controls;
14 handling, mixing, storing, transporting, and disposing of hazardous or
15 dangerous materials, including sediments; pesticide usage; storage and
16 use of deicing agents; prevention and mitigation of noise; and
17 protection of fish and wildlife habitat. To the extent practicable,
18 best management practices shall be defined for each environmental
19 concern and shall be incorporated into the proposed policies and
20 procedures;

21 (3) Develop policies and procedures to ensure uniform application
22 requirements for substantial development permits required under the
23 Shoreline Management Act, chapter 90.58 RCW. These policies and
24 procedures shall be submitted to and acted upon by the department of
25 ecology;

26 (4) Develop policies and procedures to ensure uniform application
27 requirements for hydraulic project approvals as required by chapter
28 75.20 RCW. These policies and procedures shall be submitted to and
29 acted upon by the departments of fisheries and wildlife;

30 (5) Develop recommendations for improving permitting processes and
31 procedures. Recommendations shall also be made for resolving permit
32 disputes;

33 (6) Monitor implementation of the conditional permit application
34 process set forth in section 8 of this act and make recommendations
35 regarding changes to that section.

36 If Senate Bill No. 5572 of 1993 becomes law, the committee shall
37 incorporate the findings and recommendations provided in it.

1 NEW SECTION. **Sec. 5.** The department shall periodically, but not
2 less than semiannually, present the findings and any recommendations of
3 the environmental policies committee to the transportation commission.
4 The commission shall adopt by formal resolution those policies and
5 procedures it deems appropriate to apply to the design, maintenance,
6 and construction activities of the department. The commission shall
7 hold its meetings in compliance with chapter 42.30 RCW. After adoption
8 of environmental policies and procedures by the commission, the
9 department shall adopt rules in accordance with the Administrative
10 Procedure Act, chapter 34.05 RCW.

11 NEW SECTION. **Sec. 6.** In the process of developing both biennial
12 and six-year construction programs, including specific project lists,
13 the department shall actively seek input from the general public and
14 agencies with regulatory jurisdiction. The department shall develop a
15 method or methods for documenting the input and for demonstrating that
16 the input was considered at the earliest stages of program and project
17 development. Further, when applicable, the department shall document
18 that more than one solution to the identified transportation problem
19 was considered. The department shall also document whether proposed
20 projects are consistent with county, city, and town comprehensive plans
21 as well as regional transportation plans. To the extent practicable,
22 affected jurisdictions and regulatory agencies shall identify critical
23 environmental issues.

24 After projects have been prioritized in accordance with chapter
25 47.05 RCW, and funds for the projects have been appropriated by the
26 legislature, the final list of projects shall be submitted to each
27 affected jurisdiction and regulatory agency.

28 NEW SECTION. **Sec. 7.** For those projects requiring formal permit
29 applications, the department shall actively solicit early and
30 continuous participation from the public and agencies with
31 jurisdiction, in the development of project design alternatives.
32 Variances from the policies and procedures adopted under section 5 of
33 this act may be negotiated during the design alternatives phase of
34 project development.

35 NEW SECTION. **Sec. 8.** The department and the permit-granting
36 agencies shall adhere to the following schedule:

1 (1) The department shall seek conditional permit approval from the
2 relevant permit-granting agencies upon submittal of a standardized
3 project draft design report and documentation required under the State
4 Environmental Policy Act, chapter 43.21C RCW. For purposes of this
5 section, state and local permitting agencies may require only the
6 following information in a project design report:

7 (a) A statement describing the specific need for the project;

8 (b) A description of the design alternatives considered, and the
9 reasons for selecting the preferred alternative;

10 (c) Conceptual designs for those project elements required to
11 mitigate environmental impacts;

12 (d) Descriptions, tables, and charts necessary to explain the costs
13 of project construction;

14 (e) A statement that the design conforms to the environmental
15 policies and procedures adopted under section 5 of this act, or a
16 detailed explanation of the reasons for deviation from those policies
17 and procedures; and

18 (f) A description of required project maintenance.

19 (2) Permit-granting agencies shall respond to the identified
20 environmental impacts and proposed mitigations contained within the
21 SEPA document and draft design report within forty-five days from the
22 receipt of documents identified in subsection (1) of this section.
23 Failure to respond within the statutory time period constitutes
24 approval for a conditional permit for the proposed project.

25 (3) The department shall then respond to the concerns identified by
26 the relevant permit-granting agencies within thirty days and resubmit
27 the design report, together with any modifications, to the permit-
28 granting agencies. The design report is considered full and complete
29 upon resubmittal by the department to the permit-granting agencies.

30 (4) Once the design report is full and complete under subsection
31 (3) of this section, within fifteen days the permit-granting agency
32 shall either: (a) Grant conditional permit approval; (b) grant
33 conditional permit approval, with the permit-granting agency accepting
34 responsibility for costs in excess of those agreed upon in the final
35 design report; or (c) deny conditional permit approval.

36 (5) If a permitting agency denies conditional permit approval,
37 the denial must be accompanied by a description of the legal grounds
38 for the denial. The transportation district administrator, secretary
39 of transportation, or a designee shall make every effort to resolve a

1 dispute informally with the appropriate public works and planning
2 directors, directors of state regulatory agencies, and other relevant
3 parties. However, if the dispute cannot be resolved, the department
4 shall cease all design and planning for the project. The department
5 may appeal denial of the permit application to the Thurston county
6 superior court. The court shall review the permit application de novo.
7 The court shall presume the permit application to be complete and in
8 compliance, and the permit-granting agency has the burden of proving
9 noncompliance.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 44.40 RCW
11 to read as follows:

12 (1) The legislative transportation committee may recommend waiver
13 of all permits required by state and local agencies for those state
14 transportation projects found to be immediately necessary for the
15 health, safety, or welfare of the traveling public. The legislative
16 transportation committee shall, after a public hearing, make the
17 determinations of necessity by formal resolution, and shall forward its
18 recommendations to the governor.

19 (2) Upon receipt of a recommendation by the legislative
20 transportation committee, the governor may order that state and local
21 permit requirements be waived for those projects found to be
22 immediately necessary for the health, safety, and welfare of the
23 traveling public.

24 (3) The waiver provided for in subsection (1) of this section may
25 be granted after considering environmental and economic impacts, safety
26 needs, whether the final project design is complete and has been
27 approved by the department of transportation or the federal highway
28 administration, whether the accident rate exceeds state-wide average,
29 and whether the project conforms to the relevant regional
30 transportation plan.

31 (4) For those projects designated under subsection (1) of this
32 section, the department of transportation shall notify all affected
33 entities of the legislative transportation committee's findings and
34 inform the entity that under this chapter, all permit requirements and
35 land use standards have been waived.

36 (5) For all state transportation projects selected for waiver under
37 subsection (1) of this section, the department of transportation shall,
38 to the maximum extent practicable, use best management practices to

1 adhere to those land use and environmental standards that otherwise
2 would have been required by state and local agencies.

3 (6) This section does not relieve the department of transportation
4 from those permits required under federal law.

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 18.104
6 RCW to read as follows:

7 This chapter is subject to waiver by section 9 of this act.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.70 RCW
9 to read as follows:

10 This chapter is subject to waiver by section 9 of this act.

11 NEW SECTION. **Sec. 12.** A new section is added to chapter 36.70A
12 RCW to read as follows:

13 This chapter is subject to waiver by section 9 of this act.

14 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.20A
15 RCW to read as follows:

16 This chapter is subject to waiver by section 9 of this act.

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

19 This chapter is subject to waiver by section 9 of this act.

20 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.27A
21 RCW to read as follows:

22 This chapter is subject to waiver by section 9 of this act.

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.94 RCW
24 to read as follows:

25 This chapter is subject to waiver by section 9 of this act.

26 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.105
27 RCW to read as follows:

28 This chapter is subject to waiver by section 9 of this act.

29 NEW SECTION. **Sec. 18.** A new section is added to chapter 75.20 RCW
30 to read as follows:

1 This chapter is subject to waiver by section 9 of this act.

2 NEW SECTION. **Sec. 19.** A new section is added to chapter 76.04 RCW
3 to read as follows:

4 This chapter is subject to waiver by section 9 of this act.

5 NEW SECTION. **Sec. 20.** A new section is added to chapter 76.09 RCW
6 to read as follows:

7 This chapter is subject to waiver by section 9 of this act.

8 NEW SECTION. **Sec. 21.** A new section is added to chapter 78.44 RCW
9 to read as follows:

10 This chapter is subject to waiver by section 9 of this act.

11 NEW SECTION. **Sec. 22.** A new section is added to chapter 86.16 RCW
12 to read as follows:

13 This chapter is subject to waiver by section 9 of this act.

14 NEW SECTION. **Sec. 23.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 This chapter is subject to waiver by section 9 of this act.

17 NEW SECTION. **Sec. 24.** A new section is added to chapter 90.14 RCW
18 to read as follows:

19 This chapter is subject to waiver by section 9 of this act.

20 NEW SECTION. **Sec. 25.** A new section is added to chapter 90.16 RCW
21 to read as follows:

22 This chapter is subject to waiver by section 9 of this act.

23 NEW SECTION. **Sec. 26.** A new section is added to chapter 90.22 RCW
24 to read as follows:

25 This chapter is subject to waiver by section 9 of this act.

26 NEW SECTION. **Sec. 27.** A new section is added to chapter 90.44 RCW
27 to read as follows:

28 This chapter is subject to waiver by section 9 of this act.

1 NEW SECTION. **Sec. 28.** A new section is added to chapter 90.48 RCW
2 to read as follows:

3 This chapter is subject to waiver by section 9 of this act.

4 NEW SECTION. **Sec. 29.** A new section is added to chapter 90.54 RCW
5 to read as follows:

6 This chapter is subject to waiver by section 9 of this act.

7 NEW SECTION. **Sec. 30.** A new section is added to chapter 90.58 RCW
8 to read as follows:

9 This chapter is subject to waiver by section 9 of this act.

10 NEW SECTION. **Sec. 31.** Sections 1 through 8 of this act are added
11 to chapter 47.04 RCW.

--- END ---