
ENGROSSED SUBSTITUTE SENATE BILL 5996

State of Washington

64th Legislature

2015 Regular Session

By Senate Transportation (originally sponsored by Senators King, Hobbs, Fain, Lias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker, and Brown)

READ FIRST TIME 02/24/15.

1 AN ACT Relating to Washington state department of transportation
2 projects; adding a new section to chapter 47.01 RCW; adding a new
3 chapter to Title 47 RCW; creating new sections; providing an
4 effective date; providing a contingent effective date; and declaring
5 an emergency.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 achieve transportation regulatory reform that expedites the delivery
9 of transportation projects through a streamlined approach to
10 environmental decision making. The department of transportation
11 should work cooperatively and proactively with state regulatory and
12 natural resource agencies, public and private sector interests, and
13 Indian tribes to avoid project delays. The department and state
14 regulatory and natural resource agencies should continue to implement
15 and improve upon the successful policies, guidance, tools, and
16 procedures that were created as a result of transportation permit
17 efficiency and accountability committee efforts. The department
18 should expedite project delivery and routine maintenance activities
19 through the use of programmatic agreements and permits where possible
20 and seek new opportunities to eliminate duplicative processes.

1 NEW SECTION. **Sec. 2.** The legislature recognizes the value that
2 tribal governments provide in the review of transportation projects.
3 The legislature expects the department to continue its efforts to
4 provide consistent consultation and communication during the
5 environmental review of proposed transportation projects.

6 NEW SECTION. **Sec. 3.** The department must streamline the
7 permitting process by developing and maintaining positive
8 relationships with the regulatory agencies and the Indian tribes. The
9 department can reduce the time it takes to obtain permits by
10 incorporating impact avoidance and minimization measures into project
11 design and by developing complete permit applications. To streamline
12 the permitting process, the department must:

13 (1) Implement a multiagency permit program, commensurate with
14 program funding levels, consisting of appropriate regulatory agency
15 staff with oversight and management from the department.

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

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

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

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

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

1 NEW SECTION. **Sec. 4.** The legislature finds that an essential
2 component of streamlined permit decision making is the ability of the
3 department to demonstrate the capacity to meet environmental
4 responsibilities. Therefore, the legislature directs that:

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

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

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

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

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

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

27 NEW SECTION. **Sec. 5.** The legislature expects the department to
28 continue its efforts to improve training and compliance. The
29 department must:

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

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

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

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

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

12 NEW SECTION. **Sec. 6.** The legislature finds that local land use
13 reviews under chapter 90.58 RCW need to be harmonized with the
14 efficient accomplishment of necessary maintenance and improvement to
15 state transportation facilities. Local land use review procedures are
16 highly variable and pose distinct challenges for linear facility
17 maintenance and improvement projects sponsored by the department. In
18 particular, clearer procedures for local permitting under chapter
19 90.58 RCW are needed to meet the objectives of chapter 36.70A RCW
20 regarding department facilities designated as essential public
21 facilities.

22 NEW SECTION. **Sec. 7.** Nothing in this chapter may be interpreted
23 to create a private right of action or right of review. Judicial
24 review of the department's environmental review is limited to that
25 available under chapter 43.21C RCW or applicable federal law.

26 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.01
27 RCW to read as follows:

28 (1) The department shall submit a report to the transportation
29 committees of the legislature detailing engineering errors on highway
30 construction projects resulting in project cost increases in excess
31 of five hundred thousand dollars. The department must submit a full
32 report within ninety days of the negotiated change order resulting
33 from the engineering error.

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

36 (a) How the engineering error happened;

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

4 (c) What corrective action was taken;

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

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

9 (f) What action the secretary has recommended to avoid similar
10 engineering errors in the future.

11 NEW SECTION. **Sec. 9.** Beginning in 2015-2017, the department of
12 transportation shall include in the department of transportation
13 "Grey Notebook" (the department's data driven performance-based
14 reporting structure) and provide an annual agency "LEAN & Performance
15 & Accountability Report." A summary of this report must be provided
16 annually to the office of financial management and the joint
17 transportation committee of the legislature. This report must include
18 progress made on achieving:

19 (1) Criteria to prioritize asset management for maintenance,
20 preservation, and capital improvements according to the legislatively
21 mandated transportation goals;

22 (2) The agency's strategic core values, goals, and outcomes to
23 meet the legislatively mandated goals;

24 (3) Results of LEAN efforts;

25 (4) Challenges in sustainable approaches to meeting statutory
26 policy goals;

27 (5) Status on specific reforms initiated by the secretary of the
28 department of transportation and operational effectiveness; and

29 (6) Completion of a Baldrige assessment every three years with a
30 goal of achieving a score of sixty percent within seven years of the
31 first assessment.

32 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act
33 constitute a new chapter in Title 47 RCW.

34 NEW SECTION. **Sec. 11.** The provisions of this act apply to
35 projects identified as connecting Washington projects and supported
36 by revenues generated under chapter ... (Substitute Senate Bill No.
37 5987), Laws of 2015.

1 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect July 1, 2015.

5 NEW SECTION. **Sec. 13.** This act takes effect only if chapter ...
6 (Substitute Senate Bill No. 5987), Laws of 2015 is enacted by June
7 30, 2015.

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