

HOUSE BILL REPORT

ESHB 1978

As Passed House:
April 18, 2013

Title: An act relating to permitting certain transportation projects.

Brief Description: Addressing the permitting of certain transportation projects.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Zeiger, Clibborn, Orcutt, O'Ban, Hargrove, Liias, Fey, Moscoso and Morrell).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 4/18/13, 93-1.

Brief Summary of Engrossed Substitute Bill

- Creates a seven-step required permitting process for all transportation projects undertaken by the Washington State Department of Transportation (WSDOT) that require the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act.
- Requires the Department of Ecology to undertake rule-making and convene a work group regarding local permitting of transportation projects under the Shoreline Management Act.
- Directs the WSDOT to continue using the multiagency permit program and places various requirements upon the staff and the program.
- Requires the WSDOT environmental staff to develop all environmental documentation and oversee project work in order to insure environmental compliance.
- Creates various training, design, and funding requirements related to environmental permitting.

HOUSE COMMITTEE ON TRANSPORTATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 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, Ryu, Sells, Takko, Tarleton, Upthegrove and Zeiger.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: David Munnecke (786-7315).

Background:

The Legislature and the Governor formed the Blue Ribbon Commission on Transportation (Commission) in 1998 to: assess the local, regional, and state transportation system; ensure that current and future money was spent wisely; make the system more accountable and predictable; and prepare a 20-year plan for funding and investing in the transportation system. The Commission consisted of 46 members representing business, labor, agriculture, tribes, government, ports, shipping, trucking, transit, rail, environmental interests, and the general public. The Commission made 18 recommendations to the Governor and the Legislature.

Transportation Permit Efficiency and Accountability Committee.

Recommendation 11 directed the Washington State Department of Transportation (WSDOT) to work toward a goal of one-stop environmental permitting for transportation projects. Pursuant to this recommendation, in 2001 the following projects were made eligible for a streamlined environmental permitting process: designated pilot projects, transportation projects of statewide significance, and projects selected for a programmatic approach by the Transportation Permit Efficiency and Accountability Committee (TPEAC) created in that same act.

The TPEAC was required to assess the application of then current environmental standards and integrate those standards where appropriate. The TPEAC was also required to designate three pilot projects and use a streamlined process for permitting those projects. An interim process for permitting transportation projects of statewide significance applied until the TPEAC adopted integrated standards and best management practices. This process was optional for the WSDOT and specified a six-step process including early involvement of affected agencies, identification of permit requirements, selection of preferred alternatives, coordinated reviews and hearings, and timelines for completing reviews and decisions.

The legislation establishing the TPEAC and the various environmental permitting processes described above expired in 2006.

The Shoreline Management Act.

The Shoreline Management Act of 1971 (SMA) governs uses of state shorelines. The SMA enunciates state policy to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and

enjoyment and creates preference criteria listed in prioritized order that must be used by state and local governments in regulating shoreline uses.

The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in city and county shoreline master programs that regulate land use activities in shoreline areas of the state. Each local government is charged with establishing a program for the administration and enforcement of a shoreline permit system. While the SMA specifies standards for local governments to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Local governments, however, must notify the Department of Ecology (DOE) of all the SMA permit decisions.

The SMA requires a property owner or developer to obtain a substantial development permit for substantial developments within shoreline areas. "Substantial developments" are defined to include both developments with a total cost or fair market value exceeding \$5,718 and developments materially interfering with normal public shoreline or water use. Certain exemptions to the substantial development permit requirement are specified in statute.

The permit review and approval standards generally specify that a local permit system must include provisions to assure that construction on a project may not begin or be authorized until 21 days from the date of filing, which is defined as the date of receipt by the DOE of the local government's decision, or until all review proceedings are terminated.

Summary of Engrossed Substitute Bill:

An environmental review and approval process for the WSDOT is created for any transportation project that requires the preparation of an environmental impact statement (EIS) under the National Environmental Policy Act, which consists of the following seven steps:

Step 1: Public and Agency Involvement in Defining the Purpose and Scope of Environmental Review.

The first step in the process requires notice to the public, an invitation to provide input to various parties, and a 30-day comment period. Input from the parties must be considered in finalizing the purpose and scope of environmental review.

Step 2: Identify Participating Agencies and Convene Meeting with an Interdisciplinary Team.

This step requires the identification of any governmental agencies with an interest in the project and an invitation to these agencies to serve as participating agencies, in order to provide input on various aspects of the review. This step also requires the formation of interdisciplinary teams consisting of participating agency staff and the WSDOT technical specialists which must convene during each subsequent step.

Step 3: Participating Agency Involvement During the Screening of Alternatives.

This step is initiated by providing notice to participating agencies that the screening of project alternatives has begun. Within 30 days of receiving notification, participating agencies must identify: 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; the reasons these features are significant; and 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. For each feature for which an agency raises concerns, they must identify: recommendations on how the potential adverse impacts could be avoided, minimized, and mitigated; and an assessment of the relative ranking of each alternative with respect to whether and to what extent these concerns apply; and other information the participating agency requests the WSDOT to consider in deciding whether, when, where, or how to proceed with the project.

Step 4: Participating Agency Involvement During the Identification of Environmental Permits and Approvals, Application Procedures, and Decision Standards.

For this step, the WSDOT, in consultation with the participating agencies, must identify all permits and other approvals the agencies might require for each project alternative. Also, after consulting with all participating agencies, the WSDOT completes this step by compiling a list of all environmental permits and approvals it believes are needed for the project under each alternative being considered.

Step 5: Complete an Environmental Analysis and Issue a Draft Environmental Impact Statement.

The WSDOT initiates this step by providing notice of the availability of the draft EIS 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 EIS no later than 45 days after the WSDOT posts notice in the State Environmental Policy Act register (register).

Step 6: Develop a Final Environmental Impact Statement.

The WSDOT must work with the federal lead agency to consider and respond to all substantive comments received during the comment period. The WSDOT must also evaluate public and agency comments on the draft EIS to determine if the statement sufficiently identifies and analyzes the impacts and mitigation of the proposed action. The WSDOT must engage participating agencies in refining alternatives and completing the environmental review.

Step 7: Issue a Final Environmental Impact Statement.

The final EIS must contain: the WSDOT's final recommendation and preferred alternative, a summary of the comments received on the draft EIS and the response, and a description of the procedures required to ensure that mitigation measures are implemented. The WSDOT must provide notice of the final EIS and the federal lead agency's record of decision in the register.

Washington State Department of Transportation Requirements.

The WSDOT is required to invite affected tribes to participate in the review process and make reasonable efforts to engage with tribes that choose not to participate.

The WSDOT is directed to continue using the multiagency permit program, which must provide early project coordination, expedited project review, project status updates, technical

and regulatory guidance, and construction support. The multiagency permit program staff is required to assist with project mitigation and assessments, establish programmatic agreements, develop permit application guidance, and perform quality assurance regarding these functions. The multiagency permit program staff is also required to collaborate with federal staff from various agencies to develop, implement, and maintain complete permit application guidance.

The WSDOT environmental staff, or consultants hired by the WSDOT, are required to develop all environmental documentation, conduct prebid meetings for environmentally complex projects, review environmental considerations with the selected contractor, and oversee project work in order to insure environmental compliance. These staff must notify the WSDOT project engineer of noncompliance with permit conditions or environmental regulations and notify regulatory agencies of noncompliance. Upon notification, the WSDOT project engineer must order the contractor to halt nonconforming work and bring the project into compliance.

The WSDOT is also required to provide training in environmental procedures and permit requirements, require wetland mitigation sites to be designed by a qualified interdisciplinary team, develop an environmental compliance data system, continue to implement the environmental compliance assurance procedure, and report noncompliance.

Department of Ecology Requirements.

The DOE is directed to update the rules for integrating national environmental policy documents into State Environmental Policy Act decisions and for rule-based categorical exemptions for transportation maintenance activities. The DOE is also directed to convene a work group to identify clearer procedures for local permitting of transportation projects under the SMA, with a report due to the Legislature by December 1, 2013.

The bill creates a new chapter in Title 47. Nothing in the chapter created by the act creates a private right of action or review.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 11, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to streamline the permitting process, which is expensive and lengthy. It is very important to make this process more efficient, while continuing to maintain high environmental standards.

It took almost 15 years to complete the environmental permitting process for the 520 bridge. Once it was complete there were numerous appeals to the Shoreline Hearings Board, and the Legislature ultimately stepped in and exempted the 520 bridge from certain aspects of the SMA.

Through this bill, the state would use the TPEAC process that was created in 2001, and continues to be used through the Moving Ahead for Progress in the 21st Century (MAP-21) process. The process created in this bill would apply to all projects costing \$5 million or more.

(In support with concerns) It is important to streamline the environmental permitting process so that it can move more quickly. The TPEAC process was developed 10 years ago and was used successfully on the Hood Canal bridge replacement and a bridge project in Yakima.

(Opposed) Regulatory reform needs to occur and the permitting system needs to be more efficient, but we do not want to undermine the effectiveness of the permitting process.

The TPEAC is a complex process that might actually be less efficient. It could undermine public involvement because of the volume of information and the need to review many designs in a compressed timeframe. The bill also puts the WSDOT in charge of the process, which could lead to self-regulation, and creates a presumption that the WSDOT decisions are correct.

The MAP-21 teams and general concept work, but the specific approach in the bill might be flawed. The time should be taken to do this right.

Futurewise is concerned about the effect of up-front permitting on public involvement. There is always the possibility that information might not come in on time, and with the presumption of completion this might not be challengeable.

Futurewise is also concerned about the ability of the WSDOT to take control of local permitting.

(Information only) There were many benefits to the TPEAC process, including improved consensus building and the development of programmatic permitting to speed the process. It also helped standardize permits so that the completeness of permits was clear.

The WSDOT is now actively working with the resource agencies on its larger projects, and just finished a programmatic permit for endangered species.

Problems arise in the permitting process when there is a lack of clarity or consensus in the community. The WSDOT projects are clearly defined as to scope and cost.

Persons Testifying: (In support) Representative Zieger, prime sponsor; and Mike Ennis, Association of Washington Business.

(In support with concerns) Duke Schaub, Associated General Contractors of Washington.

(Opposed) Bruce Wishart, Sierra Club; and April Putney, Futurewise.

(Information only) Megan White, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.