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ENGROSSED SUBSTITUTE SENATE BILL 5765

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State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Prentice, Swecker, Shin, Oke, Parlette, Horn, Haugen and McDonald; by request of The Blue Ribbon Commission on Transportation)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to improving the efficiency and accountability of  
2 the environmental permitting and compliance process for transportation  
3 projects; adding a new chapter to Title 47 RCW; and prescribing  
4 penalties.

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 and efficient transportation systems planned, designed,  
13 constructed, and maintained through expedited permit decision-making  
14 processes.

15 It is the intent of the legislature to achieve transportation  
16 permit reform to expedite the delivery of statewide significant  
17 transportation projects through a streamlined approach to environmental  
18 permit decision making while improving environmental benefits through  
19 a watershed-based approach to aquatic and natural resource management.

1 In order to optimize the limited resources available for transportation  
2 system improvements and environmental protection, state regulatory and  
3 natural resource agencies, public and private sector interests, Indian  
4 tribes, and the department of transportation must work cooperatively to  
5 establish common goals, minimize project delays, develop consistency in  
6 the application of environmental standards, maximize environmental  
7 benefits through coordinated investment strategies, and eliminate  
8 duplicative processes through delegation of selected permit drafting  
9 and compliance activities between state and federal agencies.

10 Therefore, the transportation permit efficiency and accountability  
11 committee is created. The committee must conduct three environmental  
12 permit streamlining pilot programs. The committee must also identify  
13 and develop general permits and a programmatic consultation process.  
14 Finally, the committee must explore other permit streamlining  
15 opportunities by designating transportation projects of statewide  
16 significance and selected delegation of permit authority.

17 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
18 section apply throughout this chapter unless the context clearly  
19 requires otherwise.

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

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

31 (3) "Committee" means the transportation permit efficiency and  
32 accountability committee created in section 3 of this act.

33 (4) "General permit" means a permit that covers a geographic area  
34 and applies to a project activity. A general permit allows actions to  
35 proceed without individual review by each permit decision-making  
36 agency.

1 (5) "Larger-impacting projects" means projects that are likely to  
2 affect a species or its habitat and must be examined for ways to  
3 mitigate or reduce the impact to avoid harm.

4 (6) "Least cost planning" means the use of best available  
5 information within a watershed basin applied to transportation decision  
6 making in the planning, permit decision making, and mitigation phases  
7 of a project.

8 (7) "Low-impact development project" means an activity or series of  
9 actions that conform to a comprehensive land-use planning and  
10 engineering design approach with a goal of maintaining or restoring  
11 existing natural habitat functions and hydrologic regime of urban and  
12 developing watersheds. These projects incorporate strategic watershed  
13 planning with site-specific management techniques to reduce development  
14 impacts to better replicate natural watershed hydrology and water  
15 quality, while allowing for development or infrastructure  
16 rehabilitation to occur.

17 (8) "One-stop permit decision making" means a coordinated permit  
18 decision-making process that streamlines environmental review and  
19 permit decision making for transportation projects by providing  
20 concurrent, consolidated review by each agency required to review the  
21 project.

22 (9) "Programmatic agreement" means a regulatory instrument that  
23 outlines permit conditions and obligations under which a variety of  
24 identified project activities for an agency program or other actions  
25 may be conducted within a watershed or other geographically defined  
26 territory, without the necessity of obtaining individual permits.

27 (10) "Transportation project of statewide significance" means a  
28 surface transportation project or combination of surface transportation  
29 projects, that crosses multiple city or county jurisdictional  
30 boundaries or connects major state destinations in support of the  
31 state's economy and is so designated by the department of  
32 transportation and approved by the transportation committees of the  
33 senate and house of representatives. The transportation committees of  
34 the senate and house of representatives may also designate such  
35 projects. The pilot projects established in section 4 of this act are  
36 examples of transportation projects of statewide significance, but  
37 transportation projects of statewide significance are not limited to  
38 the pilot projects.

1        NEW SECTION.        **Sec. 3.**        TRANSPORTATION PERMIT EFFICIENCY AND  
2 ACCOUNTABILITY COMMITTEE--CREATED.        The transportation permit  
3 efficiency and accountability committee is created.

4        (1) The committee will consist of fifteen voting members, including  
5 two members of the house of representatives from each of the two  
6 largest caucuses and two members of the senate from each of the two  
7 largest caucuses; one member designated by the secretary of  
8 transportation; one member designated by the director of fish and  
9 wildlife; one member designated by the director of ecology; one member  
10 designated by the state commissioner of public lands; one member  
11 designated by the Northwest Indian Fisheries Commission; one member  
12 designated by the Columbia River Intertribal Fisheries Commission; two  
13 members appointed by the state transportation commission or its  
14 successor agency, upon consultation with the Association of Washington  
15 Cities and the Washington Association of Counties, to represent local  
16 government interests; one member appointed by the state transportation  
17 commission or its successor agency, upon consultation with the  
18 Consulting Engineers Council of Washington, the Associated General  
19 Contractors of Washington, and the Washington Construction Industry  
20 Council, to represent the construction industry; one member appointed  
21 by the state transportation commission or its successor agency, upon  
22 consultation with statewide environmental organizations, to represent  
23 environmental interests; and one member appointed by the state  
24 transportation commission or its successor agency, upon consultation  
25 with the state fish and wildlife commission, to represent the interests  
26 of citizens engaged in fish and wildlife recovery. The committee shall  
27 elect a chair from the four legislators appointed to the committee.

28        (2) Representatives from federal regulatory and transportation  
29 agencies, including the Environmental Protection Agency, National  
30 Marine Fisheries Service, Army Corps of Engineers, Federal Highways  
31 Administration, and United States Fish and Wildlife Service must be  
32 invited to participate in committee deliberations as nonvoting members.

33        (3) The committee may create technical subcommittees for the pilot  
34 projects designated in section 4 of this act and transportation  
35 projects of statewide significance. The technical subcommittees must  
36 include, but are not limited to, representatives of local governments  
37 from jurisdictions that have transportation projects of statewide  
38 significance. Decisions made by the technical subcommittee must be

1 approved by a majority of the transportation permit efficiency and  
2 accountability committee.

3 (4) Nonvoting members will not be compensated but will receive  
4 reimbursement for travel expenses in accordance with RCW 43.03.050 and  
5 43.03.060.

6 (5) The department of transportation office of environmental  
7 affairs shall provide administrative and clerical assistance to the  
8 committee.

9 NEW SECTION. **Sec. 4.** PILOT PROJECTS. (1) It is the expectation  
10 of the legislature that a comprehensive approach to environmental  
11 permit decision making for transportation projects created between  
12 agencies, public and private sector interests, and tribes that focuses  
13 on concise design standards and a commitment to expedited permit  
14 decisions will minimize duplicative and time-consuming permit processes  
15 and achieve a greater potential for benefit to the environment. Pilot  
16 efforts designed to delegate selected permit drafting and compliance  
17 activities to the department when agreement on standards are achieved  
18 and when compliance safeguards are implemented should be tested. To  
19 this end, the legislature directs the committee to select and conduct  
20 three permit reform pilot programs.

21 (2) The committee must select one permit reform pilot program that  
22 includes a mix of projects from each of the following geographic areas:

23 (a) The Translake and I-405 congestion relief study areas to test  
24 the application of permit reform to near built-out conditions in urban  
25 areas within the Cedar-Sammamish, Duwamish-Green, and other applicable  
26 adjoining watersheds agreed to by the committee;

27 (b) Transportation projects that can be grouped for geographic  
28 permit decision making related to western Washington watersheds and  
29 salmon recovery areas for the Willapa, Grays-Elochoman, Lewis,  
30 Salmon-Washougal, Wind-White Salmon, Klickitat, and other applicable  
31 adjoining watersheds agreed to by the committee; and

32 (c) Transportation projects that can be grouped for geographic  
33 permit decision making related to eastern Washington watersheds and  
34 salmon recovery areas for the Walla Walla, Middle Snake, Lower Snake,  
35 Rock-Glade, and other applicable adjoining watersheds agreed to by the  
36 committee.

1           NEW SECTION.           **Sec. 5.**           COMMITTEE--RESPONSIBILITIES FOR

2 TRANSPORTATION PROJECTS OF STATEWIDE SIGNIFICANCE. (1) The committee  
3 and its authorized technical subcommittees shall develop a one-stop  
4 permit decision-making process that uses interdisciplinary review of  
5 transportation projects of statewide significance to streamline and  
6 expedite permit decision making. The one-stop permitting process must  
7 include early review and coordination between state regulatory agencies  
8 and the department in order to develop common environmental goals and  
9 strategies, and minimize subsequent changes to conditions.

10           (2) The committee must use a one-stop permitting process and other  
11 components identified in this chapter to:

12           (a) Link expedited permit decision making to best available  
13 information for a watershed; and

14           (b) Link investment strategy and priorities of the pilot watershed  
15 areas with the mitigation needs of the department along a geographic  
16 based approach.

17           (3) The committee must use an interdisciplinary permit review  
18 approach for each pilot project in order to:

19           (a) Provide coordinated and consolidated review and approval of  
20 permit applications;

21           (b) Provide coordinated and consolidated public hearings where  
22 required by one or more regulatory agencies under state law;

23           (c) Establish timelines for permit decision making;

24           (d) Allow delegation of selected permit drafting and compliance  
25 activities to the department.

26           (5) The committee shall seek federal delegation authorities to the  
27 state where appropriate to streamline permit processes for  
28 transportation projects of statewide significance including:  
29 Delegation of section 404 permit authority under the Clean Water Act;  
30 nonfederal lead agency status under the federal Endangered Species Act;  
31 section 106 cultural resource designation under the National Historic  
32 Preservation Act; and other appropriate authority that when delegated  
33 should result in permit streamlining.

34           (6) The committee shall develop and prioritize a list of permit  
35 streamlining opportunities, specifically identifying substantive and  
36 procedural duplications and suggestions for resolving those  
37 duplications, and standard development needs. Based on the list of  
38 permit streamlining opportunities, the committee shall designate  
39 transportation projects of statewide significance and submit those

1 projects to the transportation committees of the house of  
2 representatives and the senate.

3 (7) The committee must provide to the legislative authority of each  
4 county and city a list of the projects that the committee has  
5 designated as pilot projects or transportation projects of statewide  
6 significance. The committee must also provide each county and city  
7 with a list of projects designated as transportation projects of  
8 statewide significance by the transportation committees of the  
9 legislature.

10 (8) The committee must provide a summary report to the legislature  
11 every six months beginning September 15, 2001.

12 NEW SECTION. **Sec. 6.** COMMITTEE RESPONSIBILITIES FOR PROGRAMMATIC  
13 AGREEMENTS AND GENERAL PERMITS. The committee shall:

14 (1) Identify and develop general permits and programmatic  
15 consultation processes for low-impacting projects and for larger-  
16 impacting projects. The committee must develop general permits for  
17 evaluating low-impacting projects in three to six months from the  
18 effective date of this act and for larger-impacting projects in six to  
19 nine months from the effective date of this act. The committee must  
20 develop a programmatic consultation process for low-impacting projects  
21 in three to six months from the effective date of this act and for  
22 larger-impacting projects in six to nine months from the effective date  
23 of this act;

24 (2) Develop and implement a general permit program. At a minimum  
25 this program must require that decisions on minor variations to the  
26 requirements of the general permit or programmatic conditions must be  
27 provided by the permit decision-making agencies within fifteen business  
28 days of submittal; and

29 (3) Review the department's construction project list to determine  
30 which projects can be included in programmatic or general permit  
31 agreements. The committee shall develop agreements to cover those  
32 projects.

33 NEW SECTION. **Sec. 7.** GENERAL COMMITTEE RESPONSIBILITIES. The  
34 committee must:

35 (1) Evaluate the use of planning and permit decision-making  
36 standards that encourage low-impact alternatives;

- 1           (2) Seek to accelerate the permit process for projects that use  
2 low-impact development standards;
- 3           (3) Develop preliminary models and strategies to test how best to  
4 maximize the environmental investment of transportation funds within  
5 the framework of sections 1 through 6 of this act;
- 6           (4) Develop a uniform methodology for the timely and predictable  
7 submittal and evaluation of completed plans and specifications  
8 detailing project elements that impact environmental resources as well  
9 as proposed mitigation measures during the preliminary specifications  
10 and engineering phase of project development;
- 11          (5) Develop a least-cost methodology for analyzing environmental  
12 impacts and applying compensatory mitigation consistent with a  
13 watershed-based approach before final design;
- 14          (6) Assess models to collate and access watershed data to support  
15 early agency involvement in transportation planning and reviews under  
16 the national Environmental Policy Act and the State Environmental  
17 Policy Act;
- 18          (7) In consultation with the department, identify projects that do  
19 not qualify as transportation projects of statewide significance or for  
20 programmatic review or general permit agreements, and develop a  
21 streamlined permit decision-making process for them;
- 22          (8) Collaborate with appropriate agencies and parties to develop  
23 concise environmental standards and best management practices for  
24 transportation projects that can be applied with certainty,  
25 consistency, and assurance of swift permit action, while taking into  
26 account the varying climate, geomorphologic, and hydrologic conditions  
27 throughout the state. The standards and best management practices may  
28 use prescriptive or performance standards and must meet all current  
29 relevant federal, state, and local environmental and land use  
30 regulations;
- 31          (9) Create a streamlined permit decision-making and consultation  
32 process for transportation projects for section 404 federal Clean Water  
33 Act permits and section 10 permits issued by the United States Army  
34 Corps of Engineers, section 401 and 402 permits issued by the  
35 department of ecology, shoreline approvals reviewed by the department  
36 of ecology, hydraulic project approvals issued by the department of  
37 fish and wildlife, and any other applicable permit issued for  
38 transportation projects;



1 (10) Use existing best available information from watershed  
2 planning efforts, lead entities, regional fisheries enhancement groups,  
3 and other recognized entities as deemed appropriate by the committee,  
4 to determine potential mitigation requirements for projects within a  
5 watershed. Priority consideration should be given to the use of the  
6 state's alternative mitigation to best link transportation mitigation  
7 needs with local watershed and lead entity project lists;

8 (11) Give consideration to flexible approaches that maximize  
9 transportation and environmental interests;

10 (12) Work with the department of ecology to develop a virtual one-  
11 stop environmental permitting center to provide interested parties and  
12 citizens with information regarding environmental permitting  
13 requirements; and

14 (13) Develop a dispute resolution process to resolve conflicts in  
15 interpretation of environmental standards and best management  
16 practices, mitigation requirements, permit requirements, and other  
17 related issues by September 15, 2001. Every effort to include federal  
18 agencies in the dispute resolution process must be made. A list of  
19 ongoing disputed issues must be included in the committee's report to  
20 the legislature.

21 NEW SECTION. **Sec. 8.** DEPARTMENT ORGANIZATION AND ADMINISTRATIVE  
22 ACTIONS. The legislature finds that an essential component of  
23 streamlined permit decision making is the ability of the department to  
24 demonstrate the capacity to meet environmental responsibilities.  
25 Therefore, the legislature directs that:

26 (1) Qualified environmental staff within the department shall lead  
27 the development of all environmental documentation associated with  
28 department projects and permit activities in accordance with the  
29 department's project delivery tools.

30 (2) The department shall conduct special prebid meetings for  
31 projects that are environmentally complex. In addition, the department  
32 shall review environmental considerations related to these projects  
33 during the preconstruction meeting held with the contractor who is  
34 awarded the bid.

35 (3) Environmental staff at the department shall conduct field  
36 inspections to ensure that project activities are performed under  
37 permit conditions. These inspectors must:

1 (a) Have the ability to issue stop work orders when compliance with  
2 permit standards are not being met;

3 (b) For this portion of their job duties, be accountable to the  
4 director of the office of environmental services of the department.

5 (4) Failure to comply with a stop work order may result in civil  
6 penalties being assessed against the department and individuals  
7 involved. Willful violation of a stop work notice issued by the  
8 department is subject to civil penalties assessed on the agency as well  
9 as the individuals involved. Persistent violations by the department  
10 may result in loss of permit drafting and program management  
11 responsibilities.

12 NEW SECTION. **Sec. 9.** TRAINING AND COMPLIANCE. The legislature  
13 expects the department to continue its efforts to improve training and  
14 compliance. The department shall:

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

17 (2) Require wetland mitigation sites to be designed by trained  
18 biologist or landscape architects, qualified by the department of  
19 ecology's wetland program. Environmental mitigation site improvements  
20 must have oversight conducted by environmental staff;

21 (3) Develop an environmental compliance data system to track all  
22 permit conditions;

23 (4) Report all noncompliance activities to applicable agencies of  
24 jurisdiction along with a remedy plan;

25 (5) Fund the departments of ecology, natural resources, and fish  
26 and wildlife, operating under their permit-granting authority to  
27 conduct audits of the department's permit drafting and compliance  
28 activities. The department of ecology shall collate the audits in an  
29 annual report to the legislature;

30 (6) Fund dedicated technical staff at federal permit decision-  
31 making entities and the state departments of ecology, natural  
32 resources, community, trade, and economic development, and fish and  
33 wildlife to implement the requirements of this chapter;

34 (7) Fund a technical specialist at the Northwest Indian Fisheries  
35 Commission and the Columbia River Intertribal Fisheries Commission for  
36 the purpose of implementing this chapter;

37 (8) Reimburse local jurisdictions for costs associated with local  
38 participation on the committee and technical subcommittees.

1        NEW SECTION.    **Sec. 10.**    Captions used in this act are not part of  
2 the law.

3        NEW SECTION.    **Sec. 11.**    Sections 1 through 10 of this act  
4 constitute a new chapter in Title 47 RCW.

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