
SUBSTITUTE SENATE BILL 5765

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 new sections to chapter 36.70A RCW; creating a new
4 section; and prescribing 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 review processes.

14 It is the intent of the legislature to achieve transportation
15 permit reform to expedite the delivery of statewide significant
16 transportation projects while striving to increase environmental
17 benefits through a watershed-based approach to aquatic and natural
18 resource management. In order to optimize the limited resources
19 available for transportation system improvements and environmental

1 protection, state regulatory and natural resource agencies, public and
2 private sector interests, Indian tribes, and the department of
3 transportation must work cooperatively to establish common goals,
4 minimize project delays, develop agreed-upon standards, and maximize
5 environmental benefits through coordinated investment strategies.
6 Increased certainty and consistency of actions through the development
7 of agreed-upon environmental standards, and the elimination of
8 duplicative processes through delegated permit responsibilities between
9 state and federal agencies is imperative to meet the needs of the
10 state.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

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

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

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

27 (4) "Department" means the state department of transportation.

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

31 (6) "One-stop permitting" means a coordinated permitting process
32 that streamlines environmental review and approval of transportation
33 projects by providing concurrent, consolidated review by each agency
34 required to review and approve the project.

35 (7) "Programmatic agreement" means a regulatory instrument that
36 outlines permit conditions and obligations for a variety of similar
37 project activities spanning a watershed ecosystem or geographically
38 defined boundary, that once entered into by parties, delineates an

1 applicant's proposed actions over a specific period of time, that may
2 be conducted without the necessity of obtaining individual permits for
3 the types of projects identified.

4 (8) "Transportation project of statewide significance" means a
5 project or combination of projects, that cross multiple city or county
6 jurisdictional boundaries or connects major state destinations in
7 support of the state's economy and are so designated by the department
8 of transportation and approved by the transportation committees of the
9 senate and house of representatives. The transportation committees of
10 the senate and house of representatives may also designate such
11 projects.

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

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

1 (2) Representatives from federal regulatory and transportation
2 agencies, including the Environmental Protection Agency, National
3 Marine Fisheries Service, Federal Highways Administration, and United
4 States Fish and Wildlife Service must be invited to participate in
5 committee deliberations as nonvoting members.

6 (3) The committee may create technical subcommittees for individual
7 projects. The technical subcommittees must include, but are not
8 limited to, representatives from those local governments electing to
9 participate under section 4(2) of this act.

10 (4) Nonvoting members will not be compensated but will receive
11 reimbursement for travel expenses in accordance with RCW 43.03.050 and
12 43.03.060.

13 (5) The department of transportation office of environmental
14 affairs shall provide administrative and clerical assistance to the
15 committee.

16 NEW SECTION. **Sec. 4.** (1) This section establishes procedures for
17 allowing local governments to participate in the processes identified
18 in sections 5 and 6 of this act in order to provide for coordinated
19 multijurisdictional environmental review and permitting decisions for
20 projects of statewide significance, projects eligible for programmatic
21 review, and projects eligible for general permit agreements.

22 (2) Each city and county within whose boundaries is located or
23 partially located one or more projects identified in subsection (1) of
24 this section, shall elect whether or not to participate in coordinated
25 processes for environmental review and permitting of those projects and
26 notify the committee within sixty days of project designation.

27 (3) If the county or city elects not to participate in the
28 coordinated processes for designated projects, it shall notify the
29 committee within sixty days of the project designation, and the state
30 shall administer the local environmental review and permit
31 requirements.

32 NEW SECTION. **Sec. 5.** COMMITTEE--RESPONSIBILITIES. The committee
33 and its authorized technical subcommittees shall:

34 (1) Develop a one-stop permitting process that uses
35 interdisciplinary review of transportation projects to streamline and
36 expedite approval of required permits consistent with chapter 90.60
37 RCW. The one-stop permitting process must include early review and

1 coordination between state regulatory agencies and the department in
2 order to develop common environmental goals and strategies, and
3 minimize subsequent changes to conditions;

4 (2) Develop concise environmental standards and best management
5 practices for transportation projects that can be applied with
6 certainty, consistency, and assurance of swift permit action, while
7 taking into account the varying climate, geomorphologic, and hydrologic
8 conditions throughout the state. The standards and best management
9 practices must meet the intent of all current relevant federal, state,
10 and local environmental regulations. Actions to achieve this goal must
11 include:

12 (a) Identification and development of general permits and
13 programmatic consultation processes for low-impacting projects
14 developed in three to six months and for larger-impacting projects
15 developed in six to nine months;

16 (b) Development and implementation of a general permit program that
17 allows actions to proceed without individual project reviews by the
18 permitting agencies. Concurrence on minor variations to the
19 requirements of the general permit or programmatic conditions must be
20 provided by the permitting agencies within fifteen business days of
21 submittal;

22 (c) Evaluation of the use of planning and permitting standards that
23 encourage low-impact alternatives;

24 (d) Seeking to accelerate the permit process for projects that use
25 low-impact development standards;

26 (e) Development of preliminary models and strategies to test how
27 best to maximize the environmental investment of transportation funds
28 within the framework of sections 1 through 8 of this act;

29 (3) Develop and prioritize a list of permit streamlining
30 opportunities, specifically identifying substantive and procedural
31 duplications and suggestions for resolving those duplications, and
32 standard development needs such as developing agreement on state
33 transportation storm water standards;

34 (4) Create a streamlined permitting and consultation process for
35 transportation projects for section 404 federal Clean Water Act and
36 section 10 permits issued by the United States Army Corps of Engineers,
37 section 401 and 402 permits issued by the department of ecology,
38 shoreline master permits reviewed by the department of ecology,
39 hydraulic project approvals issued by the department of fish and

1 wildlife, and any other applicable permit issued for transportation
2 projects;

3 (5) Develop a uniform methodology for the timely and predictable
4 submittal and evaluation of plans completed and specifications
5 detailing project elements that impact environmental resources as well
6 as proposed mitigation measures during the preliminary specifications
7 and engineering phase of project development;

8 (6) Develop a least-cost methodology for analyzing environmental
9 impacts and applying compensatory mitigation consistent with a
10 watershed-based approach before final design;

11 (7) Assess models to collate and access watershed data to support
12 early agency involvement in transportation planning and reviews under
13 the federal Environmental Protection Act and the State Environmental
14 Protection Act;

15 (8) Review the department's construction project list to determine
16 which projects can be included in programmatic or general permit
17 agreements. The committee will develop agreements to cover those
18 projects;

19 (9) Use existing best available information from watershed planning
20 efforts, lead entities, regional fisheries enhancement groups, and
21 other recognized entities as deemed appropriate by the committee, to
22 determine potential mitigation site requirements for project actions
23 within a watershed. Priority consideration should be given to the use
24 of the state's alternative mitigation strategy to best link
25 transportation mitigation needs with local watershed and lead entity
26 project lists;

27 (10) In consultation with the department, identify projects that do
28 not qualify as projects of statewide significance for programmatic
29 review or general permit agreements, and develop a streamlined
30 permitting process for them;

31 (11) Seek federal delegation authorities to the state where
32 appropriate to streamline permit processes including: Delegation of
33 section 404 permit authority under the Clean Water Act; nonfederal lead
34 agency status under the federal Endangered Species Act; section 106
35 cultural resource designation under the National Historic Preservation
36 Act; and other appropriate authority that when delegated should result
37 in permit streamlining;

38 (12) Develop a dispute resolution process to resolve conflicts in
39 interpretation of environmental standards and best management

1 practices, mitigation requirements, permit requirements, and other
2 related issues by September 15, 2001. Every effort to include federal
3 agencies in the dispute resolution process must be made. A list of
4 ongoing disputed issues must be included in the committee's report to
5 the legislature.

6 NEW SECTION. **Sec. 6.** PILOT PROJECTS. It is the expectation of
7 the legislature that a comprehensive approach to environmental
8 permitting of transportation projects created between agencies, public
9 and private sector interests, and tribes that focuses on concise design
10 standards and a commitment to expedited permit decisions, will minimize
11 duplicative and time-consuming permit processes and achieve a greater
12 potential for benefit to the environment. Pilot efforts designed to
13 delegate process permit writing to the department when agreement on
14 standards are achieved and when compliance safeguards are implemented
15 should be tested. To this end the legislature directs the committee to
16 conduct three permit reform pilot projects. The pilot projects must:

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

18 (a) The Translake and I-405 congestion relief study areas to test
19 the application of permit reform to near built-out conditions in urban
20 areas within the Cedar-Sammamish, Duwamish-Green, and other applicable
21 adjoining watersheds;

22 (b) Transportation projects that can be grouped for geographic
23 permitting related to western Washington watersheds and salmon recovery
24 areas for the Willapa, Grays-Elochoman, Lewis, Salmon-Washougal,
25 Wind-White Salmon, Klickitat, and other applicable adjoining
26 watersheds;

27 (c) Transportation projects that can be grouped for geographic
28 permitting related to eastern Washington watersheds and salmon recovery
29 areas for the Walla Walla, Middle Snake, Lower Snake, Rock-Glade, and
30 other applicable adjoining watersheds;

31 (2) Deploy and monitor the one-stop permit center to the pilot
32 projects and other components identified in section 4 of this act to:

33 (a) Link expedited permit decision making to best available
34 information in a basin;

35 (b) Link investment strategy and priorities of the pilot watershed
36 areas with the mitigation needs of the department along a geographic
37 based approach;

1 (3) Use an interdisciplinary permit review approach for each pilot
2 project in order to:

3 (a) Provide coordinated and consolidated review and approval of
4 permit applications;

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

7 (c) Establish timelines for permit approval and issuance;

8 (d) Allow delegation of permit drafting and compliance activities
9 to the department;

10 (4) Give consideration to flexible approaches that maximize
11 transportation and environmental investments;

12 (5) Provide a summary report to the legislature every six months
13 beginning September 15, 2001.

14 NEW SECTION. **Sec. 7.** DEPARTMENT ORGANIZATION AND ADMINISTRATIVE
15 ACTIONS. The legislature finds that an essential component of
16 delegated federal or state permitting authority to the department is
17 the ability of the department to demonstrate the capacity to meet
18 environmental responsibilities. Therefore, the legislature directs
19 that:

20 (1) Environmental staff within the department shall lead the
21 development of all environmental documentation associated with
22 department projects and permit activities in accordance with the
23 department's managing project delivery tools.

24 (2) Certified environmental staff or certified consultants must be
25 given the responsibility to draft environmental permits for the
26 department.

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

32 (4) Environmental staff at the department shall conduct field
33 inspections to ensure that project activities are performed under
34 permit conditions. These inspectors must:

35 (a) Have the ability to issue stop work orders when compliance with
36 permit standards are not being met. Failure to comply with a stop work
37 order may result in civil penalties being assessed against the
38 department and individuals involved. Willful violation of a stop work

1 notice issued by the department is subject to civil penalties assessed
2 on the agency as well as the individuals involved. Persistent
3 violations by the department may result in loss of permit writing and
4 program management responsibilities;

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

7 NEW SECTION. **Sec. 8.** TRAINING AND COMPLIANCE. The legislature
8 expects the department to continue its efforts to improve training and
9 compliance. The department shall:

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

12 (2) Provide resource agency-approved certification training for
13 permit writers and environmental inspectors;

14 (3) Require wetland mitigation sites to be designed by trained
15 biologist or landscape architects, certified by the department of
16 ecology's wetland program. Environmental mitigation site improvements
17 must have oversight conducted by environmental staff;

18 (4) Develop an environmental compliance data system to track all
19 permit conditions;

20 (5) Report all noncompliance activities to applicable agencies of
21 jurisdiction along with a remedy plan;

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

27 (7) Fund dedicated technical staff at federal permitting entities
28 and the state departments of ecology, natural resources, community,
29 trade, and economic development, and fish and wildlife to implement the
30 requirements of this chapter;

31 (8) Fund a technical specialist at the Northwest Indian Fisheries
32 Commission and the Columbia River Intertribal Fisheries Commission for
33 the purpose of implementing this chapter.

34 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act are added
35 to chapter 36.70A RCW.

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

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