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**SENATE BILL 5996**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senators King, Hobbs, Fain, Lias, Litzow, Braun, Schoesler, Parlette, Dammeier, Warnick, Sheldon, O'Ban, Hewitt, Becker, and Brown

Read first time 02/16/15. Referred to Committee on Transportation.

1 AN ACT Relating to Washington state department of transportation  
2 projects; amending RCW 47.01.300; adding a new section to chapter  
3 47.01 RCW; adding a new chapter to Title 47 RCW; 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.**    (1)(a) The legislature recognizes the  
2 opportunity to gain efficiencies by reducing duplication between  
3 national and state environmental policy act compliance for state  
4 transportation projects.

5        (b) The department of ecology is directed to update the rules in  
6 WAC 197-11-610 for integrating use of national environmental policy  
7 act documents in decisions under chapter 43.21C RCW.

8        (2)(a) The legislature finds that rule-based categorical  
9 exemptions to chapter 43.21C RCW applying to transportation  
10 maintenance activities have not been updated in recent years.

11        (b) The department of ecology is directed to update, but not  
12 decrease, the rule-based categorical exemptions for transportation  
13 maintenance activities in WAC 197-11-800 and 197-11-860.

14        NEW SECTION.    **Sec. 3.**    The department must use the following  
15 expedited environmental review and approval process for any  
16 transportation project requiring the preparation of an environmental  
17 impact statement under the national environmental policy act (42  
18 U.S.C. Sec. 4321 et seq.). State and local agencies with relevant  
19 jurisdiction, to the extent practicable and appropriate, as  
20 determined by the agencies, must provide technical assistance to the  
21 department on accomplishing the project review and coordination  
22 activities described in this section.

23        (1) Step 1: Public and agency involvement in defining the project  
24 purpose and scope of environmental review. The department must  
25 provide notice to the public that environmental review for the  
26 project is being initiated. This notice must reference the notice of  
27 intent under the national environmental policy act and explain that  
28 this replaces the need for a threshold determination under chapter  
29 43.21C RCW. The department must invite the public, agencies, and  
30 tribes to provide input on the project purpose and scope of  
31 environmental review. The department must provide a thirty-day  
32 comment period. The department may hold one or more meetings to  
33 collect input. The department must complete step 1 by: (a) Providing  
34 a summary of the results of step 1, including a statement that the  
35 department considers step 1 to be complete; and (b) making the  
36 summary available to the public. The department must consider the  
37 input from the public, agencies, and tribes before finalizing the  
38 project purpose and scope of environmental review.

1 (2) Step 2: Identify participating agencies and convene meetings  
2 with an interdisciplinary team.

3 (a) The department must identify any federal, state, tribal,  
4 regional, and local governmental agencies that may have an interest  
5 in the project. The department must invite these agencies to serve as  
6 participating agencies. The roles and responsibilities of  
7 participating agencies include, but are not limited to, identifying  
8 potential environmental or socioeconomic impacts that could  
9 substantially delay or prevent an agency from granting a permit or  
10 other approval that is needed for the project. Participating agencies  
11 must provide input to the department as the department develops: The  
12 scope of environmental analysis, a purpose and need statement, a  
13 range of alternatives, methodologies, and the level of detail for the  
14 analysis of alternatives. Designation as a participating agency does  
15 not indicate project support, but it does give invited agencies  
16 opportunities to provide input at key decision points in the process.

17 (b) The department must form an interdisciplinary team composed  
18 of participating agency staff and key technical specialists from the  
19 department. Participating agencies must identify key technical or  
20 regulatory experts to participate on the project interdisciplinary  
21 team. The department must convene at least one meeting with the  
22 interdisciplinary team at each of the subsequent steps in order to  
23 collaborate on project decisions and milestones.

24 (3) Step 3: Participating agency involvement during the screening  
25 of alternatives.

26 (a) The department must initiate step 3 by providing notice to  
27 participating agencies that the screening of project alternatives has  
28 begun. Within thirty days of receiving notification, participating  
29 state, county, and city agencies must, and federal agencies are  
30 encouraged to, identify:

31 (i) For each identified alternative: (A) The specific features  
32 that the agency considers significant with respect to the agency's  
33 role in environmental reviews, permits, or other approvals for the  
34 project; (B) the reasons these features are significant; and (C) any  
35 concerns the agency may have about the alternative because of  
36 potential significant adverse impacts of these features on resources  
37 or social policies within the agency's jurisdiction;

38 (ii) For each feature for which the agency raises concerns: (A)  
39 Recommendations on how the potential adverse impacts could be  
40 avoided, minimized, and mitigated; and (B) an assessment of the

1 relative ranking of each alternative with respect to whether and to  
2 what extent these concerns apply; and

3 (iii) Other information the participating agency requests the  
4 department to consider in deciding whether, when, where, or how to  
5 proceed with the project.

6 (b) The department must consider the input from the participating  
7 agencies prior to selecting a preferred project alternative.

8 (4) Step 4: Participating agency involvement during the  
9 identification of environmental permits and approvals, application  
10 procedures, and decision standards.

11 (a) The department, in consultation with the participating  
12 agencies, must identify all permits and other approvals the agencies  
13 might require for each project alternative.

14 (b) After consulting with all participating agencies, the  
15 department must complete step 4 by compiling a list of all  
16 environmental permits and approvals it believes are needed for the  
17 project under each alternative being considered.

18 (5) Step 5: Complete an environmental analysis and issue a draft  
19 environmental impact statement. The department must initiate step 5  
20 by providing notice of the availability of the draft environmental  
21 impact statement to participating agencies, tribal governments, and  
22 the public. Notification must include posting on the state  
23 environmental policy act register. State, county, and city agencies  
24 must, and federal agencies are encouraged to, provide written  
25 comments on the draft environmental impact statement no later than  
26 forty-five days after the department posts notice in the state  
27 environmental policy act register.

28 (6) Step 6: Develop a final environmental impact statement. The  
29 department must work with the federal lead agency to consider and  
30 respond to all substantive comments received during the comment  
31 period. The department must evaluate public and agency comments on  
32 the draft environmental impact statement to determine if the  
33 statement sufficiently identifies and analyzes the impacts and  
34 mitigation of the proposed action. The department must engage  
35 participating agencies in refining alternatives and completing the  
36 environmental review.

37 (7) Step 7: Issue a final environmental impact statement. The  
38 final environmental impact statement must contain: The department's  
39 final recommendation and preferred alternative, a summary of the  
40 comments received on the draft environmental impact statement and the

1 response, and a description of the procedures required to ensure that  
2 mitigation measures are implemented. The department must provide  
3 notice of the final environmental impact statement and the federal  
4 lead agency's record of decision in the state environmental policy  
5 act register.

6 NEW SECTION. **Sec. 4.** (1) The legislature recognizes the value  
7 that tribal governments provide in the review of transportation  
8 projects. The legislature expects the department to continue its  
9 efforts to provide consistent consultation and communication during  
10 the environmental review of proposed transportation projects.

11 (2) For projects described in section 3 of this act, the  
12 department must invite affected tribes to be participating agencies.  
13 If tribal governments elect not to participate, the department must  
14 make a reasonable effort to: Meet with representatives of affected  
15 tribes to review broad issues during scoping, engage in both formal  
16 and technical consultation with tribal staff, and seek to resolve  
17 issues in parallel with project planning and permitting activities.

18 NEW SECTION. **Sec. 5.** The department must streamline the  
19 permitting process by developing and maintaining positive  
20 relationships with the regulatory agencies and the Indian tribes. The  
21 department can reduce the time it takes to obtain permits by  
22 incorporating impact avoidance and minimization measures into project  
23 design and by developing complete permit applications. To streamline  
24 the permitting process, the department must:

25 (1) Continue a multiagency permit program consisting of  
26 appropriate regulatory agency staff with oversight and management  
27 from the department.

28 (a) The multiagency permit program must provide early project  
29 coordination, expedited project review, project status updates,  
30 technical and regulatory guidance, and construction support to ensure  
31 compliance.

32 (b) The multiagency permit program staff must assist department  
33 project teams with developing complete biological assessments and  
34 permit applications, provide suggestions for how the project can  
35 avoid and minimize impacts, and provide input regarding mitigation  
36 for unavoidable impacts;

37 (2) Establish, implement, and maintain programmatic agreements  
38 and permits with federal and state agencies to expedite the process

1 of ensuring compliance with the endangered species act, section 106  
2 of the national historic preservation act, hydraulic project  
3 approvals, the clean water act, and other federal acts as  
4 appropriate;

5 (3) Collaborate with permitting staff from the United States army  
6 corps of engineers, Seattle district, department of ecology, and  
7 department of fish and wildlife to develop, implement, and maintain  
8 complete permit application guidance. The guidance must identify the  
9 information that is required for agencies to consider a permit  
10 application complete; and

11 (4) Perform internal quality assurance and quality control to  
12 ensure that permit applications are complete before submitting them  
13 to the regulatory agencies.

14 NEW SECTION. **Sec. 6.** The legislature finds that an essential  
15 component of streamlined permit decision making is the ability of the  
16 department to demonstrate the capacity to meet environmental  
17 responsibilities. Therefore, the legislature directs that:

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

21 (2) The department must conduct special prebid meetings for  
22 projects that are environmentally complex. In addition, the  
23 department must review environmental requirements related to these  
24 projects during the preconstruction meeting held with the contractor  
25 who is awarded the bid;

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

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

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

35 (4) When a project is not complying with a permit or  
36 environmental regulation, the project engineer must immediately order  
37 the contractor to stop all nonconforming work and implement measures  
38 necessary to bring the project into compliance with permits and  
39 regulations.

1        NEW SECTION.    **Sec. 7.**    The legislature expects the department to  
2 continue its efforts to improve training and compliance. The  
3 department must:

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

6        (2) Require wetland mitigation sites to be designed by qualified  
7 technical specialists that meet training requirements developed by  
8 the department in consultation with the department of ecology.  
9 Environmental mitigation site improvements must have oversight by  
10 environmental staff;

11       (3) Develop, implement, and maintain an environmental compliance  
12 data system to track permit conditions, environmental commitments,  
13 and violations;

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

21       (5) Provide an annual report summarizing violations of  
22 environmental permits and regulations to the department of ecology  
23 and the legislature on March 1st of each year for violations  
24 occurring during the preceding year.

25       NEW SECTION.    **Sec. 8.**    The legislature finds that local land use  
26 reviews under chapter 90.58 RCW need to be harmonized with the  
27 efficient accomplishment of necessary maintenance and improvement to  
28 state transportation facilities. Local land use review procedures are  
29 highly variable and pose distinct challenges for linear facility  
30 maintenance and improvement projects sponsored by the department. In  
31 particular, clearer procedures for local permitting under chapter  
32 90.58 RCW are needed to meet the objectives of chapter 36.70A RCW  
33 regarding department facilities designated as essential public  
34 facilities. Therefore, the legislature directs that:

35       (1) The department of ecology must convene a work group including  
36 the department and local governments to identify procedures to more  
37 effectively achieve the objectives of this section.

38       (2) The work group is tasked with identifying procedures that  
39 effectively and efficiently address policy objectives of local

1 shoreline master programs, while avoiding unnecessary time delay and  
2 expense for state transportation facility maintenance and  
3 improvement.

4 (3) The work group must consider the widely varying scale and  
5 scope of department facility maintenance and improvement projects in  
6 identifying appropriate shoreline review procedures.

7 (4) By August 1, 2015, the department of ecology must provide a  
8 report on the outcome of the work group to the appropriate committees  
9 of the legislature.

10 NEW SECTION. **Sec. 9.** Nothing in this chapter may be interpreted  
11 to create a private right of action or right of review. Judicial  
12 review of the department's environmental review is limited to that  
13 available under chapter 43.21C RCW or applicable federal law.

14 **Sec. 10.** RCW 47.01.300 and 2012 c 62 s 1 are each amended to  
15 read as follows:

16 The department shall, in cooperation with environmental  
17 regulatory authorities:

18 (1) Identify and document environmental resources in the  
19 development of the statewide multimodal plan under RCW 47.06.040;

20 (2) Allow for public comment regarding changes to the criteria  
21 used for prioritizing projects under chapter 47.05 RCW before final  
22 adoption of the changes by the commission;

23 (3) Use an environmental review as part of the project prospectus  
24 identifying potential environmental impacts, mitigation, the  
25 utilization of the mitigation option available in RCW 90.74.040, and  
26 costs during the early project identification and selection phase,  
27 submit the prospectus to the relevant environmental regulatory  
28 authorities, and maintain a record of comments and proposed revisions  
29 received from the authorities;

30 (4) Actively work with the relevant environmental regulatory  
31 authorities during the design alternative analysis process and seek  
32 written concurrence from the authorities that they agree with the  
33 preferred design alternative selected;

34 (5) Develop a uniform methodology, in consultation with relevant  
35 environmental regulatory authorities, for submitting plans and  
36 specifications detailing project elements that impact environmental  
37 resources, and proposed mitigation measures including the mitigation  
38 option available in RCW 90.74.040, to the relevant environmental

1 regulatory authorities during the preliminary specifications and  
2 engineering phase of project development;

3 (6) Use available technologies to minimize permit delays for,  
4 inform and interact with interested parties including relevant  
5 environmental regulatory authorities regarding, and optimize the  
6 effectiveness of proposed compensatory mitigation projects. In  
7 addition to the mitigation programs specified in RCW 90.74.040(1)(a),  
8 the correction of fish passage barriers on city streets and county  
9 roads located within the same watershed as the proposed project must  
10 be considered for compensatory mitigation. The department shall  
11 consult with the department of fish and wildlife, the appropriate  
12 local government, and interested tribes to identify the existing fish  
13 passage barriers that, upon removal, will result in the greatest  
14 habitat benefit. The department shall submit a report to the  
15 transportation committees of the legislature by December 1, 2015,  
16 regarding the use and effectiveness of the mitigation option created  
17 in this subsection as well as recommendations for improvements;

18 (7) Screen construction projects to determine which projects will  
19 require complex or multiple permits. The permitting authorities shall  
20 develop methods for initiating review of the permit applications for  
21 the projects before the final design of the projects;

22 ~~((+7))~~ (8) Conduct special prebid meetings for those projects  
23 that are environmentally complex; and

24 ~~((+8))~~ (9) Review environmental considerations related to  
25 particular projects during the preconstruction meeting held with the  
26 contractor who is awarded the bid.

27 NEW SECTION. Sec. 11. A new section is added to chapter 47.01  
28 RCW to read as follows:

29 (1) The department shall submit a report to the transportation  
30 committees of the legislature detailing engineering errors on highway  
31 construction projects resulting in project cost increases in excess  
32 of five hundred thousand dollars. The department must submit an  
33 initial report of an engineering error within thirty days of the  
34 engineering error occurring. A full report must be submitted within  
35 ninety days of the engineering error occurring.

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

38 (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. If the legislature finds that the  
11 actions taken by the secretary were inadequate, the legislature may  
12 take additional action to correct the problem.

13 (3) Within ninety days of the effective date of this section, a  
14 report must be submitted on engineering errors that have occurred on  
15 projects that are currently under construction and not yet  
16 operationally complete.

17 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act  
18 constitute a new chapter in Title 47 RCW.

19 NEW SECTION. **Sec. 13.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of  
21 the state government and its existing public institutions, and takes  
22 effect July 1, 2015.

23 NEW SECTION. **Sec. 14.** This act takes effect only if chapter ...  
24 (Senate Bill No. ... (S-1301/15)), Laws of 2015 is enacted by June  
25 30, 2015.

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