

ESSB 5997 - H AMD  
By Representative

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 47.20.785 and 2006 c 37 s 1 are each amended to  
4 read as follows:

5 (1) The department of transportation (~~may~~) is authorized and  
6 strongly encouraged to use the design-build procedure for public  
7 works projects over ten million dollars (~~where~~) when:

8 (a) The construction activities are highly specialized and a  
9 design-build approach is critical in developing the construction  
10 methodology; or

11 (b) The projects selected provide opportunity for greater  
12 innovation and efficiencies between the designer and the builder; or

13 (c) Significant savings in project delivery time would be  
14 realized.

15 (2) To test the applicability of the design-build procedure on  
16 smaller projects and specialty projects, the department may conduct  
17 up to five pilot projects on projects that cost between two and ten  
18 million dollars. The department shall evaluate these pilot projects  
19 with respect to cost, time to complete, efficiencies gained, if any,  
20 and other pertinent information to facilitate analysis regarding the  
21 further use of the design-build process on projects of this size.  
22 This subsection expires upon the completion of the five pilot  
23 projects authorized under this subsection.

24 NEW SECTION. **Sec. 2.** (1) The joint transportation committee  
25 must convene a design-build contracting review panel to examine the  
26 department's implementation and use of design-build contracting under  
27 RCW 47.20.785.

28 (2) The design-build contracting review panel must provide a  
29 report detailing any recommended changes or improvements that the  
30 department of transportation should make to the design-build process  
31 in order to maximize cost and schedule efficiencies and ensure that  
32 design risk is borne by the appropriate party. The report is due to

1 the transportation committees of the legislature and the governor by  
2 December 1, 2016.

3 (3) The design-build contracting review panel must be comprised  
4 of six members, two of which are nationally recognized experts in the  
5 field of design-build project delivery, a representative from the  
6 association of general contractors, a representative from the  
7 American council of engineering companies of Washington, a  
8 representative of the professional and technical employees local 17,  
9 and a representative from the department of transportation. The two  
10 nationally recognized experts must be selected cooperatively by the  
11 chairs and ranking members of the senate and house transportation  
12 committees from of a list of five to seven proposed candidates  
13 provided by the secretary of transportation and the governor. The  
14 chair of the design-build contracting review panel must be designated  
15 by the appointing authorities. The two experts serving on the panel  
16 must be compensated at a rate commensurate with their experience,  
17 including reimbursement for expenses according to RCW 43.03.050 and  
18 43.03.060. The joint transportation committee must provide staff  
19 support to the design-build contracting review panel.

20 (4) This section expires June 30, 2017.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.01  
22 RCW to read as follows:

23 (1) The department must develop a construction program business  
24 plan that incorporates findings of the report required in section 2  
25 of this act and also outlines a sustainable staffing level of state-  
26 employed engineering staff, adjusted as necessary by additional  
27 sustainable revenue and modeled and optimized to address long-term  
28 needs in preservation and improvement programs through multiple  
29 biennia.

30 (2) The sustainable staffing level recognizes that it is in the  
31 state's interest that periodic increases in workload due to increases  
32 in construction funding are best addressed through the use of  
33 contract engineering resources in conjunction with limited and  
34 flexible augmentations to department staffing levels as necessary for  
35 project oversight, accountability, and delivery.

36 (3) To provide the appropriate management oversight and  
37 accountability of the use of contracted services, the plan must also  
38 make recommendations on the development of a strong owner strategy

1 that addresses state employee training, career development, and  
2 competitive compensation.

3 (4) The department must submit the plan to the office of  
4 financial management and appropriate committees of the legislature  
5 one hundred eighty days after the report in section 2 of this act is  
6 completed. The department must submit progress reports on  
7 implementation of the plan biennially beginning September 30, 2018,  
8 until September 30, 2030. The elements of the plan must include:

9 (a) Sustainable staffing levels to address long-term needs in  
10 preservation and improvement programs;

11 (b) Employee recruitment, retention, training, and compensation  
12 status;

13 (c) Project delivery methods for design and construction; and

14 (d) A comparison of Washington state to national trends and  
15 methods.

16 (5) To assist in the development of the plan, the department must  
17 convene an advisory group to be comprised of the following members:

18 (a) One representative of the professional and technical  
19 employees local 17 to represent the nonmanagement engineering and  
20 technical employees of the department;

21 (b) One member of the managerial engineering and technical staff  
22 of the department, who must serve as chair of the advisory group;

23 (c) One member appointed by the American council of engineering  
24 companies of Washington to represent the private design industry; and

25 (d) One member appointed by the associated general contractors of  
26 Washington to represent the private construction industry.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.04  
28 RCW to read as follows:

29 (1) The legislature intends the department to deliver the  
30 projects and activities listed in LEAP Transportation Document 2015  
31 NLH-1, as developed April 12, 2015, as funded by new revenues  
32 provided in chapter . . . (Engrossed Substitute Senate Bill No.  
33 5987), Laws of 2015, and for which appropriations of such funds are  
34 provided every two years in the omnibus transportation appropriations  
35 act, in a manner that exemplifies the stewardship goal in RCW  
36 47.04.280.

37 (2) To allow the department the flexibility to deliver the  
38 projects in the most expeditious and efficient manner, while at the  
39 same time honoring the intent of the legislature under chapter . . .

1 (Engrossed Substitute Senate Bill No. 5988), Laws of 2015, the  
2 department's stewardship in delivering the projects and activities  
3 under this section is subject to the following limitations:

4 (a) The department must allocate funding to projects in a manner  
5 that optimizes efficient management of project spending and delivery.  
6 If the most recent engineer's estimate of a project cost differs from  
7 the most recent project budget approved by the legislature by ten  
8 percent or two hundred fifty thousand dollars, whichever is greater,  
9 the department must seek approval before proceeding as provided in  
10 this subsection (2).

11 (b) The legislative scope of a project may not be changed to a  
12 material degree except:

13 (i) By the legislature; or

14 (ii) When a more efficient, less expensive, or more expeditious  
15 scope would provide an equivalent functional outcome. If such an  
16 alternative scope is identified, the department must seek approval  
17 before proceeding as provided in this subsection (2).

18 (c)(i) To the extent possible within budgetary and financial  
19 planning constraints, the department must adhere to the capital  
20 delivery plan schedule adopted by the legislature and as referenced  
21 in the LEAP transportation document identified in subsection (1) of  
22 this section.

23 (ii) If adherence to the original capital delivery plan schedule  
24 would result in failure to substantively meet the stewardship,  
25 efficiency, and expediency objectives of this section, the department  
26 may seek approval of reasonable changes in project scheduling so as  
27 to meet the objectives as provided in this subsection (2).

28 (d) To seek approval of project changes under this subsection  
29 (2), the department must submit a request to the office of financial  
30 management. At the time the department submits a request to transfer  
31 funds under this section, a copy of the request must be submitted to  
32 the transportation committees of the legislature. The office of  
33 financial management must work with legislative staff of the house of  
34 representatives and senate transportation committees to review the  
35 requested transfers in a timely manner.

36 (e) The department must develop by the end of each calendar  
37 quarter a report with updates of any changes under (a), (b), or (c)  
38 of this subsection. The report must be submitted to the office of  
39 financial management and the transportation committees of the  
40 legislature.

1 (3)(a) In January of each year that precedes the next fiscal  
2 biennium, beginning January 1, 2017, the department must submit a  
3 report to the governor and to the transportation committees of the  
4 legislature on progress made toward the delivery of all projects and  
5 activities subject to this section.

6 (b) The secretary must certify to the governor and the  
7 legislature the completion of the project package identified in the  
8 LEAP transportation document identified in subsection (1) of this  
9 section, or the most recent version approved by the legislature or  
10 the office of financial management under subsection (2)(d) of this  
11 section, on the date that the delivery of the projects and activities  
12 subject to this section is substantively complete.

13 (4) The changes for which the department may seek approval under  
14 subsection (2)(a), (b), or (c) of this section are changes to the  
15 cost, scope, or schedule of a project relative to the cost, scope, or  
16 schedule of the project in the LEAP transportation document  
17 identified in subsection (1) of this section or the most recent  
18 version approved by the legislature or the office of financial  
19 management under subsection (2)(d) of this section.

20 (5) This section expires June 30, 2031, or the date the secretary  
21 certifies that the delivery of the projects and activities listed in  
22 the LEAP transportation document identified in subsection (1) of this  
23 section, or the most recent version approved by the legislature or  
24 the office of financial management under subsection (2)(d) of this  
25 section, is substantively complete, whichever is later.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.01  
27 RCW to read as follows:

28 (1)(a) For projects identified as connecting Washington projects  
29 and supported by revenues under chapter . . . (Engrossed Substitute  
30 Senate Bill No. 5987), Laws of 2015, it is the priority of the  
31 legislature that the department deliver the named projects. In doing  
32 so, the legislature expects that, for some projects, costs will be  
33 reduced during the project design phase due to the application of  
34 practical design. The application of practical design may result in  
35 changes to project titles or descriptions, or both, but the intended  
36 system performance expected from a project may not be substantially  
37 changed. Savings specific to the application of practical design must  
38 be made available through the transportation future funding program  
39 to new connecting Washington projects that are in addition to those

1 identified in chapter . . . (Engrossed Substitute Senate Bill No.  
2 5988), Laws of 2015, and to preservation investments in equal  
3 amounts. Additionally, any retired risk or unused contingency funding  
4 on a project must be made available to the transportation future  
5 funding program.

6 (b) Each connecting Washington project must be evaluated at the  
7 end of the project design phase to determine savings gained from the  
8 application of practical design. To determine the savings specific to  
9 practical design, the department must consider the impacts that  
10 inflation and other forces outside of the department's control have  
11 on project costs. The department must include a practical design  
12 update as a part of quarterly project delivery reporting. The  
13 department must include a detailed summary of the application of  
14 practical design and the associated savings gained each year as a  
15 part of its annual budget submittal.

16 (2)(a) The transportation future funding program is intended to  
17 provide for future emergent transportation projects and highway  
18 preservation investments, beginning in fiscal year 2024, based on  
19 savings accrued from the application of practical design on  
20 connecting Washington projects. Beginning in fiscal year 2024, as a  
21 part of its budget submittal, the department may recommend highway  
22 improvement projects or preservation investments for potential  
23 legislative approval as new connecting Washington projects.

24 (b) Highway improvement projects considered for inclusion as new  
25 connecting Washington projects under the transportation future  
26 funding program must: Address significant safety concerns; provide  
27 compelling economic development gains; leverage partnership funds  
28 from local, federal, or other sources; or require a next phase of  
29 funding to build upon initial investments provided by the  
30 legislature.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.01  
32 RCW to read as follows:

33 (1) The department of transportation, the department of ecology,  
34 and the department of fish and wildlife must use their existing  
35 authorities and guidance to provide a preference for the removal of  
36 existing fish passage barriers owned by cities and counties as  
37 compensatory mitigation for environmental impacts of transportation  
38 projects where appropriate.

1 (2)(a) The office of the governor must convene the department of  
2 transportation, department of ecology, and department of fish and  
3 wildlife, and consult with other relevant stakeholders, to develop a  
4 framework for encouraging off-site and out-of-kind local fish passage  
5 barrier mitigation that provides results that are consistent with  
6 habitat protection priorities and practical design principles, and  
7 are ecologically preferable to on-site mitigation.

8 (b) The implementation of this framework must:

9 (i) Not delay transportation project delivery;

10 (ii) Not be additive to the amount or cost of mitigation required  
11 under existing regulations;

12 (iii) Not preclude on-site or off-site and in-kind mitigation  
13 when that is the most ecologically appropriate means to address  
14 project impacts;

15 (iv) Not alter the mitigation sequencing principles of first  
16 avoidance and the minimization of impacts before compensatory  
17 mitigation;

18 (v) Provide for a mechanism that identifies whether environmental  
19 impacts from projects are appropriate for local fish passage barrier  
20 mitigation;

21 (vi) Use the statewide fish passage barrier removal strategy  
22 developed by the fish passage barrier removal board created in RCW  
23 77.95.160 and information provided by salmon recovery regional  
24 organizations and local entities to identify specific priority  
25 locations where removal of local barriers would provide a net  
26 resource gain; and

27 (vii) Consistent with existing mitigation regulations and  
28 guidelines, provide a preference, where appropriate, for investment  
29 in local fish passage barrier removal where greater environmental  
30 benefit can be achieved with off-site and out-of-kind mitigation.

31 (c) In addition to the framework developed in (a) of this  
32 subsection, the department of transportation, department of ecology,  
33 and department of fish and wildlife must develop and implement an  
34 umbrella statewide in lieu fee program or other formal means to  
35 provide a streamlined mechanism to undertake priority local fish  
36 passage barrier corrections throughout the watersheds of the state as  
37 a preferred means of compensatory mitigation, where appropriate, for  
38 state transportation that is consistent with the principles in (a)  
39 and (b) of this subsection.

1 (3) This section is not intended to decrease funding or otherwise  
2 impede the state's efforts to meet its obligation for fish passage  
3 barrier correction according to existing law or court ruling.

4 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of  
6 the state government and its existing public institutions, and takes  
7 effect July 1, 2015.

8 NEW SECTION. **Sec. 8.** This act takes effect only if both  
9 chapter . . . (Engrossed Substitute Senate Bill No. 5987), Laws of  
10 2015 and chapter . . . (Engrossed Substitute Senate Bill No. 5988),  
11 Laws of 2015 are enacted by June 30, 2015."

12 Correct the title.

EFFECT: (1) Requires the Washington state department of  
transportation (WSDOT) to seek approval for specific project changes  
for projects funded by ESSB 5987, and specifies the process for how  
project changes are approved.

(2) Specifies that the legislature expects project costs to be  
reduced through the application of practical design.

(3) Designates that savings attributable to practical design must  
be made available through the transportation future funding program  
to new connecting Washington projects and to preservation investments  
in equal amounts.

(4) Requires the WSDOT, the department of ecology, and the  
department of fish and wildlife to provide a preference for the  
removal of existing fish passage barriers owned by cities and  
counties as compensatory mitigation for environmental impacts of  
transportation projects, where appropriate.

(5) Sets forth a process to develop a framework for local fish  
passage barrier mitigation.

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