ESSB 5997 - H AMD
By Representative

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

(2) The design-build contracting review panel must provide a report detailing any recommended changes or improvements that the department of transportation should make to the design-build process in order to maximize cost and schedule efficiencies and ensure that design risk is borne by the appropriate party. The report is due to
the transportation committees of the legislature and the governor by December 1, 2016.

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

(4) This section expires June 30, 2017.

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

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

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

(3) To provide the appropriate management oversight and accountability of the use of contracted services, the plan must also make recommendations on the development of a strong owner strategy
that addresses state employee training, career development, and competitive compensation.

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

(a) Sustainable staffing levels to address long-term needs in preservation and improvement programs;
(b) Employee recruitment, retention, training, and compensation status;
(c) Project delivery methods for design and construction; and
(d) A comparison of Washington state to national trends and methods.

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

(a) One representative of the professional and technical employees local 17 to represent the nonmanagement engineering and technical employees of the department;
(b) One member of the managerial engineering and technical staff of the department, who must serve as chair of the advisory group;
(c) One member appointed by the American council of engineering companies of Washington to represent the private design industry; and
(d) One member appointed by the associated general contractors of Washington to represent the private construction industry.

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

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

(2) To allow the department the flexibility to deliver the projects in the most expeditious and efficient manner, while at the same time honoring the intent of the legislature under chapter . . .
(Engrossed Substitute Senate Bill No. 5988), Laws of 2015, the
department's stewardship in delivering the projects and activities
under this section is subject to the following limitations:

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

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

(i) By the legislature; or

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

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

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

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

(e) The department must develop by the end of each calendar
quarter a report with updates of any changes under (a), (b), or (c)
of this subsection. The report must be submitted to the office of
financial management and the transportation committees of the
legislature.
(3)(a) In January of each year that precedes the next fiscal biennium, beginning January 1, 2017, the department must submit a report to the governor and to the transportation committees of the legislature on progress made toward the delivery of all projects and activities subject to this section.

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

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

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

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

(1)(a) For projects identified as connecting Washington projects and supported by revenues under chapter . . . (Engrossed Substitute Senate Bill No. 5987), Laws of 2015, it is the priority of the legislature that the department deliver the named projects. In doing so, the legislature expects that, for some projects, costs will be reduced during the project design phase due to the application of practical design. The application of practical design may result in changes to project titles or descriptions, or both, but the intended system performance expected from a project may not be substantially changed. Savings specific to the application of practical design must be made available through the transportation future funding program to new connecting Washington projects that are in addition to those
identified in chapter . . . (Engrossed Substitute Senate Bill No. 5988), Laws of 2015, and to preservation investments in equal amounts. Additionally, any retired risk or unused contingency funding on a project must be made available to the transportation future funding program.

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

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

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

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

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

(b) The implementation of this framework must:

(i) Not delay transportation project delivery;

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

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

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

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

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

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

(c) In addition to the framework developed in (a) of this subsection, the department of transportation, department of ecology, and department of fish and wildlife must develop and implement an umbrella statewide in lieu fee program or other formal means to provide a streamlined mechanism to undertake priority local fish passage barrier corrections throughout the watersheds of the state as a preferred means of compensatory mitigation, where appropriate, for state transportation that is consistent with the principles in (a) and (b) of this subsection.
This section is not intended to decrease funding or otherwise impede the state's efforts to meet its obligation for fish passage barrier correction according to existing law or court ruling.

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

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

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.