

HOUSE BILL REPORT

ESSB 6277

As Passed House - Amended:

March 8, 2000

Title: An act relating to authorizing cost-reimbursement agreements for leases and environmental permits.

Brief Description: Authorizing cost-reimbursement agreements for leases and environmental permits.

Sponsors: Senate Committee on Environmental Quality & Water Resources (originally sponsored by Senators B. Sheldon, Swecker, Jacobsen, Franklin, Morton, Costa, Fraser, Eide, Spanel, Thibaudeau and Kohl-Welles).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/17/00, 2/25/00 [DPA].

Floor Activity:

Passed House - Amended: 3/3/00, 69-29.

Senate Refused to Concur.

House Recessed.

House Amended.

Passed House: 3/8/00, 91-7.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)**

- Authorizes voluntary cost-reimbursement agreements between permit applicants and certain agencies for complex projects which require an environmental impact statement.
- Requires the hiring of independent consultants to work on the permits, but funds may be used for current staff to review the work of the consultants or to work on the permits when qualified consultants are unavailable.
- Allows the hiring of independent consultants to replace permanent staff diverted to work on permits covered by the agreements. Allows recovery of necessary direct and indirect costs to process the permits.
- Specifies that conflict of interest laws apply to these agreements and anyone hired under these agreements.
- Prohibits the supplanting of existing funding, and prohibits reducing the current level of staff to work on permits not covered by these agreements.
- Allows a water rights applicant to enter into an agreement with the Department of Ecology to process the application if the applicant agrees to pay for, or as part of a cooperative effort agrees to pay for, the cost of processing applications that are ahead in line.
- Limits the time for which new agreements can be negotiated at July 1, 2005.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Staff: Bill Lynch (786-7092).

Background:

Cost-reimbursement agreements are a mechanism by which an applicant for a state or local government permit or lease can provide funds for the staff necessary to process the required application in a timely manner. A complex project may cause delays in

processing the complex project's application, and may also result in delays in processing smaller project applications.

The Legislature has authorized agencies which enter into environmental excellence program agreements to collect a fee to recover the costs of processing proposals for such agreements. Under the coordinated permit process of the Permit Assistance Center, a coordinating permit agency may also enter into an agreement with an applicant to recover the costs of performing the coordinated permit services. The authority to enter into such agreements with regards to the coordinated permit process expires in June 2000.

Summary of Amended Bill:

Voluntary cost-reimbursement agreements may be negotiated between applicants for complex permits and the Departments of Ecology, Natural Resources, Health, and Fish and Wildlife, and local air pollution control authorities. The Department of Natural Resources may also use these agreements for any lease application except aquatic leases. A complex permit is a permit which requires an environmental impact statement.

Under a cost-reimbursement agreement, the applicant pays the reasonable costs incurred by the agency or local pollution control authority for permit coordination, environmental review, application review, technical studies, permit processing, and carrying out the requirements of other relevant laws. The agreement must identify the specific tasks, costs, and schedule for work to be conducted. The billing process for a cost-reimbursement agreement must provide for accurate time and cost accounting, and may allow for progress payments.

Funds under a cost-reimbursement agreement are used by the agency to contract with independent consultants to carry out the work covered by the agreement. The funds may also be used to assign current staff to review the consultants' work and to provide necessary technical assistance when an independent consultant with comparable technical skills are unavailable. The agency must make an estimate of the number of permanent staff hours needed to process permits, and is required to contract with independent consultants to replace the time and functions performed by these permanent staff which are committed to permits under the cost-reimbursement agreement. Necessary direct and indirect costs that arise from processing the permit may also be recovered from funds provided under the agreement.

An agency may not use any funds provided under a cost-reimbursement agreement to supplant existing funding. The use of cost-reimbursement agreements may not result in reductions in the current level of staff available to work on permits not covered by

these agreements. An agency must ensure that final decisions that involve policy matters are made by the agency and not by a consultant.

The conflict of interest provisions provided under the Ethics in Public Service law apply to these agreements and to persons hired under these agreements. An air pollution control authority is considered to be a state agency for the sole purpose of applying this ethics law to cost-reimbursement agreements negotiated by the air pollution control authority.

An applicant for a water right pending before the Department of Ecology may enter into a cost-reimbursement agreement with the department of expedited review of the application. The applicant must agree to pay for, or as part of a cooperative effort agree to pay for, the costs of processing his or her application and all other applications from the same source of supply which must be acted upon because they were filed prior to the date of the applicant's filing. It is not necessary for an environmental impact statement to be filed as a prerequisite for entering into a cost-reimbursement agreement related to processing water rights.

No new cost-reimbursement agreement may be negotiated after July 1, 2005. An agency may continue to administer any cost-reimbursement agreement which was entered into before July 1, 2005, until the project is completed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: These changes will increase efficiency and be beneficial to the environment. Large projects which take a great deal of staff time will be able to move forward without impacting smaller projects. These are voluntary agreements initiated by the applicant. A number of protections are provided in the bill for the applicant and to make sure there are no conflict of interest problems with the agencies. There is no bow-wave effect because consultants are hired only until the project is completed. Some local governments and the Bureau of Reclamation have good track records with these types of agreements. Public water systems in Island County are willing to pay to process water rights faster because of salt water intrusion problems.

(Concerns) The Senate floor amendment which requires processing Island County water rights permits within a specified time will be difficult to achieve. Island

County has a large backlog on water rights permits. This could upset other work in the state.

Testimony Against: None.

Testified: (In support) Senator Betti Sheldon, prime sponsor; Senator Mary Margaret Haugen; Mike Shelton, Island County Commissioner; Kaleen Cottingham, Department of Natural Resources; Jim Metcalf, United Infrastructure of Washington; Steve Gano, Trend West Resorts; Jerry Smedes, NW Environmental Business Council; Peter Birch, Department of Fish and Wildlife; and Scott Boettcher, Department of Ecology.

(In support with concerns) Ken Slattery, Department of Ecology.