

# SENATE BILL REPORT

## ESSB 6277

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As Passed Senate, February 9, 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:** Environmental Quality & Water Resources: 1/13/2000, 1/28/2000 [DPS].

Passed Senate, 2/9/2000, 46-0.

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### SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

**Majority Report:** That Substitute Senate Bill No. 6277 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Eide, Vice Chair; Jacobsen, McAuliffe, Morton and Swecker.

**Staff:** Richard Ramsey (786-7412)

**Background:** State and local governments often lack the personnel and financial resources to conduct environmental reviews and process permit applications in a timely manner. This situation is compounded when agencies review permit applications for large and complex projects. Not only is the large project delayed, so too is the review and processing of permits for small projects.

Cost-reimbursement agreements are currently authorized for the coordination activities only as a part of the coordinated permit process of the permit assistance center. This authority expires in June, 2000.

**Summary of Bill:** State regulatory agencies are authorized to negotiate voluntary cost-reimbursement agreements with the applicants for permits. The Department of Natural Resources may use the agreement for lease applications.

Under a cost-reimbursement agreement, the permit applicant may reimburse costs incurred in an agency's environmental review and permit processing. The affected agencies include the departments of Natural Resources, Ecology, Health, Fish and Wildlife, and local air pollution control authorities.

Agencies are required to develop and follow guidelines to avoid conflict of interest for work under cost-reimbursement agreements and may not execute the agreements until the guidelines are adopted.

Public water supply systems withdrawing ground water from federally designated sole-source aquifers in counties surrounded by water are authorized to negotiate cost-reimbursement agreements for expedited review of pending applications for withdrawals, changes or transfers. For applications pending on or before January 1, 2000, the Department of Ecology must render decisions on the applications by June 30, 2002.

The Joint Legislative Audit and Review Committee must review cost-reimbursement agreements, emphasizing their effect on lease and permit applicants who do not choose to negotiate the agreements, make annual progress reports and a final report to the Legislature by December 15, 2003.

The bill takes effect immediately.

**Appropriation:** None.

**Fiscal Note:** Requested on January 12, 2000.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** Permitting agencies can use cost reimbursement to manage peak work loads and will be better able to respond to all projects. The bill can help assure that agencies' resources can focus on the complex, controversial, non-routine projects, that pose significant work loads and tight timeframes.

**Testimony Against:** Complex- and small- projects should be defined. Clarify that paying for the expedited review does not guarantee a favorable answer. There is a potential conflict of interest. The bill should include ground rules- or rules of engagement- that define agencies' conduct in cost reimbursement. Agencies should not be allowed to extort- payment from permit applicants and a small project should not lose its place in line.

**Testified:** Senator Betti Sheldon, prime sponsor (pro); Craig Weckesser, Olympic Air Pollution Authority (pro); Jim Metcalf, United Infrastructure (pro); Kaleen Cottingham, Department of Natural Resources (pro); Steve Gano, Trend West Resorts (pro); Scott Boettcher, Department of Ecology (pro); Peter Birch, Department of Fish and Wildlife (pro); Bruce Wishart, People for Puget Sound (concerns); Ron Shultz, National Audubon Society (pro with concerns); Jodi Slavik, Building Industry Association of Washington (concerns).

**House Amendment(s):** 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 (DNR) 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 agency is required to contract with independent consultants to carry out the work covered by a cost-reimbursement 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 is 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. Final decisions involving policy matters are made by the agency rather than the consultant.

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.

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.

No new cost-reimbursement agreement may be negotiated after July 1, 2005, but an adopted agreement on that date may be completed.

An applicant for a new water right or a change or transfer for a water right may initiate a cost-reimbursement agreement if the applicant agrees to pay for the processing of all permit applications affecting the same water source and ahead of the permit applicant, except that no EIS is required.