

2 **E2SHB 2671** - S AMD 861

3 By Senators Fraser and Morton

4 ADOPTED 03/13/02

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. (1) The legislature finds that the health
8 and safety of its citizens, natural resources, and the environment are
9 vital interests of the state that must be protected to preserve the
10 state's quality of life. The legislature also finds that the state's
11 economic well-being is a vital interest that depends upon the
12 development of fair, coordinated environmental permitting processes
13 that ensure that the state not only protects natural resources but also
14 encourages appropriate activities that stimulate growth and
15 development. The legislature further finds that Washington's
16 environmental protection programs have established strict standards to
17 reduce pollution and protect public health and safety and the
18 environment.

19 (2) The legislature also finds that, as the number of environmental
20 and land use laws have grown in Washington, so have the number of
21 permits required of business and government. The increasing number of
22 individual permits and permit agencies has generated the potential for
23 conflict, overlap, and duplication among various state, local, and
24 federal permits. Lack of coordination in the processing of project
25 applications may cause costly delays and frustration to applicants.

26 (3) The legislature further finds that not all project applicants
27 require the same type of assistance. Applicants with small projects
28 may merely need information about local and state permits and
29 assistance in applying for those permits, while intermediate-sized
30 projects may require a facilitated permit process, and large complex
31 projects may need extensive coordination among local, state, and
32 federal agencies and tribal governments.

33 (4) The legislature, therefore, finds that a range of assistance
34 and coordination options should be available to project applicants from
35 a state office independent of any local, state, or federal permit

1 agency. The legislature finds that citizens, businesses, and project
2 applicants should be provided with:

3 (a) A reliable and consolidated source of information concerning
4 federal, state, and local environmental and land use laws and
5 procedures that may apply to any given project;

6 (b) Facilitated interagency forums for discussion of significant
7 issues related to the multiple permitting processes if needed for some
8 project applicants; and

9 (c) Active coordination of all applicable regulatory and land use
10 permitting procedures if needed for some project applicants.

11 (5) The legislature declares that the purpose of this chapter is to
12 transfer the existing permit assistance center in the department of
13 ecology to a new office of permit assistance in the office of financial
14 management to:

15 (a) Assure that citizens, businesses, and project applicants will
16 continue to be provided with vital information regarding environmental
17 and land use laws and with assistance in complying with environmental
18 and land use laws to promote understanding of these laws and to protect
19 public health and safety and the environment;

20 (b) Ensure that facilitation of project permit decisions by permit
21 agencies promotes both process efficiency and environmental protection;

22 (c) Allow for coordination of permit processing for large projects
23 upon project applicants' request and at project applicants' expense to
24 promote efficiency, ensure certainty, and avoid conflicts among permit
25 agencies; and

26 (d) Provide these services through an office independent of any
27 permit agency to ensure that any potential or perceived conflicts of
28 interest related to providing these services or making permit decisions
29 can be avoided.

30 (6) The legislature intends that establishing an office of permit
31 assistance will provide these services without abrogating or limiting
32 the authority of any permit agency to make decisions on permits that it
33 issues. The legislature therefore declares that the office of permit
34 assistance shall have authority to provide these services but shall not
35 have any authority to make decisions on permits.

36 NEW SECTION. **Sec. 2.** (1) The office of permit assistance is
37 created in the office of financial management and shall be administered

1 by the office of the governor to assist citizens, businesses, and
2 project applicants.

3 (2) The office shall:

4 (a) Maintain and furnish information as provided in section 5 of
5 this act;

6 (b) Furnish facilitation as provided in section 6 of this act;

7 (c) Furnish coordination as provided in section 7 of this act;

8 (d) Coordinate cost reimbursement as provided in section 8 of this
9 act;

10 (e) Work with state agencies and local governments to continue to
11 develop a range of permit assistance options for project applicants;

12 (f) Review initiatives developed by the transportation permit
13 efficiency and accountability committee established in chapter 47.06C
14 RCW and determine if any would be beneficial if implemented for other
15 types of projects;

16 (g) Work to develop informal processes for dispute resolution
17 between agencies and permit applicants;

18 (h) Conduct customer surveys to evaluate its effectiveness; and

19 (i) Provide the following biennial reports to the governor and the
20 appropriate committees of the legislature:

21 (i) A performance report, based on the customer surveys required in
22 (h) of this subsection;

23 (ii) A report on any statutory or regulatory conflicts identified
24 by the office in the course of its duties that arise from differing
25 legal authorities and roles of agencies and how these were resolved.
26 The report may include recommendations to the legislature and to
27 agencies; and

28 (iii) A report regarding use of outside independent consultants
29 under section 8 of this act, including the nature and amount of work
30 performed and implementation of requirements relating to costs.

31 (3) The office shall give priority to furnishing assistance to
32 small projects when expending general fund moneys allocated to it.

33 NEW SECTION. **Sec. 3.** (1) The office shall operate on the
34 principle that citizens of the state of Washington should receive the
35 following information regarding permits:

36 (a) A date and time for a decision on a permit;

1 (b) The information required for an agency to make a decision on a
2 permit, recognizing that changes in the project or other circumstances
3 may change the information required; and

4 (c) An estimate of the maximum amount of costs in fees, studies, or
5 public processes that will be incurred by the project applicant.

6 (2) This section does not create an independent cause of action,
7 affect any existing cause of action, or establish time limits for
8 purposes of RCW 64.40.020.

9 NEW SECTION. **Sec. 4.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Office" means the office of permit assistance in the office of
12 financial management established in section 2 of this act.

13 (2) "Permit" means any permit, certificate, use authorization, or
14 other form of governmental approval required in order to construct or
15 operate a project in the state of Washington.

16 (3) "Permit agency" means any state or local agency authorized by
17 law to issue permits.

18 (4) "Project" means any activity, the conduct of which requires a
19 permit or permits from one or more permit agencies.

20 (5) "Project applicant" means a citizen, business, or any entity
21 seeking a permit or permits in the state of Washington.

22 NEW SECTION. **Sec. 5.** The office shall assist citizens,
23 businesses, and project applicants by maintaining and furnishing
24 information, including, but not limited to:

25 (1) To the extent possible, compiling and periodically updating one
26 or more handbooks containing lists and explanations of permit laws,
27 including all relevant local, state, federal, and tribal laws. In
28 providing this information, the office shall seek the cooperation of
29 relevant local, state, and federal agencies and tribal governments;

30 (2) Establishing and providing notice of a point of contact for
31 obtaining information;

32 (3) Working closely and cooperatively with the business license
33 center in providing efficient and nonduplicative service;

34 (4) Collecting and making available information regarding federal,
35 state, local, and tribal government programs that rely on private
36 professional expertise to assist agencies in project permit review; and

37 (5) Developing a call center and a web site.

1 NEW SECTION. **Sec. 6.** At the request of a project applicant, the
2 office shall assist the project applicant in determining what
3 regulatory requirements, processes, and permits apply to the project,
4 as provided in this section.

5 (1) The office shall assign a project facilitator who shall discuss
6 applicable regulatory requirements, permits, and processes with the
7 project applicant and explain the available options for obtaining
8 required permits.

9 (2) If the project applicant and the project facilitator agree that
10 the project would benefit from a project scoping, the project
11 facilitator shall conduct a project scoping by the project applicant
12 and the relevant state and local permit agencies. The project
13 facilitator shall invite the participation of the relevant federal
14 permit agencies and tribal governments.

15 (a) The purpose of the project scoping is to identify the issues
16 and information needs of the project applicant and the participating
17 permit agencies regarding the project, share perspectives, and jointly
18 develop a strategy for the processing of required permits by each
19 participating permit agency.

20 (b) The scoping shall address:

21 (i) The permits that are required for the project;

22 (ii) The permit application forms and other application
23 requirements of the participating permit agencies;

24 (iii) The specific information needs and issues of concern of each
25 participant and their significance;

26 (iv) Any statutory or regulatory conflicts that might arise from
27 the differing authorities and roles of the permit agencies;

28 (v) Any natural resources, including federal or state listed
29 species, that might be adversely affected by the project and might
30 cause an alteration of the project or require mitigation; and

31 (vi) The anticipated time required for permit decisions by each
32 participating permit agency, including the time required to determine
33 if the permit application is complete, to conduct environmental review,
34 and to review and process the application. In determining the time
35 required, full consideration must be given to achieving the greatest
36 possible efficiencies through any concurrent studies and any
37 consolidated applications, hearings, and comment periods.

1 (c) The outcome of the project scoping shall be documented in
2 writing, furnished to the project applicant, and be made available to
3 the public.

4 (d) The project scoping shall be completed within sixty days of the
5 project applicant's request for a project scoping.

6 (e) Upon completion of the project scoping, the participating
7 permit agencies shall proceed under their respective authority. The
8 agencies are encouraged to remain in communication for purposes of
9 coordination until their final permit decisions are made.

10 (3) This section does not create an independent cause of action,
11 affect any existing cause of action, or establish time limits for
12 purposes of RCW 64.40.020.

13 NEW SECTION. **Sec. 7.** (1) The office may coordinate the processing
14 by participating permit agencies of permits required for a project, at
15 the request of the project applicant through a cost reimbursement
16 agreement as provided in subsection (3) of this section or with the
17 agreement of the project applicant as provided in subsection (4) of
18 this section.

19 (2) The office shall assign a project coordinator to perform any or
20 all of the following functions, as specified by the terms of a cost
21 reimbursement agreement under subsection (3) of this section or an
22 agreement under subsection (4) of this section:

23 (a) Serve as the main point of contact for the project applicant;

24 (b) Conduct a project scoping as provided in section 6(2) of this
25 act;

26 (c) Verify that the project applicant has all the information
27 needed to complete applications;

28 (d) Coordinate the permit processes of the permit agencies;

29 (e) Manage the applicable administrative procedures;

30 (f) Work to assure that timely permit decisions are made by the
31 permit agencies and maintain contact with the project applicant and the
32 permit agencies to ensure adherence to schedules;

33 (g) Assist in resolving any conflict or inconsistency among permit
34 requirements and conditions; and

35 (h) Coordinate with relevant federal permit agencies and tribal
36 governments to the extent possible.

37 (3) At the request of a project applicant and as provided in
38 section 8 of this act, the project coordinator shall coordinate

1 negotiations among the project applicant, the office, and participating
2 permit agencies to enter into a cost reimbursement agreement and shall
3 coordinate implementation of the agreement, which shall govern
4 coordination of permit processing by the participating permit agencies.

5 (4) The office may determine that it is in the public interest to
6 coordinate the processing of permits for certain projects that are
7 complex in scope, require multiple permits, involve multiple
8 jurisdictions, or involve a significant number of affected parties.
9 Upon such a determination, the office may enter into an agreement with
10 the project applicant and the participating permit agencies to
11 coordinate the processing of permits for the project. The office may
12 limit the number of such agreements according to the resources
13 available to the office and the permit agencies at the time.

14 NEW SECTION. **Sec. 8.** (1) The office may coordinate negotiation
15 and implementation of a written agreement among the project applicant,
16 the office, and participating permit agencies to recover from the
17 project applicant the reasonable costs incurred by the office in
18 carrying out the provisions of sections 6(2) and 7(2) of this act and
19 by participating permit agencies in carrying out permit processing
20 tasks specified in the agreement.

21 (2) The office may coordinate negotiation and implementation of a
22 written agreement among the project applicant, the office, and
23 participating permit agencies to recover from the project applicant the
24 reasonable costs incurred by outside independent consultants selected
25 by the office and participating permit agencies to perform permit
26 processing tasks.

27 (3) Outside independent consultants may only bill for the costs of
28 performing those permit processing tasks that are specified in a cost
29 reimbursement agreement under this section. The billing process shall
30 provide for accurate time and cost accounting and may include a billing
31 cycle that provides for progress payments.

32 (4) The office shall adopt a policy to coordinate cost
33 reimbursement agreements with outside independent consultants. Cost
34 reimbursement agreements coordinated by the office under this section
35 must be based on competitive bids that are awarded for each agreement
36 from a prequalified consultant roster.

37 (5) Independent consultants hired under a cost reimbursement
38 agreement, shall report directly to the permit agency. The office

1 shall assure that final decisions are made by the permit agency and not
2 by the consultant.

3 (6) The office shall develop procedures for determining,
4 collecting, and distributing cost reimbursement for carrying out the
5 provisions of this chapter.

6 (7) For a cost reimbursement agreement, the office and
7 participating permit agencies shall negotiate a work plan and schedule
8 for reimbursement. Prior to distributing scheduled reimbursement to
9 the agencies, the office shall verify that the agencies have met the
10 obligations contained in their work plan.

11 (8) Prior to commencing negotiations with the project applicant for
12 a cost reimbursement agreement, the office shall request work load
13 analyses from each participating permitting agency. These analyses
14 shall be available to the public. The work load of a participating
15 permit agency may only be modified with the concurrence of the agency
16 and if there is both good cause to do so and no significant impact on
17 environmental review.

18 (9) The office shall develop guidance to ensure that, in developing
19 cost reimbursement agreements, conflicts of interest are eliminated.

20 (10) For project permit processes that it coordinates, the office
21 shall coordinate the negotiation of all cost reimbursement agreements
22 executed under RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and
23 70.94.085. The office and the permit agencies shall be signatories to
24 the agreements. Each permit agency shall manage performance of its
25 portion of the agreement.

26 (11) If a permit agency or the project applicant foresees, at any
27 time, that it will be unable to meet its obligations under the cost
28 reimbursement agreement, it shall notify the office and state the
29 reasons. The office shall notify the participating permit agencies and
30 the project applicant and, upon agreement of all parties, adjust the
31 schedule, or, if necessary, coordinate revision of the work plan.

32 NEW SECTION. **Sec. 9.** (1) There is established the permit
33 assistance advisory council. The council shall:

34 (a) Assess the performance of the office;

35 (b) Review customer surveys conducted by the office to determine
36 the effectiveness of the office; and

37 (c) Make recommendations for improving the performance of the
38 office in carrying out the provisions of this chapter.

1 (2) The council shall be composed of eleven members.

2 (a) The governor shall appoint seven members, who shall reflect
3 geographical balance and the diversity of population within Washington
4 state. The governor shall include representation from business, the
5 environmental community, agriculture, port districts, counties, cities,
6 and the tribes.

7 (b) Two members shall be members of the senate selected by the
8 president of the senate with one member selected from each caucus in
9 the senate, and two members shall be members of the house of
10 representatives selected by the speaker of the house of representatives
11 with one member selected from each caucus in the house of
12 representatives. The legislative members shall be nonvoting members of
13 the council.

14 (3) Nonlegislative members shall serve four-year terms. Of the
15 initial members appointed to the council, two shall serve for two
16 years, two shall serve for three years, and three shall serve for four
17 years. Thereafter members shall be appointed to four-year terms.

18 (4) Vacancies shall be filled by appointment in the same manner as
19 the original appointment for the remainder of the unexpired term of the
20 position being vacated.

21 (5) Nonlegislative members shall be reimbursed for travel expenses
22 as provided in RCW 43.03.050 and 43.03.060. Legislative members shall
23 be reimbursed as provided in RCW 44.04.120.

24 (6) The council shall elect a chair and a vice-chair from the
25 voting members. The chair and vice-chair shall serve a term of one
26 year.

27 (7) The council shall meet at least four times per year.

28 NEW SECTION. **Sec. 10.** (1) The powers, duties, and functions of
29 the permit assistance center at the department of ecology are
30 transferred to the office created in section 2 of this act.

31 (2)(a) All reports, documents, surveys, books, records, files,
32 papers, or written material in the possession of the department of
33 ecology pertaining to the powers, functions, and duties transferred
34 shall be delivered to the custody of the office. All cabinets,
35 furniture, office equipment, motor vehicles, and other tangible
36 property employed by the department of ecology in carrying out the
37 powers, functions, and duties transferred shall be made available to
38 the office. All funds, credits, or other assets held in connection

1 with the powers, functions, and duties transferred shall be assigned to
2 the office.

3 (b) Any appropriations made to the department of ecology for
4 carrying out the powers, functions, and duties transferred shall, on
5 June 30, 2002, be transferred and credited to the office.

6 (c) Whenever any question arises as to the transfer of any
7 personnel, funds, books, documents, records, papers, files, equipment,
8 or other tangible property used or held in the exercise of the powers
9 and the performance of the duties and functions transferred, the
10 director of financial management shall make a determination as to the
11 proper allocation and certify the same to the state agencies concerned.

12 (3) All rules and all pending business before the department of
13 ecology pertaining to the powers, functions, and duties transferred
14 shall be continued and acted upon by the office. All existing
15 contracts and obligations shall remain in full force and shall be
16 performed by the office.

17 (4) The transfer of the powers, duties, and functions of the permit
18 assistance center shall not affect the validity of any act performed
19 before the effective date of this act.

20 (5) If apportionments of budgeted funds are required because of the
21 transfers directed by this section, the director of financial
22 management shall certify the apportionments to the agencies affected,
23 the state auditor, and the state treasurer. Each of these shall make
24 the appropriate transfer and adjustments in funds and appropriation
25 accounts and equipment records in accordance with the certification.

26 NEW SECTION. **Sec. 11.** Nothing in this chapter affects the
27 jurisdiction of the energy facility site evaluation council under
28 chapter 80.50 RCW.

29 NEW SECTION. **Sec. 12.** (1) Nothing in this chapter shall be
30 construed to abrogate or diminish the functions, powers, or duties
31 granted to any permit agency by law.

32 (2) Nothing in this chapter grants the office authority to decide
33 if a permit shall be issued. The authority for determining if a permit
34 shall be issued shall remain with the permit agency.

35 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.131
36 RCW to read as follows:

1 The office of permit assistance established in section 2 of this
2 act and its powers and duties shall be terminated June 30, 2007, as
3 provided in section 14 of this act.

4 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.131
5 RCW to read as follows:

6 The following acts or parts of acts, as now existing or hereafter
7 amended, are each repealed, effective June 30, 2008:

- 8 (1) Section 1 of this act;
- 9 (2) Section 2 of this act;
- 10 (3) Section 3 of this act;
- 11 (4) Section 4 of this act;
- 12 (5) Section 5 of this act;
- 13 (6) Section 6 of this act;
- 14 (7) Section 7 of this act;
- 15 (8) Section 8 of this act;
- 16 (9) Section 9 of this act;
- 17 (10) Section 10 of this act;
- 18 (11) Section 11 of this act; and
- 19 (12) Section 12 of this act.

20 NEW SECTION. **Sec. 15.** The joint legislative and audit review
21 committee shall work within its existing resources in conducting the
22 sunset review for the office of permit assistance.

23 NEW SECTION. **Sec. 16.** Sections 1 through 12 of this act
24 constitute a new chapter in Title 43 RCW.

25 NEW SECTION. **Sec. 17.** If specific funding for the purposes of
26 this act, referencing this act by bill or chapter number, is not
27 provided by June 30, 2002, in the omnibus appropriations act, this act
28 is null and void.

29 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately."

1 **E2SHB 2671** - S AMD 861
2 By Senators Fraser and Morton

3 ADOPTED 03/13/02

4 On page 1, line 2 of the title, after "ecology;" strike the
5 remainder of the title and insert "adding new sections to chapter
6 43.131 RCW; adding a new chapter to Title 43 RCW; creating new
7 sections; and declaring an emergency."

--- END ---