

HOUSE BILL REPORT

E2SHB 2671

As Amended by the Senate

Title: An act relating to a permit assistance center within the department of ecology.

Brief Description: Creating the permit assistance center in the office of the governor.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Linville, Romero, Reardon, Simpson, Gombosky, Grant, Veloria, Kessler, Conway, Doumit, Hatfield, Ogden, Morris, Kenney, Dickerson, Edwards, Chase, Schual-Berke, Wood, Rockefeller, Jackley, Kagi and McDermott).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/31/02, 2/8/02 [DPS];
Appropriations: 2/11/02, 2/12/02 [DP2S(w/o sub AGECE)].

Floor Activity:

Passed House: 2/16/02, 72-26.
Senate Amended.
Passed Senate: 3/8/02, 48-0.
House Refused to Concur.
Senate Receded.
Senate Amended.
Passed Senate: 3/13/02, 46-1.

Brief Summary of Engrossed Second Substitute Bill

- Transfers the powers, duties, and functions of the Department of Ecology's Permit Assistance Center to a new Permit Assistance Center within the Office of the Governor.
- Creates an 11-member Permit Assistance Advisory Council to assess the Permit Assistance Center's performance.
- Terminates these provisions on June 30, 2007.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Linville, Chair; Hunt, Vice Chair; Cooper,

Dunshee, Grant, Kirby, Quall and Roach.

Minority Report: Do not pass. Signed by 5 members: Representatives Schoesler, Ranking Minority Member; Chandler, Delvin, Holmquist and Sump.

Staff: Caroleen Dineen (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 19 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Mastin, McIntire, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

Minority Report: Do not pass. Signed by 6 members: Representatives Boldt, Buck, Clements, Cox, Lisk and Pearson.

Staff: Jeff Olsen (786-7157).

Background:

The Permit Assistance Center was created in 1995 in the Department of Ecology (DOE) to provide the public information regarding environmental permitting laws and assistance to businesses and public agencies in complying with these laws. In addition to other requirements, the Permit Assistance Center was directed to develop and provide a coordinated state permitting procedure that permit applicants could use at their option and expense and was authorized by statute to recover costs for this coordinated permit process.

The Permit Assistance Center's statutory provisions were subject to a sunset provision. Although the Joint Legislative Audit and Review Committee (JLARC) prepared a sunset review recommending reauthorization, the Permit Assistance Center's statutory provisions expired on June 30, 1999. An appropriation in the 1999-2001 budget continued funding for Permit Assistance Center operations, and it continues to operate within the DOE.

Summary of Engrossed Second Substitute Bill:

The Permit Assistance Center (PAC) is created in statute. All funding, powers, duties, functions, and records of the permit assistance center currently operating within the Department Of Ecology are transferred to the PAC. Provisions are included for transfer of authority and validity of prior and pending actions.

The PAC is required to operate on the principle that state citizens have the right to:

- a date in time for a decision on permits;
- notification of the information required by the permitting agency or authorizing agency in order to accept a completed application or issue a final decision; and
- know the maximum amount of costs in fees, studies, or public processes that will be incurred by the permit applicant.

For purposes of the PAC provisions, "permit" is defined as any license, certificate, registration, permit, or other form of use authorization required by a permit agency to engage in a particular activity.

Working with various state and local agencies, the PAC must create a range of permit assistance options for permit applicants. Options include a centralized customer call center, a web site for permitting information, facilitation services offered on a regional basis, and a process for developing a coordinated permit process utilizing a cost reimbursement system. The PAC also must work to develop informal processes for dispute resolution between agencies and permit applicants and, to the maximum extent possible, must work with the Transportation Permit Efficiency and Accountability Committee.

In addition to other duties, the PAC must:

- Publish and keep current informational handbooks for all permit laws;
- Establish and make known a contact for distribution of the handbook and public advice;
- Work closely and cooperatively with the Business Licence Center in providing efficient and non-duplicative service to the public;
- Collect and disseminate information to public and private entities on federal, state, local, and tribal government programs that rely on private professional expertise to assist governmental agencies in project permit review; and
- Provide an annual performance report to the Legislature based on customer surveys.

The PAC must prioritize expenditures of general fund money to provide services to small project applicants.

Upon a project proponent's request, the PAC must appoint a project facilitator to assist the applicant in determining applicable regulatory requirements, processes, and permits and to provide information and options to the applicant in obtaining the required permits. If requested, the project facilitator must facilitate a project scoping meeting within 60 days of the request at which the project applicant, applicable state permitting agencies, affected local governments, and any federal agencies or tribal governments electing to participate may share perspectives and identify the project issues and information needs or concerns each participant and jointly develop a strategy for managing the permitting

process. Items to be identified at the scoping meeting are specified. The results of this meeting must be documented in written form, be provided to the project applicant, and be available to the public.

The PAC also may provide active project coordination upon request. Based on a written cost reimbursement agreement, the PAC would initiate this process by convening a scoping meeting. In addition, the PAC would serve as the main contact for the permit applicant with regard to the coordinated permit processes and manage the procedural aspects of permit processing consistent with existing laws. The PAC must ensure the permit applicant has all necessary information, coordinate the review of those permits by the permit agencies, ensure timely permit decisions are made, and assist in resolving any conflict or inconsistency among permit requirements and conditions. The PAC must coordinate all cost-reimbursement agreements under other statutes for permits it coordinates.

The written cost reimbursement agreement may be negotiated to recover the reasonable costs incurred by the PAC, permit agencies, and outside independent consultants selected by the PAC and permit agencies to perform permit review and processing consistent with the coordinated permit process. Only the costs of performing permit services coordinated through the coordinated permitting process may be recovered in this manner. Any independent consultants hired under the cost reimbursement agreement report directly to the permitting agency. Provisions are included for development of a cost reimbursement policy; bidding, negotiation and development of the cost reimbursement agreement; avoiding conflicts of interest; billing; initiation of agency participation; and notification of a permitting agency's inability to meet its contractual obligations.

An 11-member Permit Assistance Advisory Council (council) is created. The council includes seven members appointed by the Governor to represent business, the environmental community, agriculture, port districts, counties, cities, and tribes. Four legislative members, two from the Senate and two from the House of Representatives, serve on the council as nonvoting members. Council appointments must reflect geographical balance and population diversity. Members serve four-year terms, and provisions are included for staggering of initial terms, vacancies, reimbursements, meetings, and governance. The council must:

- Assess the performance of the PAC;
- Review annual customer surveys to determine the PAC's effectiveness; and
- Recommend changes to PAC services to enhance technical assistance to permit applicants.

Provisions creating the PAC do not affect the jurisdiction of the Energy Facility Site Evaluation Council. The PAC provisions expire on June 30, 2007.

EFFECT OF SENATE AMENDMENT(S):

- (1) Creates the Office of Permit Assistance (Office) in the Office of Financial Management (to be administered by the Governor's office) and transfers the existing Permit Assistance Center's duties and powers to this new Office (rather than to a new permit assistance center in the Governor's office);
- (2) Identifies the Office's functions of information, facilitation, and coordination and includes customer survey and reporting requirements for the Office;
- (3) Specifies that permit agencies make decisions on permits and that permit decisions are not made by the Office or any independent consultants involved in coordinated permit processes;
- (4) Amends provisions regarding duties related to the Office's facilitation function;
- (5) Amends coordinated permit process provisions to specify Office's role and to allow the Office to require cost reimbursement for some projects and to pay for coordinating other projects within the Office's resources;
- (6) Applies cost reimbursement provisions to facilitated scoping and some coordinated permit process provisions;
- (7) Specifies parameters of cost reimbursement agreements, requirements for cost reimbursement processes and provisions for employment of independent consultants;
- (8) Requires the Office to review the activities of the Transportation Permit Efficiency and Accountability Committee to determine if initiatives may be beneficially implemented for other types of projects;
- (9) Amends the Office's operating principles to identify information that should be received (rather than rights to certain information);
- (10) Specifies that neither the Office's operating principles nor the facilitated permit process create an independent cause of action, affect any existing cause of action, or establish any time limits for purposes of legal actions related to land use decisions;
- (11) Adds definitions related to the Office and its functions;
- (12) Amends legislative intent provisions to reflect transfer of the existing Permit Assistance Center to the new Office and to address the Office's purposes;
- (13) Specifies the Joint Legislative Audit and Review Committee (JLARC) must conduct the sunset review of the Office within existing resources;
- (14) Codifies these provision in the state executive title; and
- (15) Includes technical and clarifying revisions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

Testimony For: (Agriculture & Ecology) (Original bill) The Department of Ecology

supports reenactment of the PAC but suggests the Legislature consider: (1) the requirement to seek assignment of other agencies' personnel to the PAC in light of the current budget; (2) changing the annual report to the Legislature to a periodic report; (3) aligning the cost recovery provisions with the cost reimbursement provisions passed in 2000; and (4) removing the sunset provisions.

The PAC provides good service and substantial advantages to permit applicants. The cost reimbursement provisions should apply to all permit agencies involved in the PAC, and appeals processes should be coordinated with the PAC.

Effectiveness cannot be reduced for the sake of efficiency. There needs to be a balance that provides useful service and better coordination.

Testimony For: (Appropriations) The Permit Assistance Center is valuable to permittees. Fiscal impacts from other agencies should be minimal because they currently have these permitting responsibilities. The Permit Assistance Center should be given the ability to coordinate all cost reimbursement provisions.

Testimony Against: (Agriculture & Ecology) (original bill) There is a conflict in how the scope of work is examined in that the same outside experts doing the scoping are also doing the examination. Concern also exists that with cost recovery, a conflict of interest exists when the applicant is paying for staff services. The Legislature needs to look at ways to eliminate these potential conflicts.

Testimony Against: (Appropriations) None.

Testified: (Agriculture & Ecology) (In support) Scott Boettcher, Department of Ecology; Peter Birch, Washington Department of Fish and Wildlife; Jerry Smedes, Northwest Environmental Business Council; Bruce Wishart, People for Puget Sound; and Steve Gano, Miller Brewing Company

(Concerns) Willy O' Neal, Associated General Contractors of Washington; and Jodi Slavik, Building Industry Association of Washington.

Testified: (Appropriations) Willy O'Neal, Associated General Contractors of Washington; and Kristen Sawin, Association of Washington Business.