

HOUSE BILL REPORT

E2SHB 2671

As Passed Legislature

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.

House Concurred.

Passed House: 3/13/02, 95-2.

Passed Legislature.

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 Office of Permit Assistance within the Office of Financial Management.
- Creates a 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 (PAC) 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 PAC was directed to develop and provide a coordinated state permitting procedure that project applicants could use at their option and expense and was authorized by statute to recover costs for this coordinated permit process.

The PAC'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 PAC's statutory provisions expired on June 30, 1999. An appropriation in the 1999-2001 budget continued funding for PAC operations, and it continues to operate within the DOE.

Summary of Engrossed Second Substitute Bill:

The Office of Permit Assistance (OPA) is created in the Office of Financial Management, to be administered by the Office of the Governor. All funding, powers, duties, functions, and records of the Permit Assistance Center currently operating within the Department Of Ecology (PAC) are transferred to the OPA. Provisions are included for transfer of PAC

authority to the OPA and for validity of prior and pending actions.

The OPA is required to operate on the principle that state citizens should receive:

- a date and time for a decision on a permit;
- the information required to make a decision on a permit, recognizing that project changes or other circumstances may change the information required; and
- an estimate of the maximum amount of costs in fees, studies, or public processes that will be incurred by the project applicant.

For purposes of the OPA provisions, "permit" is defined as any permit, certificate, use authorization, or other form of governmental approval required to construct or operate a project. Other definitions related to the OPA or permitted projects are included.

Duties of the OPA are specified. The OPA must provide information services, including permit handbooks and contacts persons as well as development of a call center and a web site. The OPA also must provide facilitation services upon request, which include appointing a project facilitator to assist project applicants to determine applicable regulatory requirements, processes and permits and provide information and options for obtaining required permits. The OPA also must complete a project scoping within 60 days of request with relevant state and local permit agencies and the project applicant to identify issues and information needs regarding the project. Items to be identified through project scoping are identified. The outcome of the project scoping must be documented in written form, provided to the project applicant, and be made available to the public. Neither the OPA's facilitation services nor its operating principles may be construed to create an independent cause of action, affect an existing cause of action, or establish time limits for purposes of RCW 64.40.020.

Further, the OPA may provide active project coordination either: (1) upon the project applicant's request based on a written cost reimbursement agreement; or (2) with the project applicant's request and at the OPA's expense when the OPA determines it is in the public interest to do so. The OPA must assign a project coordinator to, among other responsibilities, conduct a project scoping, serve as the project applicant's contact, coordinate permit processes, and assist in resolving conflicts. The project coordinator may coordinate negotiations for a written cost reimbursement agreement.

The written cost reimbursement agreement may be negotiated to recover the reasonable costs incurred by the OPA, permit agencies, and outside independent consultants selected 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 permit 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.

In addition to these responsibilities, the OPA must:

- work to develop informal processes for dispute resolution between agencies and project applicants;
- conduct customer surveys to evaluate its effectiveness;
- review initiatives developed by the Transportation Permit Efficiency and Accountability Committee to determine if any would be beneficial if implemented for other projects;
- prioritize expenditures of general fund money to provide services to small project applicants; and
- provide biennial reports to the Legislature on OPA performance, on any identified statutory or regulatory conflicts related to authorities and roles of permit agencies, and on use of outside independent consultants in the coordinated permit process.

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 OPA;
- Review annual customer surveys to determine the OPA's effectiveness; and
- Recommend changes to OPA performance.

Provisions creating the OPA do not affect the jurisdiction of the Energy Facility Site Evaluation Council. The OPA provisions do not abrogate or diminish functions, powers, or duties granted to any permit agency or grants the OPA authority to decide if a permit will be issued.

The OPA provisions expire on June 30, 2007. The Joint Legislative and Audit Review Committee must work within its existing resources to conduct the sunset review of the OPA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: An emergency clause is included for the provisions to take effect

immediately.

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.