

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2671

Chapter 153, Laws of 2002

(partial veto)

57th Legislature
2002 Regular Session

OFFICE OF PERMIT ASSISTANCE

EFFECTIVE DATE: 6/13/02

Passed by the House March 13, 2002
Yeas 95 Nays 2

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 13, 2002
Yeas 46 Nays 1

BRAD OWEN
President of the Senate

Approved March 26, 2002, with the
exception of sections 9 and 18, which
are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2671** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 26, 2002 - 12:27 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2671

AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

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)

Read first time 02/12/2002. Referred to Committee on .

1 AN ACT Relating to a permit assistance center within the department
2 of ecology; adding new sections to chapter 43.131 RCW; adding a new
3 chapter to Title 43 RCW; creating new sections; and declaring an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

18 (2) The legislature also finds that, as the number of environmental
19 and land use laws have grown in Washington, so have the number of

1 permits required of business and government. The increasing number of
2 individual permits and permit agencies has generated the potential for
3 conflict, overlap, and duplication among various state, local, and
4 federal permits. Lack of coordination in the processing of project
5 applications may cause costly delays and frustration to applicants.

6 (3) The legislature further finds that not all project applicants
7 require the same type of assistance. Applicants with small projects
8 may merely need information about local and state permits and
9 assistance in applying for those permits, while intermediate-sized
10 projects may require a facilitated permit process, and large complex
11 projects may need extensive coordination among local, state, and
12 federal agencies and tribal governments.

13 (4) The legislature, therefore, finds that a range of assistance
14 and coordination options should be available to project applicants from
15 a state office independent of any local, state, or federal permit
16 agency. The legislature finds that citizens, businesses, and project
17 applicants should be provided with:

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

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

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

26 (5) The legislature declares that the purpose of this chapter is to
27 transfer the existing permit assistance center in the department of
28 ecology to a new office of permit assistance in the office of financial
29 management to:

30 (a) Assure that citizens, businesses, and project applicants will
31 continue to be provided with vital information regarding environmental
32 and land use laws and with assistance in complying with environmental
33 and land use laws to promote understanding of these laws and to protect
34 public health and safety and the environment;

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

37 (c) Allow for coordination of permit processing for large projects
38 upon project applicants' request and at project applicants' expense to

1 promote efficiency, ensure certainty, and avoid conflicts among permit
2 agencies; and

3 (d) Provide these services through an office independent of any
4 permit agency to ensure that any potential or perceived conflicts of
5 interest related to providing these services or making permit decisions
6 can be avoided.

7 (6) The legislature intends that establishing an office of permit
8 assistance will provide these services without abrogating or limiting
9 the authority of any permit agency to make decisions on permits that it
10 issues. The legislature therefore declares that the office of permit
11 assistance shall have authority to provide these services but shall not
12 have any authority to make decisions on permits.

13 NEW SECTION. **Sec. 2.** (1) The office of permit assistance is
14 created in the office of financial management and shall be administered
15 by the office of the governor to assist citizens, businesses, and
16 project applicants.

17 (2) The office shall:

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

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

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

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

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

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

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

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

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

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

37 (ii) A report on any statutory or regulatory conflicts identified
38 by the office in the course of its duties that arise from differing

1 legal authorities and roles of agencies and how these were resolved.
2 The report may include recommendations to the legislature and to
3 agencies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) Establishing and providing notice of a point of contact for
7 obtaining information;

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

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

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

14 NEW SECTION. **Sec. 6.** At the request of a project applicant, the
15 office shall assist the project applicant in determining what
16 regulatory requirements, processes, and permits apply to the project,
17 as provided in this section.

18 (1) The office shall assign a project facilitator who shall discuss
19 applicable regulatory requirements, permits, and processes with the
20 project applicant and explain the available options for obtaining
21 required permits.

22 (2) If the project applicant and the project facilitator agree that
23 the project would benefit from a project scoping, the project
24 facilitator shall conduct a project scoping by the project applicant
25 and the relevant state and local permit agencies. The project
26 facilitator shall invite the participation of the relevant federal
27 permit agencies and tribal governments.

28 (a) The purpose of the project scoping is to identify the issues
29 and information needs of the project applicant and the participating
30 permit agencies regarding the project, share perspectives, and jointly
31 develop a strategy for the processing of required permits by each
32 participating permit agency.

33 (b) The scoping shall address:

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

35 (ii) The permit application forms and other application
36 requirements of the participating permit agencies;

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

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

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

6 (vi) The anticipated time required for permit decisions by each
7 participating permit agency, including the time required to determine
8 if the permit application is complete, to conduct environmental review,
9 and to review and process the application. In determining the time
10 required, full consideration must be given to achieving the greatest
11 possible efficiencies through any concurrent studies and any
12 consolidated applications, hearings, and comment periods.

13 (c) The outcome of the project scoping shall be documented in
14 writing, furnished to the project applicant, and be made available to
15 the public.

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

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

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

25 NEW SECTION. **Sec. 7.** (1) The office may coordinate the processing
26 by participating permit agencies of permits required for a project, at
27 the request of the project applicant through a cost reimbursement
28 agreement as provided in subsection (3) of this section or with the
29 agreement of the project applicant as provided in subsection (4) of
30 this section.

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

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

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

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

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

4 (e) Manage the applicable administrative procedures;

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

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

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

12 (3) At the request of a project applicant and as provided in
13 section 8 of this act, the project coordinator shall coordinate
14 negotiations among the project applicant, the office, and participating
15 permit agencies to enter into a cost reimbursement agreement and shall
16 coordinate implementation of the agreement, which shall govern
17 coordination of permit processing by the participating permit agencies.

18 (4) The office may determine that it is in the public interest to
19 coordinate the processing of permits for certain projects that are
20 complex in scope, require multiple permits, involve multiple
21 jurisdictions, or involve a significant number of affected parties.
22 Upon such a determination, the office may enter into an agreement with
23 the project applicant and the participating permit agencies to
24 coordinate the processing of permits for the project. The office may
25 limit the number of such agreements according to the resources
26 available to the office and the permit agencies at the time.

27 NEW SECTION. **Sec. 8.** (1) The office may coordinate negotiation
28 and implementation of a written agreement among the project applicant,
29 the office, and participating permit agencies to recover from the
30 project applicant the reasonable costs incurred by the office in
31 carrying out the provisions of sections 6(2) and 7(2) of this act and
32 by participating permit agencies in carrying out permit processing
33 tasks specified in the agreement.

34 (2) The office may coordinate negotiation and implementation of a
35 written agreement among the project applicant, the office, and
36 participating permit agencies to recover from the project applicant the
37 reasonable costs incurred by outside independent consultants selected

1 by the office and participating permit agencies to perform permit
2 processing tasks.

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

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

13 (5) Independent consultants hired under a cost reimbursement
14 agreement, shall report directly to the permit agency. The office
15 shall assure that final decisions are made by the permit agency and not
16 by the consultant.

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

20 (7) For a cost reimbursement agreement, the office and
21 participating permit agencies shall negotiate a work plan and schedule
22 for reimbursement. Prior to distributing scheduled reimbursement to
23 the agencies, the office shall verify that the agencies have met the
24 obligations contained in their work plan.

25 (8) Prior to commencing negotiations with the project applicant for
26 a cost reimbursement agreement, the office shall request work load
27 analyses from each participating permitting agency. These analyses
28 shall be available to the public. The work load of a participating
29 permit agency may only be modified with the concurrence of the agency
30 and if there is both good cause to do so and no significant impact on
31 environmental review.

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

34 (10) For project permit processes that it coordinates, the office
35 shall coordinate the negotiation of all cost reimbursement agreements
36 executed under RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and
37 70.94.085. The office and the permit agencies shall be signatories to
38 the agreements. Each permit agency shall manage performance of its
39 portion of the agreement.

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

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

9 *(a) Assess the performance of the office;*

10 *(b) Review customer surveys conducted by the office to determine
11 the effectiveness of the office; and*

12 *(c) Make recommendations for improving the performance of the
13 office in carrying out the provisions of this chapter.*

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

15 *(a) The governor shall appoint seven members, who shall reflect
16 geographical balance and the diversity of population within Washington
17 state. The governor shall include representation from business, the
18 environmental community, agriculture, port districts, counties, cities,
19 and the tribes.*

20 *(b) Two members shall be members of the senate selected by the
21 president of the senate with one member selected from each caucus in
22 the senate, and two members shall be members of the house of
23 representatives selected by the speaker of the house of representatives
24 with one member selected from each caucus in the house of
25 representatives. The legislative members shall be nonvoting members of
26 the council.*

27 *(3) Nonlegislative members shall serve four-year terms. Of the
28 initial members appointed to the council, two shall serve for two
29 years, two shall serve for three years, and three shall serve for four
30 years. Thereafter members shall be appointed to four-year terms.*

31 *(4) Vacancies shall be filled by appointment in the same manner as
32 the original appointment for the remainder of the unexpired term of the
33 position being vacated.*

34 *(5) Nonlegislative members shall be reimbursed for travel expenses
35 as provided in RCW 43.03.050 and 43.03.060. Legislative members shall
36 be reimbursed as provided in RCW 44.04.120.*

1 (6) *The council shall elect a chair and a vice-chair from the*
2 *voting members. The chair and vice-chair shall serve a term of one*
3 *year.*

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

5 *Sec. 9 was vetoed. See message at end of chapter.

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

9 (2)(a) All reports, documents, surveys, books, records, files,
10 papers, or written material in the possession of the department of
11 ecology pertaining to the powers, functions, and duties transferred
12 shall be delivered to the custody of the office. All cabinets,
13 furniture, office equipment, motor vehicles, and other tangible
14 property employed by the department of ecology in carrying out the
15 powers, functions, and duties transferred shall be made available to
16 the office. All funds, credits, or other assets held in connection
17 with the powers, functions, and duties transferred shall be assigned to
18 the office.

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

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

28 (3) All rules and all pending business before the department of
29 ecology pertaining to the powers, functions, and duties transferred
30 shall be continued and acted upon by the office. All existing
31 contracts and obligations shall remain in full force and shall be
32 performed by the office.

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

36 (5) If apportionments of budgeted funds are required because of the
37 transfers directed by this section, the director of financial
38 management shall certify the apportionments to the agencies affected,

1 the state auditor, and the state treasurer. Each of these shall make
2 the appropriate transfer and adjustments in funds and appropriation
3 accounts and equipment records in accordance with the certification.

4 NEW SECTION. **Sec. 11.** Nothing in this chapter affects the
5 jurisdiction of the energy facility site evaluation council under
6 chapter 80.50 RCW.

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

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

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

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

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

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

22 (1) Section 1 of this act;

23 (2) Section 2 of this act;

24 (3) Section 3 of this act;

25 (4) Section 4 of this act;

26 (5) Section 5 of this act;

27 (6) Section 6 of this act;

28 (7) Section 7 of this act;

29 (8) Section 8 of this act;

30 (9) Section 9 of this act;

31 (10) Section 10 of this act;

32 (11) Section 11 of this act; and

33 (12) Section 12 of this act.

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

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

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

10 ****NEW SECTION. Sec. 18. This act is necessary for the immediate***
11 ***preservation of the public peace, health, or safety, or support of the***
12 ***state government and its existing public institutions, and takes effect***
13 ***immediately.***

14 ***Sec. 18 was vetoed. See message at end of chapter.**

 Passed the House March 13, 2002.

 Passed the Senate March 13, 2002.

 Approved by the Governor March 26, 2002, with the exception of
 certain items that were vetoed.

 Filed in Office of Secretary of State March 26, 2002.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 9 and
3 18, Engrossed Second Substitute House Bill No. 2671 entitled:

4 "AN ACT Relating to a permit assistance center within the
5 department of ecology;"

6 Engrossed Second Substitute House Bill No. 2671 establishes an
7 office of permit assistance in the Office of Financial Management (OFM)
8 to be administered by the Governor. The bill will move the permit
9 assistance center currently in operation at the Department of Ecology
10 (DOE) to OFM, and extend its reach.

11 Section 9 of the bill would have established an eleven-member
12 advisory council to assess the performance of the permit assistance
13 office, review customer surveys, and make performance improvement
14 recommendations, among other things. However, no funding was provided
15 in the budget to support the advisory council, and such a council is
16 not essential. The new office will provide biennial reports to the
17 governor and the legislature, and DOE will also be forming an advisory
18 committee.

19 The emergency clause in section 18 of the bill has also been
20 vetoed. OFM, the Governor's Office and DOE will need time to establish
21 the new office.

1 For these reasons, I have vetoed sections 9 and 18 of Engrossed
2 Second Substitute House Bill No. 2671.

3 With the exception of sections 9 and 18, Engrossed Second
4 Substitute House Bill No. 2671 is approved."