

SENATE BILL REPORT

SB 5776

As Reported By Senate Committee On:
Land Use & Planning, March 3, 2003
Ways & Means, March 10, 2003

Title: An act relating to review of permit decisions by state agencies; and adding a new chapter to Title 43 RCW.

Brief Description: Providing an appeal process for state agency permit decisions on certain projects.

Sponsors: Senators Doumit, Morton, Hargrove, Mulliken, Rasmussen, Swecker, Haugen, Zarelli, Reardon, Parlette, McAuliffe and Winsley.

Brief History:

Committee Activity: Land Use & Planning: 2/20/03, 3/3/03 [DPS-WM, DNP].
Ways & Means: 3/7/03, 3/10/03 [DPS (LU)].

SENATE COMMITTEE ON LAND USE & PLANNING

Majority Report: That Substitute Senate Bill No. 5776 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Mulliken, Chair; McCaslin, Morton and T. Sheldon.

Minority Report: Do not pass.

Signed by Senator Kline.

Staff: Tim Watterson (786-7441)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5776 as recommended by Committee on Land Use & Planning be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Fairley, Hale, Honeyford, Johnson, Roach, B. Sheldon and Winsley.

Staff: Richard Ramsey (786-7412)

Background: Under current statutes, numerous environmental and land use permits may be required from state and local agencies for a single development project proposal. Each permit requires a separate application, review process, and decision. Separate statutory provisions may apply for appeal of the final permit decisions. In 2002, the Legislature found that a coordinated permitting process, subject to the applicable environmental laws, is vital to the state's economic well-being. The 2002 Legislature created a permit coordination option for project applicants, administered by the Office of Permit Assistance (OPA) by written

agreement with the project applicant and participating state agencies. Existing permit decision and appeal procedures are unaffected by the project permit coordination.

Summary of Substitute Bill: A consolidated permit appeal process is established to be available to certain qualifying projects that are located in statutory distressed areas and rural natural resources impact areas and that provide at least 30 full-time jobs. The appeal process, if applicable, is the exclusive process for review of the environmental and land use permits from state agencies and local governments that are required for the qualifying project.

Appeals of permit decisions are filed with the local superior court within 21 days from the agency notice of decision. The court must review the appealed permit decisions according to timelines included. In order for permit appeals to be consolidated, the project applicant must file an affidavit with the court listing all project permits applied for. If verified by the court, the court must halt the judicial review process and timelines pending the issuance of all project permits. After appeal periods for all permit decisions have run, the court must consolidate all appeals into the same case. Expedited court review is provided if all permit decisions were made consistent with due process for public input. Otherwise, a full de novo hearing or trial is required. The court's review is based on procedures and standards set forth.

Substitute Bill Compared to Original Bill: The substitute bill clarifies definitions and appeals procedures. A "qualifying project" must be located in a county that is both a distressed area and a natural resources impact area and must provide at least 30 full-time jobs. The requirement in the original bill for a coordination agreement with the Office of Permit Assistance is eliminated. Permits and permit agencies included in the consolidated appeals process are defined in terms of all state and local environmental and land use permits applied for by the project proponent, as certified by the project applicant and verified by the court. Expedited court review of the consolidated appeal is provided only if all permit decisions were made consistent with due process; otherwise, a full de novo hearing or trial is required.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Land Use & Planning): Economic development in distressed areas requires expedited process and consolidated appeals. Permitting and appeals for needed public and private projects may take years. Development money will not flow into the state if projects cannot be permitted. Appeals should protect against rampant development, not prevent needed projects in depressed areas. This is a good idea that should be expanded beyond distressed areas.

Testimony Against (Land Use & Planning): Environmental hearings boards have expertise not available in courts. Directing permit review to superior court will cause new workload and costs for courts. The alternative of consolidating appeals in a single hearings board should be investigated.

Testified (Land Use & Planning): Senator Doumit, prime sponsor; Gary Nelson, Port of Grays Harbor (pro); Chuck Maples, Mox Chehalis LLC (pro); Mike Coverdale, Windermere

Westport (pro); Martha Harden, Superior Court Judges Association (con); Ron Shultz, Governor's Policy Office (pro/con); Bruce Wishart, People for Puget Sound (con); Eli Sanders, WashPIRG (con); Kristen Sawin, Association of Washington Business (pro).

Testimony For (Ways & Means): If this bill does not create savings, then the fiscal effect is a wash.

Testimony Against (Ways & Means): It is generally faster to appeal to the PCHB and then for Superior Court review based on the PCHB record, than for Superior Court de novo. The de novo hearing is intensive; consider getting Superior Court out of de novo and have PCHB decisions appealed directly to the Court of Appeals. The Environmental Hearings Office boards have developed technical expertise to better inform decisions.

Testified (Ways & Means): PRO: Senator Mark Doumit, prime sponsor; Eric Johnson, WA Public Ports Assn.; With Concerns: Bill Lynch and Bob Jensen, Environmental Hearings Office; Fiscal Concerns: Martha Hardin, Superior Court Judges Assn.; Con/Concerns: Bruce Wishart, People for Puget Sound.