

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1526

Chapter 70, Laws of 2003

58th Legislature
2003 Regular Session

COST-REIMBURSEMENT AGREEMENTS

EFFECTIVE DATE: 7/27/03

Passed by the House March 15, 2003
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 10, 2003
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved April 18, 2003.

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 **HOUSE BILL 1526** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

April 18, 2003 - 3:47 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1526

Passed Legislature - 2003 Regular Session

State of Washington

58th Legislature

2003 Regular Session

By Representatives Linville, Armstrong, Haigh, Morris, Cooper, Mastin, Gombosky, Delvin, Grant, Schoesler, Sullivan, Chandler and Schual-Berke

Read first time 01/29/2003. Referred to Committee on Fisheries, Ecology & Parks.

1 AN ACT Relating to cost-reimbursement agreements between state
2 agencies and permit applicants; and amending RCW 43.21A.690, 43.30.420,
3 43.70.630, 43.300.080, 70.94.085, 90.03.265, and 43.42.070.

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

5 **Sec. 1.** RCW 43.21A.690 and 2000 c 251 s 2 are each amended to read
6 as follows:

7 (1) The department may enter into a written cost-reimbursement
8 agreement with a permit applicant (~~for a complex project~~) to recover
9 from the applicant the reasonable costs incurred by the department in
10 carrying out the requirements of this chapter, as well as the
11 requirements of other relevant laws, as they relate to permit
12 coordination, environmental review, application review, technical
13 studies, and permit processing. The cost-reimbursement agreement shall
14 identify the specific tasks, costs, and schedule for work to be
15 conducted under the agreement. (~~For purposes of this section, a
16 complex project is a project for which an environmental impact
17 statement is required under chapter 43.21C RCW.~~)

18 (2) The written cost-reimbursement agreement shall be negotiated
19 with the permit applicant. Under the provisions of a cost-

1 reimbursement agreement, funds from the applicant shall be used by the
2 department to contract with an independent consultant to carry out the
3 work covered by the cost-reimbursement agreement. The department may
4 also use funds provided under a cost-reimbursement agreement to assign
5 current staff to review the work of the consultant, to provide
6 necessary technical assistance when an independent consultant with
7 comparable technical skills is unavailable, and to recover reasonable
8 and necessary direct and indirect costs that arise from processing the
9 permit. The department shall, in developing the agreement, ensure that
10 final decisions that involve policy matters are made by the agency and
11 not by the consultant. The department shall make an estimate of the
12 number of permanent staff hours to process the permits, and shall
13 contract with consultants to replace the time and functions committed
14 by these permanent staff to the project. The billing process shall
15 provide for accurate time and cost accounting and may include a billing
16 cycle that provides for progress payments. Use of cost-reimbursement
17 agreements shall not reduce the current level of staff available to
18 work on permits not covered by cost-reimbursement agreements. The
19 department may not use any funds under a cost-reimbursement agreement
20 to replace or supplant existing funding. The restrictions of chapter
21 42.52 RCW apply to any cost-reimbursement agreement, and to any person
22 hired as a result of a cost-reimbursement agreement.

23 (3) The department may not enter into any new cost-reimbursement
24 agreements on or after July 1, ~~((2005))~~ 2007. The department may
25 continue to administer any cost-reimbursement agreement ~~((which))~~ that
26 was entered into before July 1, ~~((2005))~~ 2007, until the project is
27 completed.

28 **Sec. 2.** RCW 43.30.420 and 2000 c 251 s 3 are each amended to read
29 as follows:

30 (1) The department may enter into a written cost-reimbursement
31 agreement with a permit or lease applicant ~~((for a complex project))~~
32 to recover from the applicant the reasonable costs incurred by the
33 department in carrying out the requirements of this chapter, as well as
34 the requirements of other relevant laws, as they relate to permit
35 coordination, environmental review, application review, technical
36 studies, and permit or lease processing. The cost-reimbursement
37 agreement shall identify the specific tasks, costs, and schedule for

1 work to be conducted under the agreement. ((For purposes of this
2 section, a complex project is a project for which an environmental
3 impact statement is required under chapter 43.21C RCW.)) An applicant
4 for a lease issued under chapter 79.90 RCW may not enter into a cost-
5 reimbursement agreement under this section for projects conducted under
6 the lease.

7 (2) The written cost-reimbursement agreement shall be negotiated
8 with the permit or lease applicant. Under the provisions of a cost-
9 reimbursement agreement, funds from the applicant shall be used by the
10 department to contract with an independent consultant to carry out the
11 work covered by the cost-reimbursement agreement. The department may
12 also use funds provided under a cost-reimbursement agreement to assign
13 current staff to review the work of the consultant, to provide
14 necessary technical assistance when an independent consultant with
15 comparable technical skills is unavailable, and to recover reasonable
16 and necessary direct and indirect costs that arise from processing the
17 permit or lease. The department shall, in developing the agreement,
18 ensure that final decisions that involve policy matters are made by the
19 agency and not by the consultant. The department shall make an
20 estimate of the number of permanent staff hours to process the permits
21 or leases, and shall contract with consultants to replace the time and
22 functions committed by these permanent staff to the project. The
23 billing process shall provide for accurate time and cost accounting and
24 may include a billing cycle that provides for progress payments. Use
25 of cost-reimbursement agreements shall not reduce the current level of
26 staff available to work on permits or leases not covered by cost-
27 reimbursement agreements. The department may not use any funds under
28 a cost-reimbursement agreement to replace or supplant existing funding.
29 The restrictions of chapter 42.52 RCW apply to any cost-reimbursement
30 agreement, and to any person hired as a result of a cost-reimbursement
31 agreement.

32 (3) The department may not enter into any new cost-reimbursement
33 agreements on or after July 1, ((2005)) 2007. The department may
34 continue to administer any cost-reimbursement agreement ((which)) that
35 was entered into before July 1, ((2005)) 2007, until the project is
36 completed.

1 **Sec. 3.** RCW 43.70.630 and 2000 c 251 s 4 are each amended to read
2 as follows:

3 (1) The department may enter into a written cost-reimbursement
4 agreement with a permit applicant (~~((for a complex project))~~) to recover
5 from the applicant the reasonable costs incurred by the department in
6 carrying out the requirements of this chapter, as well as the
7 requirements of other relevant laws, as they relate to permit
8 coordination, environmental review, application review, technical
9 studies, and permit processing.

10 The cost-reimbursement agreement shall identify the specific tasks,
11 costs, and schedule for work to be conducted under the agreement.
12 (~~((For purposes of this section, a complex project is a project for
13 which an environmental impact statement is required under chapter
14 43.21C RCW.))~~)

15 (2) The written cost-reimbursement agreement shall be negotiated
16 with the permit applicant. Under the provisions of a cost-
17 reimbursement agreement, funds from the applicant shall be used by the
18 department to contract with an independent consultant to carry out the
19 work covered by the cost-reimbursement agreement. The department may
20 also use funds provided under a cost-reimbursement agreement to assign
21 current staff to review the work of the consultant, to provide
22 necessary technical assistance when an independent consultant with
23 comparable technical skills is unavailable, and to recover reasonable
24 and necessary direct and indirect costs that arise from processing the
25 permit. The department shall, in developing the agreement, ensure that
26 final decisions that involve policy matters are made by the agency and
27 not by the consultant. The department shall make an estimate of the
28 number of permanent staff hours to process the permits, and shall
29 contract with consultants to replace the time and functions committed
30 by these permanent staff to the project. The billing process shall
31 provide for accurate time and cost accounting and may include a billing
32 cycle that provides for progress payments. Use of cost-reimbursement
33 agreements shall not reduce the current level of staff available to
34 work on permits not covered by cost-reimbursement agreements. The
35 department may not use any funds under a cost-reimbursement agreement
36 to replace or supplant existing funding. The restrictions of chapter
37 42.52 RCW apply to any cost-reimbursement agreement, and to any person
38 hired as a result of a cost-reimbursement agreement.

1 (3) The department may not enter into any new cost-reimbursement
2 agreements on or after July 1, ~~((2005))~~ 2007. The department may
3 continue to administer any cost-reimbursement agreement ~~((which))~~ that
4 was entered into before July 1, ~~((2005))~~ 2007, until the project is
5 completed.

6 **Sec. 4.** RCW 43.300.080 and 2000 c 251 s 5 are each amended to read
7 as follows:

8 (1) The department may enter into a written cost-reimbursement
9 agreement with a permit applicant ~~((for a complex project))~~ to recover
10 from the applicant the reasonable costs incurred by the department in
11 carrying out the requirements of this chapter, as well as the
12 requirements of other relevant laws, as they relate to permit
13 coordination, environmental review, application review, technical
14 studies, and permit processing. The cost-reimbursement agreement shall
15 identify the specific tasks, costs, and schedule for work to be
16 conducted under the agreement. ~~((For purposes of this section, a
17 complex project is a project for which an environmental impact
18 statement is required under chapter 43.21C RCW.))~~

19 (2) The written cost-reimbursement agreement shall be negotiated
20 with the permit applicant. Under the provisions of a cost-
21 reimbursement agreement, funds from the applicant shall be used by the
22 department to contract with an independent consultant to carry out the
23 work covered by the cost-reimbursement agreement. The department may
24 also use funds provided under a cost-reimbursement agreement to assign
25 current staff to review the work of the consultant, to provide
26 necessary technical assistance when an independent consultant with
27 comparable technical skills is unavailable, and to recover reasonable
28 and necessary direct and indirect costs that arise from processing the
29 permit. The department shall, in developing the agreement, ensure that
30 final decisions that involve policy matters are made by the agency and
31 not by the consultant. The department shall make an estimate of the
32 number of permanent staff hours to process the permits, and shall
33 contract with consultants to replace the time and functions committed
34 by these permanent staff to the project. The billing process shall
35 provide for accurate time and cost accounting and may include a billing
36 cycle that provides for progress payments. Use of cost-reimbursement
37 agreements shall not reduce the current level of staff available to

1 work on permits not covered by cost-reimbursement agreements. The
2 department may not use any funds under a cost-reimbursement agreement
3 to replace or supplant existing funding. The restrictions of chapter
4 42.52 RCW apply to any cost-reimbursement agreement, and to any person
5 hired as a result of a cost-reimbursement agreement.

6 (3) The department may not enter into any new cost-reimbursement
7 agreements on or after July 1, ~~((2005))~~ 2007. The department may
8 continue to administer any cost-reimbursement agreement ~~((which))~~ that
9 was entered into before July 1, ~~((2005))~~ 2007, until the project is
10 completed.

11 **Sec. 5.** RCW 70.94.085 and 2000 c 251 s 6 are each amended to read
12 as follows:

13 (1) An authority may enter into a written cost-reimbursement
14 agreement with a permit applicant ~~((for a complex project))~~ to recover
15 from the applicant the reasonable costs incurred by the authority in
16 carrying out the requirements of this chapter, as well as the
17 requirements of other relevant laws, as they relate to permit
18 coordination, environmental review, application review, technical
19 studies, and permit processing. The cost-reimbursement agreement shall
20 identify the specific tasks, costs, and schedule for work to be
21 conducted under the agreement. ~~((For purposes of this section, a
22 complex project is a project for which an environmental impact
23 statement is required under chapter 43.21C RCW.))~~

24 (2) The written cost-reimbursement agreement shall be negotiated
25 with the permit applicant. Under the provisions of a cost-
26 reimbursement agreement, funds from the applicant shall be used by the
27 air pollution control authority to contract with an independent
28 consultant to carry out the work covered by the cost-reimbursement
29 agreement. The air pollution control authority may also use funds
30 provided under a cost-reimbursement agreement to assign current staff
31 to review the work of the consultant, to provide necessary technical
32 assistance when an independent consultant with comparable technical
33 skills is unavailable, and to recover reasonable and necessary direct
34 and indirect costs that arise from processing the permit. The air
35 pollution control authority shall, in developing the agreement, ensure
36 that final decisions that involve policy matters are made by the agency
37 and not by the consultant. The air pollution control authority shall

1 make an estimate of the number of permanent staff hours to process the
2 permits, and shall contract with consultants to replace the time and
3 functions committed by these permanent staff to the project. The
4 billing process shall provide for accurate time and cost accounting and
5 may include a billing cycle that provides for progress payments. Use
6 of cost-reimbursement agreements shall not reduce the current level of
7 staff available to work on permits not covered by cost-reimbursement
8 agreements. The air pollution control authority may not use any funds
9 under a cost-reimbursement agreement to replace or supplant existing
10 funding. The provisions of chapter 42.52 RCW apply to any cost-
11 reimbursement agreement, and to any person hired as a result of a cost-
12 reimbursement agreement. Members of the air pollution control
13 authority's board of directors shall be considered as state officers,
14 and employees of the air pollution control authority shall be
15 considered as state employees, for the sole purpose of applying the
16 restrictions of chapter 42.52 RCW to this section.

17 (3) An air pollution control authority may not enter into any new
18 cost-reimbursement agreements on or after July 1, ~~((2005))~~ 2007. The
19 ~~((department-[authority]))~~ authority may continue to administer any
20 cost-reimbursement agreement ~~((which))~~ that was entered into before
21 July 1, ~~((2005))~~ 2007, until the project is completed.

22 **Sec. 6.** RCW 90.03.265 and 2000 c 251 s 7 are each amended to read
23 as follows:

24 Any applicant for a new withdrawal or a change, transfer, or
25 amendment of a water right pending before the department, may initiate
26 a cost-reimbursement agreement with the department to provide expedited
27 review of the application. A cost-reimbursement agreement may only be
28 initiated under this section if the applicant agrees to pay for, or as
29 part of a cooperative effort agrees to pay for, the cost of processing
30 his or her application and all other applications from the same source
31 of supply which must be acted upon before the applicant's request
32 because they were filed prior to the date of when the applicant filed.
33 The department shall use the process established under RCW 43.21A.690
34 for entering into cost-reimbursement agreements ~~((, except that it is
35 not necessary for an environmental impact statement to be filed as a
36 prerequisite for entering into a cost reimbursement agreement under
37 this section))~~.

1 **Sec. 7.** RCW 43.42.070 and 2002 c 153 s 8 are each amended to read
2 as follows:

3 (1) The office may coordinate negotiation and implementation of a
4 written agreement among the project applicant, the office, and
5 participating permit agencies to recover from the project applicant the
6 reasonable costs incurred by the office in carrying out the provisions
7 of RCW 43.42.050(2) and 43.42.060(2) and by participating permit
8 agencies in carrying out permit processing tasks specified in the
9 agreement.

10 (2) The office may coordinate negotiation and implementation of a
11 written agreement among the project applicant, the office, and
12 participating permit agencies to recover from the project applicant the
13 reasonable costs incurred by outside independent consultants selected
14 by the office and participating permit agencies to perform permit
15 processing tasks.

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

21 (4) The office shall adopt a policy to coordinate cost_
22 reimbursement agreements with outside independent consultants. Cost_
23 reimbursement agreements coordinated by the office under this section
24 must be based on competitive bids that are awarded for each agreement
25 from a prequalified consultant roster.

26 (5) Independent consultants hired under a cost_reimbursement
27 agreement((~~7~~)) shall report directly to the permit agency. The office
28 shall assure that final decisions are made by the permit agency and not
29 by the consultant.

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

33 (7) For a cost_reimbursement agreement, the office and
34 participating permit agencies shall negotiate a work plan and schedule
35 for reimbursement. Prior to distributing scheduled reimbursement to
36 the agencies, the office shall verify that the agencies have met the
37 obligations contained in their work plan.

1 (8) Prior to commencing negotiations with the project applicant for
2 a cost_reimbursement agreement, the office shall request work load
3 analyses from each participating permitting agency. These analyses
4 shall be available to the public. The work load of a participating
5 permit agency may only be modified with the concurrence of the agency
6 and if there is both good cause to do so and no significant impact on
7 environmental review.

8 (9) The office shall develop guidance to ensure that, in developing
9 cost_reimbursement agreements, conflicts of interest are eliminated.

10 (10) For project permit processes that it coordinates, the office
11 shall coordinate the negotiation of all cost_reimbursement agreements
12 executed under RCW 43.21A.690, 43.30.420, 43.70.630, 43.300.080, and
13 70.94.085. The office and the permit agencies shall be signatories to
14 the agreements. Each permit agency shall manage performance of its
15 portion of the agreement.

16 (11) If a permit agency or the project applicant foresees, at any
17 time, that it will be unable to meet its obligations under the cost_
18 reimbursement agreement, it shall notify the office and state the
19 reasons. The office shall notify the participating permit agencies and
20 the project applicant and, upon agreement of all parties, adjust the
21 schedule, or, if necessary, coordinate revision of the work plan.

Passed by the House March 15, 2003.

Passed by the Senate April 10, 2003.

Approved by the Governor April 18, 2003.

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