

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1730

Chapter 97, Laws of 2009

61st Legislature
2009 Regular Session

THE OFFICE OF REGULATORY ASSISTANCE

EFFECTIVE DATE: 07/26/09

Passed by the House February 27, 2009
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 3, 2009
Yeas 43 Nays 2

BRAD OWEN

President of the Senate

Approved April 15, 2009, 11:22 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1730** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 15, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1730

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House State Government & Tribal Affairs (originally sponsored by Representatives Linville, Kretz, Ericks, Hunt, Armstrong, and Short)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to the office of regulatory assistance; amending
2 RCW 43.42.005, 43.42.020, 43.42.030, 43.42.050, 43.42.060, 43.42.070,
3 43.21A.690, 43.70.630, 43.300.080, and 70.94.085; reenacting and
4 amending RCW 43.42.010 and 43.30.490; and adding a new section to
5 chapter 43.42 RCW.

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

7 **Sec. 1.** RCW 43.42.005 and 2007 c 94 s 1 are each amended to read
8 as follows:

9 (1) ~~((The legislature finds that the health and safety of its~~
10 ~~citizens, natural resources, and the environment are vital interests of~~
11 ~~the state that must be protected to preserve the state's quality of~~
12 ~~life. The legislature also finds that the state's economic well being~~
13 ~~is a vital interest that depends upon the development of fair,~~
14 ~~accessible, and coordinated permitting and regulatory requirements that~~
15 ~~ensure that the state not only protects public health and safety and~~
16 ~~natural resources but also encourages appropriate activities that~~
17 ~~stimulate growth and development. The legislature further finds that~~
18 ~~Washington's permitting and regulatory programs have established strict~~
19 ~~standards to protect public health and safety and the environment.~~

1 ~~(2) The legislature also finds that, as the number of environmental~~
2 ~~and land use laws and requirements have grown in Washington, so have~~
3 ~~the number of permits required of business and government. The~~
4 ~~increasing number of permits and permitting agencies has generated the~~
5 ~~potential for conflict, overlap, and duplication among state, local,~~
6 ~~and federal permitting and regulatory requirements.~~

7 ~~(3) The legislature further finds that not all project proponents~~
8 ~~require the same type of assistance. Proponents with small projects~~
9 ~~may merely need information and assistance in starting the permitting~~
10 ~~and application process, while intermediate-sized projects may require~~
11 ~~more of a facilitated and periodically assisted permitting process, and~~
12 ~~large complex projects may need extensive and more continuous~~
13 ~~coordination among local, state, and federal agencies and tribal~~
14 ~~governments.~~

15 ~~(4) The legislature further finds that persons doing business in~~
16 ~~Washington state should have access to clear and appropriate~~
17 ~~information regarding regulations, permit requirements, and agency~~
18 ~~rule-making processes.~~

19 ~~(5) The legislature, therefore, finds that a range of assistance~~
20 ~~and coordination options should be available to project proponents from~~
21 ~~a state office independent of any local, state, or federal permit~~
22 ~~agency. The legislature finds that citizens, businesses, and project~~
23 ~~proponents should be provided with:~~

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

27 ~~(b) Facilitated interagency forums for discussion of significant~~
28 ~~issues related to the multiple permitting processes if needed for some~~
29 ~~project proponents; and~~

30 ~~(c) Active coordination of all applicable regulatory and land use~~
31 ~~permitting procedures if needed for some project proponents.~~

32 ~~(6) The legislature declares that the purpose of this chapter is~~
33 ~~to:~~

34 ~~(a) Assure that citizens, businesses, and project proponents will~~
35 ~~continue to be provided with vital information regarding environmental~~
36 ~~and land use laws and with assistance in complying with environmental~~
37 ~~and land use laws to promote understanding of these laws and to protect~~
38 ~~public health and safety and the environment;~~

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

3 ~~(c) Allow for coordination of permit processing for large projects~~
4 ~~upon project proponents' request and at project proponents' expense to~~
5 ~~promote efficiency, ensure certainty, and avoid conflicts among permit~~
6 ~~agencies; and~~

7 ~~(d) Provide these services through an office independent of any~~
8 ~~permit agency to ensure that any potential or perceived conflicts of~~
9 ~~interest related to providing these services or making permit decisions~~
10 ~~can be avoided.~~

11 ~~(7) The legislature also declares that the purpose of this chapter~~
12 ~~is to provide citizens of the state with access to information~~
13 ~~regarding state regulations, permit requirements, and agency rule-~~
14 ~~making processes in Washington state.~~

15 ~~(8))~~ The legislature finds that: The health and safety of its
16 citizens and environment are of vital interest to the state's long-term
17 quality of life; Washington state is a national leader in protecting
18 its environment; and Washington state has a vibrant and diverse economy
19 that is dependent on the state maintaining high environmental
20 standards. Further, the legislature finds that a complex and confusing
21 network of environmental and land use laws and business regulations can
22 create obstacles to sustainable growth.

23 It is the intent of the legislature to promote accountability,
24 timeliness, and predictability for citizens, business, and state,
25 federal, and local permitting agencies, and to provide information and
26 assistance on the regulatory process through the creation of the office
27 of regulatory assistance in the governor's office.

28 (2) The office of regulatory assistance is created to work to
29 continually improve the function of environmental and business
30 regulatory processes by identifying conflicts and overlap in the
31 state's rules, statutes, and operational practices; the office is to
32 provide project proponents and business owners with active assistance
33 for all permitting, licensing, and other regulatory procedures required
34 for completion of specific projects; and the office is to ensure that
35 citizens, businesses, and local governments have access to, and clear
36 information regarding, regulatory processes for permitting and business
37 regulation, including state rules, permit and license requirements, and
38 agency rule-making processes.

1 (3) The legislature declares that the purpose of this chapter is to
2 provide direction and practical resources for improving the regulatory
3 process and for assistance through regulatory processes on individual
4 projects in furtherance of the state's goals of governmental
5 transparency and accountability.

6 (4) The legislature intends that establishing an office of
7 regulatory assistance will provide these services without abrogating or
8 limiting the authority of any agency to make decisions on permits
9 ((and)), licenses, regulatory requirements ((that it requires)), or
10 ((any rule making)) agency ((to make decisions on regulations)) rule
11 making. The legislature ((therefore declares)) further intends that
12 the office of regulatory assistance shall have authority to provide
13 ((these)) services but shall not have any authority to make decisions
14 on permits.

15 **Sec. 2.** RCW 43.42.020 and 2007 c 94 s 3 are each amended to read
16 as follows:

17 (1) Principles of accountability and transparency shall guide the
18 office in its operations. The office shall ((operate on the principle
19 that citizens of the state of Washington should receive)) provide the
20 following information regarding permits to citizens and businesses:

21 (a) ((A date and time for a decision on a permit or regulatory
22 requirement)) An agency's average turnaround time from the date of
23 application to date of decision for the required permit, licenses, or
24 other necessary regulatory decisions, or the most relevant information
25 the agency can provide, for projects of a comparable size and
26 complexity;

27 (b) The information required for an agency to make a decision on a
28 permit or regulatory requirement, including the agency's best estimate
29 of the number of times projects of a similar size and complexity have
30 been asked to clarify, improve, or provide supplemental information
31 before a decision, and the expected agency response time, recognizing
32 that changes in the project or other circumstances may change the
33 information required; and

34 (c) An estimate of the maximum amount of costs in fees((~~τ~~)) to be
35 paid to state agencies, the type of any studies an agency expects to
36 need, ((~~or~~)) and the timing of any expected public processes ((that
37 will be incurred by)) for the project ((proponent)).

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

4 **Sec. 3.** RCW 43.42.030 and 2007 c 94 s 4 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Director" means the director of the office of regulatory
9 assistance.

10 (2) "Fully coordinated permit process" means a comprehensive
11 coordinated permitting assistance approach supported by a written
12 agreement between the project proponent, the office of regulatory
13 assistance, and the agencies participating in the fully coordinated
14 permit process.

15 (3) "General coordination services" means services that bring
16 interested parties together to explore opportunities for cooperation
17 and to resolve conflicts. General coordination services may be
18 provided as a stand-alone event or as an element of broader project
19 assistance, nonproject-related interagency coordination, or policy and
20 planning teamwork.

21 (4) "Office" means the office of regulatory assistance (~~(in the~~
22 ~~office of financial management)) established in RCW 43.42.010.~~

23 ~~((+2))~~ (5) "Permit" means any permit, license, certificate, use
24 authorization, or other form of governmental review or approval
25 required in order to construct, expand, or operate a project in the
26 state of Washington.

27 ~~((+3))~~ (6) "Permit agency" means any state, local, or federal
28 agency authorized by law to issue permits.

29 ~~((+4))~~ (7) "Project" means any activity, the conduct of which
30 requires a permit or permits from one or more permit agencies.

31 ~~((+5))~~ (8) "Project proponent" means a citizen, business, or any
32 entity applying for or seeking a permit or permits in the state of
33 Washington.

34 (9) "Project scoping" means the identification of relevant issues
35 and information needs of a project proponent and the permitting
36 agencies, and reaching a common understanding regarding the process,
37 timing, and sequencing for obtaining applicable permits.

1 **Sec. 4.** RCW 43.42.010 and 2007 c 231 s 5 and 2007 c 94 s 2 are
2 each reenacted and amended to read as follows:

3 (1) The office of regulatory assistance is created in the office of
4 financial management and shall be administered by the office of the
5 governor to help improve the regulatory system and assist citizens,
6 businesses, and project proponents.

7 (2) The governor shall appoint a director. The director may employ
8 a deputy director and a confidential secretary and such staff as are
9 necessary, or contract with another state agency pursuant to chapter
10 39.34 RCW for support in carrying out the purposes of this chapter.

11 (3) The office shall offer to:

12 (a) ~~((Maintain – and – furnish – information – as – provided – in – RCW~~
13 ~~43.42.040;~~

14 ~~(b) Furnish facilitation as provided in RCW 43.42.050;~~

15 ~~(c) Furnish coordination as provided in RCW 43.42.060;~~

16 ~~(d) Coordinate cost reimbursement as provided in RCW 43.42.070;~~

17 ~~(e) Work with governmental agencies to continue to develop a range~~
18 ~~of permitting and regulatory assistance options for project proponents;~~

19 ~~(f) Help local jurisdictions comply with the requirements of RCW~~
20 ~~36.70B.080 by:~~

21 ~~(i) Providing information about best practices and compliance with~~
22 ~~the requirements of RCW 36.70B.080; and~~

23 ~~(ii) Providing technical assistance in reducing the turnaround time~~
24 ~~between submittal of an application for a development permit and the~~
25 ~~issuance of the permit;~~

26 ~~(g) Work to develop informal processes for dispute resolution~~
27 ~~between agencies and permit proponents;~~

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

29 ~~(i))) Act as the central point of contact for the project proponent~~
30 ~~in communicating about defined issues;~~

31 (b) Conduct project scoping as provided in RCW 43.42.050;

32 (c) Verify that the project proponent has all the information
33 needed to correctly apply for all necessary permits;

34 (d) Provide general coordination services;

35 (e) Coordinate the efficient completion among participating
36 agencies of administrative procedures, such as collecting fees or
37 providing public notice;

- 1 (f) Maintain contact with the project proponent and the permit
2 agencies to promote adherence to agreed schedules;
- 3 (g) Assist in resolving any conflict or inconsistency among permit
4 requirements and conditions;
- 5 (h) Coordinate, to the extent practicable, with relevant federal
6 permit agencies and tribal governments;
- 7 (i) Facilitate meetings;
- 8 (j) Manage a fully coordinated permit process, as provided in RCW
9 43.42.060;
- 10 (k) Help local jurisdictions comply with the requirements of
11 chapter 36.70B RCW by providing information about best permitting
12 practices methods to improve communication with, and solicit early
13 involvement of, state agencies when needed; and
- 14 (l) Maintain and furnish information as provided in RCW 43.42.040.
- 15 (4) The office shall provide the following ((reports)) by ((June))
16 September 1, ((2008)) 2009, and biennially thereafter, to the governor
17 and the appropriate committees of the legislature:
- 18 ((i)) (a) A performance report(, based on the customer surveys
19 required in (h) of this subsection)) including:
- 20 (i) Information regarding use of the office's voluntary cost-
21 reimbursement services as provided in RCW 43.42.070;
- 22 (ii) The number and type of projects where the office provided
23 services and the resolution provided by the office on any conflicts
24 that arose on such projects; and
- 25 (iii) The agencies involved on specific projects; and
- 26 ((ii) A report on) (b) Recommendations on system improvements
27 including recommendations regarding:
- 28 (i) Measurement of overall system performance; and
- 29 (ii) Resolving any conflicts ((identified by the office in the
30 course of its duties)) or inconsistencies arising from differing
31 statutory or regulatory authorities, roles and missions of agencies,
32 timing and sequencing of permitting and procedural requirements(, or
33 otherwise, and how these were resolved; and
- 34 ((iii) A report regarding negotiation and implementation of
35 voluntary cost reimbursement agreements and use of outside independent
36 consultants under RCW 43.42.070, including the nature and amount of
37 work performed and implementation of requirements relating to costs.

1 ~~(3) The office shall ensure the equitable delivery and provision of~~
2 ~~assistance services, regardless of project type, scale, fund source, or~~
3 ~~assistance request)) as identified by the office in the course of its~~
4 ~~duties.~~

5 **Sec. 5.** RCW 43.42.050 and 2007 c 94 s 6 are each amended to read
6 as follows:

7 ~~((At the request of a project proponent, the office shall assist~~
8 ~~the project proponent in determining what regulatory requirements,~~
9 ~~processes, and permits apply to the project, as provided in this~~
10 ~~section.~~

11 ~~(1) The office shall assign a project facilitator who shall discuss~~
12 ~~applicable regulatory requirements, permits, and processes with the~~
13 ~~project proponent and explain the available options for obtaining~~
14 ~~required permits and regulatory review.))~~

15 (1) Upon request of a project proponent, the office shall determine
16 the level of project scoping needed by the project proponent, taking
17 into consideration the complexity of the project and the experience of
18 those expected to be involved in the project application and review
19 process.

20 ~~(2) ((If the project proponent and the project facilitator agree~~
21 ~~that the project would benefit from a project scoping, the project~~
22 ~~facilitator shall conduct a project scoping with the project proponent~~
23 ~~and the relevant permitting and regulatory agencies. The project~~
24 ~~facilitator shall invite the participation of the relevant federal~~
25 ~~agencies and tribal governments.~~

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

31 ~~(b) The scoping)) Project scoping shall consider the complexity,~~
32 size, and needs for assistance of the project and shall address as
33 appropriate:

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

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

1 ~~((iii))~~ (c) The specific information needs and issues of concern
2 of each participant and their significance;

3 ~~((iv))~~ (d) Any statutory or regulatory conflicts that might arise
4 from the differing authorities and roles of the permit agencies;

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

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

16 ~~((e))~~ (3) The outcome of the project scoping shall be documented
17 in writing, furnished to the project proponent, and be made available
18 to the public.

19 ~~((d))~~ (4) The project scoping shall be completed ~~((within))~~ prior
20 to the passage of sixty days of the project proponent's request for a
21 project scoping unless the director finds that better results can be
22 obtained by delaying the project scoping meeting or meetings to ensure
23 full participation.

24 ~~((e))~~ (5) Upon completion of the project scoping, the
25 participating permit agencies shall proceed under their respective
26 ~~((authority. The agencies are encouraged to remain))~~ authorities. The
27 agencies may remain in communication ~~((for purposes of coordination~~
28 ~~until their final permit decisions are made))~~ with the office as
29 needed.

30 ~~((3))~~ (6) This section does not create an independent cause of
31 action, affect any existing cause of action, or establish time limits
32 for purposes of RCW 64.40.020.

33 **Sec. 6.** RCW 43.42.060 and 2007 c 94 s 7 are each amended to read
34 as follows:

35 ~~((1) The office may coordinate the processing by participating~~
36 ~~permit agencies of permits required for a project, at the request of~~

1 the project proponent through a cost reimbursement agreement as
2 provided in subsection (3) of this section or with the agreement of the
3 project proponent as provided in subsection (4) of this section.

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

8 (a) Serve as the main point of contact for the project proponent;

9 (b) Conduct a project scoping as provided in RCW 43.42.050(2);

10 (c) Verify that the project proponent has all the information
11 needed to complete applications;

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

13 (e) Manage the applicable administrative procedures;

14 (f) Work to assure that timely permit decisions are made by the
15 permit agencies and maintain contact with the project proponent and the
16 permit agencies to ensure adherence to schedules;

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

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

21 (3) At the request of a project proponent and as provided in RCW
22 43.42.070, the project coordinator shall coordinate negotiations among
23 the project proponent, the office, and participating permit agencies to
24 enter into a cost reimbursement agreement and shall coordinate
25 implementation of the agreement, which shall govern coordination of
26 permit processing by the participating permit agencies.

27 (4) For industrial projects of statewide significance or if the
28 office determines that it is in the public interest to coordinate the
29 processing of permits for certain projects that are complex in scope,
30 require multiple permits, involve multiple jurisdictions, or involve a
31 significant number of affected parties, the office shall, upon the
32 proponent's request, enter into an agreement with the project proponent
33 and the participating permit agencies to coordinate the processing of
34 permits for the project. The office may limit the number of such
35 agreements according to the resources available to the office and the
36 permit agencies at the time.) (1) A project proponent may submit a
37 written request to the director of the office for participation in a

1 fully coordinated permit process. Designation as a fully coordinated
2 project requires that:

3 (a) The project proponent enters into a cost-reimbursement
4 agreement pursuant to RCW 43.42.070;

5 (b) The project has a designation under chapter 43.157 RCW; or

6 (c) The director determine that (i)(A) the project raises complex
7 coordination, permit processing, or substantive permit review issues;
8 or (B) if completed, the project would provide substantial benefits to
9 the state; and (ii) the office, as well as the participating permit
10 review agencies, have sufficient capacity within existing resources to
11 undertake the full coordination process without reimbursement and
12 without seriously affecting other services.

13 (2) A project proponent who requests designation as a fully
14 coordinated permit process project must provide the office with a full
15 description of the project. The office may request any information
16 from the project proponent that is necessary to make the designation
17 under this section, and may convene a scoping meeting or a work plan
18 meeting of the likely participating permit agencies.

19 (3) When a project is designated for the fully coordinated permit
20 process, the office shall serve as the main point of contact for the
21 project proponent and participating agencies with regard to the permit
22 process for the project as a whole. The office shall keep an
23 up-to-date project management log and schedule illustrating required
24 procedural steps in the permitting process, and highlighting
25 substantive issues as appropriate that must be resolved in order for
26 the project to move forward. In carrying out these responsibilities,
27 the office shall:

28 (a) Ensure that the project proponent has been informed of all the
29 information needed to apply for the permits that are included in the
30 coordinated permit process;

31 (b) Coordinate the timing of review for those permits by the
32 respective participating permit agencies;

33 (c) Facilitate communication between project proponents,
34 consultants, and agency staff to promote timely permit decisions;

35 (d) Assist in resolving any conflict or inconsistency among the
36 permit requirements and conditions that are expected to be imposed by
37 the participating permit agencies; and

1 (e) Make contact, at least once, with any local, tribal, or federal
2 jurisdiction that is responsible for issuing a permit for the project
3 and invite them to participate in the coordinated permit process or to
4 receive periodic updates in the project.

5 (4) Within thirty days, or longer with agreement of the project
6 proponent, of the date that the office designates a project for the
7 fully coordinated permit process, it shall convene a work plan meeting
8 with the project proponent and the participating permit agencies to
9 develop a coordinated permit process schedule. The meeting agenda
10 shall include at least the following:

11 (a) Review of the permits that are required for the project;

12 (b) A review of the permit application forms and other application
13 requirements of the agencies that are participating in the coordinated
14 permit process;

15 (c) An estimation of the timelines that will be used by each
16 participating permit agency to make permit decisions, including the
17 estimated time periods required to determine if the permit applications
18 are complete and to review or respond to each application or submittal
19 of new information.

20 (i) The estimation must also include the estimated number of
21 revision cycles for the project, or the typical number of revision
22 cycles for projects of similar size and complexity.

23 (ii) In the development of this timeline, full attention shall be
24 given to achieving the maximum efficiencies possible through concurrent
25 studies and consolidated applications, hearings, and comment periods.

26 (iii) Estimated action or response times for activities of the
27 office that are required before or trigger further action by a
28 participant must also be included;

29 (d) Available information regarding the timing of any public
30 hearings that are required to issue permits for the project and a
31 determination of the feasibility of coordinating or consolidating any
32 of those required public hearings; and

33 (e) A discussion of fee arrangements for the coordinated permit
34 process, including an estimate of the costs allowed by statute, any
35 reimbursable agency costs, and billing schedules, if applicable.

36 (5) Each agency shall send at least one representative qualified to
37 discuss the applicability and timelines associated with all permits
38 administered by that agency or jurisdiction. At the request of the

1 project proponent, the office shall notify any relevant local or
2 federal agency or federally recognized Indian tribe of the date of the
3 meeting and invite that agency's participation in the process.

4 (6) Any accelerated time period for the consideration of a permit
5 application shall be consistent with any statute, rule, or regulation,
6 or adopted state policy, standard, or guideline that requires the
7 participation of other agencies, federally recognized Indian tribes, or
8 interested persons in the application process.

9 (7) If a permit agency or the project proponent foresees, at any
10 time, that it will be unable to meet the estimated timelines or other
11 obligations under the agreement, it shall notify the office of the
12 reasons for the problem and offer potential solutions or an amended
13 timeline for resolving the problem. The office shall notify the
14 participating permit agencies and the project proponent and, upon
15 agreement of all parties, adjust the schedule, or, if necessary,
16 schedule another work plan meeting.

17 (8) The project proponent may withdraw from the coordinated permit
18 process by submitting to the office a written request that the process
19 be terminated. Upon receipt of the request, the office shall notify
20 each participating permit agency that a coordinated permit process is
21 no longer applicable to the project.

22 **Sec. 7.** RCW 43.42.070 and 2007 c 94 s 8 are each amended to read
23 as follows:

24 (1) The office may (~~coordinate negotiation and implementation of~~
25 ~~a written agreement among the~~) enter into cost-reimbursement
26 agreements with a project proponent(~~(, the office, and participating~~
27 ~~permit agencies)) to recover from the project proponent the reasonable
28 costs incurred by the office in carrying out the provisions of RCW
29 43.42.050(~~(2) and 43.42.060(2) and by participating~~). The agreement
30 shall include the permit agencies (~~(in)~~) that are participating in the
31 cost-reimbursement project and carrying out permit processing tasks
32 (~~(specified)~~) referenced in the agreement.~~

33 (2) (~~The office may coordinate negotiation and implementation of~~
34 ~~a written agreement among the project proponent, the office, and~~
35 ~~participating permit agencies to recover from the project proponent the~~
36 ~~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))~~ maintain
9 policies or guidelines for coordinating cost-reimbursement agreements
10 with participating agencies, project proponents, and outside
11 independent consultants. ~~((Cost reimbursement agreements coordinated))~~
12 Policies or guidelines must ensure that, in developing cost-
13 reimbursement agreements, conflicts of interest are eliminated.
14 Contracts with independent consultants hired by the office under this
15 section must be based on competitive bids that are awarded for each
16 agreement from a prequalified consultant roster.

17 ~~((5) Independent consultants hired under a cost reimbursement~~
18 ~~agreement shall report directly to the permit agency. The office shall~~
19 ~~assure that final decisions are made by the permit agency and not by~~
20 ~~the consultant.~~

21 ~~(6) The office shall develop procedures for determining,~~
22 ~~collecting, and distributing cost reimbursement for carrying out the~~
23 ~~provisions of this chapter.~~

24 ~~(7) For a cost reimbursement agreement, the office and~~
25 ~~participating permit agencies shall negotiate a work plan and schedule~~
26 ~~for reimbursement. Prior to distributing scheduled reimbursement to~~
27 ~~the agencies, the office shall verify that the agencies have met the~~
28 ~~obligations contained in their work plan.~~

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

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

1 ~~(10))~~ (3) For ~~((project))~~ fully coordinated permit processes
2 ~~((that it coordinates))~~, the office shall coordinate the negotiation of
3 all cost-reimbursement agreements executed under RCW 43.21A.690,
4 43.30.490, 43.70.630, 43.300.080, and 70.94.085. The office, project
5 proponent, and the permit agencies shall be signatories to the
6 agreement or agreements. Each permit agency shall manage performance
7 of its portion of the agreement. Independent consultants hired under
8 a cost-reimbursement agreement shall report directly to the hiring
9 office or permit agency. Any cost-reimbursement agreement must require
10 that final decisions are made by the permit agency and not by a hired
11 consultant.

12 ~~((11))~~ (4) For a fully coordinated project using cost
13 reimbursement, the office and participating permit agencies shall
14 include a cost-reimbursement work plan, including deliverables and
15 schedules for invoicing and reimbursement in the fully coordinated
16 project work plan described in RCW 43.42.060. Upon request, the office
17 shall verify that the agencies have met the obligations contained in
18 the cost-reimbursement work plan and agreement. The cost-reimbursement
19 agreement shall identify the tasks of each agency and the maximum costs
20 for work conducted under the agreement. The agreement must include a
21 schedule that states:

22 (a) The estimated number of weeks for initial review of the permit
23 application for comparable projects;

24 (b) The anticipated number of revision cycles;

25 (c) The estimated number of weeks for review of subsequent revision
26 submittals;

27 (d) The estimated number of billable hours of employee time;

28 (e) The rate per hour; and

29 (f) A process for revision of the agreement if necessary.

30 (5) If a permit agency or the project proponent foresees, at any
31 time, that it will be unable to meet its obligations under the cost-
32 reimbursement agreement and fully coordinated project work plan, it
33 shall notify the office and state the reasons, along with proposals for
34 resolving the problems and potentially amending the timelines. The
35 office shall notify the participating permit agencies and the project
36 proponent and, upon agreement of all parties, adjust the schedule, or,
37 if necessary, coordinate revision of the cost-reimbursement agreement
38 and fully coordinated project work plan.

1 **Sec. 8.** RCW 43.21A.690 and 2007 c 94 s 10 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 or project proponent to recover from
5 the applicant or proponent the reasonable costs incurred by the
6 department in carrying out the requirements of this chapter, as well as
7 the requirements of other relevant laws, as they relate to permit
8 coordination, environmental review, application review, technical
9 studies, and permit processing.

10 (2) The cost-reimbursement agreement shall identify the
11 (~~specific~~) tasks(~~(7)~~) and costs(~~(7-and-schedule)~~) for work to be
12 conducted under the agreement. The agreement must include a schedule
13 that states:

14 (a) The estimated number of weeks for initial review of the permit
15 application;

16 (b) The estimated number of revision cycles;

17 (c) The estimated number of weeks for review of subsequent revision
18 submittals;

19 (d) The estimated number of billable hours of employee time;

20 (e) The rate per hour; and

21 (f) A date for revision of the agreement if necessary.

22 (~~(+2)~~) (3) The written cost-reimbursement agreement shall be
23 negotiated with the permit applicant or project proponent. Under the
24 provisions of a cost-reimbursement agreement, funds from the applicant
25 shall be used by the department to contract with an independent
26 consultant to carry out the work covered by the cost-reimbursement
27 agreement. The department may also use funds provided under a cost-
28 reimbursement agreement to hire temporary employees, to assign current
29 staff to review the work of the consultant, to provide necessary
30 technical assistance when an independent consultant with comparable
31 technical skills is unavailable, and to recover reasonable and
32 necessary direct and indirect costs that arise from processing the
33 permit. The department shall, in developing the agreement, ensure that
34 final decisions that involve policy matters are made by the agency and
35 not by the consultant. The department shall make an estimate of the
36 number of permanent staff hours to process the permits, and shall
37 contract with consultants or hire temporary employees to replace the
38 time and functions committed by these permanent staff to the project.

1 The billing process shall provide for accurate time and cost accounting
2 and may include a billing cycle that provides for progress payments.
3 (~~Use of cost reimbursement agreements shall not reduce the current~~
4 ~~level of staff available to work on permits not covered by cost~~
5 ~~reimbursement agreements. The department may not use any funds under~~
6 ~~a cost reimbursement agreement to replace or supplant existing~~
7 ~~funding.~~)

8 (4) The cost-reimbursement agreement must not negatively impact the
9 processing of other permit applications. In order to maintain permit
10 processing capacity, the agency may hire outside consultants, temporary
11 employees, or make internal administrative changes. Consultants or
12 temporary employees hired as part of a cost-reimbursement agreement or
13 to maintain agency capacity are hired as agents of the state not of the
14 permit applicant. The restrictions of chapter 42.52 RCW apply to any
15 cost-reimbursement agreement, and to any person hired as a result of a
16 cost-reimbursement agreement.

17 **Sec. 9.** RCW 43.30.490 and 2007 c 188 s 1 and 2007 c 94 s 11 are
18 each reenacted and amended to read as follows:

19 (1) The department may enter into a written cost-reimbursement
20 agreement with a permit or lease applicant or project proponent to
21 recover from the applicant or proponent the reasonable costs incurred
22 by the department in carrying out the requirements of this chapter, as
23 well as the requirements of other relevant laws, as they relate to
24 permit coordination, environmental review, application review,
25 technical studies, establishment of development units and approval or
26 establishment of pooling agreements under chapter 78.52 RCW, including
27 necessary technical studies, permit or lease processing, and monitoring
28 for permit compliance.

29 (2) The cost-reimbursement agreement shall identify the
30 (~~specific~~) tasks(~~(7)~~) and costs(~~(7-and-schedule)~~) for work to be
31 conducted under the agreement. The agreement must include a schedule
32 that states:

33 (a) The estimated number of weeks for initial review of the permit
34 application;

35 (b) The estimated number of revision cycles;

36 (c) The estimated number of weeks for review of subsequent revision
37 submittals;

1 (d) The estimated number of billable hours of employee time;

2 (e) The rate per hour; and

3 (f) A date for revision of the agreement if necessary.

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

28 (4) The cost-reimbursement agreement must not negatively impact the
29 processing of other permit applications. In order to maintain permit
30 processing capacity, the agency may hire outside consultants, temporary
31 employees, or make internal administrative changes. Consultants or
32 temporary employees hired as part of a cost-reimbursement agreement or
33 to maintain agency capacity are hired as agents of the state not of the
34 permit applicant. The restrictions of chapter 42.52 RCW apply to any
35 cost-reimbursement agreement, and to any person hired as a result of a
36 cost-reimbursement agreement.

1 **Sec. 10.** RCW 43.70.630 and 2007 c 94 s 12 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 or project proponent to recover from
5 the applicant or proponent the reasonable costs incurred by the
6 department in carrying out the requirements of this chapter, as well as
7 the requirements of other relevant laws, as they relate to permit
8 coordination, environmental review, application review, technical
9 studies, and permit processing.

10 (2) The cost-reimbursement agreement shall identify the
11 (~~specific~~) tasks(~~(7)~~) and costs(~~(7-and-schedule)~~) for work to be
12 conducted under the agreement. The agreement must include a schedule
13 that states:

14 (a) The estimated number of weeks for initial review of the permit
15 application;

16 (b) The estimated number of revision cycles;

17 (c) The estimated number of weeks for review of subsequent revision
18 submittals;

19 (d) The estimated number of billable hours of employee time;

20 (e) The rate per hour; and

21 (f) A date for revision of the agreement if necessary.

22 (~~(+2)~~) (3) The written cost-reimbursement agreement shall be
23 negotiated with the permit applicant or project proponent. Under the
24 provisions of a cost-reimbursement agreement, funds from the applicant
25 or proponent shall be used by the department to contract with an
26 independent consultant to carry out the work covered by the cost-
27 reimbursement agreement. The department may also use funds provided
28 under a cost-reimbursement agreement to hire temporary employees, to
29 assign current staff to review the work of the consultant, to provide
30 necessary technical assistance when an independent consultant with
31 comparable technical skills is unavailable, and to recover reasonable
32 and necessary direct and indirect costs that arise from processing the
33 permit. The department shall, in developing the agreement, ensure that
34 final decisions that involve policy matters are made by the agency and
35 not by the consultant. The department shall make an estimate of the
36 number of permanent staff hours to process the permits, and shall
37 contract with consultants or hire temporary employees to replace the
38 time and functions committed by these permanent staff to the project.

1 The billing process shall provide for accurate time and cost accounting
2 and may include a billing cycle that provides for progress payments.
3 (~~Use of cost reimbursement agreements shall not reduce the current~~
4 ~~level of staff available to work on permits not covered by cost~~
5 ~~reimbursement agreements. The department may not use any funds under~~
6 ~~a cost reimbursement agreement to replace or supplant existing~~
7 ~~funding.))~~

8 (4) The cost-reimbursement agreement must not negatively impact the
9 processing of other permit applications. In order to maintain permit
10 processing capacity, the agency may hire outside consultants, temporary
11 employees, or make internal administrative changes. Consultants or
12 temporary employees hired as part of a cost-reimbursement agreement or
13 to maintain agency capacity are hired as agents of the state not of the
14 permit applicant. The restrictions of chapter 42.52 RCW apply to any
15 cost-reimbursement agreement, and to any person hired as a result of a
16 cost-reimbursement agreement.

17 **Sec. 11.** RCW 43.300.080 and 2007 c 94 s 13 are each amended to
18 read as follows:

19 (1) The department may enter into a written cost-reimbursement
20 agreement with a permit applicant or project proponent to recover from
21 the applicant or proponent the reasonable costs incurred by the
22 department in carrying out the requirements of this chapter, as well as
23 the requirements of other relevant laws, as they relate to permit
24 coordination, environmental review, application review, technical
25 studies, and permit processing.

26 (2) The cost-reimbursement agreement shall identify the
27 (~~specific~~) tasks(~~(7)~~) and costs(~~(7-and-schedule)~~) for work to be
28 conducted under the agreement. The agreement must include a schedule
29 that states:

30 (a) The estimated number of weeks for initial review of the permit
31 application;

32 (b) The estimated number of revision cycles;

33 (c) The estimated number of weeks for review of subsequent revision
34 submittals;

35 (d) The estimated number of billable hours of employee time;

36 (e) The rate per hour; and

37 (f) A date for revision of the agreement if necessary.

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

25 (4) The cost-reimbursement agreement must not negatively impact the
26 processing of other permit applications. In order to maintain permit
27 processing capacity, the agency may hire outside consultants, temporary
28 employees, or make internal administrative changes. Consultants or
29 temporary employees hired as part of a cost-reimbursement agreement or
30 to maintain agency capacity are hired as agents of the state not of the
31 permit applicant. The restrictions of chapter 42.52 RCW apply to any
32 cost-reimbursement agreement, and to any person hired as a result of a
33 cost-reimbursement agreement.

34 **Sec. 12.** RCW 70.94.085 and 2007 c 94 s 14 are each amended to read
35 as follows:

36 (1) An authority may enter into a written cost-reimbursement
37 agreement with a permit applicant or project proponent to recover from

1 the applicant or proponent the reasonable costs incurred by the
2 authority in carrying out the requirements of this chapter, as well as
3 the requirements of other relevant laws, as they relate to permit
4 coordination, environmental review, application review, technical
5 studies, and permit processing.

6 (2) The cost-reimbursement agreement shall identify the
7 ~~((specific))~~ tasks~~((7))~~ and costs~~((7-and-schedule))~~ for work to be
8 conducted under the agreement. The agreement must include a schedule
9 that states:

10 (a) The estimated number of weeks for initial review of the permit
11 application;

12 (b) The estimated number of revision cycles;

13 (c) The estimated number of weeks for review of subsequent revision
14 submittals;

15 (d) The estimated number of billable hours of employee time;

16 (e) The rate per hour; and

17 (f) A date for revision of the agreement if necessary.

18 ~~((+2))~~ (3) The written cost-reimbursement agreement shall be
19 negotiated with the permit applicant or project proponent. Under the
20 provisions of a cost-reimbursement agreement, funds from the applicant
21 or proponent shall be used by the air pollution control authority to
22 contract with an independent consultant to carry out the work covered
23 by the cost-reimbursement agreement. The air pollution control
24 authority may also use funds provided under a cost-reimbursement
25 agreement to hire temporary employees, to assign current staff to
26 review the work of the consultant, to provide necessary technical
27 assistance when an independent consultant with comparable technical
28 skills is unavailable, and to recover reasonable and necessary direct
29 and indirect costs that arise from processing the permit. The air
30 pollution control authority shall, in developing the agreement, ensure
31 that final decisions that involve policy matters are made by the agency
32 and not by the consultant. The air pollution control authority shall
33 make an estimate of the number of permanent staff hours to process the
34 permits, and shall contract with consultants or hire temporary
35 employees to replace the time and functions committed by these
36 permanent staff to the project. The billing process shall provide for
37 accurate time and cost accounting and may include a billing cycle that
38 provides for progress payments. ~~((Use of cost reimbursement agreements~~

1 ~~shall not reduce the current level of staff available to work on~~
2 ~~permits not covered by cost reimbursement agreements. The air~~
3 ~~pollution control authority may not use any funds under a cost~~
4 ~~reimbursement agreement to replace or supplant existing funding.))~~

5 (4) The cost-reimbursement agreement must not negatively impact the
6 processing of other permit applications. In order to maintain permit
7 processing capacity, the agency may hire outside consultants, temporary
8 employees, or make internal administrative changes. Consultants or
9 temporary employees hired as part of a cost-reimbursement agreement or
10 to maintain agency capacity are hired as agents of the state not of the
11 permit applicant. The provisions of chapter 42.52 RCW apply to any
12 cost-reimbursement agreement, and to any person hired as a result of a
13 cost-reimbursement agreement. Members of the air pollution control
14 authority's board of directors shall be considered as state officers,
15 and employees of the air pollution control authority shall be
16 considered as state employees, for the sole purpose of applying the
17 restrictions of chapter 42.52 RCW to this section.

18 NEW SECTION. Sec. 13. A new section is added to chapter 43.42 RCW
19 to read as follows:

20 This chapter shall not be construed to limit or abridge the powers
21 and duties granted to a participating permit agency under the law that
22 authorizes or requires the agency to issue a permit for a project.
23 Each participating permit agency shall retain its authority to make all
24 decisions on all nonprocedural matters with regard to the respective
25 component permit that is within its scope of its responsibility
26 including, but not limited to, the determination of permit application
27 completeness, permit approval or approval with conditions, or permit
28 denial. The office may not substitute its judgment for that of a
29 participating permit agency on any such nonprocedural matters.

Passed by the House February 27, 2009.

Passed by the Senate April 3, 2009.

Approved by the Governor April 15, 2009.

Filed in Office of Secretary of State April 15, 2009.