

# SENATE BILL REPORT

## ESSB 5776

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As Passed Senate, March 18, 2003

**Title:** An act relating to review of permit decisions by state agencies and local governments for economic development projects.

**Brief Description:** Providing an appeal process for state agency and local government permit decisions for economic development projects.

**Sponsors:** Senate Committee on Land Use & Planning (originally sponsored by 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)].

Passed Senate: 3/18/03, 45-4.

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### 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)

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### 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 Bill:** A consolidated permit appeal process is authorized for qualifying projects (1) located in counties designated as distressed areas and rural natural resources impact areas as defined in statute, (2) providing at least 30 full-time jobs, and (3) designated as qualifying projects by the Office of Permit Assistance. If applicable, this appeal process is the exclusive process for review of final state agency and local government environmental and land use permit decisions on the qualifying project. All existing environmental and land use permit review processes and standards are unaffected and remain intact.

Permit decision appeals for a qualifying project are consolidated before a new board within the Environmental Hearings Office. The board membership is constituted as the Shorelines Hearings Board. Board procedures, timelines, and standards of review are included. If the agency permit decision included a quasi-judicial hearing, then the board review is on the agency decision record. If no hearing was included, then the board conducts a de novo review of the permit decision.

Appeals from the board decision on the qualifying project are filed in superior court for Thurston County, but the superior court must certify the appeal for direct review by the Court of Appeals if it makes certain factual determinations.

**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.

**House Amendment(s):** The striking amendment adopted by the House included the following modifications of the bill passed by the Senate:

- exempts Energy Facility Site Evaluation Council certifications and local health district certifications of water and sewer availability;
- provides for a project applicant to request the Office of Permit Assistance for designation as a qualifying project, within 30 days after the first permit application for the project, but no later than December 31, 2010;
- requires the office to make a determination on the request, and, if designated, to notify permit agencies and the public of the designation;
- provides that the determination by the office does not create an independent cause of action;
- clarifies that permits which have already been appealed to a board or to court before the request is filed may not be included in the process provided in this bill;
- clarifies that discovery for permit appeals under this bill may be subject to rules adopted by the board;
- provides procedures for service of process for any appeal of a board decision to court; and
- includes additional clarifying language and a new definition.

The amendment also states that the Legislature expects all affected state agencies to implement the provisions of the bill within existing appropriations.