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SENATE BILL 6359

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Eide, Kastama, Kilmer, and McAuliffe

Read first time 01/19/12. Referred to Committee on Economic Development, Trade & Innovation.

1 AN ACT Relating to modifying provisions related to the office of  
2 regulatory assistance; amending RCW 43.42.010, 43.42.050, 43.42.070,  
3 and 43.42.095; and reenacting and amending RCW 43.42.060.

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

5 **Sec. 1.** RCW 43.42.010 and 2011 c 149 s 2 are each amended to read  
6 as follows:

7 (1) The office of regulatory assistance is created in the office of  
8 financial management and must be administered by the office of the  
9 governor to help improve the regulatory system and assist citizens,  
10 businesses, and project proponents.

11 (2) The governor must appoint a director. The director may employ  
12 a deputy director and a confidential secretary and such staff as are  
13 necessary, or contract with another state agency pursuant to chapter  
14 39.34 RCW for support in carrying out the purposes of this chapter.

15 (3) The office must offer to:

16 (a) Act as the central point of contact for the project proponent  
17 in communicating about defined issues;

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

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

3 (d) Provide general coordination services;

4 (e) Coordinate the efficient completion among participating  
5 agencies of administrative procedures, such as collecting fees or  
6 providing public notice;

7 (f) Maintain contact with the project proponent and the permit  
8 agencies to promote adherence to agreed schedules;

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

11 (h) Coordinate, to the extent practicable, with relevant federal  
12 permit agencies and tribal governments;

13 (i) Facilitate meetings;

14 (j) Manage a fully coordinated permit process, as provided in RCW  
15 43.42.060; and

16 (k) Help local jurisdictions comply with the requirements of  
17 chapter 36.70B RCW (~~by providing information about best permitting  
18 practices methods to improve communication with, and solicit early  
19 involvement of, state agencies when needed; and~~

20 ~~(l) Maintain and furnish information as provided in RCW  
21 43.42.040)).~~

22 (4) The office must also:

23 (a) Provide information to local jurisdictions about best  
24 permitting practices, methods to improve communication with, and  
25 solicit early involvement of, state agencies when needed, and effective  
26 means of assessing and communicating expected project timelines and  
27 costs;

28 (b) Maintain and furnish information as provided in RCW 43.42.040;  
29 and

30 (c) Provide the following by September 1, 2009, and biennially  
31 thereafter, to the governor and the appropriate committees of the  
32 legislature:

33 ~~((a))~~ (i) A performance report including:

34 ~~((i))~~ (A) Information regarding use of the office's voluntary  
35 cost-reimbursement services as provided in RCW 43.42.070;

36 ~~((ii))~~ (B) The number and type of projects or initiatives where  
37 the office provided services (~~and the resolution provided by the  
38 office on any conflicts that arose on such projects;~~

- 1       ~~(iii) The agencies involved on specific projects;~~  
2       ~~(iv) Specific information on any difficulty encountered in~~  
3 ~~provision of services, implementation of programs or processes, or use~~  
4 ~~of tools; and~~  
5       ~~(v) Trend reporting that allows comparisons between statements of~~  
6 ~~goals and performance targets and the achievement of those goals and~~  
7 ~~targets; and~~  
8       ~~(b) Recommendations on system improvements including~~  
9 ~~recommendations regarding:~~  
10       ~~(i) Measurement of overall system performance;~~  
11       ~~(ii) Changes needed to make cost reimbursement, a fully coordinated~~  
12 ~~permit process, multiagency permitting teams, and other processes~~  
13 ~~effective; and~~  
14       ~~(iii) Resolving any conflicts or inconsistencies arising from~~  
15 ~~differing statutory or regulatory authorities, roles and missions of~~  
16 ~~agencies, timing and sequencing of permitting and procedural~~  
17 ~~requirements as identified by the office in the course of its duties))~~  
18 including the key agencies with which the office partnered;  
19       (C) Specific information on any difficulty encountered in providing  
20 services or implementing programs, processes, or assistance tools; and  
21       (D) Trend reporting that allows comparisons between statements of  
22 goals and performance targets and the achievement of those goals and  
23 targets; and  
24       (ii) Recommendations on system improvements including, but not  
25 limited to, recommendations on improving environmental permitting.

26       **Sec. 2.** RCW 43.42.050 and 2009 c 97 s 5 are each amended to read  
27 as follows:

28       (1) Upon request of a project proponent, the office (~~shall~~) must  
29 determine the level of project scoping needed by the project proponent,  
30 taking into consideration the complexity of the project and the  
31 experience of those expected to be involved in the project application  
32 and review process. The director may require the attendance at a  
33 scoping meeting of any state or local agency.

34       (2) Project scoping (~~shall~~) must consider the complexity, size,  
35 and needs for assistance of the project and (~~shall~~) must address as  
36 appropriate:

37       (a) The permits that are required for the project;

1 (b) The permit application forms and other application requirements  
2 of the participating permit agencies;

3 (c) The specific information needs and issues of concern of each  
4 participant and their significance;

5 (d) Any statutory or regulatory conflicts that might arise from the  
6 differing authorities and roles of the permit agencies;

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

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

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

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

26 (5) Upon completion of the project scoping, the participating  
27 permit agencies (~~shall~~) must proceed under their respective  
28 authorities. The agencies may remain in communication with the office  
29 as needed.

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

33 **Sec. 3.** RCW 43.42.060 and 2009 c 421 s 8 and 2009 c 97 s 6 are  
34 each reenacted and amended to read as follows:

35 (1) A project proponent may submit a written request to the  
36 director of the office for participation in a fully coordinated permit  
37 process. Designation as a fully coordinated project requires that:

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

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

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

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

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

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~~) may include (~~at least~~) any of 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~~)  
24 must be given to achieving the maximum efficiencies possible through  
25 concurrent studies and consolidated applications, hearings, and comment  
26 periods.

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

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

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

37 (5) Each agency (~~shall~~) must send at least one representative  
38 qualified to discuss the applicability and timelines associated with

1 all permits administered by that agency or jurisdiction. At the  
2 request of the project proponent, the office (~~shall~~) must notify any  
3 relevant local or federal agency or federally recognized Indian tribe  
4 of the date of the meeting and invite that agency's participation in  
5 the process.

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

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

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

24 **Sec. 4.** RCW 43.42.070 and 2010 c 162 s 4 are each amended to read  
25 as follows:

26 (1) The office may enter into cost-reimbursement agreements with a  
27 project proponent 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, 43.42.060, 43.42.090, and 43.42.092. The agreement must  
30 include the permit agencies that are participating in the  
31 cost-reimbursement project and carrying out permit processing or  
32 project review tasks referenced in the agreement.

33 (2) The office must maintain policies or guidelines for  
34 coordinating cost-reimbursement agreements with participating agencies,  
35 project proponents, and outside independent consultants. Policies or  
36 guidelines must ensure that, in developing cost-reimbursement  
37 agreements, conflicts of interest are eliminated. (~~Contracts with~~

1 ~~independent consultants hired by the office under this section must be~~  
2 ~~based on competitive bids that are awarded for each agreement from a~~  
3 ~~prequalified consultant roster.))~~

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

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

24 ~~(a) The estimated number of weeks for initial review of the permit~~  
25 ~~application for comparable projects;~~

26 ~~(b) The anticipated number of revision cycles;~~

27 ~~(c) The estimated number of weeks for review of subsequent revision~~  
28 ~~submittals;~~

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

30 ~~(e) The rate per hour; and~~

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

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



1 ~~if necessary, coordinate revision of the cost reimbursement agreement~~  
2 ~~and fully coordinated project work plan))~~ agreement must require the  
3 office, the project proponent, and participating agencies to develop  
4 and regularly update a project work plan that the office must post  
5 online. The agreement may include deliverables and schedules for  
6 invoicing and reimbursement. Reasonable costs must be determined based  
7 on time and materials estimates or may be set as a flat fee tied to  
8 estimates of staff hours required. The office may require advance  
9 payment to be held in reserve and distributed to agencies and the  
10 office upon approval of invoices by the project proponent. Each  
11 participating agency must agree to give priority to the cost-  
12 reimbursement project but may in no way reduce or eliminate regulatory  
13 requirements. Upon request, the office must verify that the agencies  
14 have met the obligations contained in the project work plan and  
15 agreement. The cost-reimbursement agreement must identify the known  
16 tasks of each party to the agreement and the maximum costs for work  
17 conducted under the agreement.

18 (5) If a party to the agreement foresees, at any time, that it will  
19 be unable to meet its obligations under the cost-reimbursement  
20 agreement, it must notify the office and state the reasons, along with  
21 proposals for resolving the problems. The office must notify the other  
22 parties and work to resolve the issues, which may include adjustments  
23 to invoices, deliverables, and the project work plan.

24 **Sec. 5.** RCW 43.42.095 and 2010 c 162 s 5 are each amended to read  
25 as follows:

26 The multiagency permitting team account is created in the state  
27 treasury. All receipts from solicitations authorized in RCW 43.42.092  
28 must be deposited into the account. Moneys in the account may be spent  
29 only after appropriation. Expenditures from the account may be used  
30 only for covering the ~~((initial))~~ staffing and other administrative  
31 costs of multiagency permitting teams and such other costs associated  
32 with the teams as may arise that are not recoverable through cost-  
33 reimbursement or cost-sharing mechanisms.

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