
HOUSE BILL 2495

State of Washington

53rd Legislature

1994 Regular Session

By Representatives King, Fuhrman and Basich

Read first time 01/17/94. Referred to Committee on Fisheries & Wildlife.

1 AN ACT Relating to finfish; adding a new chapter to Title 90 RCW;
2 and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that undesirable
5 and heavy burdens are being imposed on persons proposing to develop and
6 operate finfish facilities in Washington state as a result of the
7 numerous and complicated permits and other government approvals that
8 are presently required for the development and operation of the
9 facilities. The legislature further finds that the present methods for
10 obtaining public views in regard to applications to state agencies and
11 local governments to develop and operate facilities are cumbersome and
12 place undue hardship on members of the public thereby thwarting the
13 public's ability to present views on the facilities.

14 (2) The purpose of this act is to:

15 (a) Provide for an optional procedure to coordinate all state
16 agency and local government administrative decision-making procedures,
17 and related quasi-judicial and judicial reviews, to assist those who,
18 in the course of satisfying requirements of state agencies and local
19 governments prior to undertaking a facility that contemplates the use

1 of the state's air, land, or water resources, must obtain a number of
2 permits and other government approvals;

3 (b) Provide to members of the public a better and easier
4 opportunity to comprehensively present their views on a proposed
5 facility concerning natural resources and related environmental matters
6 prior to the making of decisions on the facility by state agencies and
7 local governments;

8 (c) Provide to persons proposing to develop and operate a facility
9 a greater degree of certainty in terms of permit requirements of state
10 agencies and local governments;

11 (d) Provide better coordination and understanding between state
12 agencies and local governments in the administration of various
13 programs relating to air, water, and land resources; and

14 (e) Establish the opportunity for members of the public to obtain
15 information pertaining to requirements of state and federal law that
16 must be complied with prior to operating a facility in Washington
17 state.

18 NEW SECTION. **Sec. 2.** Unless the context clearly requires
19 otherwise, the definitions in this section apply throughout this
20 chapter.

21 (1) "Board" means the pollution control hearings board.

22 (2) "Department" means the department of ecology.

23 (3) "Finfish rearing facility" or "facility" means those private
24 and public facilities located in the state where finfish are fed,
25 nurtured, held, maintained, or reared to reach a size for release or
26 for market sale, to include an "upland finfish facility" as defined in
27 RCW 90.48.215.

28 (4) "Permit" means a license, permit, certificate, certification,
29 approval, compliance schedule, or other similar document pertaining to
30 a regulatory or management program related to the protection,
31 conservation, or use of, or interference with, the natural resources of
32 land, air, or water in the state, that is required to be obtained from
33 a state agency or local government prior to constructing or operating
34 a finfish rearing facility in the state.

35 (5) "Person" means an individual, municipal, public, or private
36 corporation, or other entity however denominated, including a state
37 agency and local government entity.

1 (6) "State agency" means a state department, commission, board, or
2 other agency or entity of the state.

3 NEW SECTION. **Sec. 3.** (1) A person proposing a facility may submit
4 a master application to the department requesting the issuance of all
5 permits necessary prior to the construction and operation of the
6 facility in the state. The master application shall be on a form
7 furnished by the department and shall contain precise information as to
8 the location of the facility, and shall describe the nature of the
9 facility including proposed discharges of wastes and contemplated uses
10 of, or interferences with, natural resources.

11 (2)(a) Upon receipt of a properly completed master application, the
12 department shall immediately notify in writing each state agency and
13 local government, if applicable, having a possible interest in the
14 master application arising from requirements pertaining to a permit
15 program under its jurisdiction. The notification from the department
16 shall be accompanied by a copy of the master application together with
17 the date by which the state agency or local government shall respond to
18 the notice. Each notified state agency or local government shall
19 respond in writing to the department within the specified date, not
20 exceeding fifteen days from receipt, as determined by the department,
21 advising (i) whether the state agency or local government has an
22 interest in the master application; and (ii) if the response to (a)(i)
23 of this subsection is affirmative, the permit programs under the state
24 agency's or local government's jurisdiction to which the facility
25 described in the master application is pertinent, and whether, in
26 relation to the master application, a public hearing as provided in
27 section 4 of this act would be of value taking into consideration the
28 overall public interest.

29 (b) Each notified state agency and local government that (i)
30 responds within the specified date that it does not have an interest in
31 the master application; or (ii) does not respond as required within the
32 specified date, may not subsequently require a permit for the facility
33 described in the master application. However, the bar to subsequently
34 requiring a permit shall not be applicable if the master application
35 provided the notified state agency or local government contained false,
36 misleading, or deceptive information, or other information, or lack
37 thereof, that would reasonably lead a state agency or local government
38 to misjudge its interest in a master application.

1 (3) A local government shall process pursuant to the procedures
2 provided by this chapter all permits under its jurisdiction that may be
3 required from it for the facility described in the master application.
4 The procedures established by this chapter shall satisfy the procedural
5 requirements for any local government permit.

6 (4) After receiving the information regarding permits and
7 applications provided by the department under subsection (2) of this
8 section, the person may continue the process to apply for all or some
9 of the permits required for the facility or choose not to use the
10 process to apply for permits.

11 (5) The department shall send application forms relating to permits
12 identified in affirmative responses under subsection (2) of this
13 section to the applicant within five working days of the date specified
14 by the department pursuant to subsection (2) of this section, with a
15 direction to complete and return them to the department within a
16 reasonable time as specified by the department and agreed to by the
17 applicant.

18 (6) When the applications, properly completed, have been returned
19 to the department, each of the applications shall be transmitted to the
20 appropriate state agency and local government, if applicable, for the
21 performance of its responsibilities of decision making in accordance
22 with the procedures of this chapter.

23 NEW SECTION. **Sec. 4.** (1) The department, within ten days after
24 receipt of all application forms from the applicant under section 3(5)
25 of this act, shall cause a notice to be published at the applicant's
26 expense once each week on the same day of the week for two consecutive
27 weeks in a newspaper of general circulation within each county in which
28 the facility is proposed to be constructed or operated. The notice
29 shall describe the nature of the master application including, with
30 reasonable specificity, the proposed facility, its location, the
31 various permits applied for, and the agency having jurisdiction over
32 each permit. Except as provided in subsection (2) of this section, the
33 notice shall also state the time and place of a public hearing to be
34 held on the project. It shall further state that a copy of the master
35 application and a copy of all permit applications for the facility are
36 available for public inspection at its planning department, or its
37 equivalent in each county in which the facility is proposed to be

1 constructed or operated, and at the Olympia office and appropriate
2 regional office of the department.

3 (2) If the responses received by the department from state agencies
4 and local governments under section 3(2) of this act unanimously state
5 that a public hearing in relation to a master application would not be
6 of value taking into consideration the overall public interest, and the
7 department, after an evaluation, taking into consideration all
8 interests involved concludes likewise, a hearing is not required
9 pursuant to subsection (1) of this section. If this circumstance
10 occurs, the provisions of subsection (1) of this section pertaining to
11 the time and place of a public hearing shall not be included in the
12 notice under subsection (1) of this section. Instead, the notice shall
13 state that members of the public may present relevant views and
14 supporting materials in writing to the department in relation to any of
15 the permits applied for within twenty days after the last date of
16 publication of the notice in a newspaper.

17 NEW SECTION. **Sec. 5.** (1) Except as provided in section 4(2) of
18 this act, prior to a final decision on a permit application relating to
19 a facility subject to the procedures of this chapter, a public hearing
20 shall be held in the county in which all or a major part of the
21 proposed project is to be constructed or operated, the hearing to be
22 held pursuant to notice made under section 4(1) of this act. The
23 hearing shall be held within thirty days of the date of the first
24 publication of the notice under section 4(1) of this act. At the
25 hearing, the applicant may submit relevant information and materials in
26 support of the applications, and members of the public may present
27 relevant views and supporting materials in relation to the considered
28 applications.

29 (2) Each state agency and local government having a permit
30 application before it as described in the notice in section 4(1) of
31 this act, shall be represented at the public hearing by its chief
32 administrative officer or a designee. The director of the department,
33 or a hearing officer duly appointed by the director, shall chair the
34 hearing. The representative of each state agency, other than the
35 department, and each local government, shall conduct the portion of the
36 hearing pertaining to submission of information, views, and supporting
37 materials that are relevant to that state agency's or local
38 government's application. The chair may, when appropriate, continue a

1 hearing from time to time and place to place. The hearing shall be
2 recorded in a manner suitable for transcription as determined by the
3 department.

4 (3) No provisions of chapter 34.05 RCW shall apply to the hearing
5 provided for by this section. The hearing shall be conducted for the
6 purpose of obtaining information for the assistance of the state
7 agencies and local governments, but shall not be considered a trial or
8 adversarial proceeding.

9 (4) Upon completion of the public hearing, the chair, after
10 consultation with state agency representatives, shall establish the
11 date by which all state agencies and local governments shall forward
12 their final decisions on applications before them to the department.
13 This date shall not be more than ninety days after completion of the
14 public hearing, unless the chair and the applicant mutually agree upon
15 a later date. However, subsequent to the hearing, the chair and the
16 applicant may agree, prior to the expiration of the ninety-day period,
17 or the agreed upon later date, that the date may be extended for state
18 agencies or local governments to forward their final decisions. If an
19 agreement is reached, the affected state agencies or local governments
20 shall be notified in writing by the chair. Failure of an agency to
21 forward a decision by the established date constitutes unconditional
22 approval by that state agency or local government of the application.
23 Every final decision shall set forth the basis for the conclusion
24 reached together with a final order granting or denying the permit
25 application, subject to the conditions of approval as the agency or
26 local government with jurisdiction may impose.

27 (5) In situations where notice is provided pursuant to section 4(1)
28 of this act and no public hearing is conducted as provided in
29 subsections (1) and (2) of this section, the department shall, within
30 twenty-five days after the last notice is published in the newspaper,
31 submit a copy of all views and supporting materials received by it to
32 each state agency or local government having an application for a
33 permit before it as described in the notice. The department shall
34 concurrently notify each state agency or local government in writing of
35 the date by which final decisions on applications shall be forwarded to
36 the department. This date shall not be more than ninety days after the
37 department has submitted a copy of all views and supporting materials
38 received by it to each state agency or local government having an
39 application for a permit before it, unless the department and the

1 applicant mutually agree upon a later date. However, the information
2 shall be available to all interested parties, and the chair and the
3 applicant may agree, prior to the expiration of the ninety-day period
4 or an agreed upon later date, to extend the date for agencies to
5 forward their final decisions. If an agreement is reached, the
6 affected state agencies and local governments shall be notified in
7 writing by the chair. Failure of a state agency or local government to
8 forward a decision by the established date shall constitute
9 unconditional approval by that state agency or local government of the
10 application. Each final decision shall consist of the same contents as
11 provided for final decisions in subsection (4) of this section.

12 (6) When all final decisions are received by the department from
13 the various participating state agencies and local governments, as
14 provided in subsections (4) and (5) of this section, the department
15 shall incorporate them, without modification, into one document and
16 transmit it to the applicant either personally or by registered mail.

17 (7) A state agency or local government may, in the performance of
18 its responsibilities, request or receive additional information from an
19 applicant and others prior to or subsequent to a public hearing.
20 However, the request or receipt of the information shall not otherwise
21 effect the provisions of this chapter.

22 NEW SECTION. **Sec. 6.** A state agency or local government
23 responding affirmatively as provided in section 3(2) of this act, may
24 withdraw from further participation in the processing provided for in
25 this chapter at any time by written notification to the department if
26 it subsequently appears to the state agency or local government that it
27 has no jurisdiction over the facility.

28 NEW SECTION. **Sec. 7.** (1) A person aggrieved by a final decision
29 of a state agency under this chapter may obtain review by filing a
30 request with the board within thirty days of the transmittal under
31 section 5(6) of this act by the department of a final decision, except
32 for a substantial development variance or conditional use permit
33 pursuant to RCW 90.58.140 that shall be appealed to the shorelines
34 hearings board within thirty days of transmittal of the final decision.
35 In the event a request for review includes a final decision involving
36 a substantial development permit, or a substantial development
37 conditional use or variance permit appealable to the shorelines

1 hearings board, and other final decisions or permits, there shall be a
2 single staged hearing of the permits by the board and the shorelines
3 hearings board. The board shall be authorized to adopt rules
4 implementing the staged hearings and the filing of requests to
5 eliminate all unnecessary duplication.

6 (2) A person appealing a final decision of a local government under
7 this chapter shall obtain review in the same manner as would apply had
8 the local government not been subject to this chapter.

9 NEW SECTION. **Sec. 8.** Notwithstanding any other statutes relating
10 to the processing of permits, the procedures, including related timing
11 requirements, and approval requirements set forth in this chapter shall
12 be exclusive in relation to permits processed pursuant to this chapter.

13 NEW SECTION. **Sec. 9.** The rule of strict construction shall have
14 no application to this chapter and it shall be liberally constructed to
15 carry out its purpose.

16 NEW SECTION. **Sec. 10.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 11.** Sections 2 through 10 of this act shall
21 constitute a new chapter in Title 90 RCW.

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