
HOUSE BILL 1941

State of Washington

57th Legislature

2001 Regular Session

By Representatives Doumit and Dunshee

Read first time 02/09/2001. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to enhancing efficiency in permit processes;
2 amending RCW 58.17.095, 36.70B.060, 36.70B.140, and 36.70B.150; adding
3 new sections to chapter 43.21A RCW; adding a new section to chapter
4 47.01 RCW; adding a new section to chapter 77.55 RCW; adding a new
5 section to chapter 36.70B RCW; adding a new section to chapter 64.40
6 RCW; creating new sections; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that facilitating the
9 environmental permit process will increase citizen satisfaction and
10 compliance with state and local permit requirements. Lack of
11 coordination in the processing of permit applications causes costly
12 delays and frustration to the applicant. The public deserves a clear,
13 predictable system for land-use decisions. The legislature also finds
14 that permit issuance can be expedited by requiring state agencies and
15 local jurisdictions to coordinate their permit processes.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21A RCW
17 to read as follows:

1 (1) It is the intent of this section to provide an interagency
2 forum for the discussion of significant issues related to the
3 permitting processes and use authorizations for projects that are
4 proposed on state-owned aquatic lands where there are multiple permits,
5 programs, and legal authorities involved.

6 (2) It is a goal of this section to encourage all agencies and
7 local governments involved in issuing permits or granting use
8 authorizations for a single project on state-owned aquatic lands to
9 communicate with each other on a timely basis and early in the project
10 review process in order to maximize coordination, facilitate problem
11 resolution, promote the effectiveness of permit decisions, and enhance
12 citizen understanding and involvement in the permit process. It is
13 also a goal of this section that all permitting or authorizing federal
14 and state agencies, local governments, and tribal governments be
15 involved in coordinating their respective roles related to permits or
16 use authorizations from the outset of any review process.

17 (3) For the purposes of this section, "aquatic lands" means
18 "aquatic lands" as defined in RCW 79.90.010.

19 (4) The applicant may submit a joint aquatic resource permit
20 application to the department if a project proposed for the use of
21 state-owned aquatic lands requires:

22 (a) A hydraulic project approval under chapter 77.55 RCW;

23 (b) A wastewater discharge permit under chapter 90.48 RCW, or a
24 federal clean water act section 401 certification; and

25 (c) A substantial development permit under chapter 90.58 RCW.

26 (5) If requested by the applicant, the department shall facilitate
27 a project scoping meeting including the project applicant, the
28 department, the department of natural resources, the department of fish
29 and wildlife, and the local governments in whose jurisdiction the
30 project is proposed. Federal agencies and tribal governments that
31 either issue or may require a permit or that may require a use
32 authorization for the project shall each be invited to name a
33 representative to participate in the coordinated permit review process
34 for proposed projects on state-owned aquatic lands. All participating
35 agencies are encouraged to remain in communication for purposes of
36 coordination throughout the permit review processes until final permit
37 decisions are made.

38 (6) The purpose of the scoping meeting is to share perspectives and
39 identify the issues and information needs of concern to each

1 participant with regard to the proposed project, and jointly develop a
2 strategy for coordinating permitting and issuance of use authorization
3 issues. This project scoping process shall be concluded within sixty
4 days of the date of receipt of the joint aquatic resource permit
5 application by the permit assistance center.

6 (a) During this review, the participating agencies shall identify:

7 (i) The specific information needs and issues of concern and their
8 significance to each participant with regard to the permitting
9 processes involved;

10 (ii) Any statutory or regulatory conflicts that might arise
11 relating to differing legal authorities and roles of the agencies
12 issuing the permit or use authorization of the project;

13 (iii) Any state or local jurisdiction or private sector liability
14 that might result from permitting or issuing a use authorization for
15 the project; and

16 (iv) Any natural resources, including federal or state listed
17 species, that might be adversely affected by the permitting or
18 authorizing decision.

19 (b) Following this project scoping review, the outcome shall be
20 documented in written form and furnished to the applicant, and be
21 available to the public.

22 (c) Upon completion of this review, the permitting and authorizing
23 agencies and governments shall proceed according to their respective
24 statutes. Nothing in this section may prevent the parties from
25 reconvening later in the course of the permitting or use authorization
26 process.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.01 RCW
28 to read as follows:

29 The legislature recognizes that the department is working with
30 state and federal agencies to address transportation construction and
31 maintenance program impacts so that these programs meet the
32 requirements of the federal clean water act and the consultation
33 requirements of the federal endangered species act. The legislature
34 supports the department's efforts in this regard and encourages the
35 department to work collaboratively with local governments and other
36 interested parties during these consultations, and to provide local
37 governments and other interested parties with opportunity to
38 participate in this process to the extent practicable.

1 The department shall report by December 1st of each year to the
2 legislature the status of any programmatic consultation developed under
3 this section.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21A RCW
5 to read as follows:

6 The legislature recognizes that the department is working with
7 state and federal agencies to coordinate the permitting requirements of
8 the federal clean water act and the consultation requirements of the
9 federal endangered species act. The legislature supports the
10 department's efforts in this regard and encourages the department to
11 work collaboratively with local governments and other interested
12 parties during these consultations, and to provide local governments
13 and other interested parties with opportunity to participate in this
14 process to the extent practicable.

15 The department shall report by December 1st of each year to the
16 legislature the status of any programmatic consultation developed under
17 this section.

18 **Sec. 5.** RCW 58.17.095 and 1986 c 233 s 1 are each amended to read
19 as follows:

20 (1) A county, city, or town may adopt an ordinance providing for
21 the administrative review of a preliminary plat without a public
22 hearing (~~((by adopting an ordinance providing for such administrative
23 review))~~). The ordinance may specify a threshold number of lots in a
24 subdivision above which a public hearing must be held, and may specify
25 other factors which necessitate the holding of a public hearing. (~~((The
26 administrative review process shall include))~~)

27 (2) If the county, city, or town has not adopted consolidated
28 permitting procedures and time frames as provided in chapter 36.70B
29 RCW, it shall conduct administrative review of preliminary plats
30 consistent with the following minimum conditions:

31 ~~((1))~~ (a) The notice requirements of RCW 58.17.090 shall be
32 followed, except that the publication shall be made within ten days of
33 the filing of the application. Additionally, at least ten days after
34 the filing of the application notice both shall be: ~~((a))~~ (i) Posted
35 on or around the land proposed to be subdivided in at least five
36 conspicuous places designed to attract public awareness of the
37 proposal; and ~~((b))~~ (ii) mailed to the owner of each lot or parcel of

1 property located within at least three hundred feet of the site. The
2 applicant shall provide the county, city, or town with a list of such
3 property owners and their addresses. The notice shall include
4 notification that no public hearing will be held on the application,
5 except as provided by this section. The notice shall set out the
6 procedures and time limitations for persons to require a public hearing
7 and make comments.

8 ~~((+2))~~ (b) Any person shall have a period of twenty days from the
9 date of the notice to comment upon the proposed preliminary plat. All
10 comments received shall be provided to the applicant. The applicant
11 has seven days from receipt of the comments to respond thereto.

12 ~~((+3))~~ (c) A public hearing on the proposed subdivision shall be
13 held if any person files a request for a hearing with the county, city,
14 or town within twenty-one days of the publishing of such notice. If
15 such a hearing is requested, notice requirements for the public hearing
16 shall be in conformance with RCW 58.17.090, and the ninety-day period
17 for approval or disapproval of the proposed subdivision provided for in
18 RCW 58.17.140 shall commence with the date of the filing of the request
19 for a public hearing. Any hearing ordered under this subsection shall
20 be conducted by the planning commission or hearings officer as required
21 by county or city ordinance.

22 ~~((+4))~~ (d) On its own initiative within twenty-one days of the
23 filing of the request for approval of the subdivision, the governing
24 body, or a designated employee or official, of the county, city, or
25 town, shall be authorized to cause a public hearing to be held on the
26 proposed subdivision within ninety days of the filing of the request
27 for the subdivision.

28 ~~((+5))~~ (e) If the public hearing is waived as provided in this
29 section, the planning commission or planning agency shall complete the
30 review of the proposed preliminary plat and transmit its recommendation
31 to the legislative body as provided in RCW 58.17.100.

32 (3) If the county, city, or town has adopted consolidated
33 permitting procedures and time frames as provided in chapter 36.70B
34 RCW, it may conduct administrative review of preliminary plats
35 consistent with its procedures and time frames. At a minimum, local
36 permitting procedures and time frames related to administrative review
37 of preliminary plats shall provide for:

38 (a) Notice of application by publication, posting, and mailing.
39 All forms of notice shall include a prominent statement that no public

1 hearing will be held on the application, except as provided by this
2 section. All forms of notice shall clearly state procedures and time
3 frames for persons to make comments on the proposal and request a
4 public hearing;

5 (b) Written comments on the application by any person. Comments
6 received shall be provided to the applicant, and the applicant shall
7 have seven days from receipt of the comments to respond thereto;

8 (c) A public hearing on the application if any person files a
9 request for a hearing within the time frame specified. If a hearing is
10 requested, notice requirements for the public hearing and the time
11 frame for approval or disapproval of the application shall be
12 consistent with other local permitting procedures. Any hearing
13 conducted under this subsection shall be conducted by the planning
14 commission or hearing officer as required by local ordinance;

15 (d) A public hearing on the application if the legislative or
16 executive branch of the county, city, or town so requests within the
17 time frame specified;

18 (e) Expedited agency review and transmittal of its recommendation
19 on the application to the legislative body of the county, city, or
20 town, if there is no request for public hearing.

21 NEW SECTION. Sec. 6. A new section is added to chapter 77.55 RCW
22 to read as follows:

23 The legislature recognizes that the department is working with
24 state and federal agencies to coordinate the permitting requirements of
25 the federal clean water act and the consultation requirements of the
26 federal endangered species act. The legislature supports the
27 department's efforts in this regard and encourages the department to
28 work collaboratively with local governments and other interested
29 parties during these consultations, and to provide local governments
30 and other interested parties with opportunity to participate in this
31 process to the extent practicable.

32 The department shall report by December 1st of each year to the
33 legislature the status of any programmatic consultation developed under
34 this section.

35 NEW SECTION. Sec. 7. A new section is added to chapter 36.70B RCW
36 to read as follows:

1 (1) Except as otherwise provided in subsection (2) of this section,
2 a local government planning under RCW 36.70A.040 shall issue its notice
3 of final decision on a project permit application within one hundred
4 twenty days after the local government notifies the applicant that the
5 application is complete, as provided in RCW 36.70B.070. In determining
6 the number of days that have elapsed after the local government has
7 notified the applicant that the application is complete, the following
8 periods shall be excluded:

9 (a)(i) Any period during which the applicant has been requested by
10 the local government to correct plans, perform required studies, or
11 provide additional required information. The period shall be
12 calculated from the date the local government notifies the applicant of
13 the need for additional information until the earlier of the date the
14 local government determines whether the additional information
15 satisfies the request for information or fourteen days after the date
16 the information has been provided to the local government.

17 (ii) If the local government determines that the information
18 submitted by the applicant under (a)(i) of this subsection is
19 insufficient, it shall notify the applicant of the deficiencies and the
20 procedures under (a)(i) of this subsection shall apply as if a new
21 request for studies had been made;

22 (b) Any period during which an environmental impact statement is
23 being prepared following a determination of significance pursuant to
24 chapter 43.21C RCW, if the local government by ordinance or resolution
25 has established time periods for completion of environmental impact
26 statements, or if the local government and the applicant in writing
27 agree to a time period for completion of an environmental impact
28 statement;

29 (c) Any period for administrative appeals of project permits, if an
30 open record appeal hearing or a closed record appeal, or both, are
31 allowed. The local government by ordinance or resolution shall
32 establish a time period to consider and decide such appeals. The time
33 period shall not exceed: (i) Ninety days for an open record appeal
34 hearing; and (ii) sixty days for a closed record appeal. The parties
35 to an appeal may agree to extend these time periods; and

36 (d) Any extension of time mutually agreed upon by the applicant and
37 the local government.

38 (2) The time limits established by subsection (1) of this section
39 do not apply if a project permit application:

1 (a) Requires an amendment to the comprehensive plan or a
2 development regulation;

3 (b) Requires approval of a new fully contained community as
4 provided in RCW 36.70A.350, a master planned resort as provided in RCW
5 36.70A.360, or the siting of an essential public facility as provided
6 in RCW 36.70A.200; or

7 (c) Is substantially revised by the applicant, in which case the
8 time period shall start from the date at which the revised project
9 application is determined to be complete under RCW 36.70B.070.

10 (3) If the local government is unable to issue its final decision
11 within the time limits provided for in this section, it shall provide
12 written notice of this fact to the project applicant. The notice shall
13 include a statement of reasons why the time limits have not been met
14 and an estimated date for issuance of the notice of final decision.

15 (4) This section shall apply to project permit applications filed
16 on or after September 1, 2001.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 64.40 RCW
18 to read as follows:

19 A local government is not liable for damages under this chapter due
20 to the local government's failure to make a final decision within the
21 time limits established in section 7 of this act.

22 **Sec. 9.** RCW 36.70B.060 and 1995 c 347 s 407 are each amended to
23 read as follows:

24 Not later than March 31, 1996, each local government planning under
25 RCW 36.70A.040 shall establish by ordinance or resolution an integrated
26 and consolidated project permit process that may be included in its
27 development regulations. In addition to the elements required by RCW
28 36.70B.050, the process shall include the following elements:

29 (1) A determination of completeness to the applicant as required by
30 RCW 36.70B.070;

31 (2) A notice of application to the public and agencies with
32 jurisdiction as required by RCW 36.70B.110;

33 (3) Except as provided in RCW 36.70B.140, an optional consolidated
34 project permit review process as provided in RCW 36.70B.120. The
35 review process shall provide for no more than one consolidated open
36 record hearing and one closed record appeal. If an open record
37 predecision hearing is provided prior to the decision on a project

1 permit, the process shall not allow a subsequent open record appeal
2 hearing;

3 (4) Provision allowing for any public meeting or required open
4 record hearing to be combined with any public meeting or open record
5 hearing that may be held on the project by another local, state,
6 regional, federal, or other agency, in accordance with provisions of
7 section 7 of this act and RCW ((36.70B.090 and)) 36.70B.110;

8 (5) A single report stating all the decisions made as of the date
9 of the report on all project permits included in the consolidated
10 permit process that do not require an open record predecision hearing
11 and any recommendations on project permits that do not require an open
12 record predecision hearing. The report shall state any mitigation
13 required or proposed under the development regulations or the agency's
14 authority under RCW 43.21C.060. The report may be the local permit.
15 If a threshold determination other than a determination of significance
16 has not been issued previously by the local government, the report
17 shall include or append this determination;

18 (6) Except for the appeal of a determination of significance as
19 provided in RCW 43.21C.075, if a local government elects to provide an
20 appeal of its threshold determinations or project permit decisions, the
21 local government shall provide for no more than one consolidated open
22 record hearing on such appeal. The local government need not provide
23 for any further appeal and may provide an appeal for some but not all
24 project permit decisions. If an appeal is provided after the open
25 record hearing, it shall be a closed record appeal before a single
26 decision-making body or officer;

27 (7) A notice of decision as required by RCW 36.70B.130 and issued
28 within the time period provided in section 7 of this act and RCW
29 36.70B.080 ((and 36.70B.090));

30 (8) Completion of project review by the local government, including
31 environmental review and public review and any appeals to the local
32 government, within any applicable time periods under ((RCW 36.70B.090))
33 section 7 of this act; and

34 (9) Any other provisions not inconsistent with the requirements of
35 this chapter or chapter 43.21C RCW.

36 **Sec. 10.** RCW 36.70B.140 and 1995 c 347 s 418 are each amended to
37 read as follows:

1 (1) A local government by ordinance or resolution may exclude the
2 following project permits from the provisions of RCW 36.70B.060 through
3 (~~36.70B.090~~) 36.70B.080, section 7 of this act, and 36.70B.110
4 through 36.70B.130: Landmark designations, street vacations, or other
5 approvals relating to the use of public areas or facilities, or other
6 project permits, whether administrative or quasi-judicial, that the
7 local government by ordinance or resolution has determined present
8 special circumstances that warrant a review process different from that
9 provided in RCW 36.70B.060 through (~~36.70B.090~~) 36.70B.080, section
10 7 of this act, and 36.70B.110 through 36.70B.130.

11 (2) A local government by ordinance or resolution also may exclude
12 the following project permits from the provisions of RCW 36.70B.060 and
13 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and
14 building and other construction permits, or similar administrative
15 approvals, categorically exempt from environmental review under chapter
16 43.21C RCW, or for which environmental review has been completed in
17 connection with other project permits.

18 **Sec. 11.** RCW 36.70B.150 and 1995 c 347 s 419 are each amended to
19 read as follows:

20 A local government not planning under RCW 36.70A.040 may
21 incorporate some or all of the provisions of RCW 36.70B.060 through
22 (~~36.70B.090~~) 36.70B.080, section 7 of this act, and 36.70B.110
23 through 36.70B.130 into its procedures for review of project permits or
24 other project actions.

25 NEW SECTION. **Sec. 12.** (1) A task force is created to review
26 issues related to local project review processes and requirements and
27 to provide the legislature with recommendations related to:

28 (a) Streamlining the process of local project review to reduce the
29 administrative and development costs and time associated with
30 development proposals;

31 (b) Improving coordination between federal, state, and local
32 permitting authorities related to processing development project
33 applications;

34 (c) Consolidating statutes and merging standards governing local
35 project review;

1 (d) Providing flexibility and funding for local governments to
2 conduct comprehensive environmental review in advance of development
3 proposals; and

4 (e) Achieving a more effective and cost-efficient permit system
5 while ensuring environmental protection and compliance with federal and
6 state environmental laws.

7 (2) The task force shall consist of eight members as follows: Four
8 legislative members, appointed by the cospeakers of the house of
9 representatives and the majority and minority leaders of the senate,
10 including one each from the two largest caucuses of the house of
11 representatives and the senate; one representative each from the
12 association of Washington cities and the Washington state association
13 of counties; and one representative each from the department of
14 community, trade, and economic development and the department of
15 ecology.

16 (3) The task force may appoint an advisory committee to assist with
17 consideration of issues and to provide comment on proposals for
18 legislative recommendations. The advisory committee should include
19 representatives from a variety of interest groups, including but not
20 limited to agencies, planners, land use attorneys, tribes, developers,
21 realtors, and environmental organizations. The staff of senate
22 committee services and the office of program research of the house of
23 representatives shall provide support to the task force.

24 (4) The task force shall submit a report of its recommendations to
25 the governor and the legislature by December 1, 2001.

26 NEW SECTION. **Sec. 13.** Sections 8 and 12 of this act expire June
27 30, 2002.

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