
HOUSE BILL 1707

State of Washington 58th Legislature 2003 Regular Session

By Representatives Jarrett, Simpson, Shabro, Sullivan, Moeller,
Berkey, Schindler, Linville and Anderson

Read first time 02/05/2003. Referred to Committee on Local
Government.

1 AN ACT Relating to revising environmental review provisions to
2 improve the development approval process and enhance economic
3 development; and amending RCW 43.21C.031, 43.21C.060, 43.21C.110, and
4 43.21C.240.

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

6 **Sec. 1.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to
7 read as follows:

8 (1) An environmental impact statement (the detailed statement
9 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for
10 legislation and other major actions having a probable significant,
11 adverse environmental impact. The environmental impact statement may
12 be combined with the recommendation or report on the proposal or issued
13 as a separate document. The substantive decisions or recommendations
14 shall be clearly identifiable in the combined document. Actions
15 categorically exempt under RCW 43.21C.110(1)(a) do not require
16 environmental review or the preparation of an environmental impact
17 statement under this chapter. In a county, city, or town planning
18 under RCW 36.70A.040, a planned action, as provided for in subsection
19 (2) of this section, does not require a threshold determination or the

1 preparation of an environmental impact statement under this chapter,
2 but is subject to (~~environmental review and mitigation as provided in~~
3 ~~this chapter~~) potential substantive mitigation under RCW 43.21C.060.

4 An environmental impact statement is required to analyze only those
5 probable adverse environmental impacts which are significant.
6 Beneficial environmental impacts may be discussed. The responsible
7 official shall consult with agencies and the public to identify such
8 impacts and limit the scope of an environmental impact statement. The
9 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate
10 sections of an environmental impact statement. Discussions of
11 significant short-term and long-term environmental impacts, significant
12 irrevocable commitments of natural resources, significant alternatives
13 including mitigation measures, and significant environmental impacts
14 (~~which~~) that cannot be mitigated should be consolidated or included,
15 as applicable, in those sections of an environmental impact statement
16 where the responsible official decides they logically belong.

17 (2)(a) For purposes of this section, a planned action means one or
18 more types of project action that:

19 (i) Are designated planned actions by an ordinance or resolution
20 adopted by a county, city, or town planning under RCW 36.70A.040;

21 (ii) Have had the significant impacts adequately addressed in an
22 environmental impact statement prepared in conjunction with (A) a
23 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or
24 (B) a fully contained community, a master planned resort, a master
25 planned development, or a phased project;

26 (iii) Are subsequent or implementing projects for the proposals
27 listed in (a)(ii) of this subsection;

28 (iv) Are located within an urban growth area, as defined in RCW
29 36.70A.030; and

30 (~~Are not essential public facilities, as defined in RCW~~
31 ~~36.70A.200; and~~

32 ~~(vi))~~ Are consistent with a comprehensive plan adopted under
33 chapter 36.70A RCW.

34 (b) A county, city, or town shall limit planned actions to certain
35 types of development or to specific geographical areas that are less
36 extensive than the jurisdictional boundaries of the county, city, or
37 town and may limit a planned action to a time period identified in the

1 environmental impact statement or the ordinance or resolution adopted
2 under this subsection.

3 **Sec. 2.** RCW 43.21C.060 and 1983 c 117 s 3 are each amended to read
4 as follows:

5 (1) The policies and goals set forth in this chapter are
6 supplementary to those set forth in existing authorizations of all
7 branches of government of this state, including state agencies,
8 municipal and public corporations, and counties. Except as provided in
9 subsection (2) of this section, any governmental action may be
10 conditioned or denied pursuant to this chapter~~((~~PROVIDED, That~~~~
11 ~~such))~~.

12 (a) Conditions or denials shall be based upon policies identified
13 by the appropriate governmental authority and incorporated into
14 regulations, plans, or codes which are formally designated by the
15 agency (or appropriate legislative body, in the case of local
16 government) as possible bases for the exercise of authority pursuant to
17 this chapter. ~~((Such))~~ Designation shall occur at the time specified
18 by RCW 43.21C.120.

19 ~~((Such))~~ (b) Action may be conditioned only to mitigate specific
20 adverse environmental impacts ~~((which))~~ that are identified in the
21 environmental documents prepared under this chapter. These conditions
22 shall be stated in writing by the decisionmaker.

23 (c) Mitigation measures shall be reasonable and capable of being
24 accomplished. In order to deny a proposal under this chapter, an
25 agency must find that:

26 ~~((1))~~ (i) The proposal would result in significant adverse
27 impacts identified in a final or supplemental environmental impact
28 statement prepared under this chapter; and

29 ~~((2))~~ (ii) Reasonable mitigation measures are insufficient to
30 mitigate the identified impact.

31 (d) Except for permits and variances issued pursuant to chapter
32 90.58 RCW, when such a governmental action, not requiring a legislative
33 decision, is conditioned or denied by a nonelected official of a local
34 governmental agency, the decision shall be appealable to the
35 legislative authority of the acting local governmental agency unless
36 that legislative authority formally eliminates such appeals. Such

1 appeals shall be in accordance with procedures established for such
2 appeals by the legislative authority of the acting local governmental
3 agency.

4 (2) Proposed essential public facilities identified according to
5 RCW 36.70A.200 may not be conditioned on the payment of a fee under
6 this section to mitigate a specific adverse environmental impact, if an
7 impact fee, as defined in RCW 82.02.090, could be imposed according to
8 RCW 82.02.050 through 82.02.090 to mitigate that specific adverse
9 environmental impact.

10 **Sec. 3.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to
11 read as follows:

12 It shall be the duty and function of the department of ecology:

13 (1) To adopt and amend thereafter rules of interpretation and
14 implementation of this chapter, subject to the requirements of chapter
15 34.05 RCW, for the purpose of providing uniform rules and guidelines to
16 all branches of government including state agencies, political
17 subdivisions, public and municipal corporations, and counties. The
18 proposed rules shall be subject to full public hearings requirements
19 associated with rule promulgation. Suggestions for modifications of
20 the proposed rules shall be considered on their merits, and the
21 department shall have the authority and responsibility for full and
22 appropriate independent promulgation and adoption of rules, assuring
23 consistency with this chapter as amended and with the preservation of
24 protections afforded by this chapter. The rule-making powers
25 authorized in this section shall include, but shall not be limited to,
26 the following phases of interpretation and implementation of this
27 chapter:

28 (a) Categories of governmental actions which are not to be
29 considered as potential major actions significantly affecting the
30 quality of the environment, including categories pertaining to
31 applications for water right permits pursuant to chapters 90.03 and
32 90.44 RCW. The types of actions included as categorical exemptions in
33 the rules shall be limited to those types which are not major actions
34 significantly affecting the quality of the environment. The rules
35 shall provide for certain circumstances where actions which potentially
36 are categorically exempt require environmental review. An action that

1 is categorically exempt under the rules adopted by the department may
2 not be conditioned or denied under this chapter.

3 (b) In urban growth areas in which existing density and intensity
4 is lower than the levels called for in the goals and policies of
5 applicable comprehensive plans adopted according to chapter 36.70A RCW,
6 in order to accommodate infill development and thereby realize the
7 goals and policies of the comprehensive plans, the rules shall provide
8 for categorical exemptions for higher levels of density and intensity
9 of new development than the categorical exemption levels provided for
10 all other areas.

11 (c) Rules for criteria and procedures applicable to the
12 determination of when an act of a branch of government is a major
13 action significantly affecting the quality of the environment for which
14 a detailed statement is required to be prepared pursuant to RCW
15 43.21C.030.

16 (~~(c)~~) (d) Rules and procedures applicable to the preparation of
17 detailed statements and other environmental documents, including but
18 not limited to rules for timing of environmental review, obtaining
19 comments, data and other information, and providing for and determining
20 areas of public participation which shall include the scope and review
21 of draft environmental impact statements.

22 (~~(d)~~) (e) Scope of coverage and contents of detailed statements
23 assuring that such statements are simple, uniform, and as short as
24 practicable; statements are required to analyze only reasonable
25 alternatives and probable adverse environmental impacts which are
26 significant, and may analyze beneficial impacts.

27 (~~(e)~~) (f) Rules and procedures for public notification of actions
28 taken and documents prepared.

29 (~~(f)~~) (g) Definition of terms relevant to the implementation of
30 this chapter including the establishment of a list of elements of the
31 environment. Analysis of environmental considerations under RCW
32 43.21C.030(2) may be required only for those subjects listed as
33 elements of the environment (or portions thereof). The list of
34 elements of the environment shall consist of the "natural" and "built"
35 environment. The elements of the built environment shall consist of
36 public services and utilities (such as water, sewer, schools, fire and
37 police protection), transportation, environmental health (such as

1 explosive materials and toxic waste), and land and shoreline use
2 (including housing, and a description of the relationships with land
3 use and shoreline plans and designations, including population).

4 ~~((g))~~ (h) Rules for determining the obligations and powers under
5 this chapter of two or more branches of government involved in the same
6 project significantly affecting the quality of the environment.

7 ~~((h))~~ (i) Methods to assure adequate public awareness of the
8 preparation and issuance of detailed statements required by RCW
9 43.21C.030(2)(c).

10 ~~((i))~~ (j) To prepare rules for projects setting forth the time
11 limits within which the governmental entity responsible for the action
12 shall comply with the provisions of this chapter.

13 ~~((j))~~ (k) Rules for utilization of a detailed statement for more
14 than one action and rules improving environmental analysis of
15 nonproject proposals and encouraging better interagency coordination
16 and integration between this chapter and other environmental laws.

17 ~~((k))~~ (l) Rules relating to actions which shall be exempt from
18 the provisions of this chapter in situations of emergency.

19 ~~((l))~~ (m) Rules relating to the use of environmental documents in
20 planning and decision making and the implementation of the substantive
21 policies and requirements of this chapter, including procedures for
22 appeals under this chapter.

23 ~~((m))~~ (n) Rules and procedures that provide for the integration
24 of environmental review with project review as provided in RCW
25 43.21C.240. The rules and procedures shall be jointly developed with
26 the department of community, trade, and economic development and shall
27 be applicable to the preparation of environmental documents for actions
28 in counties, cities, and towns planning under RCW 36.70A.040. The
29 rules and procedures shall also include procedures and criteria to
30 analyze planned actions under RCW 43.21C.031(2) and revisions to the
31 rules adopted under this section to ensure that they are compatible
32 with the requirements and authorizations of chapter 347, Laws of 1995,
33 as amended by chapter 429, Laws of 1997. Ordinances or procedures
34 adopted by a county, city, or town to implement the provisions of
35 chapter 347, Laws of 1995 prior to the effective date of rules adopted
36 under this subsection (1)~~((m))~~ (n) shall continue to be effective
37 until the adoption of any new or revised ordinances or procedures that

1 may be required. If any revisions are required as a result of rules
2 adopted under this subsection (1)((~~m~~)) (n), those revisions shall be
3 made within the time limits specified in RCW 43.21C.120.

4 (2) In exercising its powers, functions, and duties under this
5 section, the department may:

6 (a) Consult with the state agencies and with representatives of
7 science, industry, agriculture, labor, conservation organizations,
8 state and local governments, and other groups, as it deems advisable;
9 and

10 (b) Utilize, to the fullest extent possible, the services,
11 facilities, and information (including statistical information) of
12 public and private agencies, organizations, and individuals, in order
13 to avoid duplication of effort and expense, overlap, or conflict with
14 similar activities authorized by law and performed by established
15 agencies.

16 (3) Rules adopted pursuant to this section shall be subject to the
17 review procedures of chapter 34.05 RCW.

18 **Sec. 4.** RCW 43.21C.240 and 1995 c 347 s 202 are each amended to
19 read as follows:

20 (1) If the requirements of subsection (2) of this section are
21 satisfied, a county, city, or town reviewing a project action ((~~may~~))
22 shall determine that the requirements for environmental analysis,
23 protection, and mitigation measures in the county, city, or town's
24 development regulations and comprehensive plans adopted under chapter
25 36.70A RCW, and in other applicable local, state, or federal laws and
26 rules provide adequate analysis of and mitigation for the specific
27 adverse environmental impacts of the project action to which the
28 requirements apply. In these situations, in which all adverse
29 environmental impacts will be mitigated below the level of significance
30 as a result of voluntary measures by the proponent and/or regulatory
31 requirements of development regulations adopted under chapter 36.70A
32 RCW or other local, state, or federal laws, a determination of
33 nonsignificance or a mitigated determination of nonsignificance is the
34 proper threshold determination.

35 (2) A county, city, or town ((~~may~~)) shall make the determination
36 provided for in subsection (1) of this section if:

1 (a) In the course of project review, including any required
2 environmental analysis, the local government considers the specific
3 probable adverse environmental impacts of the proposed action and
4 determines that these specific impacts are adequately addressed by the
5 development regulations or other applicable requirements of the
6 comprehensive plan, subarea plan element of the comprehensive plan, or
7 other local, state, or federal rules or laws; and

8 (b) The local government bases or conditions its approval on
9 compliance with these requirements or mitigation measures.

10 (3) If a county, city, or town's comprehensive plans, subarea
11 plans, and development regulations adequately address a project's
12 probable specific adverse environmental impacts, as determined under
13 subsections (1) and (2) of this section, the county, city, or town
14 shall not impose additional mitigation under this chapter during
15 project review. Project review shall be integrated with environmental
16 analysis under this chapter.

17 (4) A comprehensive plan, subarea plan, or development regulation
18 shall be considered to adequately address an impact if the county,
19 city, or town, through the planning and environmental review process
20 under chapter 36.70A RCW and this chapter, has identified the specific
21 adverse environmental impacts and:

22 (a) The impacts have been avoided or otherwise mitigated; or

23 (b) The legislative body of the county, city, or town has
24 designated as acceptable certain levels of service, land use
25 designations, development standards, or other land use planning
26 required or allowed by chapter 36.70A RCW.

27 (5) In deciding whether a specific adverse environmental impact has
28 been addressed by an existing rule or law of another agency with
29 jurisdiction with environmental expertise with regard to a specific
30 environmental impact, the county, city, or town shall consult orally or
31 in writing with that agency and may expressly defer to that agency. In
32 making this deferral, the county, city, or town shall base or condition
33 its project approval on compliance with these other existing rules or
34 laws.

35 (6) Nothing in this section limits the authority of an agency in
36 its review or mitigation of a project to adopt or otherwise rely on
37 environmental analyses and requirements under other laws, as provided
38 by this chapter.

1 (7) This section shall apply only to a county, city, or town
2 planning under RCW 36.70A.040.

3 NEW SECTION. **Sec. 5.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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