

HOUSE BILL REPORT

E2SHB 1893

As Amended by the Senate

Title: An act relating to streamlining state and local permit issuance.

Brief Description: Revising provisions regulating permit issuance.

Sponsors: By House Committee on Local Government (Originally sponsored by Representatives Doumit, Mulliken, Scott, Linville and Hatfield).

Brief History:

Committee Activity:

Local Government: 2/18/99, 3/1/99 [DPS];
Appropriations: 3/6/99 [DP2S(w/o sub LG)].

Floor Activity:

Passed House: 3/17/99, 78-20.
Senate Amended.
Passed Senate: 4/9/99, 48-1.
House (House refused to concur)
Senate (Senate receded)
Senate Amended.
Passed Senate: 4/23/99, 46-1.

Brief Summary of Engrossed Second Substitute Bill

- Reauthorizes the Permit Assistance Center and establishes regional Center offices.
- Establishes processes and timelines for certain state permits.
- Initiates development and coordination of state and local permit processes.
- Encourages certain state agencies to develop programmatic permits to address impacts under the federal Endangered Species Act and federal Clean Water Act and to include local governments in these processes.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen; Fisher and Fortunato.

Staff: Caroleen Dineen (786-7156).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 31 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

Staff: Jeff Olsen (786-7157).

Background:

A number of state laws allow or require counties and cities to establish land use regulations or control land use activities. State and local governments are both involved in some permitting decisions related to certain development proposals.

Growth Management Act.

The Growth Management Act (GMA) specifies numerous planning goals, imposes certain requirements on all jurisdictions and includes specific requirements for counties and cities planning under RCW 36.70A.040 (GMA jurisdictions). Among other requirements, GMA jurisdictions are required to designate urban growth areas and to adopt a comprehensive plan and implementing development regulations. All jurisdictions must designate natural resource lands and designate and protect critical areas, regardless of whether they plan under the GMA.

Local Project Review

Counties and cities specifically may provide for administrative review of preliminary plats without a public hearing if statutory procedural notice and comment periods are satisfied and if the local government allows a public hearing upon request.

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare an environmental impact statement (EIS) if proposed legislation or other major action may have a probable significant, adverse impact on the environment. The determination whether an EIS must be prepared involves a threshold determination and use of an environmental checklist.

For GMA jurisdictions, GMA comprehensive plans and development regulations determine land uses, level of development, and availability and adequacy of public facilities. Legislation enacted in 1995 required counties and cities to adopt procedures combining environmental review with project review and to provide for no more than one open record hearing and one closed record appeal. This legislation also established a process for court appeals of land use decisions.

GMA jurisdictions are required to establish an integrated and consolidated development permit process for all projects involving two or more permits that may be utilized by request. The process must include a determination of the completeness of the application within 28 days of submission and a single report combining the threshold determination under SEPA with the decision on all development permits and any required mitigation. Until June 30, 2000, GMA jurisdictions must issue a final permit decision within 120 days after the applicant has been notified the application is complete. The 120-day period does not include:

- any period during which the applicant is requested to correct plans, perform required studies, or provide additional information;
- the period during which an EIS is prepared;
- any period for administrative appeals of permits; and
- any mutually agreed time extension.

Permit Assistance Center

The Permit Assistance Center (PAC) was created in 1995 and is located at the Department of Ecology's (DOE's) office in Lacey. The PAC is required to provide public information regarding permitting laws and to provide a coordinated state permitting procedure that applicants may use at their option and expense. The PAC is authorized to recover costs for the coordinated permit process. The PAC is also required to submit an annual report to the Legislature on potential conflicts and perceived inconsistencies among existing permitting statutes. The PAC provisions expire on June 30, 1999.

State Permits

Department of Ecology

The federal Clean Water Act (CWA) regulates the discharge of pollutants into United States waters and requires a National Pollutant Discharge Elimination System (NPDES) permit for pollutant discharges. States with federally approved programs may administer the NPDES program on the state level. The DOE administers the NPDES program in Washington.

State water pollution statutes give DOE authority to control and prevent pollution within the waters of the state. DOE has authority to approve plans for construction of sewage treatment and disposal systems, to issue pollution control discharge permits and to delegate certain permit authority to local governments. DOE is required to approve or deny discharge permit applications from upland finfish hatching and rearing facilities and marine finfish rearing facilities within 180 days from the date of application with certain exceptions. If DOE fails to issue a decision on certain state water quality permits within sixty days of application, a temporary permit is deemed to have issued until DOE takes action on the application.

Department of Fish and Wildlife

The Department of Fish and Wildlife (DFW) has authority to issue hydraulic permits for construction projects in state waters. With certain exceptions, DFW is required by statute to issue decisions for hydraulic permit applications within 45 days after receiving a complete application and notice of compliance with any applicable SEPA requirements.

Summary of Bill:

Growth Management Act.

The Growth Management Act (GMA) permit planning goal is amended to clarify state and local government permit agencies should coordinate and process permits in a timely and fair manner to ensure predictability for applicants.

Local Project Review

Counties, cities and towns adopting consolidated permitting procedures under Chapter 36.70B may conduct administrative review of preliminary plats consistent with the time periods specified in those procedures.

Permit Assistance Center

The sunset provisions for PAC statutes are repealed. The PAC is required to establish four regional offices. The PAC is also required to submit a biennial report to the Legislature that:

- includes statutory and other recommendations for streamlining and coordinating environmental permitting;
- summarizes results of the PAC's efforts to measure performance and outcomes;
- summarizes, evaluates and makes recommendations to improve the PAC's and permitting agencies efforts to provide efficient public notice and to promote effective public participation in permit processes;
- details the PAC's and other's efforts to promote public confidence in the permitting process; and
- shows PAC revenues and expenditures.

The PAC is required to work collaboratively with local and state agencies to jointly develop and coordinate an integrated permit process. The PAC must report to the Legislature on this effort by December 1, 1999. State agencies are required to participate in this effort and to review procedures for developing an integrated state appeal procedure. Minimum requirements for the integrated permit process include at least one preapplication conference, a determination of completeness, coordination and integration of permit processes, integrated review and decision, and coordinated appeals.

The cost reimbursement provisions for the coordinated permit process are amended to authorize cost recovery by permit agencies.

State Permits

For projects requiring two or more permits from state or local permitting agencies and a use authorization from the Department of Natural Resources (DNR), the PAC is required to coordinate a review process. The review process involves "participating agencies," the specified aquatic resource agencies, including DNR, DOE, DFW, the local government in whose jurisdiction the project is proposed, and any port district or other local political subdivision requiring a use authorization for the project. The PAC review process includes:

- a meeting to identify issues of concern and a strategy for resolving permitting and authorizing processes;
- a review process not to exceed 30 days to identify specific issues, significance of issues, statutory or regulatory conflicts, and environmental impacts (including ESA listings) related to the project as well as potential state or local jurisdiction liability from permitting or authorizing the project; and
- written documentation of the review process approved by all participating agencies and public and applicant notice of such documentation.

The applicant or any participating agency may request that the PAC retain a facilitator, mediator or arbitrator to resolve remaining disputes if:

- a project not requiring an EIS under SEPA has not received all required permits or authorizations within six months of receipt of a completed application; or
- a project requiring an EIS under SEPA has not received all required permits or authorizations within six months of receipt of a completed application.

Certain time periods (e.g., mutually agreed extensions, periods for preparation of environmental documents under SEPA, and administrative appeal periods) are exempt from time calculations made for the purposes of this provision. The DOT, DOE, DFW and DNR are also encouraged to work collaboratively with local governments in developing programmatic permits to the extent practicable. By December 1 of each year, these four agencies are required to report to the Legislature on the status of any programmatic permits developed by the agencies.

The Department of Transportation's (DOT's) efforts to develop programmatic permits with state and federal agencies to address project and maintenance impacts under the federal endangered species act (ESA) and the federal CWA are encouraged. DOE, DFW and the Department of Natural Resources (DNR) are encouraged to develop programmatic permits with state and federal agencies to address impacts under the ESA and CWA. The DOT, DOE, DFW and DNR are also encouraged to work collaboratively with local governments in developing programmatic permits to the extent practicable. By December 1 of each year, these four agencies are required to report to the Legislature on the status of any programmatic permits developed by the agencies.

Department of Ecology

A process and timelines are established for DOE to issue permit decisions for state and federal water quality permits.

DOE is required to issue a notice of final permit determination for federal water quality permits within 120 days after issuing a determination of completeness unless federal law requires otherwise. The specified time periods do not include any period during which DOE:

- has requested plan corrections, studies or additional information;
- has notified an application that submitted information is insufficient;
- provides for administrative appeals; or
- and the applicant agree to an extension of time.

If DOE fails to issue a final permit determination within the 120-day time period, DOE is required to provide written notice to the applicant with a statement of reasons why the time limit was not met and an estimated date for issuance of the determination.

For state water quality permits, DOE is required to issue a final permit determination within 60 days after issuing a determination of completeness. Excluded time periods for

state water quality permits are the same as for the federal water quality permits. Until July 1, 2000, DOE must provide written notice with a statement of reasons to the permit applicant if DOE fails to issue a final permit determination within the 60-day period. On and after July 1, 2000, the applicant is deemed to have received a temporary permit if DOE fails to issue its determination within the 60-day period. Temporary permits are valid for up to five years and are effective until a permit is issued or the temporary permit is revoked.

For all water quality permits, DOE is required to either issue a determination of completeness to the permit applicant or notify the permit applicant of necessary information for a complete application within 28 days after receiving a permit application. The application is deemed complete for purposes of the decision time limits if Ecology does not issue the written determination within the 28-day period or within 14 days after receiving requested necessary information. An application is considered "complete" if it:

- satisfies Ecology's procedural submission requirements;
- includes a SEPA threshold determination that does not require an EIS;
- satisfies federal procedural and substantive requirements if applicable; and
- is sufficient for continued processing even if additional information subsequently may be required.

DOE is required to track information on permits issued within the specified time periods, permits denied, requests for information, and applications withdrawn.

Department of Fish and Wildlife

The DFW is required to develop a pilot project to authorize counties with a population greater than 1.5 million to issue hydraulic permits according to DFW rules. This authorization does not apply to activities and areas covered by the Forest Practices Act. The authorization agreement between the DFW and the county must contain provisions for effective permit monitoring and enforcement. Except for fish habitat restoration projects, counties may charge fees to cover permit processing costs. Counties also may not charge fees for permit monitoring and enforcement.

DFW may not delegate rulemaking authority and must report the results of the pilot project by December 31, 2000. The pilot project authority expires June 30, 2001.

EFFECT OF SENATE AMENDMENT(S): The Senate amendments: (1) delete sections creating a process and timelines for DOE to issue water quality permits and providing for temporary permits if state water quality permits are not issued within required time period; (2) require the PAC to prioritize general fund expenditures for services to small project applicants; (3) change requirements and process for PAC participation in permit

process for projects on state-owned aquatic lands to facilitation of a scoping meeting and eliminate provisions for PAC mediation, facilitation or arbitration of disputes related to such projects; (4) eliminate DFW requirement to develop a pilot project to authorize counties with at least 1.5 million population to issue hydraulic permits; (5) add provisions exempting defined small scale prospecting and mining from hydraulic project permit requirements; (6) replace emergency clause for PAC sunset provisions with emergency clauses for all PAC sections; (7) make changes to the general PAC intent provisions; (8) requires the PAC to consult with permit applicants, state and local agencies and interested public for required report to the Legislature; and (9d) delete provisions encouraging DFW and DNR to work collaboratively with local governments to develop programmatic approaches and general permits to address impacts under the federal ESA and CWA (retain provisions for DOE and DOT).

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: An emergency clause is added for the section repealing the PAC sunset provisions, and this section takes effect immediately. The remaining provisions take effect ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: (Local Government) (Proposed substitute) This bill will help to promote more efficiency in state and local government permit processes. Counties consider this bill a step in the right direction. Delegation of hydraulic permit authority will benefit local governments, the DFW and applicants.

The bill could include parameters for best available science rulemaking and shoreline master program guidelines. The bill could also clarify that counties issuing hydraulic permits may not impose fees for fish habitat restoration projects.

(Local Government) (In support with concerns) (Proposed substitute) The wastewater discharge permit provisions are inconsistent with federal law, and the automatic issuance provision may subject applicants to damages and penalties under federal law. These are very complicated permits that require extensive review, and the DOE has insufficient resources to adequately fund this program. Bad decisions will result if the process is forced.

The integrated permit process should be led by local governments as well as the PAC to ensure commitment to this process. The pilot integrated permit project may create a fiscal impact for agencies required to participate.

Additional permits should be included, such as shoreline conditional use permits and variances and water rights permits. The bill should also address best available science requirements.

The DFW and counties must agree on the delegation terms for hydraulic permit authority and share enforcement authority, and the DFW must retain authority to issue general permits. Delegation of hydraulic permit authority is not the best solution, as these permit applications should be reviewed by fish biologists.

The PAC provisions should include an emergency clause, and the sunset provisions should be repealed.

(Appropriations) The local-state integrated permit process and the regional offices would require general fund resources in addition to the amount currently provided in the Governor's proposed budget. The expanded cost-recovery process is a voluntary program that should benefit persons proposing large projects, and it is estimated to bring in approximately \$2 million in the 99-01 biennium. This bill should benefit permit applicants.

Testimony Against: (Local Government) None.

(Appropriations) None.

Testified: (Local Government) (In support) Representative Doumit, prime sponsor; Cara Myrick, Washington State Association of Counties; and Sophia Byrd, King County Department of Development and Environment Services.

(Local Government) (In support with concerns): Scott Boettcher, Department of Ecology; Greg Hueckel, Washington Department of Fish and Wildlife; Jodi Walker, Building Industry Association of Washington; and Bruce Wishert, People for Puget Sound.

(Appropriations) Rep. Mark Doumit, prime sponsor; Rep. Joyce Mulliken, sponsor; Scott Boettcher, Department of Ecology; Paul Parker, Washington State Association of Counties; and Steve Gano, Trend West Resorts.