
HOUSE BILL 2886

State of Washington

66th Legislature

2020 Regular Session

By Representatives Gildon, Barkis, Jenkin, and Eslick

Read first time 01/28/20. Referred to Committee on Local Government.

1 AN ACT Relating to local government permitting and land use
2 decisions; and amending RCW 36.70B.080, 36.70B.140, 43.330.125,
3 64.40.010, and 64.40.020.

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

5 **Sec. 1.** RCW 36.70B.080 and 2004 c 191 s 2 are each amended to
6 read as follows:

7 (1) (a) Development regulations adopted pursuant to RCW 36.70A.040
8 must establish and implement ~~((time periods))~~ deadlines for local
9 government actions for each type of project permit application and
10 provide timely and predictable procedures to determine whether a
11 completed project permit application meets the requirements of those
12 development regulations. The ~~((time periods))~~ deadlines for local
13 government actions for each type of complete project permit
14 application or project type ~~((should not exceed one hundred twenty
15 days, unless the local government makes written findings that a
16 specified amount of additional time is needed to process specific
17 complete project permit applications or project types))~~ may not
18 exceed:

19 (i) Ninety days for a project permit application or permit type
20 in which an open public record predecision hearing is not required
21 under this chapter or local ordinance; and

1 (ii) One hundred twenty days for a project permit application or
2 permit type in which an open public record predecision hearing is
3 required under this chapter or local ordinance.

4 (b) When more than one application is submitted and processed as
5 part of a consolidated permit review process, the longer period for
6 review applies.

7 (c) The development regulations must, for each type of permit
8 application, specify the contents of a completed project permit
9 application necessary for the complete compliance with the time
10 periods and procedures.

11 (2) (a) When determining compliance with the deadlines established
12 in subsection (1) (a) of this section, the following time periods must
13 be included:

14 (i) The time from the submittal of the project permit application
15 until a determination of completeness under RCW 36.70B.070 is made;

16 (ii) The time from the date an application is determined to be
17 complete until a complete set of first review comments are sent to
18 the applicant or an open public record predecision hearing is held;

19 (iii) The time from application resubmittal following first
20 review comments until a complete set of second review comments are
21 sent to the applicant or an open public record predecision hearing is
22 held;

23 (iv) The time after the completion of all reviews until a
24 decision is issued or until an open public record predecision hearing
25 is held;

26 (v) Notice and noticing periods required under this chapter and
27 chapter 43.21C RCW and, when applicable, time periods to set a public
28 hearing; and

29 (vi) The time following submission of draft application materials
30 meeting the submission requirements for project submittal for local
31 government review, if such a submission is required by the local
32 government prior to the submission of a formal project application.
33 This does not apply to preapplication meetings.

34 (b) When determining compliance with the deadlines established in
35 subsection (1) (a) of this section, the following time periods are not
36 included:

37 (i) The time for the preparation of an environmental impact
38 statement. When an environmental impact statement under chapter
39 43.21C RCW is required, the calculation of the time period shall toll

1 on the day the determination of significance is issued and resume on
2 the day a final environmental impact statement is issued; or

3 (ii) The time from application resubmittal following second
4 review comments until all reviews are complete.

5 (3) (a) A local government may, by ordinance, adopt deadlines that
6 exceed those required in subsection (1) (a) of this section when the
7 local government makes written findings that:

8 (i) A specified amount of additional time is needed to process a
9 specific permit type; or

10 (ii) A specified amount of additional time is needed to process a
11 permit application under specific circumstances.

12 (b) Any deadline extension adopted under this section must be
13 based on factors such as the complexity of the permit application
14 type and may not be based upon self-imposed review processes that
15 exceed state requirements for processing project permit applications.

16 (4) If a local government does not issue a notice of final
17 decision by the deadlines under this section, as may be modified by
18 subsection (3) (a) of this section, then the project permit
19 application is approved.

20 (5) A local government may not request or require an applicant to
21 agree to waive the requirements of this section prior to application
22 submittal, nor issue a denial of a permit or a recommendation to deny
23 a permit in order to avoid exceeding required deadlines for
24 processing a permit application.

25 (6) (a) Counties subject to the requirements of RCW 36.70A.215 and
26 the cities within those counties that have populations of at least
27 twenty thousand must, for each type of permit application, identify
28 the total number of project permit applications for which decisions
29 are issued according to the provisions of this chapter. For each type
30 of project permit application identified, these counties and cities
31 must establish and implement a deadline for issuing a notice of final
32 decision as required by subsection (1) of this section and minimum
33 requirements for applications to be deemed precedurally complete
34 under RCW 36.70B.070 as required by subsection (1) of this section.

35 (b) Counties and cities subject to the requirements of this
36 subsection also must prepare annual performance reports (~~that~~). The
37 department of commerce will prepare and provide counties and cities
38 subject to this requirement standardized forms for data collection.
39 Annual performance reports shall include, at a minimum, the following

1 information for each type of project permit application identified in
2 accordance with the requirements of (a) of this subsection:

3 (i) Total number of complete applications received during the
4 year;

5 (ii) Number of complete applications received during the year for
6 which a notice of final decision was issued before the deadline
7 established under this subsection;

8 (iii) Number of applications received during the year for which a
9 notice of final decision was issued after the deadline established
10 under this subsection, including those decisions issued on
11 applications subject to an extended deadline adopted under subsection
12 (3)(a) of this section;

13 (iv) Number of applications received during the year for which an
14 extension of time was mutually agreed upon by the applicant and the
15 county or city;

16 (v) Variance of actual performance, excluding applications for
17 which mutually agreed time extensions have occurred, to the deadline
18 established under this subsection during the year; ~~((and))~~

19 (vi) The mean processing time and the number standard deviation
20 from the mean; and

21 (vii) Number of applications deemed approved based upon
22 subsection (4) of this section.

23 (c) Counties and cities subject to the requirements of this
24 subsection must:

25 (i) Provide notice of and access to the annual performance
26 reports through the county's or city's web site; and

27 (ii) Post electronic facsimiles of the annual performance reports
28 through the county's or city's web site. Postings on a county's or
29 city's web site indicating that the reports are available by
30 contacting the appropriate county or city department or official do
31 not comply with the requirements of this subsection.

32 If a county or city subject to the requirements of this
33 subsection does not maintain a web site, notice of the reports must
34 be given by reasonable methods, including but not limited to those
35 methods specified in RCW 36.70B.110(4).

36 ~~((+3))~~ (iii) By January 15th of each year, provide the required
37 annual performance report from the previous calendar year to the
38 department of commerce. An annual report summarizing this information
39 will be delivered by the department of commerce to the legislature
40 annually by February 15th. If a county or city does not provide this

1 report by the annual deadline, it is not eligible for grants through
2 the department of commerce until the annual report has been provided.

3 (7) Nothing in this section prohibits a county or city from
4 extending a deadline for issuing a decision for a specific project
5 permit application for any reasonable period of time mutually agreed
6 upon by the applicant and the local government. A local government
7 may not require an applicant to sign an extension of the time periods
8 for a project permit application. Further, a local government may not
9 deny a project permit application or recommend denial of a project
10 permit application because of an inability to issue a decision or to
11 hold a public hearing by required deadlines.

12 ~~((4) The department of community, trade, and economic~~
13 ~~development shall work with the counties and cities to review the~~
14 ~~potential implementation costs of the requirements of subsection (2)~~
15 ~~of this section. The department, in cooperation with the local~~
16 ~~governments, shall prepare a report summarizing the projected costs,~~
17 ~~together with recommendations for state funding assistance for~~
18 ~~implementation costs, and provide the report to the governor and~~
19 ~~appropriate committees of the senate and house of representatives by~~
20 ~~January 1, 2005.))~~

21 **Sec. 2.** RCW 36.70B.140 and 1995 c 347 s 418 are each amended to
22 read as follows:

23 (1) A local government by ordinance or resolution may exclude the
24 following project permits from the provisions of RCW 36.70B.060
25 through 36.70B.090 and 36.70B.110 through 36.70B.130: Landmark
26 designations, street vacations, or other approvals relating to the
27 use of public areas or facilities, or other project permits, whether
28 administrative or quasi-judicial, that the local government by
29 ordinance or resolution has determined present special circumstances
30 that warrant a review process different from that provided in RCW
31 36.70B.060 through 36.70B.090 and 36.70B.110 through 36.70B.130.
32 Permit types subject to RCW 36.70B.080(1) may not be excluded from
33 review under this section.

34 (2) A local government by ordinance or resolution also may
35 exclude the following project permits from the provisions of RCW
36 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary
37 adjustments and building and other construction permits, or similar
38 administrative approvals, categorically exempt from environmental

1 review under chapter 43.21C RCW, or for which environmental review
2 has been completed in connection with other project permits.

3 **Sec. 3.** RCW 43.330.125 and 2009 c 565 s 7 are each amended to
4 read as follows:

5 The department of commerce shall provide training and technical
6 assistance to counties and cities to assist them in fulfilling the
7 requirements of chapter 36.70B RCW. This assistance must include
8 preparing and providing standardized data collection forms to those
9 counties and cities subject to the requirements of RCW 36.70B.080(6).

10 **Sec. 4.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to
11 read as follows:

12 As used in this chapter, the terms in this section shall have the
13 meanings indicated unless the context clearly requires otherwise.

14 (1) "Agency" means the state of Washington, any of its political
15 subdivisions, including any city, town, or county, and any other
16 public body exercising regulatory authority or control over the use
17 of real property in the state.

18 (2) "Permit" means any governmental approval required by law
19 before an owner of a property interest may improve, sell, transfer,
20 or otherwise put real property to use.

21 (3) "Property interest" means any interest or right in real
22 property in the state.

23 (4) "Damages" means reasonable expenses and losses, other than
24 speculative losses or profits, incurred between the time a cause of
25 action arises and the time a holder of an interest in real property
26 is granted relief as provided in RCW 64.40.020. Damages must be
27 caused by an act, necessarily incurred, and actually suffered,
28 realized, or expended, but are not based upon diminution in value of
29 or damage to real property, or litigation expenses.

30 (5) "Regulation" means any ordinance, resolution, or other rule
31 or regulation adopted pursuant to the authority provided by state
32 law, which imposes or alters restrictions, limitations, or conditions
33 on the use of real property.

34 (6) "Act" means a (~~final~~) land use decision by an agency which
35 places requirements, limitations, or conditions upon the use of real
36 property in excess of those allowed by applicable regulations in
37 effect on the date an application for a permit is filed. "Act" also
38 means the failure of an agency to act within time limits established

1 by law in response to a property owner's application for a permit:
2 PROVIDED, That there is no "act" within the meaning of this section
3 when the owner of a property interest agrees in writing to extensions
4 of time, or to the conditions or limitations imposed upon an
5 application for a permit. "Act" shall not include lawful decisions of
6 an agency which are designed to prevent a condition which would
7 constitute a threat to the health, safety, welfare, or morals of
8 residents in the area.

9 (7) "Land use decision" has the same meaning as in RCW
10 36.70C.020(2).

11 In any action brought pursuant to this chapter, a defense is
12 available to a political subdivision of this state that its act was
13 mandated by a change in statute or state rule or regulation and that
14 such a change became effective subsequent to the filing of an
15 application for a permit.

16 **Sec. 5.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to
17 read as follows:

18 (1) Owners of a property interest who have filed an application
19 for a permit have an action for damages to obtain relief from acts of
20 an agency which are arbitrary, capricious, unlawful, or exceed lawful
21 authority, or relief from a failure to act within time limits
22 established by law: PROVIDED, That the action is unlawful or in
23 excess of lawful authority only if the (~~final~~) land use decision of
24 the agency was made with knowledge of its unlawfulness or that it was
25 in excess of lawful authority, or it should reasonably have been
26 known to have been unlawful or in excess of lawful authority.

27 (2) The prevailing party in an action brought pursuant to this
28 chapter may be entitled to reasonable costs and attorney's fees.

29 (3) No cause of action is created for relief from unintentional
30 procedural or ministerial errors of an agency.

31 (4) Invalidation of any regulation in effect prior to the date an
32 application for a permit is filed with the agency shall not
33 constitute a cause of action under this chapter.

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