

Local Government Committee

BILL ANALYSIS Proposed Substitute HB 1893

TITLE OF THE BILL: Revising provisions regulating permit issuance.

WHAT THIS BILL DOES: *Amends state and local permit process statutes and establishes a mechanism for development of an integrated state-local permit process.*

SPONSORS: Representatives Doumit, Mulliken, Scott, Linville and Hatfield

HEARING DATE: Thursday, February 18, 1999

FISCAL NOTE: Not Requested.

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BACKGROUND:

A number of state laws permit 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) was enacted in 1990 and 1991 as Chapter 36.70A RCW. The GMA specifies numerous planning goals and requires certain counties, and cities located in those counties, to plan according to statutory requirements. The GMA also provides a mechanism for other counties to choose to plan under the GMA. Among other requirements, each jurisdiction planning under RCW 36.70A.040 (GMA jurisdiction) is required to designate urban growth areas and to adopt a comprehensive plan. GMA jurisdictions must also adopt development regulations to implement their comprehensive plans. 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 provided 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 a detailed statement, or 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.

The Shoreline Management Act (SMA) requires counties and cities to adopt local shoreline master programs regulating land use activities in shoreline areas of the state. A local master program is submitted to the Department of Ecology for its review and approval. A county or city enforces its approved local shoreline master program.

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 with specified times for filing, service, hearings and decisions.

For GMA jurisdictions, GMA comprehensive plans and development regulations determine the types of land use permitted, level of development allowed, and availability and adequacy of public facilities. 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 of applicants. A non-GMA jurisdiction may incorporate some or all of the integrated and consolidated development permit process required for GMA jurisdictions.

The statutory integrated and consolidated 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 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. Cost recovery for the PAC is authorized within the coordinated permit process.

The PAC is 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. The CWA requires a National Pollutant Discharge Elimination System (NPDES) permit for discharges of pollutants. The CWA allows states with federally approved programs to administer the NPDES program on the state level. The Department of Ecology (Ecology) administers the NPDES program in Washington.

State water pollution statutes give Ecology authority to control and prevent pollution within the waters of the state. Ecology 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. Ecology 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.

Department of Fish and Wildlife

The Department of Fish and Wildlife (Fish and Wildlife) has authority to issue hydraulic permits for construction projects in state waters. With certain exceptions, Fish and Wildlife 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:

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 Permit Assistance Center (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 with local and state agencies to develop and coordinate an integrated permit process and must report to the Legislature on its progress 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

Department of Ecology

A process and a timeline for issuance of water quality permit decisions by the Department of Ecology (Ecology) is established that is similar to certain local project review provisions.

Ecology 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 if Ecology does not issue the written determination within the 28-day period or within 14 days after receiving information from the applicant responding to an initial determination that the application was not complete. An application is considered complete– if it:

- *meets Ecology's procedural submission requirements;*
- *includes a threshold determination under the State Environmental Policy Act (SEPA) for either a determination of nonsignificance (DNS) or a mitigated determination of nonsignificance (MDNS); and*
- *is sufficient for continued processing even if additional information subsequently may be required.*

Except when federal law requires a 180-day period, Ecology is required to issue a notice of final decision within 120 days after issuing a determination of completeness. The 120-day period does not include any period during which Ecology:

- *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.*

Department of Fish and Wildlife

The Department of Fish and Wildlife (Fish and Wildlife) is required to develop a pilot project to authorize counties to issue hydraulic permits according to Fish and Wildlife rules. The authorization agreement must contain provisions for effective permit monitoring and enforcement. Counties may charge fees for such permits to cover program costs.

Fish and Wildlife 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.

Proposed Substitute Compared to Original Bill: The following are the major substantive differences between the proposed substitute and the original bill:

- The 120-day requirement for Ecology to issue water quality permits is subject to any 180-day period mandated by federal law.
- Provisions are deleted which required Ecology to issue decisions on major shoreline master program amendments within 180 days and minor amendments within 120 days.
- Fish and Wildlife is prohibited from delegating rulemaking authority to counties issuing hydraulic permits under the pilot program, and a requirement for counties to issue hydraulic permits under the pilot program according to Fish and Wildlife rules is included.
- A requirement is added for the PAC to establish four regional offices, and the requirements for the PAC biennial report are expanded.
- The PAC pilot integrated permit process provisions are replaced with a requirement for the PAC to develop a process.
- The requirement for local governments to participate in integrated permit processes through the PAC are deleted.
- Technical revisions are included.