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**HOUSE BILL 1013**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Shea, Taylor, Short, McCaslin, Buys, Haler, Young, and Pike

AN ACT Relating to reducing overlap between the state environmental policy act and other laws; and amending RCW 43.21C.060, 43.21C.240, 43.21C.460, 36.70C.140, 36.70A.295, and 43.21C.075.

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

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

(1) The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties. Any governmental action may be conditioned or denied pursuant to this chapter((~~: PROVIDED, That such~~)).

(2) Conditions or denials under subsection (1) of this section shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency ((~~(~~))or appropriate local government legislative body((~~, in the case of local government)~~)) as possible bases for the exercise of authority pursuant to this chapter. ((~~Such designation shall occur at the time specified by RCW 43.21C.120. Such~~)) The designation by the legislative body of a local government or an agency of a regulation, plan, or code must occur at the time specified under RCW 43.21C.120.

(3) A governmental action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decision maker. Mitigation measures shall be reasonable and capable of being accomplished.

(4) In order to deny a proposal under this chapter, an agency must find that: ((~~(1)~~)) (a) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and ((~~(2)~~)) (b) reasonable mitigation measures are insufficient to mitigate the identified impact.

(5) A governmental action may not be conditioned or denied on the basis of an impact to an element of the environment if the lead agency has identified that the impacts of the governmental action to that element of the environment are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

(6) Except for permits and variances issued pursuant to chapter 90.58 RCW, when ((~~such~~)) a governmental action((~~, not requiring a legislative decision,~~)) that does not require a legislative decision is conditioned or denied by a nonelected official of a local governmental agency, the decision shall be appealable to the legislative authority of the acting local governmental agency unless that legislative authority formally eliminates such appeals. ((~~Such~~)) Appeals under this subsection shall be in accordance with procedures established for such appeals by the legislative authority of the acting local governmental agency.

**Sec.**  RCW 43.21C.240 and 2003 c 298 s 2 are each amended to read as follows:

(1) If the requirements of subsection (2) of this section are satisfied, a county, city, or town reviewing a project action shall determine that the requirements for environmental analysis, protection, and mitigation measures in the county, city, or town's development regulations and comprehensive plans adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws and rules provide adequate analysis of and mitigation for the specific adverse environmental impacts of the project action to which the requirements apply. Rules adopted by the department according to RCW 43.21C.110 regarding project specific impacts that may not have been adequately addressed apply to any determination made under this section. In these situations, in which all adverse environmental impacts will be mitigated below the level of significance as a result of mitigation measures included by changing, clarifying, or conditioning of the proposed action and/or regulatory requirements of development regulations adopted under chapter 36.70A RCW or other local, state, or federal laws, a determination of nonsignificance or a mitigated determination of nonsignificance is the proper threshold determination.

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

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

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

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

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

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

~~(b) The legislative body of the county, city, or town has designated as acceptable certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW~~)) (a) A county, city, or town must determine that a development regulation, comprehensive plan, or subarea plan element of the comprehensive plan that directly addresses, avoids, or mitigates a specific probable adverse environmental impact of a project action provides adequate analysis of and mitigation for the project action, unless the development regulation, comprehensive plan, or subarea plan element expressly provides that it is not intended to provide adequate analysis of and mitigation for adverse environmental impacts of project actions on a specific element of the environment under the requirements of this chapter.

(b) A project that is consistent with a subarea element of a comprehensive plan adopted by a county, city, or town under chapter 36.70A RCW is not subject to the requirements of this chapter, as long as the following conditions are met:

(i) The subarea element of the comprehensive plan was the subject of analysis under this chapter;

(ii) The county, city, or town has adopted an ordinance or ordinances establishing development regulations to address or mitigate potential adverse environmental impacts of projects performed consistent with the subarea element of the comprehensive plan; and

(iii) The project meets the requirements of the development regulations described in (b)(ii) of this subsection.

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

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

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

**Sec.**  RCW 43.21C.460 and 2012 1st sp.s. c 1 s 308 are each amended to read as follows:

(1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 ((~~may~~)) shall identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority that directly addresses, avoids, or mitigates probable adverse environmental impacts to a particular element or elements of the environment.

(2) If a lead agency identifies an instance as described in subsection (1) of this section, it ((~~still must~~)) is not required to consider whether the action has an impact on the particular element or elements of the environment in question.

(3) In instances where the locally adopted ordinance, development regulation, land use plan, or other legal authority provide the necessary information to answer a specific question, the lead agency must explain how the proposed project satisfies the underlying local legal authority.

(4) If the lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority, an applicant may still provide answers to any questions on the checklist.

(5) ((~~Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist~~)) A lead agency may delete a question on the checklist if the agency has identified that the question is adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

(6) ((~~Nothing in this section changes the standard for whether an environmental impact statement is required for an action that may have a probable significant, adverse environmental impact pursuant to RCW 43.21C.030.~~

~~(7) Nothing in this section affects the appeal provisions provided in this chapter~~)) A governmental action may not be appealed under this chapter on the basis of inadequate analysis of or mitigation for an impact to a particular element or elements of the environment addressed by a checklist question that a lead agency has identified as being adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

((~~(8)~~)) (7) Nothing in this section modifies existing rules for determining the lead agency, as defined in WAC 197‑11‑922 through 197‑11‑948, nor does it modify agency procedures for complying with the state environmental policy act when an agency other than a local government is serving as the lead agency.

**Sec.**  RCW 36.70C.140 and 1995 c 347 s 715 are each amended to read as follows:

(1) The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction.

(2)(a) An appeals court must provide expedited review of an appeal of a decision by a superior court under this section. All briefs on the matter on appeal must be filed within ninety days of the filing of the notice of appeal with the court. If the appellate court decides to allow oral argument on the merits, the matter on appeal must be set for oral argument within one hundred twenty days of the filing of the notice of appeal with the court.

(b) To the extent that this subsection conflicts with the requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of appellate procedure, this section supersedes the conflicting rule.

**Sec.**  RCW 36.70A.295 and 2010 c 211 s 9 are each amended to read as follows:

(1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions ((~~in other civil cases~~)), except that an appeals court must provide expedited review of an appeal of a decision by a superior court under this section. All briefs on the matter on appeal must be filed within ninety days of the filing of the notice of appeal with the court. If the appellate court decides to allow oral argument on the merits, the matter on appeal must be set for oral argument within one hundred twenty days of the filing of the notice of appeal with the court.

(d) To the extent that (c) of this subsection conflicts with the requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of appellate procedure, this section supersedes the conflicting rule.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if the board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other procedural matters not specifically provided for in this section.

**Sec.**  RCW 43.21C.075 and 1997 c 429 s 49 are each amended to read as follows:

(1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall allow no more than one agency appeal proceeding on each procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement);

(b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision or recommendation on a proposal and any environmental determinations made under this chapter, with the exception of:

(i) An appeal of a determination of significance;

(ii) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

(iii) An appeal of a procedural determination made by an agency on a nonproject action; or

(iv) An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place for commencing an appeal.

(b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.

(6)(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and the certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together, and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8)(a) An appeals court must provide expedited review of an appeal of a decision by a superior court on environmental determinations made under this chapter together with appeals under chapters 36.70A and 36.70C RCW, consistent with RCW 36.70C.140 and 36.70A.295(4). All briefs on the matter on appeal must be filed within ninety days of the filing of the notice of appeal with the court. If the appellate court decides to allow oral argument on the merits, the matter on appeal must be set for oral argument within one hundred twenty days of the filing of the notice of appeal with the court.

(b) To the extent that this subsection conflicts with the requirements of rule 5.2, rule 10.2, or rule 11.3 of the rules of appellate procedure, this section supersedes the conflicting rule.

(9) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

((~~(9)~~)) (10) The court in its discretion may award reasonable attorneys' fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis.

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