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SENATE BILL 5776

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State of Washington

58th Legislature

2003 Regular Session

By Senators Doumit, Morton, Hargrove, Mulliken, Rasmussen, Swecker, Haugen, Zarelli, Reardon, Parlette, McAuliffe and Winsley

Read first time 02/11/2003. Referred to Committee on Land Use & Planning.

1 AN ACT Relating to review of permit decisions by state agencies;  
2 and adding a new chapter to Title 43 RCW.

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

4 NEW SECTION. **Sec. 1.** The purpose of this chapter is to reform the  
5 process of appeal and review of certain permit decisions made by state  
6 agencies for certain qualifying projects, by establishing uniform,  
7 expedited, and consolidated appeal procedures and uniform criteria for  
8 reviewing such decisions, in order to provide consistent, predictable,  
9 and timely judicial review. The appeal process authorized in this  
10 chapter is intended to be the exclusive process for review of certain  
11 decisions made by agencies on permit applications for certain  
12 qualifying projects, superseding other existing statutory appeal  
13 procedures.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires otherwise.

16 (1) "Office" means the office of permit assistance in the office of  
17 financial management established in RCW 43.42.010.

1 (2) "Participating permit agency" means any permit agency that has  
2 entered into an agreement with the applicant for a qualifying project  
3 and the office under chapter 43.42 RCW for the purpose of coordinating  
4 the agency's permits for the project.

5 (3) "Permit agency" means any state or local agency authorized by  
6 law to issue permits.

7 (4) "Qualifying project" means a project (a) located within a  
8 distressed area as defined in RCW 43.168.020(3) or within a rural  
9 natural resources impact area as defined in RCW 43.160.020, and (b)  
10 whose applicant has entered into an agreement with the office for  
11 coordination of the project permits under RCW 43.42.060.

12 NEW SECTION. **Sec. 3.** The appeal process authorized in this  
13 chapter shall be the exclusive process for review of the decisions made  
14 by participating permit agencies on permit applications for a  
15 qualifying project, in lieu of the appeals procedures that would  
16 otherwise apply for each of the permit decisions. The superior court  
17 civil rules shall govern procedural matters for the appeal process  
18 under this chapter to the extent that the rules are consistent with  
19 this chapter.

20 NEW SECTION. **Sec. 4.** (1) Proceedings for review under this  
21 section shall be commenced by filing a petition in the superior court  
22 for the county in which the property of the qualifying project is  
23 located.

24 (2) Such petition is barred, and the court may not grant review,  
25 unless the petition is timely filed with the court and timely served on  
26 the following persons who shall be parties to the review of the  
27 petition:

28 (a) The office and the participating permit agencies, which for  
29 purposes of the petition shall be the directors thereof, and on the  
30 attorney general as provided in RCW 4.92.020;

31 (b) Each of the following persons if the person is not the  
32 petitioner:

33 (i) Each person identified by name and address in the application  
34 to the participating permit agencies and the agreement filed with the  
35 office;

1 (ii) Each person identified in project application documents as an  
2 owner of the property at issue or, if none, each person identified as  
3 a taxpayer for the property at issue in the records of the county  
4 assessor.

5 (3) The petition is timely if it is filed and served on all parties  
6 listed in subsection (2) of this section within twenty-one days of the  
7 issuance by the permit agency of the permit for the qualifying project.

8 (4) For the purposes of this section, the date on which a permit  
9 decision is issued is:

10 (a) Three days after a written decision is mailed by the permit  
11 agency or, if not mailed, the date on which the permit agency provides  
12 notice that a written decision is publicly available; or

13 (b) If (a) of this subsection does not apply, the date the decision  
14 is entered into the public record.

15 (5) Service on all parties must be in accordance with superior  
16 court rules and applicable statutes. Service by mail is effective on  
17 the date of mailing. Proof of service shall be by affidavit or  
18 declaration under penalty of perjury.

19 NEW SECTION. **Sec. 5.** If the project applicant for the permit  
20 approval is not the owner of the real property at issue, and if the  
21 owner is not accurately identified in the records referred to in this  
22 chapter, the applicant shall be responsible for promptly securing the  
23 joinder of the owners. In addition, within fourteen days after service  
24 each party initially named by the petitioner shall disclose to the  
25 other parties the name and address of any person whom such party knows  
26 may be needed for just adjudication of the petition, and the petitioner  
27 shall promptly name and serve any such person whom the petitioner  
28 agrees may be needed for just adjudication. If such a person is named  
29 and served before the initial hearing, leave of court for the joinder  
30 is not required, and the petitioner shall provide the newly joined  
31 party with copies of the pleadings filed before the party's joinder.  
32 Failure by the petitioner to name or serve, within the time required by  
33 section 4(3) of this act, persons who are needed for just adjudication  
34 but who are not identified in the records referred to in this section  
35 shall not deprive the court of jurisdiction to hear the petition.

1        NEW SECTION.    **Sec. 6.** Standing to bring a petition under this  
2 chapter is limited to the following persons:

3        (1) The applicant and the owner of the property to which the permit  
4 decision is directed;

5        (2) Another person aggrieved or adversely affected by the permit  
6 decision, or who would be aggrieved or adversely affected by a reversal  
7 or modification of the permit decision. A person is aggrieved or  
8 adversely affected within the meaning of this section only when all of  
9 the following conditions are present:

10       (a) The permit decision has prejudiced or is likely to prejudice  
11 that person;

12       (b) That person's asserted interests are among those that at least  
13 one participating permit agency was required to consider when it made  
14 its permit decision;

15       (c) A judgment in favor of that person would substantially  
16 eliminate or redress the prejudice to that person caused or likely to  
17 be caused by the permit decision; and

18       (d) The petitioner has exhausted his or her administrative remedies  
19 to the extent required by law.

20       NEW SECTION.    **Sec. 7.** A petition must set forth:

21       (1) The name and mailing address of the petitioner;

22       (2) The name and mailing address of the petitioner's attorney, if  
23 any;

24       (3) The name and mailing address of the permit agency whose  
25 particular permit is at issue, if any;

26       (4) A duplicate copy of the permit decision;

27       (5) Identification of each person to be made a party under this  
28 chapter;

29       (6) Facts demonstrating that the petitioner has standing to seek  
30 judicial review under this chapter;

31       (7) A separate and concise statement of each error alleged to have  
32 been committed;

33       (8) A concise statement of facts upon which the petitioner relies  
34 to sustain the statement of error; and

35       (9) A request for relief, specifying the type and extent of relief  
36 requested.

1        NEW SECTION.    **Sec. 8.**    (1) Within seven days after the petition is  
2 served on the parties identified in section 4(2) of this act, the  
3 petitioner shall note, according to the local rules of superior court,  
4 an initial hearing on jurisdictional and preliminary matters. This  
5 initial hearing shall be set no sooner than thirty-five days and not  
6 later than fifty days after the petition is served on the parties  
7 identified in section 4(2) of this act.

8        (2) The parties shall note all motions on jurisdictional and  
9 procedural issues for resolution at the initial hearing, except that a  
10 motion to allow discovery may be brought sooner. Where confirmation of  
11 motions is required, each party shall be responsible for confirming its  
12 own motions.

13        (3) The defenses of lack of standing, untimely filing or service of  
14 the petition, and failure to join persons needed for just adjudication  
15 are waived if not raised by timely motion noted to be heard at the  
16 initial hearing, unless the court allows discovery on such issues.

17        (4) The petitioner shall move the court for an order at the initial  
18 hearing that sets the date on which the record must be submitted, sets  
19 a briefing schedule, sets a discovery schedule if discovery is to be  
20 allowed, and sets a date for the hearing or trial on the merits.

21        (5) The parties may waive the initial hearing by scheduling with  
22 the court a date for the hearing or trial on the merits and filing a  
23 stipulated order that resolves the jurisdictional and procedural issues  
24 raised by the petition, including the issues identified in subsections  
25 (3) and (4) of this section.

26        (6) A party need not file an answer to the petition.

27        NEW SECTION.    **Sec. 9.**    (1) If permits for the qualifying project  
28 have been applied for to a participating permit agency but have yet to  
29 be issued, the court shall toll the hearings and other schedules  
30 subsequent to the initial hearing as set forth in section 8 of this act  
31 for any and all petitions for review already filed on the qualifying  
32 project until twenty-one days after the issuance of the final permit  
33 for the qualifying project that has been applied for to a participating  
34 permit agency.

35        (2) If petitions for review of other permits issued by  
36 participating permit agencies for the qualifying project have  
37 previously been filed with the court, the court shall consolidate all

1 such petitions into the same case for review and hearing. The  
2 schedules set forth in section 8 of this act shall be adjusted  
3 accordingly.

4 NEW SECTION. **Sec. 10.** The court shall provide expedited review of  
5 petitions filed under this chapter. The matter must be set for hearing  
6 within sixty days of the date set for submitting the local  
7 jurisdiction's record, absent a showing of good cause for a different  
8 date or a stipulation of the parties.

9 NEW SECTION. **Sec. 11.** (1) A petitioner or other party may request  
10 the court to stay or suspend an action by a participating permit agency  
11 or another party to implement the decision under review. The request  
12 must set forth a statement of grounds for the stay and the factual  
13 basis for the request.

14 (2) A court may grant a stay only if the court finds that: (a) The  
15 party requesting the stay is likely to prevail on the merits, (b)  
16 without the stay the party requesting it will suffer irreparable harm,  
17 (c) the grant of a stay will not substantially harm other parties to  
18 the proceedings, and (d) the request for the stay is timely in light of  
19 the circumstances of the case.

20 (3) The court may grant the request for a stay upon such terms and  
21 conditions, including the filing of security, as are necessary to  
22 prevent harm to other parties by the stay.

23 NEW SECTION. **Sec. 12.** (1) Within forty-five days after entry of  
24 an order to submit the record, or within such a further time as the  
25 court allows or as the parties agree, each participating agency shall  
26 submit to the court a certified copy of the record for judicial review  
27 of the permit decision, except that the petitioner shall prepare at the  
28 petitioner's expense and submit a verbatim transcript of any hearings  
29 held on the matter.

30 (2) If the parties agree, or upon order of the court, the record  
31 shall be shortened or summarized to avoid reproduction and  
32 transcription of portions of the record that are duplicative or not  
33 relevant to the issues to be reviewed by the court.

34 (3) The petitioner shall pay the participating agency the cost of  
35 preparing the record before the participating agency submits the record

1 to the court. Failure by the petitioner to timely pay the  
2 participating agency relieves the participating agency of  
3 responsibility to submit the record and is grounds for dismissal of the  
4 petition.

5 (4) If the relief sought by the petitioner is granted in whole or  
6 in part the court shall equitably assess the cost of preparing the  
7 record among the parties. In assessing costs the court shall take into  
8 account the extent to which each party prevailed and the reasonableness  
9 of the parties' conduct in agreeing or not agreeing to shorten or  
10 summarize the record under subsection (2) of this section.

11 NEW SECTION. **Sec. 13.** (1) When all of the permit decisions being  
12 reviewed were made by quasi-judicial bodies or officers who made  
13 factual determinations in support of the decisions and the parties to  
14 the quasi-judicial proceedings had an opportunity consistent with due  
15 process to make records on the factual issues, judicial review of  
16 factual issues and the conclusions drawn from the factual issues shall  
17 be confined to the records created by the quasi-judicial bodies or  
18 officers, except as provided in subsections (2) through (4) of this  
19 section.

20 (2) For decisions described in subsection (1) of this section, the  
21 records may be supplemented by additional evidence only if the  
22 additional evidence relates to:

23 (a) Grounds for disqualification of a member of the body or of the  
24 officer that made the permit decision, when such grounds were unknown  
25 by the petitioner at the time the record was created;

26 (b) Matters that were improperly excluded from the record after  
27 being offered by a party to a quasi-judicial proceeding; or

28 (c) Matters that were outside the jurisdiction of the body or  
29 officer that made the permit decision.

30 (3) For permit decisions other than those described in subsection  
31 (1) of this section, the record for judicial review may be supplemented  
32 by evidence of material facts that were not made part of the permit  
33 agency's record.

34 (4) The court may require or permit corrections of ministerial  
35 errors or inadvertent omissions in the preparation of the record.

36 (5) The parties may not conduct pretrial discovery except with the  
37 prior permission of the court, which may be sought by motion at any

1 time after service of the petition. The court shall not grant  
2 permission unless the party requesting it makes a prima facie showing  
3 of need. The court shall strictly limit discovery to what is necessary  
4 for equitable and timely review of the issues that are raised under  
5 subsections (2) and (3) of this section. If the court allows the  
6 record to be supplemented, the court shall require the parties to  
7 disclose before the hearing or trial on the merits the specific  
8 evidence they intend to offer. If any party, or anyone acting on  
9 behalf of any party, requests records under chapter 42.17 RCW relating  
10 to the matters at issue, a copy of the request shall simultaneously be  
11 given to all other parties and the court shall take such request into  
12 account in fashioning an equitable discovery order under this  
13 subsection.

14 NEW SECTION. **Sec. 14.** (1) The superior court, acting without a  
15 jury, shall review the record and such supplemental evidence as is  
16 permitted under section 13 of this act. The court may grant relief  
17 only if the party seeking relief has carried the burden of establishing  
18 that one of the standards set forth in (a) through (f) of this  
19 subsection has been met. The standards are:

20 (a) The body or officer that made the permit decision engaged in  
21 unlawful procedure or failed to follow a prescribed process, unless the  
22 error was harmless;

23 (b) The permit decision is an erroneous interpretation of the law,  
24 after allowing for such deference as is due the construction of a law  
25 by an agency with expertise;

26 (c) The permit decision is not supported by evidence that is  
27 substantial when viewed in light of the whole record before the court;

28 (d) The permit decision is a clearly erroneous application of the  
29 law to the facts;

30 (e) The permit decision is outside the authority or jurisdiction of  
31 the body or officer making the decision; or

32 (f) The permit decision violates the constitutional rights of the  
33 party seeking relief.

34 (2) In order to grant relief under this section, it is not  
35 necessary for the court to find that the permit agency engaged in  
36 arbitrary and capricious conduct. The court may grant relief on a



1 petition for review of one permit decision and not on others  
2 consolidated with it for review. A grant of relief by itself may not  
3 be deemed to establish liability for monetary damages or compensation.

4 (3) The court may affirm or reverse any or all permit decisions  
5 under review or remand the decision for modification or further  
6 proceedings involving the permit agencies. If the decision is remanded  
7 for modification or further proceedings, the court may make such an  
8 order as it finds necessary to preserve the interests of the parties  
9 and the public, pending further proceedings or action by the permit  
10 agencies.

11 NEW SECTION. **Sec. 15.** Sections 1 through 14 of this act  
12 constitute a new chapter in Title 43 RCW.

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