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**HOUSE BILL 2886**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Gildon, Barkis, Jenkin, and Eslick

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The time for the preparation of an environmental impact statement. When an environmental impact statement under chapter 43.21C RCW is required, the calculation of the time period shall toll on the day the determination of significance is issued and resume on the day a final environmental impact statement is issued; or

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

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

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

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

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

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

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

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

(b) Counties and cities subject to the requirements of this subsection also must prepare annual performance reports ((~~that~~)). The department of commerce will prepare and provide counties and cities subject to this requirement standardized forms for data collection. Annual performance reports shall include, at a minimum, the following information for each type of project permit application identified in accordance with the requirements of (a) of this subsection:

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

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

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

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

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

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

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

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

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

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

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

((~~(3)~~)) (iii) By January 15th of each year, provide the required annual performance report from the previous calendar year to the department of commerce. An annual report summarizing this information will be delivered by the department of commerce to the legislature annually by February 15th. If a county or city does not provide this report by the annual deadline, it is not eligible for grants through the department of commerce until the annual report has been provided.

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

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

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

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

(2) A local government by ordinance or resolution also may exclude the following project permits from the provisions of RCW 36.70B.060 and 36.70B.110 through 36.70B.130: Lot line or boundary adjustments and building and other construction permits, or similar administrative approvals, categorically exempt from environmental review under chapter 43.21C RCW, or for which environmental review has been completed in connection with other project permits.

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

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

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

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

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

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

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

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

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

(6) "Act" means a ((~~final~~)) land use decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

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

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

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

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

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

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

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

**--- END ---**