

2 **SSB 6637 - H AMD 505**
3 By Representative Reams

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 36.70A.270 and 1994 c 257 s 1 are each amended to
8 read as follows:

9 Each growth ((~~planning~~)) management hearings board shall be
10 governed by the following rules on conduct and procedure:

11 (1) Any board member may be removed for inefficiency, malfeasance,
12 and misfeasance in office, under specific written charges filed by the
13 governor. The governor shall transmit such written charges to the
14 member accused and the chief justice of the supreme court. The chief
15 justice shall thereupon designate a tribunal composed of three judges
16 of the superior court to hear and adjudicate the charges. Removal of
17 any member of a board by the tribunal shall disqualify such member for
18 reappointment.

19 (2) Each board member shall receive reimbursement for travel
20 expenses incurred in the discharge of his or her duties in accordance
21 with RCW 43.03.050 and 43.03.060. If it is determined that the review
22 boards shall operate on a full-time basis, each member shall receive an
23 annual salary to be determined by the governor pursuant to RCW
24 43.03.040. If it is determined that a review board shall operate on a
25 part-time basis, each member shall receive compensation pursuant to RCW
26 43.03.250, provided such amount shall not exceed the amount that would
27 be set if they were a full-time board member. The principal office of
28 each board shall be located by the governor within the jurisdictional
29 boundaries of each board. The boards shall operate on either a part-
30 time or full-time basis, as determined by the governor.

31 (3) Each board member shall not: (a) Be a candidate for or hold
32 any other public office or trust; (b) engage in any occupation or
33 business interfering with or inconsistent with his or her duty as a
34 board member; and (c) for a period of one year after the termination of
35 his or her board membership, act in a representative capacity before
36 the board on any matter.

1 (4) A majority of each board shall constitute a quorum for making
2 orders or decisions, adopting rules necessary for the conduct of its
3 powers and duties, or transacting other official business, and may act
4 even though one position of the board is vacant. One or more members
5 may hold hearings and take testimony to be reported for action by the
6 board when authorized by rule or order of the board. The board shall
7 perform all the powers and duties specified in this chapter or as
8 otherwise provided by law.

9 (5) The board may appoint one or more hearing examiners to assist
10 the board in its hearing function, to make conclusions of law and
11 findings of fact and, if requested by the board, to make
12 recommendations to the board for decisions in cases before the board.
13 Such hearing examiners must have demonstrated knowledge of land use
14 planning and law. The boards shall specify in their joint rules of
15 practice and procedure, as required by subsection (7) of this section,
16 the procedure and criteria to be employed for designating hearing
17 examiners as a presiding officer. Hearing examiners selected by a
18 board shall meet the requirements of subsection (3) of this section.
19 The findings and conclusions of the hearing examiner shall not become
20 final until they have been formally approved by the board. This
21 authorization to use hearing examiners does not waive the requirement
22 of RCW 36.70A.300 that final orders be issued within one hundred eighty
23 days of board receipt of a petition.

24 (6) Each board shall make findings of fact and prepare a written
25 decision in each case decided by it, and such findings and decision
26 shall be effective upon being signed by two or more members of the
27 board and upon being filed at the board's principal office, and shall
28 be open for public inspection at all reasonable times.

29 (7) All proceedings before the board, any of its members, or a
30 hearing examiner appointed by the board shall be conducted in
31 accordance with such administrative rules of practice and procedure as
32 the boards jointly prescribe. All three boards shall jointly meet to
33 develop and adopt joint rules of practice and procedure, including
34 rules regarding expeditious and summary disposition of appeals. The
35 boards shall publish such rules and decisions they render and arrange
36 for the reasonable distribution of the rules and decisions. Except as
37 it conflicts with provisions of this chapter, the administrative
38 procedure act, chapter 34.05 RCW, shall govern the ((administrative
39 rules of)) practice and procedure ((adopted by)) of the boards.

1 (8) A board member or hearing examiner is subject to
2 disqualification (~~((for bias, prejudice, interest, or any other cause~~
3 ~~for which a judge is disqualified))~~) under chapter 34.05 RCW. The joint
4 rules of practice of the boards shall establish procedures by which a
5 party to a hearing conducted before the board may file with the board
6 a motion to disqualify, with supporting affidavit, against a board
7 member or hearing examiner assigned to preside at the hearing.

8 (9) The members of the boards shall meet jointly on at least an
9 annual basis with the objective of sharing information that promotes
10 the goals and purposes of this chapter.

11 **Sec. 2.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to
12 read as follows:

13 (1) A growth management hearings board shall hear and determine
14 only those petitions alleging either:

15 (a) That a state agency, county, or city planning under this
16 chapter is not in compliance with the requirements of this chapter,
17 chapter 90.58 RCW as it relates to the adoption of shoreline master
18 programs or amendments thereto, or chapter 43.21C RCW as it relates to
19 plans, development regulations, or amendments, adopted under RCW
20 36.70A.040 or chapter 90.58 RCW; or

21 (b) That the twenty-year growth management planning population
22 projections adopted by the office of financial management pursuant to
23 RCW 43.62.035 should be adjusted.

24 (2) A petition may be filed only by: (a) The state, or a county or
25 city that plans under this chapter~~((7))~~; (b) a person who has ~~((either~~
26 ~~appeared))~~ participated orally or in writing before the county or city
27 regarding the matter on which a review is being requested ~~((or))~~; (c)
28 a person who is certified by the governor within sixty days of filing
29 the request with the board~~((7))~~; or (d) a person qualified pursuant to
30 RCW 34.05.530.

31 (3) For purposes of this section "person" means any individual,
32 partnership, corporation, association, state agency, governmental
33 subdivision or unit thereof, or public or private organization or
34 entity of any character.

35 (4) When considering a possible adjustment to a growth management
36 planning population projection prepared by the office of financial
37 management, a board shall consider the implications of any such
38 adjustment to the population forecast for the entire state.

1 The rationale for any adjustment that is adopted by a board must be
2 documented and filed with the office of financial management within ten
3 working days after adoption.

4 If adjusted by a board, a county growth management planning
5 population projection shall only be used for the planning purposes set
6 forth in this chapter and shall be known as a "board adjusted
7 population projection". None of these changes shall affect the
8 official state and county population forecasts prepared by the office
9 of financial management, which shall continue to be used for state
10 budget and planning purposes.

11 **Sec. 3.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
12 read as follows:

13 (1) The board shall issue a final order within one hundred eighty
14 days of receipt of the petition for review, or, when multiple petitions
15 are filed, within one hundred eighty days of receipt of the last
16 petition that is consolidated. Such a final order shall be based
17 exclusively on whether or not a state agency, county, or city is in
18 compliance with the requirements of this chapter, chapter 90.58 RCW as
19 it relates to adoption or amendment of shoreline master programs, or
20 chapter 43.21C RCW as it relates to plans, development regulations, and
21 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
22 In the final order, the board shall either: (a) Find that the state
23 agency, county, or city is in compliance with the requirements of this
24 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
25 of shoreline master programs; or (b) find that the state agency,
26 county, or city is not in compliance with the requirements of this
27 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
28 of shoreline master programs, in which case the board shall remand the
29 matter to the affected state agency, county, or city and specify a
30 reasonable time not in excess of one hundred eighty days within which
31 the state agency, county, or city shall comply with the requirements of
32 this chapter.

33 (2) A finding of noncompliance and an order of remand shall not
34 affect the validity of comprehensive plans and development regulations
35 during the period of remand(~~(, unless the board's)~~). In addition, the
36 board may issue a determination of invalidity as part of its final
37 order ((also)) of noncompliance which shall:

1 (a) ~~Include((s))~~ a determination, supported by findings of fact and
2 conclusions of law, that the continued validity of the plan or
3 regulation would substantially interfere with the fulfillment of the
4 goals of this chapter; and

5 (b) ~~((Specifies))~~ Specify the particular part or parts of the plan
6 or regulation that are determined to be invalid, the geographic area or
7 areas where the determination of invalidity is applicable, if
8 appropriate, and the reasons for their invalidity.

9 (3) A determination of invalidity shall ~~((+~~

10 ~~(a))~~ not take effect until at least ninety days after the
11 determination of invalidity was made, during which period the board
12 shall review the progress of the county or city. If, after holding a
13 hearing on the matter, the board finds that the county or city is
14 making substantial progress toward adopting a plan or regulations or
15 taking other actions under this chapter, relating to the order, that
16 would not be determined to be invalid under subsection (2) of this
17 section, the board shall extend the ninety-day period for a reasonable
18 period and continue its jurisdiction over the matter. If, after
19 holding a hearing on the matter, the board finds that substantial
20 progress is not being made, the board shall enter an order effectuating
21 the determination of invalidity. The hearing must be held prior to the
22 ninetieth day. Another hearing shall be held prior to the end of any
23 extension granted by the board. Any order effectuating the
24 determination of invalidity shall be prospective in effect and shall
25 not extinguish rights that ~~((vested))~~ vest under state or local law
26 before or after the date of the board's order ~~((+and~~

27 ~~(b) Subject))~~ effectuating the determination of invalidity. Any
28 order effectuating the determination of invalidity shall not affect the
29 validity of the comprehensive plan, development regulations, or other
30 actions taken under this chapter, except that any ~~((development))~~
31 application for the division of land under chapter 58.17 RCW, in any
32 geographic area or areas where the determination of invalidity is
33 applicable, that would otherwise vest after the date of the board's
34 order effectuating the determination of invalidity, shall vest to the
35 local ordinance or resolution that ~~((both is enacted in response to the~~
36 order of remand and determined by the board pursuant to RCW 36.70A.330
37 to comply with the requirements of this chapter)) the county or city
38 adopts in response to the order effectuating the determination of
39 invalidity after the board determines that the response would not be

1 invalidated under subsection (2) of this section. Boundary line
2 adjustments that do not increase the number of lots are not affected by
3 an order effectuating a determination of invalidity. The board shall
4 hold a hearing before removing the order effectuating its determination
5 of invalidity.

6 ~~(4) ((If the ordinance that adopts a plan or development regulation~~
7 ~~under this chapter includes a savings clause intended to revive prior~~
8 ~~policies or regulations in the event the new plan or regulations are~~
9 ~~determined to be invalid, the board shall determine under subsection~~
10 ~~(2) of this section whether the prior policies or regulations are valid~~
11 ~~during the period of remand.))~~ A county or city for which a
12 determination of invalidity was made prior to the effective date of
13 this act may petition the board for a stay of the determination of
14 invalidity, based on a showing under the procedures of subsection (3)
15 of this section that it is making substantial progress toward adopting
16 a plan or development regulations, or taking other actions under this
17 chapter, relating to the order, that would not otherwise be declared
18 invalid under subsection (2) of this section. After holding a hearing,
19 the board shall enter an order rescinding, staying, modifying, or
20 continuing the prior determination of invalidity.

21 (5) Any party aggrieved by a final decision of the hearings board
22 may appeal the decision to superior court as provided in RCW 34.05.514
23 or 36.01.050 within thirty days of the final order of the board. The
24 court shall conduct an independent review of the board's legal
25 conclusions.

26 NEW SECTION. Sec. 4. A new section is added to chapter 36.70A RCW
27 to read as follows:

28 The court shall provide expedited review of a determination of
29 invalidity or an order effectuating a determination of invalidity made
30 or issued under RCW 36.70A.300. The matter must be set for hearing
31 within sixty days of the date set for submitting the board's record,
32 absent a showing of good cause for a different date or a stipulation of
33 the parties.

34 Sec. 5. RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
35 read as follows:

36 (1)(a) Except as provided in subsection (2) of this section,
37 designations, comprehensive plans ((and)), development regulations, and

1 other actions required by this chapter, and amendments thereto, adopted
2 under this chapter are presumed valid upon adoption. In any petition
3 under this chapter, the board, after full consideration of the
4 petition, shall determine whether there is compliance with the
5 requirements of this chapter. In recognition of the broad range of
6 discretion that may be exercised by counties and cities consistent with
7 the requirements of this chapter, the board shall not substitute its
8 judgment for that of a county or city regarding the exercise of such
9 discretion. In making its determination, the board shall consider the
10 criteria adopted by the department under RCW 36.70A.190(4). The board
11 has no discretion to prioritize, balance, or rank the goals set forth
12 in RCW 36.70A.020, all of which shall be used by counties and cities as
13 provided in RCW 36.70A.020.

14 (b) The burden of proof shall be on the petitioner. The board
15 shall find compliance unless it finds ((by a preponderance of the
16 evidence that the state agency, county, or city erroneously interpreted
17 or applied this chapter)) that: (i) The state agency, county, or city
18 erroneously interpreted this chapter; or (ii) the action of the state
19 agency, county, or city is not supported by evidence that is
20 substantial when reviewed in light of the whole record before the
21 board.

22 (2) The shoreline element of a comprehensive plan and the
23 applicable development regulations adopted by a county or city shall
24 take effect as provided in chapter 90.58 RCW.

25 NEW SECTION. Sec. 6. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. Sec. 7. This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and shall take
32 effect immediately."

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