

2 ESB 5185 - H COMM AMD

3 By Committee on Government Reform & Land Use

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

7 "Sec. 1. RCW 36.70A.270 and 1996 c 325 s 1 are each amended to
8 read as follows:

9 Each growth management hearings board shall be governed by the
10 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))~~ Each board may appoint one or more hearing examiners to
10 assist the board in its hearing function, to make ~~((conclusions of law~~
11 ~~and))~~ findings of fact and, if requested by the board, to make
12 recommendations to the board for advisory decisions in cases before the
13 board. Such hearing examiners must have demonstrated knowledge of land
14 use 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))~~ advisory decisions be
23 made within one hundred eighty days of board receipt of a petition.
24 Each board may mediate disputes between counties or cities, over
25 whether their comprehensive plans are coordinated or consistent, by
26 using one or more of its own members, hiring staff to provide
27 mediation, or contracting for the provision of mediation.

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

34 (7) All proceedings before the board, any of its members, or a
35 hearing examiner appointed by the board shall be conducted in
36 accordance with such administrative rules of practice and procedure as
37 the boards jointly prescribe. All three boards shall jointly meet to
38 develop and adopt joint rules of practice and procedure, including
39 rules regarding expeditious and summary disposition of appeals. The

1 boards shall publish such rules and decisions they render and arrange
2 for the reasonable distribution of the rules and decisions. Except as
3 it conflicts with provisions of this chapter, the administrative
4 procedure act, chapter 34.05 RCW, shall govern the practice and
5 procedure of the boards.

6 (8) A board member or hearing examiner is subject to
7 disqualification under chapter 34.05 RCW. The joint rules of practice
8 of the boards shall establish procedures by which a party to a hearing
9 conducted before the board may file with the board a motion to
10 disqualify, with supporting affidavit, against a board member or
11 hearing examiner assigned to preside at the hearing.

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

15 **Sec. 2.** RCW 36.70A.280 and 1996 c 325 s 2 are each amended to read
16 as follows:

17 (1) A growth management hearings board shall hear and (~~determine~~
18 ~~only those~~) render advisory decisions in response to petitions
19 alleging either:

20 (a) (~~That a state agency, county, or city planning under this~~
21 ~~chapter is not in compliance with the requirements of this chapter,~~
22 ~~chapter 90.58 RCW as it relates to the adoption of shoreline master~~
23 ~~programs or amendments thereto, or chapter 43.21C RCW as it relates to~~
24 ~~plans, development regulations, or amendments, adopted under RCW~~
25 ~~36.70A.040 or chapter 90.58 RCW)) That a county or city planning under
26 this chapter has not taken an action required under this chapter by the
27 time the action is required to have been taken; ((or))~~

28 (b) That (~~the twenty-year growth management planning population~~
29 ~~projections adopted by the office of financial management pursuant to~~
30 ~~RCW 43.62.035 should be adjusted)) a county or city has not addressed
31 relevant issues associated with an action required to be taken under
32 this chapter;~~

33 (c) That the comprehensive plan of a county or city adopted under
34 this chapter is not coordinated with, or consistent with, the
35 comprehensive plan of another county or city, as required under RCW
36 36.70A.100; or

1 (d) That the shoreline master program or amendment thereto, or
2 chapter 43.21C RCW as it relates thereto, are not in compliance with
3 the requirements of chapter 90.58 RCW.

4 (2) A petition alleging that a county or city has not addressed
5 issues associated with an action required under this chapter, or that
6 the comprehensive plan of a county or city is not coordinated with or
7 consistent with another comprehensive plan as required under RCW
8 36.70A.100, may be filed only by: (a) The state, or a county or city
9 that plans under this chapter; (b) a person who has participated orally
10 or in writing before the county or city regarding the matter on which
11 a review is being requested; (c) a person who is certified by the
12 governor within sixty days of filing the request with the board; or (d)
13 a person qualified pursuant to RCW 34.05.530. A petition alleging that
14 a county or city has not taken an action required under this chapter by
15 the time such action is required to have been taken may be filed by any
16 person. A petition alleging that the shoreline master program or
17 amendments thereto, or chapter 43.21C RCW as it relates thereto, may be
18 filed by a person with standing under chapter 43.21C RCW.

19 (3) For purposes of this section "person" means any individual,
20 partnership, corporation, association, state agency, governmental
21 subdivision or unit thereof, or public or private organization or
22 entity of any character.

23 ~~((4) When considering a possible adjustment to a growth management~~
24 ~~planning population projection prepared by the office of financial~~
25 ~~management, a board shall consider the implications of any such~~
26 ~~adjustment to the population forecast for the entire state.~~

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

30 ~~If adjusted by a board, a county growth management planning~~
31 ~~population projection shall only be used for the planning purposes set~~
32 ~~forth in this chapter and shall be known as a "board adjusted~~
33 ~~population projection". None of these changes shall affect the~~
34 ~~official state and county population forecasts prepared by the office~~
35 ~~of financial management, which shall continue to be used for state~~
36 ~~budget and planning purposes.))~~

37 **Sec. 3.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
38 read as follows:

1 (1) All requests for review to a growth management hearings board
2 shall be initiated by filing a petition that includes a detailed
3 statement of issues presented for resolution by the board.

4 (2) All petitions relating to whether or not an adopted
5 comprehensive plan, development regulation, or permanent amendment
6 thereto, is in compliance with the goals and requirements of (~~this~~
7 ~~chapter or~~) chapter 90.58 or 43.21C RCW must be filed within sixty
8 days after publication by the legislative (~~bodies~~) authority of the
9 county or city. All petitions relating to whether or not a county or
10 city has addressed relevant issues associated with an action required
11 under this chapter must be filed within sixty days after publication by
12 the legislative authority of the county or city. All petitions
13 relating to whether or not comprehensive plans are coordinated or
14 consistent, as required under RCW 36.70A.100, must be filed within
15 sixty days after publication by the legislative authority of the county
16 or city adopting or amending its comprehensive plan that is alleged not
17 to be coordinated or consistent with another comprehensive plan.
18 Petitions relating to whether a county or city has not taken an action
19 required under this chapter by the time such action is required to have
20 been taken may be filed at any time.

21 (~~(a) Except as provided in (c) of this subsection,~~) The date of
22 publication for a city shall be the date the city publishes the
23 ordinance, or summary of the ordinance, adopting the comprehensive plan
24 or development regulations, or amendment thereto, as is required to be
25 published.

26 (~~(b)~~) Promptly after adoption, a county shall publish a notice
27 that it has adopted the comprehensive plan or development regulations,
28 or amendment thereto. (~~Except as provided in (c) of this subsection,~~
29 for purposes of this section)) The date of publication for a county
30 shall be the date the county publishes the notice that it has adopted
31 the comprehensive plan or development regulations, or amendment
32 thereto.

33 (~~(c) For local governments planning under RCW 36.70A.040, promptly~~
34 after approval or disapproval of a local government s shoreline master
35 program or amendment thereto by the department of ecology as provided
36 in RCW 90.58.090, the local government shall publish a notice that the
37 shoreline master program or amendment thereto has been approved or
38 disapproved by the department of ecology. For purposes of this
39 section, the date of publication for the adoption or amendment of a

1 ~~shoreline master program is the date the local government publishes~~
2 ~~notice that the shoreline master program or amendment thereto has been~~
3 ~~approved or disapproved by the department of ecology.))~~

4 (3) Unless the board dismisses the petition as frivolous or finds
5 that the person filing the petition lacks standing, the board shall,
6 within ten days of receipt of the petition, set a time for hearing the
7 matter.

8 (4) The board shall base its advisory decision on the record
9 developed by the city(~~(,)~~) or county(~~(, or the state)~~) and supplemented
10 with additional evidence if the board determines that such additional
11 evidence would be necessary or of substantial assistance to the board
12 in reaching its advisory decision.

13 (5) The board, shall consolidate, when appropriate, all petitions
14 involving the review of the same comprehensive plan or the same
15 development regulation or regulations.

16 **Sec. 4.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
17 read as follows:

18 (1) The board shall (~~issue a final order~~) render its advisory
19 decision within one hundred eighty days of receipt of the petition for
20 review, or, when multiple petitions are filed, within one hundred
21 eighty days of receipt of the last petition that is consolidated.
22 (~~Such a final order shall be based exclusively on whether or not a~~
23 ~~state agency, county, or city is in compliance with the requirements of~~
24 ~~this chapter, chapter 90.58 RCW as it relates to adoption or amendment~~
25 ~~of shoreline master programs, or chapter 43.21C RCW as it relates to~~
26 ~~plans, development regulations, and amendments thereto, adopted under~~
27 ~~RCW 36.70A.040 or chapter 90.58 RCW.)) In (~~the final order~~)
28 rendering its advisory decision, the board shall (~~either~~):~~

29 (a) Find that the (~~state agency,~~) county(~~(,)~~) or city is in
30 compliance with the requirements of (~~this chapter or~~) chapter 90.58
31 RCW as it relates to the adoption or amendment of shoreline master
32 programs; or

33 (b) Find that the county or city either has, or has not, taken the
34 action by the time such action is required to have been taken; or

35 (c) Find that the (~~state agency,~~) county(~~(,)~~) or city (~~is not in~~
36 compliance with the requirements of this chapter or chapter 90.58 RCW
37 as it relates to the adoption or amendment of shoreline master
38 programs, in which case)) either has, or has not, addressed relevant

1 issues associated with an action required under this chapter, but may
2 not consider the adequacy of the actions taken by the county or city.
3 If the board finds that the county or city has not addressed the
4 relevant issues, the board shall ((remand the matter to the affected
5 state agency, county, or city and)) specify a reasonable time not in
6 excess of one hundred eighty days within which the ((state agency,))
7 county((,)) or city and the person or persons appealing the action
8 shall ((comply with the requirements of this chapter)) attempt to
9 resolve the dispute; or

10 (d) Find that the comprehensive plans either are, or are not,
11 coordinated or consistent, as required under RCW 36.70A.100. If the
12 board finds that the comprehensive plans are not coordinated or
13 consistent, the board shall mediate between the affected counties or
14 cities to resolve the lack of coordination or lack of consistency.

15 (2) ((A finding of noncompliance and an order of remand)) An
16 advisory decision rendered by the board shall not affect the validity
17 of comprehensive plans and development regulations ((during the period
18 of remand, unless the board's final order also:

19 (a) Includes a determination, supported by findings of fact and
20 conclusions of law, that the continued validity of the plan or
21 regulation would substantially interfere with the fulfillment of the
22 goals of this chapter; and

23 (b) Specifies the particular part or parts of the plan or
24 regulation that are determined to be invalid, and the reasons for their
25 invalidity.

26 (3) A determination of invalidity shall:

27 (a) Be prospective in effect and shall not extinguish rights that
28 vested under state or local law before the date of the board's order;
29 and

30 (b) Subject any development application that would otherwise vest
31 after the date of the board's order to the local ordinance or
32 resolution that both is enacted in response to the order of remand and
33 determined by the board pursuant to RCW 36.70A.330 to comply with the
34 requirements of this chapter.

35 (4) If the ordinance that adopts a plan or development regulation
36 under this chapter includes a savings clause intended to revive prior
37 policies or regulations in the event the new plan or regulations are
38 determined to be invalid, the board shall determine under subsection

1 ~~(2) of this section whether the prior policies or regulations are valid~~
2 ~~during the period of remand.~~

3 ~~(5) Any party aggrieved by a final decision of the hearings board~~
4 ~~may appeal the decision to superior court as provided in RCW 34.05.514~~
5 ~~or 36.01.050 within thirty days of the final order of the board)).~~

6 (3) Nothing in RCW 36.70A.250 through 36.70A.345 precludes an
7 aggrieved party from filing a petition in superior court seeking
8 equitable relief against a county or city for failing to comply with
9 the requirements of this chapter or seeking other remedies that may
10 exist challenging the actions of a county or city taken under this
11 chapter.

12 **Sec. 5.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
13 read as follows:

14 A request for review by the state to a growth management hearings
15 board under RCW 36.70A.280(1) may be made only by the governor, or with
16 the governor's consent the head of an agency, or by the commissioner of
17 public lands as relating to state trust lands ~~((, for the review of~~
18 ~~whether: (1) A county or city that is required or chooses to plan~~
19 ~~under RCW 36.70A.040 has failed to adopt a comprehensive plan or~~
20 ~~development regulations, or county wide planning policies within the~~
21 ~~time limits established by this chapter; or (2) a county or city that~~
22 ~~is required or chooses to plan under this chapter has adopted a~~
23 ~~comprehensive plan, development regulations, or county wide planning~~
24 ~~policies, that are not in compliance with the requirements of this~~
25 ~~chapter)).~~

26 **Sec. 6.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
27 read as follows:

28 ~~(((1) Except as provided in subsection (2) of this section,))~~
29 Comprehensive plans and development regulations, and amendments
30 thereto, adopted under this chapter are presumed valid upon adoption.
31 In any petition under this chapter, the board, after full consideration
32 of the petition, shall ((determine whether there is compliance with the
33 requirements of this chapter. In making its determination, the board
34 shall consider the criteria adopted by the department under RCW
35 36.70A.190(4). The board shall)) find compliance unless it finds ((by
36 a preponderance of the evidence)) that the ((state agency,)) action of

1 the county((7)) or city ((erroneously interpreted or applied this
2 chapter)) was clearly erroneous.

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

6 **Sec. 7.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended
7 to read as follows:

8 ((Upon receipt from the board of a finding that a state agency,
9 county, or city is in noncompliance under RCW 36.70A.330, or as a
10 result of failure to meet the requirements of)) If sanctions are
11 imposed under RCW 36.70A.210 or 36.70A.345, the governor may either:

12 (1) Notify and direct the director of the office of financial
13 management to revise allotments in appropriation levels;

14 (2) Notify and direct the state treasurer to withhold the portion
15 of revenues to which the county or city is entitled under one or more
16 of the following: The motor vehicle fuel tax, as provided in chapter
17 82.36 RCW; the transportation improvement account, as provided in RCW
18 47.26.084; the urban arterial trust account, as provided in RCW
19 47.26.080; the rural arterial trust account, as provided in RCW
20 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the
21 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise
22 tax, as provided in RCW 82.08.170; or

23 (3) File a notice of noncompliance with the secretary of state and
24 the county or city, which shall temporarily rescind the county or
25 city's authority to collect the real estate excise tax under RCW
26 82.46.030 until the governor files a notice rescinding the notice of
27 noncompliance.

28 NEW SECTION. **Sec. 8.** RCW 36.70A.330 and 1995 c 347 s 112 & 1991
29 sp.s. c 32 s 14 are each repealed.

30 NEW SECTION. **Sec. 9.** RCW 36.70A.340 is recodified to appear
31 immediately after RCW 36.70A.345."

32 Correct the title.

33 EFFECT: Clarifies that final decisions by growth management
34 hearings boards are advisory only; changes standard of review that

1 boards use to review county or city actions from preponderance of the
2 evidence to clearly erroneous; removes ability to appeal directly to
3 the court of appeals.

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