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HOUSE BILL 1148

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State of Washington

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By Representatives Cairnes, Smith, Zellinsky, Radcliff, Sterk, McMorris, Buck, Skinner, Mielke, Clements, D. Sommers, D. Schmidt, DeBolt, Johnson, Mulliken, Grant, Chandler, Sherstad, Thompson, O'Brien, Schoesler, Dunn, Van Luven and Koster

Read first time 01/15/97. Referred to Committee on Government Reform & Land Use.

1 AN ACT Relating to growth management hearings boards; amending RCW  
2 36.70A.270, 36.70A.280, 36.70A.300, 36.70A.320, and 36.70A.340; adding  
3 a new section to chapter 36.70A RCW; and repealing RCW 36.70A.330.

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

5 **Sec. 1.** RCW 36.70A.270 and 1996 c 325 s 1 are each amended to read  
6 as follows:

7 Each growth management hearings board shall be governed by the  
8 following rules on conduct and procedure:

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

17 (2) Each board member shall receive reimbursement for travel  
18 expenses incurred in the discharge of his or her duties in accordance  
19 with RCW 43.03.050 and 43.03.060. If it is determined that the review

1 boards shall operate on a full-time basis, each member shall receive an  
2 annual salary to be determined by the governor pursuant to RCW  
3 43.03.040. If it is determined that a review board shall operate on a  
4 part-time basis, each member shall receive compensation pursuant to RCW  
5 43.03.250, provided such amount shall not exceed the amount that would  
6 be set if they were a full-time board member. The principal office of  
7 each board shall be located by the governor within the jurisdictional  
8 boundaries of each board. The boards shall operate on either a part-  
9 time or full-time basis, as determined by the governor.

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

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

24 (5) The board may appoint one or more hearing examiners to assist  
25 the board in its hearing function, to make conclusions of law and  
26 findings of fact and, if requested by the board, to make  
27 recommendations to the board for decisions in cases before the board.  
28 Such hearing examiners must have demonstrated knowledge of land use  
29 planning and law. The boards shall specify in their joint rules of  
30 practice and procedure, as required by subsection (7) of this section,  
31 the procedure and criteria to be employed for designating hearing  
32 examiners as a presiding officer. Hearing examiners selected by a  
33 board shall meet the requirements of subsection (3) of this section.  
34 The findings and conclusions of the hearing examiner shall not become  
35 final until they have been formally approved by the board. This  
36 authorization to use hearing examiners does not waive the requirement  
37 of RCW 36.70A.300 that final (~~orders~~) recommendations be issued  
38 within one hundred eighty days of board receipt of a petition.

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

6 (7) All proceedings before the board, any of its members, or a  
7 hearing examiner appointed by the board shall be conducted in  
8 accordance with such administrative rules of practice and procedure as  
9 the boards jointly prescribe. All three boards shall jointly meet to  
10 develop and adopt joint rules of practice and procedure, including  
11 rules regarding expeditious and summary disposition of appeals. The  
12 boards shall publish such rules and decisions they render and arrange  
13 for the reasonable distribution of the rules and decisions. Except as  
14 it conflicts with provisions of this chapter, the administrative  
15 procedure act, chapter 34.05 RCW, shall govern the practice and  
16 procedure of the boards.

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

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

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

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

30 (a) That a state agency, county, or city planning under this  
31 chapter is not in compliance with the requirements of this chapter,  
32 chapter 90.58 RCW as it relates to the adoption of shoreline master  
33 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
34 plans, development regulations, or amendments, adopted under RCW  
35 36.70A.040 or chapter 90.58 RCW; or

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

1 (2) A petition may be filed only by: (a) The state, or a county or  
2 city that plans under this chapter; (b) a person who has participated  
3 orally or in writing before the county or city regarding the matter on  
4 which a review is being requested; (c) a person who is certified by the  
5 governor within sixty days of filing the request with the board; or (d)  
6 a person qualified pursuant to RCW 34.05.530.

7 (3) For purposes of this section "person" means any individual,  
8 partnership, corporation, association, state agency, governmental  
9 subdivision or unit thereof, or public or private organization or  
10 entity of any character.

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

15 The rationale for any adjustment that is ~~((adopted))~~ recommended by  
16 a board must be documented and filed with the office of financial  
17 management within ten working days after adoption.

18 ~~((If adjusted by a board, a county growth management planning  
19 population projection shall only be used for the planning purposes set  
20 forth in this chapter and shall be known as a "board adjusted  
21 population projection". None of these changes shall affect the  
22 official state and county population forecasts prepared by the office  
23 of financial management, which shall continue to be used for state  
24 budget and planning purposes.))~~

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

27 (1) The board shall issue a final ~~((order))~~ recommendation within  
28 one hundred eighty days of receipt of the petition for review, or, when  
29 multiple petitions are filed, within one hundred eighty days of receipt  
30 of the last petition that is consolidated. Such a final ~~((order))~~  
31 recommendation shall be based exclusively on whether or not a state  
32 agency, county, or city is in compliance with the requirements of this  
33 chapter, chapter 90.58 RCW as it relates to adoption or amendment of  
34 shoreline master programs, or chapter 43.21C RCW as it relates to  
35 plans, development regulations, and amendments thereto, adopted under  
36 RCW 36.70A.040 or chapter 90.58 RCW. In the final ~~((order))~~  
37 recommendation, the board shall either: (a) Find that the state  
38 agency, county, or city is in compliance with the requirements of this

1 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
2 of shoreline master programs; or (b) find that the state agency,  
3 county, or city is not in compliance with the requirements of this  
4 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
5 of shoreline master programs, in which case the board shall remand the  
6 matter to the affected state agency, county, or city and specify a  
7 reasonable time not in excess of one hundred eighty days within which  
8 the state agency, county, or city shall consider whether to comply with  
9 the ~~((requirements of this chapter))~~ recommendation of the board.

10 (2) A ~~((finding of noncompliance and an order of remand))~~  
11 recommendation shall not affect the validity of comprehensive plans and  
12 development regulations ~~((during the period of remand, unless the~~  
13 ~~board's final order also:~~

14 (a) ~~Includes a determination, supported by findings of fact and~~  
15 ~~conclusions of law, that the continued validity of the plan or~~  
16 ~~regulation would substantially interfere with the fulfillment of the~~  
17 ~~goals of this chapter; and~~

18 (b) ~~Specifies the particular part or parts of the plan or~~  
19 ~~regulation that are determined to be invalid, and the reasons for their~~  
20 ~~invalidity.~~

21 (3) A determination of invalidity shall:

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

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

30 (4) ~~If the ordinance that adopts a plan or development regulation~~  
31 ~~under this chapter includes a savings clause intended to revive prior~~  
32 ~~policies or regulations in the event the new plan or regulations are~~  
33 ~~determined to be invalid, the board shall determine under subsection~~  
34 ~~(2) of this section whether the prior policies or regulations are valid~~  
35 ~~during the period of remand)).~~

36 (5) Any party aggrieved by a ~~((final decision))~~ state agency,  
37 county, or city response to the recommendation of the hearings board  
38 may appeal the decision to superior court ~~((as provided in RCW~~  
39 ~~34.05.514 or 36.01.050))~~ within thirty days of the final ~~((order))~~

1 decision of the state agency, county, or city regarding the  
2 recommendation of the board.

3       **Sec. 4.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to  
4 read as follows:

5       (1) Except as provided in subsection (2) of this section,  
6 comprehensive plans and development regulations, and amendments  
7 thereto, adopted under this chapter are presumed valid upon adoption.  
8 In any petition under this chapter, the board, after full consideration  
9 of the petition, shall determine whether ~~((there is compliance with the~~  
10 ~~requirements of this chapter))~~ to recommend changes to the matters  
11 under review. In making its determination, the board shall consider  
12 the criteria adopted by the department under RCW 36.70A.190(4). ~~((The~~  
13 ~~board shall find compliance unless it finds by a preponderance of the~~  
14 ~~evidence that the state agency, county, or city erroneously interpreted~~  
15 ~~or applied this chapter.))~~

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

19       **Sec. 5.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended  
20 to read as follows:

21       ~~((Upon receipt from the board of a finding that a state agency,~~  
22 ~~county, or city is in noncompliance under RCW 36.70A.330, or))~~ As a  
23 result of failure to meet the requirements of RCW 36.70A.210, the  
24 governor may either:

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

27       (2) Notify and direct the state treasurer to withhold the portion  
28 of revenues to which the county or city is entitled under one or more  
29 of the following: The motor vehicle fuel tax, as provided in chapter  
30 82.36 RCW; the transportation improvement account, as provided in RCW  
31 47.26.084; the urban arterial trust account, as provided in RCW  
32 47.26.080; the rural arterial trust account, as provided in RCW  
33 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the  
34 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise  
35 tax, as provided in RCW 82.08.170; or

36       (3) File a notice of noncompliance with the secretary of state and  
37 the county or city, which shall temporarily rescind the county or

1 city's authority to collect the real estate excise tax under RCW  
2 82.46.030 until the governor files a notice rescinding the notice of  
3 noncompliance.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A RCW  
5 to read as follows:

6 It is the intent of the legislature that the authority given to  
7 growth management hearings boards in chapter 347, Laws of 1995 to  
8 determine that a plan or regulation is invalid is null and void. Any  
9 such determination of invalidity made at any time is of no effect. The  
10 legislature intends that this act have retroactive application and  
11 apply to determinations made before, on, and after the effective date  
12 of this act.

13 NEW SECTION. **Sec. 7.** RCW 36.70A.330 and 1995 c 347 s 112 & 1991  
14 sp.s. c 32 s 14 are each repealed.

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