
HOUSE BILL 1157

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By Representatives Dunn, Buck, Thompson, D. Schmidt, Boldt and Delvin

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1 AN ACT Relating to environmental appeals; and amending RCW
2 43.21B.170, 43.21B.180, 36.70A.300, 75.20.140, and 90.58.180.

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

4 **Sec. 1.** RCW 43.21B.170 and 1995 c 382 s 3 are each amended to read
5 as follows:

6 All proceedings before the hearings board or any of its members
7 shall be conducted in accordance with such rules of practice and
8 procedure as the hearings board may prescribe. The rules must include
9 the following provisions: (1) The department must furnish the hearings
10 board and the party appealing the department's decision a copy of all
11 evidence relied upon by the department in making its decision. The
12 party appealing the department's decision must be provided this
13 information at least one day prior to the hearing before the hearings
14 board; (2) the department may only submit evidence to the hearings
15 board which supports the findings set forth in the department's
16 decision being appealed; and (3) if the department relied upon the
17 observations of individuals in making its decision, those individuals
18 must be identified and made available for examination and cross-
19 examination before the hearings board. The department has the burden

1 of proof in all proceedings before the hearings board that its decision
2 is justified, including the burden of moving forward with the evidence.
3 The hearings board shall publish such rules and arrange for the
4 reasonable distribution thereof.

5 **Sec. 2.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to read
6 as follows:

7 Judicial review of a decision of the hearings board may be obtained
8 only pursuant to RCW 34.05.510 through 34.05.598, except that judicial
9 review of a decision of the hearings board in superior court shall be
10 de novo with the burden of proof placed on the department. The
11 director shall have the same right of review from a decision made
12 pursuant to RCW 43.21B.110 as does any person.

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

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

35 (2) A finding of noncompliance and an order of remand shall not
36 affect the validity of comprehensive plans and development regulations
37 during the period of remand, unless the board's final order also:

1 (a) Includes 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 the particular part or parts of the plan or
6 regulation that are determined to be invalid, and the reasons for their
7 invalidity.

8 (3) A determination of invalidity shall:

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

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

17 (4) If the ordinance that adopts a plan or development regulation
18 under this chapter includes a savings clause intended to revive prior
19 policies or regulations in the event the new plan or regulations are
20 determined to be invalid, the board shall determine under subsection
21 (2) of this section whether the prior policies or regulations are valid
22 during the period of remand.

23 (5) Any party aggrieved by a final decision of the hearings board
24 may appeal the decision to superior court as provided in RCW 34.05.514
25 or 36.01.050 within thirty days of the final order of the board.
26 Judicial review of any decision of the hearings board shall be de novo.

27 **Sec. 4.** RCW 75.20.140 and 1995 c 382 s 7 are each amended to read
28 as follows:

29 (1) In all appeals, the hydraulic appeals board shall have all
30 powers relating to administration of oaths, issuance of subpoenas, and
31 taking of depositions, but such powers shall be exercised in conformity
32 with chapter 34.05 RCW.

33 (2) In all appeals, the hydraulic appeals board, and each member
34 thereof, shall be subject to all duties imposed upon and shall have all
35 powers granted to, an agency by those provisions of chapter 34.05 RCW
36 relating to adjudicative proceedings.

37 (3) All proceedings before the hydraulic appeals board or any of
38 its members shall be conducted in accordance with such rules of

1 practice and procedure as the board may prescribe. Such rules shall be
2 published and distributed.

3 (4) Judicial review of a decision of the hydraulic appeals board
4 (~~may be obtained only pursuant to RCW 34.05.510 through 34.05.598~~)
5 shall be de novo with the burden of proof placed upon the department.

6 **Sec. 5.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to
7 read as follows:

8 (1) Any person aggrieved by the granting, denying, or rescinding of
9 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
10 review from the shorelines hearings board by filing a petition for
11 review within twenty-one days of the date of filing as defined in RCW
12 90.58.140(6).

13 Within seven days of the filing of any petition for review with the
14 board as provided in this section pertaining to a final decision of a
15 local government, the petitioner shall serve copies of the petition on
16 the department and the office of the attorney general. The department
17 and the attorney general may intervene to protect the public interest
18 and insure that the provisions of this chapter are complied with at any
19 time within fifteen days from the date of the receipt by the department
20 or the attorney general of a copy of the petition for review filed
21 pursuant to this section. (~~The shorelines hearings board shall
22 schedule review proceedings on the petition for review without regard
23 as to whether the period for the department or the attorney general to
24 intervene has or has not expired.~~)

25 (2) The department or the attorney general may obtain review of any
26 final decision granting a permit, or granting or denying an application
27 for a permit issued by a local government by filing a written petition
28 with the shorelines hearings board and the appropriate local government
29 within twenty-one days from the date the final decision was filed as
30 provided in RCW 90.58.140(6).

31 (3) The review proceedings authorized in subsections (1) and (2) of
32 this section are subject to the provisions of chapter 34.05 RCW
33 pertaining to procedures in adjudicative proceedings. Judicial review
34 of such proceedings of the shorelines hearings board is governed by
35 chapter 34.05 RCW, except that judicial review of a decision by the
36 board shall be de novo with the burden of proof on the department. The
37 board shall issue its decision on the appeal authorized under
38 subsections (1) and (2) of this section within one hundred eighty days

1 after the date the petition is filed with the board or a petition to
2 intervene is filed by the department or the attorney general, whichever
3 is later. The time period may be extended by the board for a period of
4 thirty days upon a showing of good cause or may be waived by the
5 parties.

6 (4) Any person may appeal any rules, regulations, or guidelines
7 adopted or approved by the department within thirty days of the date of
8 the adoption or approval. The board shall make a final decision within
9 sixty days following the hearing held thereon.

10 (5) The board shall find the rule, regulation, or guideline to be
11 valid and enter a final decision to that effect unless it determines
12 that the rule, regulation, or guideline:

13 (a) Is clearly erroneous in light of the policy of this chapter; or

14 (b) Constitutes an implementation of this chapter in violation of
15 constitutional or statutory provisions; or

16 (c) Is arbitrary and capricious; or

17 (d) Was developed without fully considering and evaluating all
18 material submitted to the department during public review and comment;
19 or

20 (e) Was not adopted in accordance with required procedures.

21 (6) If the board makes a determination under subsection (5) (a)
22 through (e) of this section, it shall enter a final decision declaring
23 the rule, regulation, or guideline invalid, remanding the rule,
24 regulation, or guideline to the department with a statement of the
25 reasons in support of the determination, and directing the department
26 to adopt, after a thorough consultation with the affected local
27 government and any other interested party, a new rule, regulation, or
28 guideline consistent with the board's decision.

29 (7) A decision of the board on the validity of a rule, regulation,
30 or guideline shall be subject to review in superior court, if
31 authorized pursuant to chapter 34.05 RCW. A petition for review of the
32 decision of the shorelines hearings board on a rule, regulation, or
33 guideline shall be filed within thirty days after the date of final
34 decision by the shorelines hearings board.

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