
SENATE BILL 5041

State of Washington

55th Legislature

1997 Regular Session

By Senator Benton

Read first time 01/13/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to environmental appeals; and amending RCW
2 36.70A.300, 43.21B.170, 43.21B.180, 75.20.140, 76.09.230, and
3 90.58.180.

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

5 **Sec. 1.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
6 read as follows:

7 (1) The board shall issue a final order within one hundred eighty
8 days of receipt of the petition for review, or, when multiple petitions
9 are filed, within one hundred eighty days of receipt of the last
10 petition that is consolidated. Such a final order shall be based
11 exclusively on whether or not a state agency, county, or city is in
12 compliance with the requirements of this chapter, chapter 90.58 RCW as
13 it relates to adoption or amendment of shoreline master programs, or
14 chapter 43.21C RCW as it relates to plans, development regulations, and
15 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
16 In the final order, the board shall either: (a) Find that the state
17 agency, county, or city is in compliance with the requirements of this
18 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
19 of shoreline master programs; or (b) find that the state agency,

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

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

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

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

18 (3) A determination of invalidity shall:

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

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

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

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

37 **Sec. 2.** RCW 43.21B.170 and 1995 c 382 s 3 are each amended to read
38 as follows:

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

19 **Sec. 3.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to read
20 as follows:

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

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.

1 (3) All proceedings before the hydraulic appeals board or any of
2 its members shall be conducted in accordance with such rules of
3 practice and procedure as the board may prescribe. Such rules shall be
4 published and distributed.

5 (4) Judicial review of a decision of the hydraulic appeals board
6 may be obtained only pursuant to RCW 34.05.510 through 34.05.598.

7 (5) Judicial review of a decision of the hydraulic appeals board
8 shall be de novo with the burden of proof placed upon the department.

9 **Sec. 5.** RCW 76.09.230 and 1994 c 253 s 9 are each amended to read
10 as follows:

11 (1) In all appeals over which the appeals board has jurisdiction,
12 upon request of one or more parties and with the consent of all
13 parties, the appeals board shall promptly schedule a conference for the
14 purpose of attempting to mediate the case. The mediation conference
15 shall be held prior to the hearing on not less than seven days' advance
16 written notice to all parties. All other proceedings pertaining to the
17 appeal shall be stayed until completion of mediation, which shall
18 continue so long as all parties consent: PROVIDED, That this shall not
19 prevent the appeals board from deciding motions filed by the parties
20 while mediation is ongoing: PROVIDED, FURTHER, That discovery may be
21 conducted while mediation is ongoing if agreed to by all parties.
22 Mediation shall be conducted by an administrative appeals judge or
23 other duly authorized agent of the appeals board who has received
24 training in dispute resolution techniques or has a demonstrated history
25 of successfully resolving disputes, as determined by the appeals board.
26 A person who mediates in a particular appeal shall not participate in
27 a hearing on that appeal or in writing the decision and order in the
28 appeal. Documentary and other physical evidence presented and evidence
29 of conduct or statements made during the course of mediation shall be
30 treated by the mediator and the parties in a confidential manner and
31 shall not be admissible in subsequent proceedings in the appeal except
32 in accordance with the provisions of the Washington rules of evidence
33 pertaining to compromise negotiations.

34 (2) In all appeals the appeals board shall have all powers relating
35 to administration of oaths, issuance of subpoenas, and taking of
36 depositions, but such powers shall be exercised in conformity with
37 chapter 34.05 RCW.

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

5 (4) All proceedings before the appeals board or any of its members
6 shall be conducted in accordance with such rules of practice and
7 procedure as the board may prescribe. The appeals board shall publish
8 such rules and arrange for the reasonable distribution thereof.

9 (5) Judicial review of a decision of the appeals board may be
10 obtained only pursuant to RCW 34.05.510 through 34.05.598, except that
11 judicial review of a decision of the appeals board shall be de novo
12 with the burden of proof placed upon the department.

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

15 (1) Any person aggrieved by the granting, denying, or rescinding of
16 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
17 review from the shorelines hearings board by filing a petition for
18 review within twenty-one days of the date of filing as defined in RCW
19 90.58.140(6).

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

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

1 (3) The review proceedings authorized in subsections (1) and (2) of
2 this section are subject to the provisions of chapter 34.05 RCW
3 pertaining to procedures in adjudicative proceedings. Judicial review
4 of such proceedings of the shorelines hearings board is governed by
5 chapter 34.05 RCW, except that judicial review of a decision by the
6 board shall be de novo with the burden of proof on the department. The
7 board shall issue its decision on the appeal authorized under
8 subsections (1) and (2) of this section within one hundred eighty days
9 after the date the petition is filed with the board or a petition to
10 intervene is filed by the department or the attorney general, whichever
11 is later. The time period may be extended by the board for a period of
12 thirty days upon a showing of good cause or may be waived by the
13 parties.

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

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

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

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

24 (c) Is arbitrary and capricious; or

25 (d) Was developed without fully considering and evaluating all
26 material submitted to the department during public review and comment;
27 or

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

29 (6) If the board makes a determination under subsection (5) (a)
30 through (e) of this section, it shall enter a final decision declaring
31 the rule, regulation, or guideline invalid, remanding the rule,
32 regulation, or guideline to the department with a statement of the
33 reasons in support of the determination, and directing the department
34 to adopt, after a thorough consultation with the affected local
35 government and any other interested party, a new rule, regulation, or
36 guideline consistent with the board's decision.

37 (7) A decision of the board on the validity of a rule, regulation,
38 or guideline shall be subject to review in superior court, if
39 authorized pursuant to chapter 34.05 RCW. A petition for review of the

1 decision of the shorelines hearings board on a rule, regulation, or
2 guideline shall be filed within thirty days after the date of final
3 decision by the shorelines hearings board.

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