
SECOND ENGROSSED SENATE BILL 5185

State of Washington 55th Legislature 1997 Regular Session

By Senators Horn, McCaslin, Long, Benton, Prince and Deccio

Read first time 01/17/97. Referred to Committee on Government Operations.

1 AN ACT Relating to growth management hearings boards; amending RCW
2 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.295, 36.70A.300, 36.70A.310,
3 36.70A.320, and 36.70A.340; adding a new section to chapter 36.70A RCW;
4 recodifying RCW 36.70A.340; and repealing RCW 36.70A.330.

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

6 **Sec. 1.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to
7 read as follows:

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

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

18 (2) Each board member shall receive reimbursement for travel
19 expenses incurred in the discharge of his or her duties in accordance

1 with RCW 43.03.050 and 43.03.060. If it is determined that the review
2 boards shall operate on a full-time basis, each member shall receive an
3 annual salary to be determined by the governor pursuant to RCW
4 43.03.040. If it is determined that a review board shall operate on a
5 part-time basis, each member shall receive compensation pursuant to RCW
6 43.03.250, provided such amount shall not exceed the amount that would
7 be set if they were a full-time board member. The principal office of
8 each board shall be located by the governor within the jurisdictional
9 boundaries of each board. The boards shall operate on either a part-
10 time or full-time basis, as determined by the governor.

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

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

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

1 board may mediate disputes between counties or cities, over whether
2 their comprehensive plans are coordinated or consistent, by using one
3 or more of its own members, hiring staff to provide mediation, or
4 contracting for the provision of mediation.

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

10 (7) All proceedings before the board, any of its members, or a
11 hearing examiner appointed by the board shall be conducted in
12 accordance with such administrative rules of practice and procedure as
13 the boards jointly prescribe. All three boards shall jointly meet to
14 develop and adopt joint rules of practice and procedure, including
15 rules regarding expeditious and summary disposition of appeals. The
16 boards shall publish such rules and decisions they render and arrange
17 for the reasonable distribution of the rules and decisions. Except as
18 it conflicts with specific provisions of this chapter, the
19 administrative procedure act, chapter 34.05 RCW, and specifically
20 including the provisions of RCW 34.05.455 governing ex parte
21 communications, shall govern the practice and procedure of the boards.

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

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

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

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

35 (a) That a (~~state agency,~~) county(~~(,)~~) or city planning under
36 this chapter is not in compliance with the requirements of this
37 chapter, chapter 90.58 RCW as it relates to the adoption of shoreline
38 master programs or amendments thereto, or chapter 43.21C RCW as it

1 ~~relates to ((plans, development regulations, or amendments, adopted~~
2 ~~under RCW 36.70A.040 or chapter 90.58 RCW)) the shoreline master~~
3 ~~programs or amendments thereto;~~

4 (b) That a county or city planning under this chapter has not taken
5 an action required under this chapter by the time the action is
6 required to have been taken; ((or

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

12 (d) That the comprehensive plan of a county or city adopted under
13 this chapter is not coordinated with, or consistent with, the
14 comprehensive plan of another county or city, as required under RCW
15 36.70A.100; or

16 (e) That the shoreline master program or amendment thereto, or
17 chapter 43.21C RCW as it relates thereto, are not in compliance with
18 the requirements of chapter 90.58 RCW.

19 (2) A petition alleging that a county or city has not addressed
20 issues associated with an action required under this chapter, or that
21 the comprehensive plan of a county or city is not coordinated with or
22 consistent with another comprehensive plan as required under RCW
23 36.70A.100, may be filed only by: (a) The state, or a county or city
24 that plans under this chapter; (b) a person who has participated orally
25 or in writing before the county or city regarding the matter on which
26 a review is being requested; (c) a person who is certified by the
27 governor within sixty days of filing the request with the board; or (d)
28 a person qualified pursuant to RCW 34.05.530. A petition alleging that
29 a county or city has not taken an action required under this chapter,
30 by the time such action is required to have been taken, may be filed by
31 any person. A petition alleging that the shoreline master program or
32 amendments thereto, or chapter 43.21C RCW as it relates thereto, may be
33 filed by a person with standing under chapter 43.21C RCW.

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

38 ~~((4) When considering a possible adjustment to a growth management~~
39 ~~planning population projection prepared by the office of financial~~

1 management, a board shall consider the implications of any such
2 adjustment to the population forecast for the entire state.

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

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

13 **Sec. 3.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
14 read as follows:

15 (1) All requests for review to a growth management hearings board
16 shall be initiated by filing a petition that includes a detailed
17 statement of issues presented for resolution by the board. The board
18 shall render written decisions articulating the basis for its holdings.
19 The board shall not issue advisory opinions on issues not presented to
20 the board in the statement of issues, as modified by any prehearing
21 order.

22 (2) All petitions relating to whether or not an adopted
23 comprehensive plan, development regulation, or permanent amendment
24 thereto, is in compliance with the goals and requirements of ((this
25 chapter or)) chapter 90.58 or 43.21C RCW must be filed within sixty
26 days after publication by the legislative ((bodies)) authority of the
27 county or city. All petitions relating to whether or not a county or
28 city has addressed relevant issues associated with an action required
29 under this chapter must be filed within sixty days after publication by
30 the legislative authority of the county or city. All petitions
31 relating to whether or not comprehensive plans are coordinated or
32 consistent, as required under RCW 36.70A.100, must be filed within
33 sixty days after publication by the legislative authority of the county
34 or city adopting or amending its comprehensive plan that is alleged not
35 to be coordinated or consistent with another comprehensive plan.
36 Petitions relating to whether a county or city has not taken an action
37 required under this chapter by the time such action is required to have
38 been taken may be filed at any time.

1 (~~((a) Except as provided in (c) of this subsection,~~) The date of
2 publication for a city shall be the date the city publishes the
3 ordinance, or summary of the ordinance, adopting the comprehensive plan
4 or development regulations, or amendment thereto, as is required to be
5 published.

6 (~~((b))~~) Promptly after adoption, a county shall publish a notice
7 that it has adopted the comprehensive plan or development regulations,
8 or amendment thereto.

9 (~~(Except as provided in (c) of this subsection, for purposes of~~
10 ~~this section)~~) The date of publication for a county shall be the date
11 the county publishes the notice that it has adopted the comprehensive
12 plan or development regulations, or amendment thereto.

13 (~~((c) For local governments planning under RCW 36.70A.040, promptly~~
14 ~~after approval or disapproval of a local government s shoreline master~~
15 ~~program or amendment thereto by the department of ecology as provided~~
16 ~~in RCW 90.58.090, the local government shall publish a notice that the~~
17 ~~shoreline master program or amendment thereto has been approved or~~
18 ~~disapproved by the department of ecology. For purposes of this~~
19 ~~section, the date of publication for the adoption or amendment of a~~
20 ~~shoreline master program is the date the local government publishes~~
21 ~~notice that the shoreline master program or amendment thereto has been~~
22 ~~approved or disapproved by the department of ecology.))~~)

23 (3) Unless the board dismisses the petition as frivolous or finds
24 that the person filing the petition lacks standing, or the parties have
25 filed an agreement to have the case heard in superior court as provided
26 in RCW 36.70A.295, the board shall, within ten days of receipt of the
27 petition, set a time for hearing the matter.

28 (4) The board shall base its decision on the record developed by
29 the city(~~(,)~~) or county(~~(, or the state)~~) and supplemented with
30 additional evidence if the board determines that such additional
31 evidence would be necessary or of substantial assistance to the board
32 in reaching its decision.

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

36 **Sec. 4.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to
37 read as follows:

1 (1) The superior court may directly review a petition for review
2 filed under RCW 36.70A.290 if all parties to the proceeding before the
3 board have agreed to direct review in the superior court. The
4 agreement of the parties shall be in writing and signed by all of the
5 parties to the proceeding or their designated representatives. ((The
6 agreement shall include the parties' agreement to proper venue as
7 provided in RCW 36.70A.300(5).)) The parties shall file their
8 agreement with the board within ten days after the date the petition is
9 filed, or if multiple petitions have been filed and the board has
10 consolidated the petitions pursuant to RCW 36.70A.300, within ten days
11 after the board serves its order of consolidation.

12 (2) Within ten days of receiving the timely and complete agreement
13 of the parties, the board shall file a certificate of agreement with
14 the designated superior court and shall serve the parties with copies
15 of the certificate. The superior court shall obtain exclusive
16 jurisdiction over a petition when it receives the certificate of
17 agreement. With the certificate of agreement the board shall also file
18 the petition for review, any orders entered by the board, all other
19 documents in the board's files regarding the action, and the written
20 agreement of the parties.

21 (3) For purposes of a petition that is subject to direct review,
22 the superior court's subject matter jurisdiction shall be equivalent to
23 that of the board. Consistent with the requirements of the superior
24 court civil rules, the superior court may consolidate a petition
25 subject to direct review under this section with a separate action
26 filed in the superior court.

27 (4)(a) Except as otherwise provided in (b) and (c) of this
28 subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which
29 specify the nature and extent of board review, shall apply to the
30 superior court's review.

31 (b) The superior court:

32 (i) Shall not have jurisdiction to directly review or modify an
33 office of financial management population projection;

34 (ii) Except as otherwise provided in RCW 36.70A.300((+2)(b)),
35 shall render its decision on the petition within one hundred eighty
36 days of receiving the certification of agreement; and

37 (iii) Shall give a compliance hearing under RCW 36.70A.330(2) the
38 highest priority of all civil matters before the court.

1 (c) An aggrieved party may secure appellate review of a final
2 judgment of the superior court under this section by the supreme court
3 or the court of appeals. The review shall be secured in the manner
4 provided by law for review of superior court decisions in other civil
5 cases.

6 (5) If, following a compliance hearing, the court finds that the
7 state agency, county, or city is not in compliance with the court's
8 prior order, the court may use its remedial and contempt powers to
9 enforce compliance.

10 (6) The superior court shall transmit a copy of its decision and
11 order on direct review to the board, the department, and the governor.
12 If the court has determined that a county or city is not in compliance
13 with the provisions of this chapter, the governor may impose sanctions
14 against the county or city in the same manner as if a board had
15 recommended the imposition of sanctions as provided in RCW 36.70A.330.

16 (7) After the court has assumed jurisdiction over a petition for
17 review under this section, the superior court civil rules shall govern
18 a request for intervention and all other procedural matters not
19 specifically provided for in this section.

20 **Sec. 5.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
21 read as follows:

22 ~~(1) ((The board shall issue a final order that shall be based~~
23 ~~exclusively on whether or not a state agency, county, or city is in~~
24 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~
25 ~~it relates to adoption or amendment of shoreline master programs, or~~
26 ~~chapter 43.21C RCW as it relates to adoption of plans, development~~
27 ~~regulations, and amendments thereto, under RCW 36.70A.040 or chapter~~
28 ~~90.58 RCW.~~

29 ~~(2))~~(a) Except as provided in (b) of this subsection, the ~~((final~~
30 ~~order))~~ decision shall be issued within one hundred eighty days of
31 receipt of the petition for review, or, if multiple petitions are
32 filed, within one hundred eighty days of receipt of the last petition
33 that is consolidated.

34 (b) The board may extend the period of time for issuing a decision
35 to enable the parties to settle the dispute if additional time is
36 necessary to achieve a settlement, and (i) an extension is requested by
37 all parties, or (ii) an extension is requested by the petitioner and
38 respondent and the board determines that a negotiated settlement

1 between the remaining parties could resolve significant issues in
2 dispute. The request must be filed with the board not later than seven
3 days before the date scheduled for the hearing on the merits of the
4 petition. The board may authorize one or more extensions for up to
5 ninety days each, subject to the requirements of this section.

6 ~~((3))~~ (2) In ~~((the final order))~~ rendering its decision, the
7 board shall ~~((either))~~:

8 (a) Find that the ~~((state agency,))~~ county~~((,))~~ or city is in
9 compliance with the requirements of ~~((this chapter,))~~ chapter 90.58 RCW
10 as it relates to the adoption or amendment of shoreline master
11 programs, or chapter 43.21C RCW as it relates to adoption of plans,
12 development regulations, and amendments thereto, under RCW 36.70A.040
13 or chapter 90.58 RCW; or

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

16 (c) Find that the ~~((state agency,))~~ county~~((,))~~ or city ~~((is not in~~
17 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~
18 ~~it relates to the adoption or amendment of shoreline master programs,~~
19 ~~or chapter 43.21C RCW as it relates to adoption of plans, development~~
20 ~~regulations, and amendments thereto, under RCW 36.70A.040 or chapter~~
21 ~~90.58 RCW, in which case))~~ either has, or has not, addressed relevant
22 issues associated with an action required under this chapter, but may
23 not consider the adequacy of the actions taken by the county or city.
24 If the board finds that the county or city has not addressed the
25 relevant issues, the board shall ~~((remand the matter to the affected~~
26 ~~state agency, county, or city. The board shall))~~ specify a reasonable
27 time not in excess of one hundred eighty days, or such longer period as
28 determined by the board in cases of unusual scope or complexity, within
29 which the ~~((state agency,))~~ county~~((,))~~ or city and the person or
30 persons appealing the action shall ~~((comply with the requirements of~~
31 ~~this chapter. The board may require periodic reports to the board on~~
32 ~~the progress the jurisdiction is making towards compliance.~~

33 ~~(4) Unless the board makes a determination of invalidity as~~
34 ~~provided in RCW 36.70A.302, a finding of noncompliance and an order of~~
35 ~~remand shall not affect the validity of comprehensive plans and~~
36 ~~development regulations during the period of remand.~~

37 (5) Any party aggrieved by a final decision of the hearings board
38 may appeal the decision to superior court as provided in RCW 34.05.514

1 or ~~36.01.050~~ within thirty days of the final order of the board))
2 attempt to resolve the dispute; or

3 (d) Find that the comprehensive plans either are, or are not,
4 coordinated or consistent, as required under RCW 36.70A.100. If the
5 board finds that the comprehensive plans are not coordinated or
6 consistent, the board shall mediate between the affected counties or
7 cities to resolve the lack of coordination or lack of consistency.

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

13 (4) Any party aggrieved by a final decision of the hearings board
14 may appeal the decision directly to the court of appeals for assignment
15 by the chief presiding judge.

16 **Sec. 6.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
17 read as follows:

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

30 **Sec. 7.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to
31 read as follows:

32 ~~(1) ((Except as provided in subsection (5) of this section,))~~
33 Comprehensive plans and development regulations, and amendments
34 thereto, adopted under this chapter are presumed valid upon adoption.

35 (2) Except as otherwise provided in subsection (4) of this section,
36 the burden is on the petitioner to demonstrate that any action taken by

1 a state agency, county, or city under this chapter is not in compliance
2 with the requirements of this chapter.

3 (3) In any petition under this chapter, the board, after full
4 consideration of the petition, shall ~~((determine whether there is
5 compliance with the requirements of this chapter. In making its
6 determination, the board shall consider the criteria adopted by the
7 department under RCW 36.70A.190(4). The board shall find compliance
8 unless it determines that the action by the state agency, county, or
9 city is clearly erroneous in view of the entire record before the board
10 and in light of the goals and requirements of this chapter))~~ render its
11 decision.

12 (4) A county or city subject to a determination of invalidity made
13 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that
14 the ordinance or resolution it has enacted in response to the
15 determination of invalidity will no longer substantially interfere with
16 the fulfillment of the goals of this chapter under the standard in RCW
17 36.70A.302(1).

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

21 **Sec. 8.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended
22 to read as follows:

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

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

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

1 (3) File a notice of noncompliance with the secretary of state and
2 the county or city, which shall temporarily rescind the county or
3 city's authority to collect the real estate excise tax under RCW
4 82.46.030 until the governor files a notice rescinding the notice of
5 noncompliance.

6 NEW SECTION. **Sec. 9.** RCW 36.70A.330 and 1997 c 429 s 21, 1995 c
7 347 s 112, & 1991 sp.s. c 32 s 14 are each repealed.

8 NEW SECTION. **Sec. 10.** RCW 36.70A.340 is recodified to appear
9 immediately after RCW 36.70A.345.

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