
HOUSE BILL 1646

State of Washington 56th Legislature 1999 Regular Session

By Representatives Dunn and Sump

Read first time 02/01/1999. Referred to Committee on State Government.

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 1997 c 429 s 14 are each amended to
14 read as follows:

15 (1) The board shall issue a final order that shall be based
16 exclusively on whether or not a state agency, county, or city is in
17 compliance with the requirements of this chapter, chapter 90.58 RCW as
18 it relates to adoption or amendment of shoreline master programs, or
19 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.

22 (2)(a) Except as provided in (b) of this subsection, the final
23 order shall be issued within one hundred eighty days of receipt of the
24 petition for review, or, if multiple petitions are filed, within one
25 hundred eighty days of receipt of the last petition that is
26 consolidated.

27 (b) The board may extend the period of time for issuing a decision
28 to enable the parties to settle the dispute if additional time is
29 necessary to achieve a settlement, and (i) an extension is requested by
30 all parties, or (ii) an extension is requested by the petitioner and
31 respondent and the board determines that a negotiated settlement
32 between the remaining parties could resolve significant issues in
33 dispute. The request must be filed with the board not later than seven
34 days before the date scheduled for the hearing on the merits of the
35 petition. The board may authorize one or more extensions for up to
36 ninety days each, subject to the requirements of this section.

37 (3) In the final order, the board shall either:

1 (a) Find that the state agency, county, or city is in compliance
2 with the requirements of this chapter, chapter 90.58 RCW as it relates
3 to the adoption or amendment of shoreline master programs, or chapter
4 43.21C RCW as it relates to adoption of plans, development regulations,
5 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

6 (b) Find that the state agency, county, or city is not in
7 compliance with the requirements of this chapter, chapter 90.58 RCW as
8 it relates to the adoption or amendment of shoreline master programs,
9 or chapter 43.21C RCW as it relates to adoption of plans, development
10 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
11 90.58 RCW, in which case the board shall remand the matter to the
12 affected state agency, county, or city. The board shall specify a
13 reasonable time not in excess of one hundred eighty days, or such
14 longer period as determined by the board in cases of unusual scope or
15 complexity, within which the state agency, county, or city shall comply
16 with the requirements of this chapter. The board may require periodic
17 reports to the board on the progress the jurisdiction is making towards
18 compliance.

19 (4) Unless the board makes a determination of invalidity as
20 provided in RCW 36.70A.302, a finding of noncompliance and an order of
21 remand shall not affect the validity of comprehensive plans and
22 development regulations 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 1997 c 199 s 1 are each amended to read
7 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, the office of the attorney general, and the local
17 government. The department and the attorney general may intervene to
18 protect the public interest and insure that the provisions of this
19 chapter are complied with at any time within fifteen days from the date
20 of the receipt by the department or the attorney general of a copy of
21 the petition for review filed pursuant to this section. (~~The
22 shorelines hearings board shall schedule review proceedings on the
23 petition for review without regard as to whether the period for the
24 department or the attorney general to intervene has or has not
25 expired.~~)

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

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

1 subsections (1) and (2) of this section within one hundred eighty days
2 after the date the petition is filed with the board or a petition to
3 intervene is filed by the department or the attorney general, whichever
4 is later. The time period may be extended by the board for a period of
5 thirty days upon a showing of good cause or may be waived by the
6 parties.

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

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

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

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

17 (c) Is arbitrary and capricious; or

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

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

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

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

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