

ESSB 5659 - H AMD 424

By Representative Ericksen

FAILED 04/18/2003

1 On page 10, after line 19, insert the following:

2 "Sec. 6. RCW 36.70A.280 and 1996 c 325 s 2 are each amended to
3 read as follows:

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

6 (a) That a state agency, county, or city planning under this
7 chapter is not in compliance with the procedural requirements of this
8 chapter as they relate to the adoption of comprehensive plans and
9 development regulations, chapter 90.58 RCW as it relates to the
10 adoption of shoreline master programs or amendments thereto, or chapter
11 43.21C RCW as it relates to the adoption of plans, development
12 regulations, or amendments(~~(, adopted)~~) under RCW 36.70A.040 or chapter
13 90.58 RCW; or

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

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

23 (3) For purposes of this section "person" means any individual,
24 partnership, corporation, association, state agency, governmental
25 subdivision or unit thereof, or public or private organization or
26 entity of any character.

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

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

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

11 **Sec. 7.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
12 read as follows:

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

20 (2) All petitions relating to whether (~~or not an adopted~~) the
21 adoption of a comprehensive plan, development regulation, or permanent
22 amendment thereto, is in compliance with the goals and requirements of
23 this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty
24 days after publication by the legislative bodies of the county or city.

25 (a) Except as provided in (c) of this subsection, the date of
26 publication for a city shall be the date the city publishes the
27 ordinance, or summary of the ordinance, adopting the comprehensive plan
28 or development regulations, or amendment thereto, as is required to be
29 published.

30 (b) Promptly after adoption, a county shall publish a notice that
31 it has adopted the comprehensive plan or development regulations, or
32 amendment thereto.

33 Except as provided in (c) of this subsection, for purposes of this
34 section the date of publication for a county shall be the date the
35 county publishes the notice that it has adopted the comprehensive plan
36 or development regulations, or amendment thereto.

1 (c) For local governments planning under RCW 36.70A.040, promptly
2 after approval or disapproval of a local government's shoreline master
3 program or amendment thereto by the department of ecology as provided
4 in RCW 90.58.090, the local government shall publish a notice that the
5 shoreline master program or amendment thereto has been approved or
6 disapproved by the department of ecology. For purposes of this
7 section, the date of publication for the adoption or amendment of a
8 shoreline master program is the date the local government publishes
9 notice that the shoreline master program or amendment thereto has been
10 approved or disapproved by the department of ecology.

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

16 (4) The board shall base its decision on the record developed by
17 the city, county, or the state and supplemented with additional
18 evidence if the board determines that such additional evidence would be
19 necessary or of substantial assistance to the board in reaching its
20 decision.

21 (5) The board, shall consolidate, when appropriate, all petitions
22 involving the review of the same comprehensive plan adoption or the
23 same development regulation or regulations adoption.

24 **Sec. 8.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to
25 read as follows:

26 (1) A board may determine that part or all of a comprehensive plan
27 or development regulations are invalid if the board:

28 (a) Makes a finding of noncompliance and issues an order of remand
29 under RCW 36.70A.300;

30 (b) Includes in the final order a determination, supported by
31 findings of fact and conclusions of law, that the (~~continued validity~~
32 ~~of part or parts of the plan or regulation would substantially~~
33 ~~interfere with the fulfillment of the goals of)) adoption of the plan
34 or regulation was not in compliance with this chapter; and~~

35 (c) Specifies in the final order the particular (~~part or parts of~~

1 ~~the plan or regulation~~) adoption actions that are determined to be
2 invalid, and the reasons for their invalidity.

3 (2) A determination of invalidity is prospective in effect and does
4 not extinguish rights that vested under state or local law before
5 receipt of the board's order by the city or county. The determination
6 of invalidity does not apply to a completed development permit
7 application for a project that vested under state or local law before
8 receipt of the board's order by the county or city or to related
9 construction permits for that project.

10 (3)(a) Except as otherwise provided in subsection (2) of this
11 section and (b) of this subsection, a development permit application
12 not vested under state or local law before receipt of the board's order
13 by the county or city vests to the local ordinance or resolution that
14 is determined by the board not to substantially interfere with the
15 fulfillment of the goals of this chapter.

16 (b) Even though the application is not vested under state or local
17 law before receipt by the county or city of the board's order, a
18 determination of invalidity does not apply to a development permit
19 application for:

20 (i) A permit for construction by any owner, lessee, or contract
21 purchaser of a single-family residence for his or her own use or for
22 the use of his or her family on a lot existing before receipt by the
23 county or city of the board's order, except as otherwise specifically
24 provided in the board's order to protect the public health and safety;

25 (ii) A building permit and related construction permits for
26 remodeling, tenant improvements, or expansion of an existing structure
27 on a lot existing before receipt of the board's order by the county or
28 city; and

29 (iii) A boundary line adjustment or a division of land that does
30 not increase the number of buildable lots existing before receipt of
31 the board's order by the county or city.

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

1 (5) A county or city subject to a determination of invalidity may
2 adopt interim controls and other measures to be in effect until it
3 adopts a comprehensive plan and development regulations that ~~((comply))~~
4 are adopted in compliance with the requirements of this chapter. A
5 development permit application may vest under an interim control or
6 measure ~~((upon determination by the board that the interim controls and~~
7 ~~other measures do not substantially interfere with the fulfillment of~~
8 ~~the goals of this chapter))~~.

9 (6) A county or city subject to a determination of invalidity may
10 file a motion requesting that the board clarify, modify, or rescind the
11 order. The board shall expeditiously schedule a hearing on the motion.
12 At the hearing on the motion, the parties may present information to
13 the board to clarify the ~~((part or parts of the))~~ comprehensive plan or
14 development regulations adoption actions to which the final order
15 applies. The board shall issue any supplemental order based on the
16 information provided at the hearing not later than thirty days after
17 the date of the hearing.

18 (7)~~((a))~~ If a determination of invalidity has been made and the
19 county or city has enacted an ordinance or resolution ~~((amending))~~
20 adopting the invalidated ~~((part or parts of the))~~ plan or regulation or
21 establishing interim controls on development affected by the order of
22 invalidity, after a compliance hearing, the board shall modify or
23 rescind the determination of invalidity if it determines under the
24 standard in subsection (1) of this section that the plan ~~((or))~~
25 regulation, ~~((as amended or made subject to such))~~ or interim
26 controls~~((, will no longer substantially interfere with the fulfillment~~
27 ~~of the goals of))~~ adoption complies with the requirements of this
28 chapter.

29 ~~((b) If the board determines that part or parts of the plan or~~
30 ~~regulation are no longer invalid as provided in this subsection, but~~
31 ~~does not find that the plan or regulation is in compliance with all of~~
32 ~~the requirements of this chapter, the board, in its order, may require~~
33 ~~periodic reports to the board on the progress the jurisdiction is~~
34 ~~making towards compliance.))~~

35 **Sec. 9.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to
36 read as follows:

1 (1) Except as provided in subsection (5) of this section,
2 comprehensive plans and development regulations, and amendments
3 thereto, adopted under this chapter are presumed valid upon adoption.

4 (2) Except as otherwise provided in subsection (4) of this section,
5 the burden is on the petitioner to demonstrate that any action taken by
6 a state agency, county, or city under this chapter is not in compliance
7 with the requirements of this chapter.

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

16 (4) A county or city subject to a determination of invalidity made
17 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that
18 the ordinance or resolution it has enacted in response to the
19 determination of invalidity (~~((will no longer substantially interfere~~
20 ~~with the fulfillment of the goals of))~~ was adopted in compliance with
21 this chapter under the standard in RCW 36.70A.302(1).

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

25 **Sec. 10.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to
26 read as follows:

27 (1) The appeal of the department's decision to adopt a master
28 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is
29 governed by RCW 34.05.510 through 34.05.598.

30 (2) ~~((a) The department's decision to approve, reject, or modify a~~
31 ~~proposed master program or amendment adopted by a local government~~
32 ~~planning under RCW 36.70A.040 shall be appealed to the growth~~
33 ~~management hearings board with jurisdiction over the local government.~~
34 ~~The appeal shall be initiated by filing a petition as provided in RCW~~
35 ~~36.70A.250 through 36.70A.320.~~

1 ~~(b) If the appeal to the growth management hearings board concerns~~
2 ~~shorelines, the growth management hearings board shall review the~~
3 ~~proposed master program or amendment for compliance with the~~
4 ~~requirements of this chapter and chapter 36.70A RCW, the policy of RCW~~
5 ~~90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it~~
6 ~~relates to the adoption of master programs and amendments under chapter~~
7 ~~90.58 RCW.~~

8 ~~(c) If the appeal to the growth management hearings board concerns~~
9 ~~a shoreline of statewide significance, the board shall uphold the~~
10 ~~decision by the department unless the board, by clear and convincing~~
11 ~~evidence, determines that the decision of the department is~~
12 ~~inconsistent with the policy of RCW 90.58.020 and the applicable~~
13 ~~guidelines.~~

14 ~~(d) The appellant has the burden of proof in all appeals to the~~
15 ~~growth management hearings board under this subsection.~~

16 ~~(e) Any party aggrieved by a final decision of a growth management~~
17 ~~hearings board under this subsection may appeal the decision to~~
18 ~~superior court as provided in RCW 36.70A.300.~~

19 ~~(3))~~(a) The department's decision to approve, reject, or modify a
20 proposed master program or master program amendment by a local
21 government (~~(not planning under RCW 36.70A.040)~~) shall be appealed to
22 the shorelines hearings board by filing a petition within thirty days
23 of the date of the department's written notice to the local government
24 of the department's decision to approve, reject, or modify a proposed
25 master program or master program amendment as provided in RCW
26 90.58.090(2).

27 (b) In an appeal relating to shorelines, the shorelines hearings
28 board shall review the proposed master program or master program
29 amendment and, after full consideration of the presentations of the
30 local government and the department, shall determine the validity of
31 the local government's master program or amendment in light of the
32 policy of RCW 90.58.020 and the applicable guidelines.

33 (c) In an appeal relating to shorelines of statewide significance,
34 the shorelines hearings board shall uphold the decision by the
35 department unless the board determines, by clear and convincing
36 evidence that the decision of the department is inconsistent with the
37 policy of RCW 90.58.020 and the applicable guidelines.

1 (d) Review by the shorelines hearings board shall be considered an
2 adjudicative proceeding under chapter 34.05 RCW, the Administrative
3 Procedure Act. The aggrieved local government shall have the burden of
4 proof in all such reviews.

5 (e) Whenever possible, the review by the shorelines hearings board
6 shall be heard within the county where the land subject to the proposed
7 master program or master program amendment is primarily located. The
8 department and any local government aggrieved by a final decision of
9 the hearings board may appeal the decision to superior court as
10 provided in chapter 34.05 RCW.

11 ((+4)) (3) A master program amendment shall become effective after
12 the approval of the department or after the decision of the shorelines
13 hearings board to uphold the master program or master program
14 amendment, provided that the board may remand the master program or
15 master program adjustment to the local government or the department for
16 modification prior to the final adoption of the master program or
17 master program amendment."

18 Correct the title.

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