
SENATE BILL 5126

State of Washington

58th Legislature

2003 Regular Session

By Senators Benton and Morton

Read first time 01/15/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to environmental appeals; and amending RCW
2 36.70A.300, 43.21B.170, 43.21B.180, 77.55.180, 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 1997 c 429 s 14 are each amended to
6 read as follows:

7 (1) The board shall issue a final order that shall be based
8 exclusively on whether or not a state agency, county, or city is in
9 compliance with the requirements of this chapter, chapter 90.58 RCW as
10 it relates to adoption or amendment of shoreline master programs, or
11 chapter 43.21C RCW as it relates to adoption of plans, development
12 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
13 90.58 RCW.

14 (2)(a) Except as provided in (b) of this subsection, the final
15 order shall be issued within one hundred eighty days of receipt of the
16 petition for review, or, if multiple petitions are filed, within one
17 hundred eighty days of receipt of the last petition that is
18 consolidated.

1 (b) The board may extend the period of time for issuing a decision
2 to enable the parties to settle the dispute if additional time is
3 necessary to achieve a settlement, and (i) an extension is requested by
4 all parties, or (ii) an extension is requested by the petitioner and
5 respondent and the board determines that a negotiated settlement
6 between the remaining parties could resolve significant issues in
7 dispute. The request must be filed with the board not later than seven
8 days before the date scheduled for the hearing on the merits of the
9 petition. The board may authorize one or more extensions for up to
10 ninety days each, subject to the requirements of this section.

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

12 (a) Find that the state agency, county, or city is in compliance
13 with the requirements of this chapter, chapter 90.58 RCW as it relates
14 to the adoption or amendment of shoreline master programs, or chapter
15 43.21C RCW as it relates to adoption of plans, development regulations,
16 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

17 (b) Find that the state agency, county, or city is not in
18 compliance with the requirements of this chapter, chapter 90.58 RCW as
19 it relates to the adoption or amendment of shoreline master programs,
20 or chapter 43.21C RCW as it relates to adoption of plans, development
21 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
22 90.58 RCW, in which case the board shall remand the matter to the
23 affected state agency, county, or city. The board shall specify a
24 reasonable time not in excess of one hundred eighty days, or such
25 longer period as determined by the board in cases of unusual scope or
26 complexity, within which the state agency, county, or city shall comply
27 with the requirements of this chapter. The board may require periodic
28 reports to the board on the progress the jurisdiction is making towards
29 compliance.

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

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

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

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

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

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

29 **Sec. 4.** RCW 77.55.180 and 1995 c 382 s 7 are each amended to read
30 as follows:

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

35 (2) In all appeals, the hydraulic appeals board, and each member

1 thereof, shall be subject to all duties imposed upon and shall have all
2 powers granted to, an agency by those provisions of chapter 34.05 RCW
3 relating to adjudicative proceedings.

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

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

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

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

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

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

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

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

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

17 **Sec. 6.** RCW 90.58.180 and 1997 c 199 s 1 are each amended to read
18 as follows:

19 (1) Any person aggrieved by the granting, denying, or rescinding of
20 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
21 review from the shorelines hearings board by filing a petition for
22 review within twenty-one days of the date of filing as defined in RCW
23 90.58.140(6).

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

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

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

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

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

- 27 (a) Is clearly erroneous in light of the policy of this chapter; or
28 (b) Constitutes an implementation of this chapter in violation of
29 constitutional or statutory provisions; or
30 (c) Is arbitrary and capricious; or
31 (d) Was developed without fully considering and evaluating all
32 material submitted to the department during public review and comment;
33 or
34 (e) Was not adopted in accordance with required procedures.

35 (6) If the board makes a determination under subsection (5)(a)
36 through (e) of this section, it shall enter a final decision declaring
37 the rule, regulation, or guideline invalid, remanding the rule,
38 regulation, or guideline to the department with a statement of the

1 reasons in support of the determination, and directing the department
2 to adopt, after a thorough consultation with the affected local
3 government and any other interested party, a new rule, regulation, or
4 guideline consistent with the board's decision.

5 (7) A decision of the board on the validity of a rule, regulation,
6 or guideline shall be subject to review in superior court, if
7 authorized pursuant to chapter 34.05 RCW. A petition for review of the
8 decision of the shorelines hearings board on a rule, regulation, or
9 guideline shall be filed within thirty days after the date of final
10 decision by the shorelines hearings board.

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