
SUBSTITUTE HOUSE BILL 2815

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Local Government (originally sponsored by Representatives Simpson, Jarrett, Springer and Lantz; by request of Department of Community, Trade, and Economic Development)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to clarifying the best available science
2 requirements to protect critical areas; and amending RCW 36.70A.172,
3 36.70A.280, 36.70A.290, and 36.70A.300.

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

5 **Sec. 1.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
6 read as follows:

7 (1) In designating and protecting critical areas under this
8 chapter, counties and cities shall include the best available science
9 in developing policies and development regulations to protect the
10 functions and values of critical areas. In addition, counties and
11 cities shall give special consideration to conservation or protection
12 measures necessary to preserve or enhance anadromous fisheries.

13 (2) If it determines that advice from scientific or other experts
14 is necessary or will be of substantial assistance in reaching its
15 decision, a growth management hearings board may retain scientific or
16 other expert advice to assist in reviewing a petition under RCW
17 36.70A.290 that involves critical areas. The growth management
18 hearings boards are directed to adopt procedures and criteria in

1 consultation with cities and counties for retaining scientific or other
2 experts under this section and RCW 36.70A.270.

3 (3) In the development of critical areas policies and development
4 regulations, counties and cities must address each of the following on
5 the record:

6 (a) To demonstrate that the best available science was included:

7 (i) The specific policies and development regulations adopted to
8 protect the functions and values of critical areas; and

9 (ii) The sources of best available scientific information included
10 in the decision making; and

11 (b) Any other information, including legal, social, cultural,
12 economic, and political information, and other programs that may have
13 been included in developing critical areas policies and regulations.

14 (4)(a) The department, in collaboration with other state agencies
15 with jurisdiction and expertise, may adopt written management
16 recommendations for optional use by cities and counties in protecting
17 the functions and values of one or more critical areas listed in RCW
18 36.70A.030(5).

19 (b) State agencies must demonstrate on the record, as provided in
20 subsection (3) of this section, that the best available science was
21 included in developing management recommendations for protecting the
22 functions and values of critical areas, with consideration of regional
23 differences among critical areas and the appropriate application of the
24 management recommendations to protect critical areas.

25 (c) Management recommendations for cities and counties proposed by
26 the department in collaboration with other state agencies under this
27 subsection must be approved through the following process:

28 (i) The proposed management recommendations shall be submitted for
29 technical review by scientists and other professionals with expertise
30 in the relevant scientific and professional disciplines. The reviewing
31 scientists and other professionals with expertise shall be from
32 organizations including but not limited to academic institutions;
33 federal, state, local, and tribal governments; and the private sector.
34 The results of this technical review must be summarized in writing and
35 made available on the department's web site;

36 (ii) Following completion of the technical review process in (c)(i)
37 of this subsection, notice of the proposed management recommendations
38 must be published in the state register, and the department must

1 maintain the full text of the proposed management recommendations on
2 its web site and accept public comment for a minimum of sixty days from
3 the date of publication. Comments received during this public review
4 period must be made available on the department's web site, and will be
5 considered by the department, in collaboration with other state
6 agencies with jurisdiction and expertise. Summaries may be provided in
7 lieu of voluminous or repetitive comments;

8 (iii) At the close of the technical review process and the public
9 review period, the department may adopt the management recommendations
10 by causing a notice of proposed management recommendations for
11 protecting the functions and values of critical areas to be published
12 in the state register and on the department's web site. Notice shall
13 also be provided to persons submitting comments on the proposed
14 management recommendations during the public review period; and

15 (iv) At the end of sixty days from the date the notice of proposed
16 management recommendations for protecting the functions and values of
17 critical areas is published in the state register, if no petition for
18 review of the management recommendation has been filed under RCW
19 36.70A.290, the department shall cause a notice of adoption of final
20 management recommendations for protecting the functions and values of
21 critical areas to be published in the state register and on the
22 department's web site. If a petition for review is filed within sixty
23 days, the publication of a notice of final management recommendations
24 for protecting the functions and values of critical areas shall be
25 delayed until the petition is finally resolved and the management
26 recommendations are found to comply with this chapter. The filing of
27 a petition for review shall not affect the use of the management
28 recommendations for purposes other than under this subsection.

29 (d) At least once every five years, the department, in
30 collaboration with other state agencies with jurisdiction and
31 expertise, shall review and, if necessary to incorporate best available
32 science that has become available or otherwise to comply with this
33 chapter, update the management recommendations adopted under this
34 subsection. The department shall cause a notice of proposed update of
35 management recommendations for protecting the functions and values of
36 critical areas or a notice of a decision not to update management
37 recommendations for protecting the functions and values of critical

1 areas to be published in the state register and on the department's web
2 site.

3 (i) Following publication of a notice of proposed update of
4 management recommendations, amendments to the management
5 recommendations shall be adopted through the process set forth in (c)
6 of this subsection and shall be appealable in the same manner and to
7 the same extent as the initial management recommendations.

8 (ii) Following publication of a notice of a decision not to update
9 management recommendations, any interested person may file a petition
10 for review of the department's decision within the time provided in RCW
11 36.70A.290(3). The sole issue before the growth management hearings
12 board shall be whether the department's decision not to update
13 management recommendations under (d) of this subsection was clearly
14 erroneous.

15 (e) Where a county or city states specifically that it has chosen
16 to develop and adopt all or a portion of its critical areas policies
17 and regulations through application of final management recommendations
18 adopted under this subsection, the growth management hearings board or
19 a reviewing court shall review the county or city policies and
20 regulations only for consistency with those portions of the final
21 management recommendations specified by the county or city. The board
22 or court shall review all other portions of critical areas policies and
23 regulations for compliance with subsections (1) and (3) of this
24 section.

25 (f) Where a county or city chooses not to apply final management
26 recommendations adopted under this section when developing its critical
27 areas policies and regulations, the growth management hearings board or
28 a reviewing court shall review the policies and regulations for
29 compliance with subsections (1) and (3) of this section.

30 (g) A growth management hearings board or a reviewing court shall
31 not consider final management recommendations adopted under this
32 subsection to be the only means of complying with this chapter's
33 critical areas protection requirements and best available science
34 requirements, nor shall a board or court consider final management
35 recommendations to establish a minimum standard for identifying the
36 best available science or protecting the functions and values of
37 critical areas.

1 (h) This subsection does not alter the requirements in RCW
2 36.70A.106.

3 **Sec. 2.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read
4 as follows:

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

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

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

16 (c) That the department was clearly erroneous in adopting
17 management recommendations under RCW 36.70A.172(4) that do not comply
18 with the requirements of RCW 36.70A.172(4), or that the department's
19 decision not to update management recommendations under RCW
20 36.70A.172(4)(d) is clearly erroneous. Any appeal under this
21 subsection (1)(c) must be heard by a panel comprised of at least two
22 members from each of the three growth management hearings boards.

23 (2) Except for petitions filed under subsection (1)(c) of this
24 section, a petition may be filed only by: (a) The state, or a county
25 or city that plans under this chapter; (b) a person who has
26 participated orally or in writing before the county or city regarding
27 the matter on which a review is being requested; (c) a person who is
28 certified by the governor within sixty days of filing the request with
29 the board; or (d) a person qualified pursuant to RCW 34.05.530. A
30 petition may be filed under subsection (1)(c) of this section only by
31 a person who has submitted comments during the public review period
32 specified in RCW 36.70A.172(4)(c)(ii).

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

1 (4) To establish participation standing under subsection (2)(b) of
2 this section, a person must show that his or her participation before
3 the county or city was reasonably related to the person's issue as
4 presented to the board.

5 (5) When considering a possible adjustment to a growth management
6 planning population projection prepared by the office of financial
7 management, a board shall consider the implications of any such
8 adjustment to the population forecast for the entire state.

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

12 If adjusted by a board, a county growth management planning
13 population projection shall only be used for the planning purposes set
14 forth in this chapter and shall be known as a "board adjusted
15 population projection". None of these changes shall affect the
16 official state and county population forecasts prepared by the office
17 of financial management, which shall continue to be used for state
18 budget and planning purposes.

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

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

28 (2) All petitions relating to whether or not an adopted
29 comprehensive plan, development regulation, or permanent amendment
30 thereto, is in compliance with the goals and requirements of this
31 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
32 after publication by the legislative bodies of the county or city.

33 (a) Except as provided in (c) of this subsection, the date of
34 publication for a city shall be the date the city publishes the
35 ordinance, or summary of the ordinance, adopting the comprehensive plan
36 or development regulations, or amendment thereto, as is required to be
37 published.

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

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

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

18 (3) All petitions relating to whether management recommendations
19 adopted by the department under RCW 36.70A.172(4) comply with the
20 requirements of RCW 36.70A.172(4) must be filed within sixty days after
21 the notice of proposed management recommendations for protecting the
22 functions and values of critical areas is published in the state
23 register pursuant to RCW 36.70A.172(4)(c)(iii).

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

29 ((+4)) (5) The board shall base its decision on the record
30 developed by the city, county, or the state and supplemented with
31 additional evidence if the board determines that such additional
32 evidence would be necessary or of substantial assistance to the board
33 in reaching its decision.

34 ((+5)) (6) The board, shall consolidate, when appropriate, all
35 petitions involving the review of the same comprehensive plan or the
36 same development regulation or regulations.

1 **Sec. 4.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to
2 read as follows:

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

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

15 (b) The board may extend the period of time for issuing a decision
16 to enable the parties to settle the dispute if additional time is
17 necessary to achieve a settlement, and (i) an extension is requested by
18 all parties, or (ii) an extension is requested by the petitioner and
19 respondent and the board determines that a negotiated settlement
20 between the remaining parties could resolve significant issues in
21 dispute. The request must be filed with the board not later than seven
22 days before the date scheduled for the hearing on the merits of the
23 petition. The board may authorize one or more extensions for up to
24 ninety days each, subject to the requirements of this section.

25 (c) In a review under RCW 36.70A.280(1)(c), the board shall issue
26 a final order within two hundred seventy days of receipt of the
27 petition for review, or, if multiple petitions are filed, within one
28 hundred eighty days of receipt of the last petition that is
29 consolidated. The board may extend this deadline as provided in (b) of
30 this subsection.

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

32 (a) Find that the state agency, county, or city is in compliance
33 with the requirements of this chapter, chapter 90.58 RCW as it relates
34 to the adoption or amendment of shoreline master programs, or chapter
35 43.21C RCW as it relates to adoption of plans, development regulations,
36 and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

37 (b) Find that the state agency, county, or city is not in
38 compliance with the requirements of this chapter, chapter 90.58 RCW as

1 it relates to the adoption or amendment of shoreline master programs,
2 or chapter 43.21C RCW as it relates to adoption of plans, development
3 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
4 90.58 RCW, in which case the board shall remand the matter to the
5 affected state agency, county, or city. The board shall specify a
6 reasonable time not in excess of one hundred eighty days, or such
7 longer period as determined by the board in cases of unusual scope or
8 complexity, within which the state agency, county, or city shall comply
9 with the requirements of this chapter. The board may require periodic
10 reports to the board on the progress the jurisdiction is making towards
11 compliance.

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

16 (5) Any party aggrieved by a final decision of the hearings board
17 may appeal the decision to superior court as provided in RCW 34.05.514
18 or 36.01.050 within thirty days of the final order of the board.

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