

HB 1653 - H AMD TO H AMD (1653 AMH SIMP MOET 438) **1170**

By Representative Taylor

NOT ADOPTED 2/15/2010

1 On page 11, after line 31 of the amendment, insert the following:

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3 "Sec. 4. RCW 90.58.190 and 2003 c 321 s 4 are each amended to
4 read as follows:

5 (1) The appeal of the department's decision to adopt a master
6 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(5) is
7 governed by RCW 34.05.510 through 34.05.598.

8 (2)(a) The department's decision to approve, reject, or modify a
9 proposed master program or amendment adopted by a local government
10 planning under RCW 36.70A.040 shall be appealed to the growth
11 management hearings board with jurisdiction over the local government.
12 The appeal shall be initiated by filing a petition as provided in RCW
13 36.70A.250 through 36.70A.320.

14 (b) If the appeal to the growth management hearings board concerns
15 shorelines, the growth management hearings board shall review the
16 proposed master program or amendment solely for compliance with the
17 requirements of this chapter(~~(7)~~) and the policy of RCW 90.58.020
18 (~~(and the applicable guidelines, the internal consistency provisions~~
19 ~~of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and~~
20 ~~chapter 43.21C RCW as it relates to the adoption of master programs~~
21 ~~and amendments under chapter 90.58 RCW)).~~

22 (c) If the appeal to the growth management hearings board concerns
23 a shoreline of statewide significance, the board shall uphold the
24 decision by the department unless the board, by clear and convincing
25 evidence, determines that the decision of the department is
26 inconsistent with the policy of RCW 90.58.020 (~~(and the applicable~~
27 ~~guidelines)).~~

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

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

6 (3)(a) The department's decision to approve, reject, or modify a
7 proposed master program or master program amendment by a local
8 government not planning under RCW 36.70A.040 shall be appealed to the
9 shorelines hearings board by filing a petition within thirty days of
10 the date of the department's written notice to the local government of
11 the department's decision to approve, reject, or modify a proposed
12 master program or master program amendment as provided in RCW
13 90.58.090(2).

14 (b) In an appeal relating to shorelines, the shorelines hearings
15 board shall review the proposed master program or master program
16 amendment and, after full consideration of the presentations of the
17 local government and the department, shall determine the validity of
18 the local government's master program or amendment in light of the
19 policy of RCW 90.58.020 (~~and the applicable guidelines~~)).

20 (c) In an appeal relating to shorelines of statewide significance,
21 the shorelines hearings board shall uphold the decision by the
22 department unless the board determines, by clear and convincing
23 evidence that the decision of the department is inconsistent with the
24 policy of RCW 90.58.020 (~~and the applicable guidelines~~)).

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

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

1 (4) A master program amendment shall become effective after the
2 approval of the department or after the decision of the shorelines
3 hearings board to uphold the master program or master program
4 amendment, provided that the board may remand the master program or
5 master program adjustment to the local government or the department
6 for modification prior to the final adoption of the master program or
7 master program amendment."

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9 Renumber the remaining sections consecutively and correct any
10 internal references accordingly.

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EFFECT: (1) Modifies provisions governing appeals of decisions by the Department of Ecology to approve, reject, or modify proposed shoreline master programs or amendments by, in part, prohibiting the Growth Management Hearings Board and the Shorelines Hearings Board from finding that a program or amendment is inconsistent with shoreline guidelines of the DOE. (2) Deletes a provision specifying that the aggrieved local government has the burden of proof in reviews by the Shorelines Hearings Board.

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