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HOUSE BILL 2459

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Taylor, Griffey, McCaslin, Shea, Haler, and  
Condotta

Read first time 01/13/16. Referred to Committee on Local Government.

1 AN ACT Relating to review by the growth management hearings board  
2 and superior courts of cases involving city or county comprehensive  
3 plans or development regulations arising from the economic  
4 development element of the growth management act in counties and  
5 cities experiencing economic deterioration; amending RCW 36.70A.030,  
6 36.70A.280, 36.70A.280, and 36.70A.295; providing an effective date;  
7 and providing an expiration date.

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

9 **Sec. 1.** RCW 36.70A.030 and 2012 c 21 s 1 are each amended to  
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Adopt a comprehensive land use plan" means to enact a new  
14 comprehensive land use plan or to update an existing comprehensive  
15 land use plan.

16 (2) "Agricultural land" means land primarily devoted to the  
17 commercial production of horticultural, viticultural, floricultural,  
18 dairy, apiary, vegetable, or animal products or of berries, grain,  
19 hay, straw, turf, seed, Christmas trees not subject to the excise tax  
20 imposed by RCW 84.33.100 through 84.33.140, finfish in upland

1 hatcheries, or livestock, and that has long-term commercial  
2 significance for agricultural production.

3 (3) "City" means any city or town, including a code city.

4 (4) "Comprehensive land use plan," "comprehensive plan," or  
5 "plan" means a generalized coordinated land use policy statement of  
6 the governing body of a county or city that is adopted pursuant to  
7 this chapter.

8 (5) "Critical areas" include the following areas and ecosystems:

9 (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
10 used for potable water; (c) fish and wildlife habitat conservation  
11 areas; (d) frequently flooded areas; and (e) geologically hazardous  
12 areas. "Fish and wildlife habitat conservation areas" does not  
13 include such artificial features or constructs as irrigation delivery  
14 systems, irrigation infrastructure, irrigation canals, or drainage  
15 ditches that lie within the boundaries of and are maintained by a  
16 port district or an irrigation district or company.

17 (6) "Department" means the department of commerce.

18 (7) "Development regulations" or "regulation" means the controls  
19 placed on development or land use activities by a county or city,  
20 including, but not limited to, zoning ordinances, critical areas  
21 ordinances, shoreline master programs, official controls, planned  
22 unit development ordinances, subdivision ordinances, and binding site  
23 plan ordinances together with any amendments thereto. A development  
24 regulation does not include a decision to approve a project permit  
25 application, as defined in RCW 36.70B.020, even though the decision  
26 may be expressed in a resolution or ordinance of the legislative body  
27 of the county or city.

28 (8) "Economic deterioration" means the worsening of the resources  
29 of a community, city, or county with a view to its productivity.  
30 Economic deterioration is exemplified by, but is not limited to, any  
31 combination of the following performance outcomes: (a) Median  
32 household incomes that are at least ten thousand dollars less than  
33 the statewide median household income for the same year as  
34 established by the office of financial management; (b) a decrease in  
35 the county's household median income during any year within the prior  
36 eight years; (c) inability of the jurisdiction to add new full-time  
37 jobs in sufficient quantities to provide for population increases;  
38 (d) decreases or stagnation in the number of economic start-ups  
39 during multiple years within the prior eight years; (e) unemployment  
40 rates that are higher than the national and statewide averages over

1 multiple years within the prior eight years; (f) decreases or  
2 stagnation in issuance of commercial building permits during multiple  
3 years within the prior eight years; and (g) increases in dropout  
4 rates of high school-aged students.

5 (9) "Forest land" means land primarily devoted to growing trees  
6 for long-term commercial timber production on land that can be  
7 economically and practically managed for such production, including  
8 Christmas trees subject to the excise tax imposed under RCW 84.33.100  
9 through 84.33.140, and that has long-term commercial significance. In  
10 determining whether forest land is primarily devoted to growing trees  
11 for long-term commercial timber production on land that can be  
12 economically and practically managed for such production, the  
13 following factors shall be considered: (a) The proximity of the land  
14 to urban, suburban, and rural settlements; (b) surrounding parcel  
15 size and the compatibility and intensity of adjacent and nearby land  
16 uses; (c) long-term local economic conditions that affect the ability  
17 to manage for timber production; and (d) the availability of public  
18 facilities and services conducive to conversion of forest land to  
19 other uses.

20 ~~((9))~~ (10) "Geologically hazardous areas" means areas that  
21 because of their susceptibility to erosion, sliding, earthquake, or  
22 other geological events, are not suited to the siting of commercial,  
23 residential, or industrial development consistent with public health  
24 or safety concerns.

25 ~~((10))~~ (11) "Long-term commercial significance" includes the  
26 growing capacity, productivity, and soil composition of the land for  
27 long-term commercial production, in consideration with the land's  
28 proximity to population areas, and the possibility of more intense  
29 uses of the land.

30 ~~((11))~~ (12) "Minerals" include gravel, sand, and valuable  
31 metallic substances.

32 ~~((12))~~ (13) "Public facilities" include streets, roads,  
33 highways, sidewalks, street and road lighting systems, traffic  
34 signals, domestic water systems, storm and sanitary sewer systems,  
35 parks and recreational facilities, and schools.

36 ~~((13))~~ (14) "Public services" include fire protection and  
37 suppression, law enforcement, public health, education, recreation,  
38 environmental protection, and other governmental services.

39 ~~((14))~~ (15) "Recreational land" means land so designated under  
40 RCW 36.70A.1701 and that, immediately prior to this designation, was

1 designated as agricultural land of long-term commercial significance  
2 under RCW 36.70A.170. Recreational land must have playing fields and  
3 supporting facilities existing before July 1, 2004, for sports played  
4 on grass playing fields.

5 ~~((15))~~ (16) "Rural character" refers to the patterns of land  
6 use and development established by a county in the rural element of  
7 its comprehensive plan:

8 (a) In which open space, the natural landscape, and vegetation  
9 predominate over the built environment;

10 (b) That foster traditional rural lifestyles, rural-based  
11 economies, and opportunities to both live and work in rural areas;

12 (c) That provide visual landscapes that are traditionally found  
13 in rural areas and communities;

14 (d) That are compatible with the use of the land by wildlife and  
15 for fish and wildlife habitat;

16 (e) That reduce the inappropriate conversion of undeveloped land  
17 into sprawling, low-density development;

18 (f) That generally do not require the extension of urban  
19 governmental services; and

20 (g) That are consistent with the protection of natural surface  
21 water flows and groundwater and surface water recharge and discharge  
22 areas.

23 ~~((16))~~ (17) "Rural development" refers to development outside  
24 the urban growth area and outside agricultural, forest, and mineral  
25 resource lands designated pursuant to RCW 36.70A.170. Rural  
26 development can consist of a variety of uses and residential  
27 densities, including clustered residential development, at levels  
28 that are consistent with the preservation of rural character and the  
29 requirements of the rural element. Rural development does not refer  
30 to agriculture or forestry activities that may be conducted in rural  
31 areas.

32 ~~((17))~~ (18) "Rural governmental services" or "rural services"  
33 include those public services and public facilities historically and  
34 typically delivered at an intensity usually found in rural areas, and  
35 may include domestic water systems, fire and police protection  
36 services, transportation and public transit services, and other  
37 public utilities associated with rural development and normally not  
38 associated with urban areas. Rural services do not include storm or  
39 sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

1       (~~(18)~~) (19) "Urban governmental services" or "urban services"  
2 include those public services and public facilities at an intensity  
3 historically and typically provided in cities, specifically including  
4 storm and sanitary sewer systems, domestic water systems, street  
5 cleaning services, fire and police protection services, public  
6 transit services, and other public utilities associated with urban  
7 areas and normally not associated with rural areas.

8       (~~(19)~~) (20) "Urban growth" refers to growth that makes  
9 intensive use of land for the location of buildings, structures, and  
10 impermeable surfaces to such a degree as to be incompatible with the  
11 primary use of land for the production of food, other agricultural  
12 products, or fiber, or the extraction of mineral resources, rural  
13 uses, rural development, and natural resource lands designated  
14 pursuant to RCW 36.70A.170. A pattern of more intensive rural  
15 development, as provided in RCW 36.70A.070(5)(d), is not urban  
16 growth. When allowed to spread over wide areas, urban growth  
17 typically requires urban governmental services. "Characterized by  
18 urban growth" refers to land having urban growth located on it, or to  
19 land located in relationship to an area with urban growth on it as to  
20 be appropriate for urban growth.

21       (~~(20)~~) (21) "Urban growth areas" means those areas designated  
22 by a county pursuant to RCW 36.70A.110.

23       (~~(21)~~) (22) "Wetland" or "wetlands" means areas that are  
24 inundated or saturated by surface water or groundwater at a frequency  
25 and duration sufficient to support, and that under normal  
26 circumstances do support, a prevalence of vegetation typically  
27 adapted for life in saturated soil conditions. Wetlands generally  
28 include swamps, marshes, bogs, and similar areas. Wetlands do not  
29 include those artificial wetlands intentionally created from  
30 nonwetland sites, including, but not limited to, irrigation and  
31 drainage ditches, grass-lined swales, canals, detention facilities,  
32 wastewater treatment facilities, farm ponds, and landscape amenities,  
33 or those wetlands created after July 1, 1990, that were  
34 unintentionally created as a result of the construction of a road,  
35 street, or highway. Wetlands may include those artificial wetlands  
36 intentionally created from nonwetland areas created to mitigate  
37 conversion of wetlands.

38       **Sec. 2.** RCW 36.70A.280 and 2014 c 147 s 3 are each amended to  
39 read as follows:

1 (1) The growth management hearings board shall hear and determine  
2 only those petitions alleging either:

3 (a) That, except as provided otherwise by this subsection, a  
4 state agency, county, or city planning under this chapter is not in  
5 compliance with the requirements of this chapter, chapter 90.58 RCW  
6 as it relates to the adoption of shoreline master programs or  
7 amendments thereto, or chapter 43.21C RCW as it relates to plans,  
8 development regulations, or amendments, adopted under RCW 36.70A.040  
9 or chapter 90.58 RCW. Nothing in this subsection authorizes the board  
10 to hear petitions alleging noncompliance (~~(with RCW 36.70A.5801)~~) of  
11 comprehensive plans and development regulations that emanate from or  
12 implement RCW 36.70A.020(5) and 36.70A.070(7) in jurisdictions where  
13 findings of economic deterioration were made by the jurisdiction as  
14 part of adoption and implementation of the comprehensive plan and  
15 development regulations;

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

19 (c) That the approval of a work plan adopted under RCW  
20 36.70A.735(1)(a) is not in compliance with the requirements of the  
21 program established under RCW 36.70A.710;

22 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not  
23 regionally applicable and cannot be adopted, wholly or partially, by  
24 another jurisdiction;

25 (e) That a department certification under RCW 36.70A.735(1)(c) is  
26 erroneous; or

27 (f) That a department determination under RCW 36.70A.060(1)(d) is  
28 erroneous.

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

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

39 (4) To establish participation standing under subsection (2)(b)  
40 of this section, a person must show that his or her participation

1 before the county or city was reasonably related to the person's  
2 issue as presented to the board.

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

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

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

17 **Sec. 3.** RCW 36.70A.280 and 2011 c 360 s 17 are each amended to  
18 read as follows:

19 (1) The growth management hearings board shall hear and determine  
20 only those petitions alleging either:

21 (a) That, except as provided otherwise by this subsection, a  
22 state agency, county, or city planning under this chapter is not in  
23 compliance with the requirements of this chapter, chapter 90.58 RCW  
24 as it relates to the adoption of shoreline master programs or  
25 amendments thereto, or chapter 43.21C RCW as it relates to plans,  
26 development regulations, or amendments, adopted under RCW 36.70A.040  
27 or chapter 90.58 RCW. Nothing in this subsection authorizes the board  
28 to hear petitions alleging noncompliance (~~(with RCW 36.70A.5801)~~) of  
29 comprehensive plans and development regulations that emanate from or  
30 implement RCW 36.70A.020(5) and 36.70A.070(7) in jurisdictions where  
31 findings of economic deterioration were made by the jurisdiction as  
32 part of adoption and implementation of the comprehensive plan and  
33 development regulations;

34 (b) That the twenty-year growth management planning population  
35 projections adopted by the office of financial management pursuant to  
36 RCW 43.62.035 should be adjusted;

37 (c) That the approval of a work plan adopted under RCW  
38 36.70A.735(1)(a) is not in compliance with the requirements of the  
39 program established under RCW 36.70A.710;

1 (d) That regulations adopted under RCW 36.70A.735(1)(b) are not  
2 regionally applicable and cannot be adopted, wholly or partially, by  
3 another jurisdiction; or

4 (e) That a department certification under RCW 36.70A.735(1)(c) is  
5 erroneous.

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

12 (3) For purposes of this section "person" means any individual,  
13 partnership, corporation, association, state agency, governmental  
14 subdivision or unit thereof, or public or private organization or  
15 entity of any character.

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

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

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

27 If adjusted by the board, a county growth management planning  
28 population projection shall only be used for the planning purposes  
29 set forth in this chapter and shall be known as the "board adjusted  
30 population projection." None of these changes shall affect the  
31 official state and county population forecasts prepared by the office  
32 of financial management, which shall continue to be used for state  
33 budget and planning purposes.

34 **Sec. 4.** RCW 36.70A.295 and 2010 c 211 s 9 are each amended to  
35 read as follows:

36 (1)(a) The superior court may directly review a petition for  
37 review filed under RCW 36.70A.290 if all parties to the proceeding  
38 before the board have agreed to direct review in the superior court.  
39 The agreement of the parties shall be in writing and signed by all of



1 the parties to the proceeding or their designated representatives.  
2 The agreement shall include the parties' agreement to proper venue as  
3 provided in RCW 36.70A.300(5). The parties shall file their agreement  
4 with the board within ten days after the date the petition is filed,  
5 or if multiple petitions have been filed and the board has  
6 consolidated the petitions pursuant to RCW 36.70A.300, within ten  
7 days after the board serves its order of consolidation.

8 (b) The superior court is authorized to directly review a  
9 petition for review filed under this chapter relating to  
10 comprehensive plans or development regulations involving claims that  
11 emanate from or implement RCW 36.70A.020(5) and 36.70A.070(7) in  
12 jurisdictions where findings of economic deterioration were made by  
13 the jurisdiction as part of adoption and implementation of the  
14 comprehensive plan and development regulations. These petitions may  
15 involve other claims under this chapter that have not been reviewed  
16 by the growth management hearings board.

17 (2) Within ten days of receiving the timely and complete  
18 agreement of the parties, the board shall file a certificate of  
19 agreement with the designated superior court and shall serve the  
20 parties with copies of the certificate. The superior court shall  
21 obtain exclusive jurisdiction over a petition when it receives the  
22 certificate of agreement. With the certificate of agreement the board  
23 shall also file the petition for review, any orders entered by the  
24 board, all other documents in the board's files regarding the action,  
25 and the written agreement of the parties.

26 (3) For purposes of a petition that is subject to direct review,  
27 the superior court's subject matter jurisdiction shall be equivalent  
28 to that of the board. Consistent with the requirements of the  
29 superior court civil rules, the superior court may consolidate a  
30 petition subject to direct review under this section with a separate  
31 action filed in the superior court.

32 (4)(a) Except as otherwise provided in (b) and (c) of this  
33 subsection, the provisions of RCW 36.70A.280 through 36.70A.330,  
34 which specify the nature and extent of board review, shall apply to  
35 the superior court's review.

36 (b) The superior court:

37 (i) Shall not have jurisdiction to directly review or modify an  
38 office of financial management population projection;

1 (ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall  
2 render its decision on the petition within one hundred eighty days of  
3 receiving the certification of agreement; and

4 (iii) Shall give a compliance hearing under RCW 36.70A.330(2) the  
5 highest priority of all civil matters before the court.

6 (c) An aggrieved party may secure appellate review of a final  
7 judgment of the superior court under this section by the supreme  
8 court or the court of appeals. The review shall be secured in the  
9 manner provided by law for review of superior court decisions in  
10 other civil cases.

11 (5) If, following a compliance hearing, the court finds that the  
12 state agency, county, or city is not in compliance with the court's  
13 prior order, the court may use its remedial and contempt powers to  
14 enforce compliance.

15 (6) The superior court shall transmit a copy of its decision and  
16 order on direct review to the board, the department, and the  
17 governor. If the court has determined that a county or city is not in  
18 compliance with the provisions of this chapter, the governor may  
19 impose sanctions against the county or city in the same manner as if  
20 the board had recommended the imposition of sanctions as provided in  
21 RCW 36.70A.330.

22 (7) After the court has assumed jurisdiction over a petition for  
23 review under this section, the superior court civil rules shall  
24 govern a request for intervention and all other procedural matters  
25 not specifically provided for in this section.

26 NEW SECTION. **Sec. 5.** Section 2 of this act expires December 31,  
27 2020.

28 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect  
29 December 31, 2020.

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