
HOUSE BILL 2237

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By Representatives Cairnes, D. Schmidt, Cooke, Clements, Chandler, Hymes, Dellwo, Thompson, Goldsmith, Hargrove and Benton

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1 AN ACT Relating to growth management hearings boards; amending RCW
2 36.70A.270, 36.70A.280, 36.70A.300, 36.70A.320, and 36.70A.340; and
3 repealing RCW 36.70A.330.

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

5 **Sec. 1.** RCW 36.70A.270 and 1994 c 257 s 1 are each amended to read
6 as follows:

7 Each growth ((~~planning~~)) management hearings board shall be
8 governed by the following rules on conduct and procedure:

9 (1) Any board member may be removed for inefficiency, malfeasance,
10 and misfeasance in office, under specific written charges filed by the
11 governor. The governor shall transmit such written charges to the
12 member accused and the chief justice of the supreme court. The chief
13 justice shall thereupon designate a tribunal composed of three judges
14 of the superior court to hear and adjudicate the charges. Removal of
15 any member of a board by the tribunal shall disqualify such member for
16 reappointment.

17 (2) Each board member shall receive reimbursement for travel
18 expenses incurred in the discharge of his or her duties in accordance
19 with RCW 43.03.050 and 43.03.060. If it is determined that the review

1 boards shall operate on a full-time basis, each member shall receive an
2 annual salary to be determined by the governor pursuant to RCW
3 43.03.040. If it is determined that a review board shall operate on a
4 part-time basis, each member shall receive compensation pursuant to RCW
5 43.03.250, provided such amount shall not exceed the amount that would
6 be set if they were a full-time board member. The principal office of
7 each board shall be located by the governor within the jurisdictional
8 boundaries of each board. The boards shall operate on either a part-
9 time or full-time basis, as determined by the governor.

10 (3) Each board member shall not: (a) Be a candidate for or hold
11 any other public office or trust; (b) engage in any occupation or
12 business interfering with or inconsistent with his or her duty as a
13 board member; and (c) for a period of one year after the termination of
14 his or her board membership, act in a representative capacity before
15 the board on any matter.

16 (4) A majority of each board shall constitute a quorum for making
17 orders or decisions, adopting rules necessary for the conduct of its
18 powers and duties, or transacting other official business, and may act
19 even though one position of the board is vacant. One or more members
20 may hold hearings and take testimony to be reported for action by the
21 board when authorized by rule or order of the board. The board shall
22 perform all the powers and duties specified in this chapter or as
23 otherwise provided by law.

24 (5) The board may appoint one or more hearing examiners to assist
25 the board in its hearing function, to make conclusions of law and
26 findings of fact and, if requested by the board, to make
27 recommendations to the board for decisions in cases before the board.
28 Such hearing examiners must have demonstrated knowledge of land use
29 planning and law. The boards shall specify in their joint rules of
30 practice and procedure, as required by subsection (7) of this section,
31 the procedure and criteria to be employed for designating hearing
32 examiners as a presiding officer. Hearing examiners selected by a
33 board shall meet the requirements of subsection (3) of this section.
34 The findings and conclusions of the hearing examiner shall not become
35 final until they have been formally approved by the board. This
36 authorization to use hearing examiners does not waive the requirement
37 of RCW 36.70A.300 that final (~~orders~~) recommendations be issued
38 within one hundred eighty days of board receipt of a petition.

1 (6) Each board shall make findings of fact and prepare a written
2 decision in each case decided by it, and such findings and decision
3 shall be effective upon being signed by two or more members of the
4 board and upon being filed at the board's principal office, and shall
5 be open for public inspection at all reasonable times.

6 (7) All proceedings before the board, any of its members, or a
7 hearing examiner appointed by the board shall be conducted in
8 accordance with such administrative rules of practice and procedure as
9 the boards jointly prescribe. All three boards shall jointly meet to
10 develop and adopt joint rules of practice and procedure, including
11 rules regarding expeditious and summary disposition of appeals. The
12 boards shall publish such rules and arrange for the reasonable
13 distribution of the rules. The administrative procedure act, chapter
14 34.05 RCW, shall govern the administrative rules of practice and
15 procedure adopted by the boards.

16 (8) A board member or hearing examiner is subject to
17 disqualification for bias, prejudice, interest, or any other cause for
18 which a judge is disqualified. The joint rules of practice of the
19 boards shall establish procedures by which a party to a hearing
20 conducted before the board may file with the board a motion to
21 disqualify, with supporting affidavit, against a board member or
22 hearing examiner assigned to preside at the hearing.

23 (9) The members of the boards shall meet jointly on at least an
24 annual basis with the objective of sharing information that promotes
25 the goals and purposes of this chapter.

26 **Sec. 2.** RCW 36.70A.280 and 1995 c 347 s 108 are each amended to
27 read as follows:

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

30 (a) That a state agency, county, or city planning under this
31 chapter is not in compliance with the requirements of this chapter,
32 chapter 90.58 RCW as it relates to the adoption of shoreline master
33 programs or amendments thereto, or chapter 43.21C RCW as it relates to
34 plans, development regulations, or amendments, adopted under RCW
35 36.70A.040 or chapter 90.58 RCW; or

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

1 (2) A petition may be filed only by the state, a county or city
2 that plans under this chapter, a person who has either appeared before
3 the county or city regarding the matter on which a review is being
4 requested or is certified by the governor within sixty days of filing
5 the request with the board, or a person qualified pursuant to RCW
6 34.05.530.

7 (3) For purposes of this section "person" means any individual,
8 partnership, corporation, association, governmental subdivision or unit
9 thereof, or public or private organization or entity of any character.

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

14 The rationale for any adjustment that is ~~((adopted))~~ recommended by
15 a board must be documented and filed with the office of financial
16 management within ten working days after adoption.

17 ~~((If adjusted by a board, a county growth management planning
18 population projection shall only be used for the planning purposes set
19 forth in this chapter and shall be known as a "board adjusted
20 population projection".— None of these changes shall affect the
21 official state and county population forecasts prepared by the office
22 of financial management, which shall continue to be used for state
23 budget and planning purposes.))~~

24 **Sec. 3.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
25 read as follows:

26 (1) The board shall issue a final ~~((order))~~ recommendation within
27 one hundred eighty days of receipt of the petition for review, or, when
28 multiple petitions are filed, within one hundred eighty days of receipt
29 of the last petition that is consolidated. Such a final ~~((order))~~
30 recommendation shall be based exclusively on whether or not a state
31 agency, county, or city is in compliance with the requirements of this
32 chapter, chapter 90.58 RCW as it relates to adoption or amendment of
33 shoreline master programs, or chapter 43.21C RCW as it relates to
34 plans, development regulations, and amendments thereto, adopted under
35 RCW 36.70A.040 or chapter 90.58 RCW. In the final ~~((order))~~
36 recommendation, the board shall either: (a) Find that the state
37 agency, county, or city is in compliance with the requirements of this
38 chapter or chapter 90.58 RCW as it relates to the adoption or amendment

1 of shoreline master programs; or (b) find that the state agency,
2 county, or city is not in compliance with the requirements of this
3 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
4 of shoreline master programs, in which case the board shall remand the
5 matter to the affected state agency, county, or city and specify a
6 reasonable time not in excess of one hundred eighty days within which
7 the state agency, county, or city shall consider whether to comply with
8 the ~~((requirements of this chapter))~~ recommendation of the board.

9 (2) A ~~((finding of noncompliance and an order of remand))~~
10 recommendation shall not affect the validity of comprehensive plans and
11 development regulations ~~((during the period of remand, unless the~~
12 ~~board's final order also:~~

13 (a) ~~Includes a determination, supported by findings of fact and~~
14 ~~conclusions of law, that the continued validity of the plan or~~
15 ~~regulation would substantially interfere with the fulfillment of the~~
16 ~~goals of this chapter; and~~

17 (b) ~~Specifies the particular part or parts of the plan or~~
18 ~~regulation that are determined to be invalid, and the reasons for their~~
19 ~~invalidity.~~

20 (3) A determination of invalidity shall:

21 (a) ~~Be prospective in effect and shall not extinguish rights that~~
22 ~~vested under state or local law before the date of the board's order;~~
23 ~~and~~

24 (b) ~~Subject any development application that would otherwise vest~~
25 ~~after the date of the board's order to the local ordinance or~~
26 ~~resolution that both is enacted in response to the order of remand and~~
27 ~~determined by the board pursuant to RCW 36.70A.330 to comply with the~~
28 ~~requirements of this chapter.~~

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

35 (5) Any party aggrieved by a ~~((final decision))~~ state agency,
36 county, or city response to the recommendation of the hearings board
37 may appeal the decision to superior court ~~((as provided in RCW~~
38 ~~34.05.514 or 36.01.050))~~ within thirty days of the final ~~((order))~~

1 decision of the state agency, county, or city regarding the
2 recommendation of the board.

3 **Sec. 4.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section,
6 comprehensive plans and development regulations, and amendments
7 thereto, adopted under this chapter are presumed valid upon adoption.
8 In any petition under this chapter, the board, after full consideration
9 of the petition, shall determine whether (~~there is compliance with the~~
10 ~~requirements of this chapter~~) to recommend changes to the matters
11 under review. In making its determination, the board shall consider
12 the criteria adopted by the department under RCW 36.70A.190(4). (~~The~~
13 ~~board shall find compliance unless it finds by a preponderance of the~~
14 ~~evidence that the state agency, county, or city erroneously interpreted~~
15 ~~or applied this chapter.~~)

16 (2) The shoreline element of a comprehensive plan and the
17 applicable development regulations adopted by a county or city shall
18 take effect as provided in chapter 90.58 RCW.

19 **Sec. 5.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended
20 to read as follows:

21 (~~Upon receipt from the board of a finding that a state agency,~~
22 ~~county, or city is in noncompliance under RCW 36.70A.330, or~~) As a
23 result of failure to meet the requirements of RCW 36.70A.210, the
24 governor may either:

25 (1) Notify and direct the director of the office of financial
26 management to revise allotments in appropriation levels;

27 (2) Notify and direct the state treasurer to withhold the portion
28 of revenues to which the county or city is entitled under one or more
29 of the following: The motor vehicle fuel tax, as provided in chapter
30 82.36 RCW; the transportation improvement account, as provided in RCW
31 47.26.084; the urban arterial trust account, as provided in RCW
32 47.26.080; the rural arterial trust account, as provided in RCW
33 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the
34 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise
35 tax, as provided in RCW 82.08.170; or

36 (3) File a notice of noncompliance with the secretary of state and
37 the county or city, which shall temporarily rescind the county or

1 city's authority to collect the real estate excise tax under RCW
2 82.46.030 until the governor files a notice rescinding the notice of
3 noncompliance.

4 NEW SECTION. **Sec. 6.** RCW 36.70A.330 and 1995 c 347 s 112 & 1991
5 sp.s. c 32 s 14 are each repealed.

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