
HOUSE BILL 2416

State of Washington

54th Legislature

1996 Regular Session

By Representatives Horn and Boldt

Read first time 01/10/96. Referred to Committee on Government Operations.

1 AN ACT Relating to growth management hearings boards; amending RCW
2 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.300, 36.70A.310, 36.70A.320,
3 36.70A.340, 36.70A.480, and 90.58.190; recodifying RCW 36.70A.340; and
4 repealing RCW 36.70A.330.

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

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

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

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

18 (2) Each board member shall receive reimbursement for travel
19 expenses incurred in the discharge of his or her duties in accordance

1 with RCW 43.03.050 and 43.03.060. If it is determined that the review
2 boards shall operate on a full-time basis, each member shall receive an
3 annual salary to be determined by the governor pursuant to RCW
4 43.03.040. If it is determined that a review board shall operate on a
5 part-time basis, each member shall receive compensation pursuant to RCW
6 43.03.250, provided such amount shall not exceed the amount that would
7 be set if they were a full-time board member. The principal office of
8 each board shall be located by the governor within the jurisdictional
9 boundaries of each board. The boards shall operate on either a part-
10 time or full-time basis, as determined by the governor.

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

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

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

1 board may mediate disputes between counties or cities, over whether
2 their comprehensive plans are coordinated or consistent, by using one
3 or more of its own members, hiring staff to provide mediation, or
4 contracting for the provision of mediation.

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

10 (7) All proceedings before the board, any of its members, or a
11 hearing examiner appointed by the board shall be conducted in
12 accordance with such administrative rules of practice and procedure as
13 the boards jointly prescribe. All three boards shall jointly meet to
14 develop and adopt joint rules of practice and procedure, including
15 rules regarding expeditious and summary disposition of appeals. The
16 boards shall publish such rules and arrange for the reasonable
17 distribution of the rules. The administrative procedure act, chapter
18 34.05 RCW, shall govern the administrative rules of practice and
19 procedure adopted by the boards.

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

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

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

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

34 (a) That a (~~state agency,~~) county(~~(,)~~) or city planning under
35 this chapter (~~is not in compliance with the requirements of this~~
36 ~~chapter, chapter 90.58 RCW as it relates to the adoption of shoreline~~
37 ~~master programs or amendments thereto, or chapter 43.21C RCW as it~~
38 ~~relates to plans, development regulations, or amendments, adopted under~~

1 ~~RCW 36.70A.040 or chapter 90.58 RCW~~) has not taken an action required
2 under this chapter by the time the action is required to have been
3 taken; or

4 (b) That ~~((the twenty-year growth management planning population~~
5 ~~projections adopted by the office of financial management pursuant to~~
6 ~~RCW 43.62.035 should be adjusted))~~ a county or city has not addressed
7 relevant issues associated with an action required to be taken under
8 this chapter; or

9 (c) That the comprehensive plan of a county or city adopted under
10 this chapter is not coordinated with, or consistent with, the
11 comprehensive plan of another county or city, as required under RCW
12 36.70A.100.

13 (2) A petition alleging that a county or city has not addressed
14 issues associated with an action required under this chapter, or that
15 the comprehensive plan of a county or city is not coordinated with or
16 consistent with another comprehensive plan as required under RCW
17 36.70A.100, may be filed only by the state, a county or city that plans
18 under this chapter, a person who has either appeared before the county
19 or city regarding the matter on which a review is being requested or is
20 certified by the governor within sixty days of filing the request with
21 the board, or a person qualified pursuant to RCW 34.05.530. A petition
22 alleging that a county or city has not taken an action required under
23 this chapter, by the time such action is required to have been taken,
24 may be filed by any person.

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

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

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

35 If adjusted by a board, a county growth management planning
36 population projection shall only be used for the planning purposes set
37 forth in this chapter and shall be known as a "board adjusted
38 population projection".— None of these changes shall affect the
39 official state and county population forecasts prepared by the office

1 of financial management, which shall continue to be used for state
2 budget and planning purposes.))

3 **Sec. 3.** RCW 36.70A.290 and 1995 c 347 s 109 are each amended to
4 read as follows:

5 (1) All requests for review to a growth management hearings board
6 shall be initiated by filing a petition that includes a detailed
7 statement of issues presented for resolution by the board.

8 (2) All petitions relating to whether or not ~~((an adopted
9 comprehensive plan, development regulation, or permanent amendment
10 thereto, is in compliance with the goals and requirements of this
11 chapter or chapter 90.58 or 43.21C RCW))~~ a county or city has addressed
12 relevant issues associated with an action required under this chapter
13 must be filed within sixty days after publication by the legislative
14 ((bodies)) authority of the county or city. All petitions relating to
15 whether or not comprehensive plans are coordinated or consistent, as
16 required under RCW 36.70A.100, must be filed within sixty days after
17 publication by the legislative authority of the county or city adopting
18 or amending its comprehensive plan that is alleged not to be
19 coordinated or consistent with another comprehensive plan. Petitions
20 relating to whether a county or city has not taken an action required
21 under this chapter by the time such action is required to have been
22 taken may be filed at any time.

23 ~~((a) Except as provided in (c) of this subsection,))~~ The date of
24 publication for a city shall be the date the city publishes the
25 ordinance, or summary of the ordinance, adopting the comprehensive plan
26 or development regulations, or amendment thereto, as is required to be
27 published.

28 ~~((b))~~ Promptly after adoption, a county shall publish a notice
29 that it has adopted the comprehensive plan or development regulations,
30 or amendment thereto. ~~((Except as provided in (c) of this subsection,
31 for purposes of this section))~~ The date of publication for a county
32 shall be the date the county publishes the notice that it has adopted
33 the comprehensive plan or development regulations, or amendment
34 thereto.

35 ~~((c) For local governments planning under RCW 36.70A.040, promptly
36 after approval or disapproval of a local government s shoreline master
37 program or amendment thereto by the department of ecology as provided
38 in RCW 90.58.090, the local government shall publish a notice that the~~

1 shoreline master program or amendment thereto has been approved or
2 disapproved by the department of ecology. For purposes of this
3 section, the date of publication for the adoption or amendment of a
4 shoreline master program is the date the local government publishes
5 notice that the shoreline master program or amendment thereto has been
6 approved or disapproved by the department of ecology.))

7 (3) Unless the board dismisses the petition as frivolous or finds
8 that the person filing the petition lacks standing, the board shall,
9 within ten days of receipt of the petition, set a time for hearing the
10 matter.

11 (4) The board shall base its decision on the record developed by
12 the city((~~7~~)) or county((~~7~~, or the state)) and supplemented with
13 additional evidence if the board determines that such additional
14 evidence would be necessary or of substantial assistance to the board
15 in reaching its decision.

16 (5) The board, shall consolidate, when appropriate, all petitions
17 involving the review of the same comprehensive plan or the same
18 development regulation or regulations.

19 **Sec. 4.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
20 read as follows:

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

32 (a) Find that the ((~~state agency,~~)) county((~~7~~)) or city ((~~is in~~
33 ~~compliance with the requirements of this chapter or chapter 90.58 RCW~~
34 ~~as it relates to the adoption or amendment of shoreline master~~
35 ~~programs)) either has, or has not, taken the action by the time such
36 action is required to have been taken; or~~

37 (b) Find that the ((~~state agency,~~)) county((~~7~~)) or city ((~~is not in~~
38 compliance with the requirements of this chapter or chapter 90.58 RCW

1 ~~as it relates to the adoption or amendment of shoreline master~~
2 ~~programs, in which case)) either has, or has not, addressed relevant~~
3 ~~issues associated with an action required under this chapter, but may~~
4 ~~not consider the adequacy of the actions taken by the county or city.~~
5 ~~If the board finds that the county or city has not addressed the~~
6 ~~relevant issues, the board shall ((remand the matter to the affected~~
7 ~~state agency, county, or city and)) specify a reasonable time not in~~
8 ~~excess of one hundred eighty days within which the ((state agency,))~~
9 ~~county((,)) or city and the person or persons appealing the action~~
10 ~~shall ((comply with the requirements of this chapter.~~

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

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

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

21 (3) ~~A determination of invalidity shall:~~

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

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

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

36 (5) ~~Any party aggrieved by a final decision of the hearings board~~
37 ~~may appeal the decision to superior court as provided in RCW 34.05.514~~
38 ~~or 36.01.050 within thirty days of the final order of the board))~~
39 ~~attempt to resolve the dispute; or~~

1 (c) Find that the comprehensive plans either are, or are not,
2 coordinated or consistent, as required under RCW 36.70A.100. If the
3 board finds that the comprehensive plans are not coordinated or
4 consistent, the board shall mediate between the affected counties or
5 cities to resolve the lack of coordination or lack of consistency.

6 (2) Nothing in RCW 36.70A.250 through 36.70A.345 precludes an
7 aggrieved party from filing a law suit seeking equitable relief against
8 a county or city for failing to comply with the requirements of this
9 chapter or seeking other remedies that may exist challenging the
10 actions of a county or city taken under this chapter.

11 **Sec. 5.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
12 read as follows:

13 A request for review by the state to a growth management hearings
14 board under RCW 36.70A.280(1) may be made only by the governor, or with
15 the governor's consent the head of an agency, or by the commissioner of
16 public lands as relating to state trust lands~~((, for the review of~~
17 ~~whether: (1) A county or city that is required or chooses to plan~~
18 ~~under RCW 36.70A.040 has failed to adopt a comprehensive plan or~~
19 ~~development regulations, or county wide planning policies within the~~
20 ~~time limits established by this chapter; or (2) a county or city that~~
21 ~~is required or chooses to plan under this chapter has adopted a~~
22 ~~comprehensive plan, development regulations, or county wide planning~~
23 ~~policies, that are not in compliance with the requirements of this~~
24 ~~chapter)).~~

25 **Sec. 6.** RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
26 read as follows:

27 ~~((1) Except as provided in subsection (2) of this section,))~~
28 Comprehensive plans and development regulations, and amendments
29 thereto, adopted under this chapter are presumed valid upon adoption.
30 In any petition under this chapter, the board, after full consideration
31 of the petition, shall ~~((determine whether there is compliance with the~~
32 ~~requirements of this chapter. In making its determination, the board~~
33 ~~shall consider the criteria adopted by the department under RCW~~
34 ~~36.70A.190(4). The board shall find compliance unless it finds by a~~
35 ~~preponderance of the evidence that the state agency, county, or city~~
36 ~~erroneously interpreted or applied this chapter.~~

1 ~~(2) The shoreline element of a comprehensive plan and the~~
2 ~~applicable development regulations adopted by a county or city shall~~
3 ~~take effect as provided in chapter 90.58 RCW)) render its decision.~~

4 **Sec. 7.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended
5 to read as follows:

6 ~~((Upon receipt from the board of a finding that a state agency,~~
7 ~~county, or city is in noncompliance under RCW 36.70A.330, or as a~~
8 ~~result of failure to meet the requirements of)) If sanctions are
9 imposed under RCW 36.70A.210 or 36.70A.345, the governor may either:~~

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

12 (2) Notify and direct the state treasurer to withhold the portion
13 of revenues to which the county or city is entitled under one or more
14 of the following: The motor vehicle fuel tax, as provided in chapter
15 82.36 RCW; the transportation improvement account, as provided in RCW
16 47.26.084; the urban arterial trust account, as provided in RCW
17 47.26.080; the rural arterial trust account, as provided in RCW
18 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the
19 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise
20 tax, as provided in RCW 82.08.170; or

21 (3) File a notice of noncompliance with the secretary of state and
22 the county or city, which shall temporarily rescind the county or
23 city's authority to collect the real estate excise tax under RCW
24 82.46.030 until the governor files a notice rescinding the notice of
25 noncompliance.

26 **Sec. 8.** RCW 36.70A.480 and 1995 c 347 s 104 are each amended to
27 read as follows:

28 (1) For shorelines of the state, the goals and policies of the
29 shoreline management act as set forth in RCW 90.58.020 are added as one
30 of the goals of this chapter as set forth in RCW 36.70A.020. The goals
31 and policies of a shoreline master program for a county or city
32 approved under chapter 90.58 RCW shall be considered an element of the
33 county or city's comprehensive plan. All other portions of the
34 shoreline master program for a county or city adopted under chapter
35 90.58 RCW, including use regulations, shall be considered a part of the
36 county or city's development regulations.

1 (2) The shoreline master program shall be adopted pursuant to the
2 procedures of chapter 90.58 RCW, including appeals to the shorelines
3 hearings board, rather than the procedures set forth in this chapter
4 for the adoption of a comprehensive plan or development regulations and
5 requests for review by a growth management hearings board.

6 **Sec. 9.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to
7 read as follows:

8 (1) The appeal of the department's decision to adopt a master
9 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is
10 governed by RCW 34.05.510 through 34.05.598.

11 ~~(2)(a) ((The department's decision to approve, reject, or modify a~~
12 ~~proposed master program or amendment adopted by a local government~~
13 ~~planning under RCW 36.70A.040 shall be appealed to the growth~~
14 ~~management hearings board with jurisdiction over the local government.~~
15 ~~The appeal shall be initiated by filing a petition as provided in RCW~~
16 ~~36.70A.250 through 36.70A.320.~~

17 ~~(b) If the appeal to the growth management hearings board concerns~~
18 ~~shorelines, the growth management hearings board shall review the~~
19 ~~proposed master program or amendment for compliance with the~~
20 ~~requirements of this chapter and chapter 36.70A RCW, the policy of RCW~~
21 ~~90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it~~
22 ~~relates to the adoption of master programs and amendments under chapter~~
23 ~~90.58 RCW.~~

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

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

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

35 ~~(3)(a))~~ The department's decision to approve, reject, or modify a
36 proposed master program or master program amendment ~~((by a local~~
37 ~~government not planning under RCW 36.70A.040))~~ shall be appealed to the
38 shorelines hearings board by filing a petition within thirty days of

1 the date of the department s written notice to the local government of
2 the department s decision to approve, reject, or modify a proposed
3 master program or master program amendment as provided in RCW
4 90.58.090(2).

5 (b) In an appeal relating to shorelines, the shorelines hearings
6 board shall review the proposed master program or master program
7 amendment and, after full consideration of the presentations of the
8 local government and the department, shall determine the validity of
9 the local government's master program or amendment in light of the
10 policy of RCW 90.58.020 and the applicable guidelines.

11 (c) In an appeal relating to shorelines of state-wide significance,
12 the shorelines hearings board shall uphold the decision by the
13 department unless the board determines, by clear and convincing
14 evidence that the decision of the department is inconsistent with the
15 policy of RCW 90.58.020 and the applicable guidelines.

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

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

26 ~~((4))~~ (3) A master program amendment shall become effective after
27 the approval of the department or after the decision of the shorelines
28 hearings board to uphold the master program or master program
29 amendment, provided that the board may remand the master program or
30 master program adjustment to the local government or the department for
31 modification prior to the final adoption of the master program or
32 master program amendment.

33 NEW SECTION. **Sec. 10.** RCW 36.70A.330 and 1995 c 347 s 112 & 1991
34 sp.s. c 32 s 14 are each repealed.

1 NEW SECTION. **Sec. 11.** The code reviser shall recodify RCW
2 36.70A.340 to appear immediately after RCW 36.70A.345.

--- **END** ---