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HOUSE BILL 2858

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State of Washington

57th Legislature

2002 Regular Session

By Representative Mulliken

Read first time 01/30/2002. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to restricting growth management hearings boards  
2 review authority; amending RCW 36.70A.140, 36.70A.280, 36.70A.290,  
3 36.70A.295, 36.70A.300, 36.70A.320, 36.70A.330, and 36.70A.340;  
4 creating a new section; repealing RCW 36.70A.302, 36.70A.305, and  
5 36.70A.335; and providing an effective date.

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

7 **Sec. 1.** RCW 36.70A.140 and 1995 c 347 s 107 are each amended to  
8 read as follows:

9 Each county and city that is required or chooses to plan under RCW  
10 36.70A.040 shall establish and broadly disseminate to the public a  
11 public participation program identifying procedures providing for early  
12 and continuous public participation in the development and amendment of  
13 comprehensive land use plans and development regulations implementing  
14 such plans. The procedures shall provide for broad dissemination of  
15 proposals and alternatives, opportunity for written comments, public  
16 meetings after effective notice, provision for open discussion,  
17 communication programs, information services, and consideration of and  
18 response to public comments. ~~((In enacting legislation in response to  
19 the board's decision pursuant to RCW 36.70A.300 declaring part or all~~

1 ~~of a comprehensive plan or development regulation invalid, the county~~  
2 ~~or city shall provide for public participation that is appropriate and~~  
3 ~~effective under the circumstances presented by the board's order.))~~  
4 Errors in exact compliance with the established program and procedures  
5 shall not render the comprehensive land use plan or development  
6 regulations invalid if the spirit of the program and procedures is  
7 observed.

8 **Sec. 2.** RCW 36.70A.280 and 1996 c 325 s 2 are each amended to read  
9 as follows:

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

12 (a) That a state agency, county, or city planning under this  
13 chapter is not in procedural compliance with the requirements of this  
14 chapter, chapter 90.58 RCW as it relates to the adoption of shoreline  
15 master programs or amendments thereto, or chapter 43.21C RCW as it  
16 relates to plans, development regulations, or amendments, adopted under  
17 RCW 36.70A.040 or chapter 90.58 RCW; or

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

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

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

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

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

1 If adjusted by a board, a county growth management planning  
2 population projection shall only be used for the planning purposes set  
3 forth in this chapter and shall be known as a "board adjusted  
4 population projection". None of these changes shall affect the  
5 official state and county population forecasts prepared by the office  
6 of financial management, which shall continue to be used for state  
7 budget and planning purposes.

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

10 (1) All requests for review to a growth management hearings board  
11 shall be initiated by filing a petition that includes a detailed  
12 statement of issues presented for resolution by the board. The board  
13 shall render written decisions articulating the basis for its holdings.  
14 The board shall not issue advisory opinions on issues not presented to  
15 the board in the statement of issues, as modified by any prehearing  
16 order.

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

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

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

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

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

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

6 (3) Unless the board dismisses the petition as frivolous or finds  
7 that the person filing the petition lacks standing, or the parties have  
8 filed an agreement to have the case heard in superior court as provided  
9 in RCW 36.70A.295, the board shall, within ten days of receipt of the  
10 petition, set a time for hearing the matter.

11 (4) The board shall base its decision on the record developed by  
12 the city, county, or the state and supplemented with additional  
13 evidence if the board determines that such additional evidence would be  
14 necessary or of substantial assistance to the board in reaching its  
15 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.295 and 1997 c 429 s 13 are each amended to  
20 read as follows:

21 (1) The superior court may directly review a petition for review  
22 filed under RCW 36.70A.290 if all parties to the proceeding before the  
23 board have agreed to direct review in the superior court. The  
24 agreement of the parties shall be in writing and signed by all of the  
25 parties to the proceeding or their designated representatives. The  
26 agreement shall include the parties' agreement to proper venue as  
27 provided in RCW 36.70A.300(5). The parties shall file their agreement  
28 with the board within ten days after the date the petition is filed, or  
29 if multiple petitions have been filed and the board has consolidated  
30 the petitions pursuant to RCW 36.70A.300, within ten days after the  
31 board serves its order of consolidation.

32 (2) Within ten days of receiving the timely and complete agreement  
33 of the parties, the board shall file a certificate of agreement with  
34 the designated superior court and shall serve the parties with copies  
35 of the certificate. The superior court shall obtain exclusive  
36 jurisdiction over a petition when it receives the certificate of  
37 agreement. With the certificate of agreement the board shall also file  
38 the petition for review, any orders entered by the board, all other

1 documents in the board's files regarding the action, and the written  
2 agreement of the parties.

3 (3) For purposes of a petition that is subject to direct review,  
4 the superior court's subject matter jurisdiction shall be equivalent to  
5 that of the board. Consistent with the requirements of the superior  
6 court civil rules, the superior court may consolidate a petition  
7 subject to direct review under this section with a separate action  
8 filed in the superior court.

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

13 (b) The superior court:

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

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

19 (iii) Shall give a procedural compliance hearing under RCW  
20 36.70A.330(2) the highest priority of all civil matters before the  
21 court.

22 (c) An aggrieved party may secure appellate review of a final  
23 judgment of the superior court under this section by the supreme court  
24 or the court of appeals. The review shall be secured in the manner  
25 provided by law for review of superior court decisions in other civil  
26 cases.

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

31 (6) The superior court shall transmit a copy of its decision and  
32 order on direct review to the board, the department, and the governor.  
33 If the court has determined that a county or city is not in procedural  
34 compliance with the provisions of this chapter, the governor may impose  
35 sanctions against the county or city in the same manner as if a board  
36 had recommended the imposition of sanctions as provided in RCW  
37 36.70A.330.

38 (7) After the court has assumed jurisdiction over a petition for  
39 review under this section, the superior court civil rules shall govern

1 a request for intervention and all other procedural matters not  
2 specifically provided for in this section.

3 **Sec. 5.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to  
4 read as follows:

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

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

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

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

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

34 (b) Find that the state agency, county, or city is not in  
35 procedural compliance with the requirements of this chapter, chapter  
36 90.58 RCW as it relates to the adoption or amendment of shoreline  
37 master programs, or chapter 43.21C RCW as it relates to adoption of  
38 plans, development regulations, and amendments thereto, under RCW

1 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand  
2 the matter to the affected state agency, county, or city. The board  
3 shall specify a reasonable time not in excess of one hundred eighty  
4 days, or such longer period as determined by the board in cases of  
5 unusual scope or complexity, within which the state agency, county, or  
6 city shall comply with the requirements of this chapter. The board may  
7 require periodic reports to the board on the progress the jurisdiction  
8 is making towards procedural compliance.

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

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

16 **Sec. 6.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to  
17 read as follows:

18 (1) Except as provided in subsection (~~(+5)~~) (4) of this section,  
19 comprehensive plans and development regulations, and amendments  
20 thereto, adopted under this chapter are presumed valid upon adoption.

21 (~~Except as otherwise provided in subsection (4) of this~~  
22 ~~section,~~) The burden is on the petitioner to demonstrate that any  
23 action taken by a state agency, county, or city under this chapter is  
24 not in procedural compliance with the requirements of this chapter.

25 (3) In any petition under this chapter, the board, after full  
26 consideration of the petition, shall determine whether there is  
27 procedural compliance with the requirements of this chapter. In making  
28 its determination, the board shall consider the criteria adopted by the  
29 department under RCW 36.70A.190(4). The board shall find procedural  
30 compliance unless it determines that the action by the state agency,  
31 county, or city is clearly erroneous in view of the entire record  
32 before the board and in light of the goals and requirements of this  
33 chapter.

34 (4) (~~A county or city subject to a determination of invalidity~~  
35 ~~made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating~~  
36 ~~that the ordinance or resolution it has enacted in response to the~~  
37 ~~determination of invalidity will no longer substantially interfere with~~

1 ~~the fulfillment of the goals of this chapter under the standard in RCW~~  
2 ~~36.70A.302(1).~~

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

6 **Sec. 7.** RCW 36.70A.330 and 1997 c 429 s 21 are each amended to  
7 read as follows:

8 (1) After the time set for complying with the requirements of this  
9 chapter under RCW 36.70A.300(3)(b) has expired, ~~((or at an earlier time~~  
10 ~~upon the motion of a county or city subject to a determination of~~  
11 ~~invalidity under RCW 36.70A.300,))~~ the board shall set a hearing for  
12 the purpose of determining whether the state agency, county, or city is  
13 in procedural compliance with the requirements of this chapter.

14 (2) The board shall conduct a hearing and issue a finding of  
15 procedural compliance or procedural noncompliance with the requirements  
16 of this chapter and with any procedural compliance schedule established  
17 by the board in its final order. A person with standing to challenge  
18 the legislation enacted in response to the board's final order may  
19 participate in the hearing along with the petitioner and the state  
20 agency, county, or city. A hearing under this subsection shall be  
21 given the highest priority of business to be conducted by the board,  
22 and a finding shall be issued within forty-five days of the filing of  
23 the motion under subsection (1) of this section with the board. The  
24 board shall issue any order necessary to make adjustments to the  
25 procedural compliance schedule and set additional hearings as provided  
26 in subsection ~~((5))~~ (4) of this section.

27 (3) If the board after a procedural compliance hearing finds that  
28 the state agency, county, or city is not in procedural compliance, the  
29 board shall transmit its finding to the governor. The board may  
30 recommend to the governor that the sanctions authorized by this chapter  
31 be imposed. The board shall take into consideration the county's or  
32 city's efforts to meet its procedural compliance schedule in making the  
33 decision to recommend sanctions to the governor.

34 (4) ~~((In a compliance hearing upon petition of a party, the board~~  
35 ~~shall also reconsider its final order and decide, if no determination~~  
36 ~~of invalidity has been made, whether one now should be made under RCW~~  
37 ~~36.70A.302.~~



1       (5)) The board shall schedule additional hearings as appropriate  
2 pursuant to subsections (1) and (2) of this section.

3       **Sec. 8.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended  
4 to read as follows:

5       Upon receipt from the board of a finding that a state agency,  
6 county, or city is in procedural noncompliance under RCW 36.70A.330, or  
7 as a result of failure to meet the requirements of RCW 36.70A.210, the  
8 governor may either:

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

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

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

25       NEW SECTION. **Sec. 9.** The following acts or parts of acts are each  
26 repealed:

27       (1) RCW 36.70A.302 (Determination of invalidity--Vesting of  
28 development permits--Interim controls) and 1997 c 429 s 16;

29       (2) RCW 36.70A.305 (Expedited review) and 1996 c 325 s 4; and

30       (3) RCW 36.70A.335 (Order of invalidity issued before July 27,  
31 1997) and 1997 c 429 s 22.

32       NEW SECTION. **Sec. 10.** This act applies to all petitions for  
33 review filed with the growth management hearings boards on or after  
34 July 1, 2002.

1        NEW SECTION.    **Sec. 11.**    This act takes effect July 1, 2002.

--- **END** ---