
SENATE BILL 6023

State of Washington

57th Legislature

2001 Regular Session

By Senators Horn, T. Sheldon and McCaslin

Read first time 02/14/2001. Referred to Committee on State & Local Government.

1 AN ACT Relating to growth management hearings boards; amending RCW
2 36.70A.270, 36.70A.280, 36.70A.290, 36.70A.295, 36.70A.300, 36.70A.310,
3 36.70A.320, and 36.70A.340; adding a new section to chapter 36.70A RCW;
4 recodifying RCW 36.70A.340; and repealing RCW 36.70A.302 and
5 36.70A.330.

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

7 **Sec. 1.** RCW 36.70A.270 and 1997 c 429 s 11 are each amended to
8 read as follows:

9 Each growth management hearings board shall be governed by the
10 following rules on conduct and procedure:

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

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

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

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

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

1 of RCW 36.70A.300 that (~~final orders be issued~~) decisions be made
2 within one hundred eighty days of board receipt of a petition. Each
3 board may mediate disputes between counties or cities, over whether
4 their comprehensive plans are coordinated or consistent, by using one
5 or more of its own members, hiring staff to provide mediation, or
6 contracting for the provision of mediation.

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

12 (7) All proceedings before the board, any of its members, or a
13 hearing examiner appointed by the board shall be conducted in
14 accordance with such administrative rules of practice and procedure as
15 the boards jointly prescribe. All three boards shall jointly meet to
16 develop and adopt joint rules of practice and procedure, including
17 rules regarding expeditious and summary disposition of appeals. The
18 boards shall publish such rules and decisions they render and arrange
19 for the reasonable distribution of the rules and decisions. Except as
20 it conflicts with specific provisions of this chapter, the
21 administrative procedure act, chapter 34.05 RCW, and specifically
22 including the provisions of RCW 34.05.455 governing ex parte
23 communications, shall govern the practice and procedure of the boards.

24 (8) A board member or hearing examiner is subject to
25 disqualification under chapter 34.05 RCW. The joint rules of practice
26 of the boards shall establish procedures by which a party to a hearing
27 conducted before the board may file with the board a motion to
28 disqualify, with supporting affidavit, against a board member or
29 hearing examiner assigned to preside at the hearing.

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

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

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

37 (a) That a (~~state agency,~~) county(~~(,)~~) or city planning under
38 this chapter is not in compliance with the requirements of this

1 chapter, chapter 90.58 RCW as it relates to the adoption of shoreline
2 master programs or amendments thereto, or chapter 43.21C RCW as it
3 relates to (~~plans, development regulations, or amendments, adopted~~
4 ~~under RCW 36.70A.040 or chapter 90.58 RCW~~) the shoreline master
5 programs or amendments thereto;

6 (b) That a county or city planning under this chapter has not taken
7 an action required under this chapter by the time the action is
8 required to have been taken; ((or

9 (b))) (c) That ((the twenty-year growth management planning
10 population projections adopted by the office of financial management
11 pursuant to RCW 43.62.035 should be adjusted)) a county or city has not
12 addressed relevant issues associated with an action required to be
13 taken under this chapter;

14 (d) That the comprehensive plan of a county or city adopted under
15 this chapter is not coordinated with, or consistent with, the
16 comprehensive plan of another county or city, as required under RCW
17 36.70A.100; or

18 (e) That the shoreline master program or amendment thereto, or
19 chapter 43.21C RCW as it relates thereto, are not in compliance with
20 the requirements of chapter 90.58 RCW.

21 (2) A petition alleging that a county or city has not addressed
22 issues associated with an action required under this chapter, or that
23 the comprehensive plan of a county or city is not coordinated with or
24 consistent with another comprehensive plan as required under RCW
25 36.70A.100, may be filed only by: (a) The state, or a county or city
26 that plans under this chapter; (b) a person who has participated orally
27 or in writing before the county or city regarding the matter on which
28 a review is being requested; (c) a person who is certified by the
29 governor within sixty days of filing the request with the board; or (d)
30 a person qualified pursuant to RCW 34.05.530. A petition alleging that
31 a county or city has not taken an action required under this chapter,
32 by the time such action is required to have been taken, may be filed by
33 any person. A petition alleging that the shoreline master program or
34 amendments thereto, or chapter 43.21C RCW as it relates thereto, may be
35 filed by a person with standing under chapter 43.21C RCW.

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

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

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

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

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

17 (1) All requests for review to a growth management hearings board
18 shall be initiated by filing a petition that includes a detailed
19 statement of issues presented for resolution by the board. The board
20 shall render written decisions articulating the basis for its holdings.
21 The board shall not issue advisory opinions on issues not presented to
22 the board in the statement of issues, as modified by any prehearing
23 order.

24 (2) All petitions relating to whether or not an adopted
25 comprehensive plan, development regulation, or permanent amendment
26 thereto, is in compliance with the goals and requirements of (~~this
27 chapter or~~) chapter 90.58 or 43.21C RCW must be filed within sixty
28 days after publication by the legislative (~~bodies~~) authority of the
29 county or city. All petitions relating to whether or not a county or
30 city has addressed relevant issues associated with an action required
31 under this chapter must be filed within sixty days after publication by
32 the legislative authority of the county or city. All petitions
33 relating to whether or not comprehensive plans are coordinated or
34 consistent, as required under RCW 36.70A.100, must be filed within
35 sixty days after publication by the legislative authority of the county
36 or city adopting or amending its comprehensive plan that is alleged not
37 to be coordinated or consistent with another comprehensive plan.
38 Petitions relating to whether a county or city has not taken an action

1 required under this chapter by the time such action is required to have
2 been taken may be filed at any time.

3 ~~((a) Except as provided in (c) of this subsection,~~) The date of
4 publication for a city shall be the date the city publishes the
5 ordinance, or summary of the ordinance, adopting the comprehensive plan
6 or development regulations, or amendment thereto, as is required to be
7 published.

8 ~~((b))~~ Promptly after adoption, a county shall publish a notice
9 that it has adopted the comprehensive plan or development regulations,
10 or amendment thereto.

11 ~~((Except as provided in (c) of this subsection, for purposes of~~
12 ~~this section))~~ The date of publication for a county shall be the date
13 the county publishes the notice that it has adopted the comprehensive
14 plan or development regulations, or amendment thereto.

15 ~~((c) For local governments planning under RCW 36.70A.040, promptly~~
16 ~~after approval or disapproval of a local government s shoreline master~~
17 ~~program or amendment thereto by the department of ecology as provided~~
18 ~~in RCW 90.58.090, the local government shall publish a notice that the~~
19 ~~shoreline master program or amendment thereto has been approved or~~
20 ~~disapproved by the department of ecology. For purposes of this~~
21 ~~section, the date of publication for the adoption or amendment of a~~
22 ~~shoreline master program is the date the local government publishes~~
23 ~~notice that the shoreline master program or amendment thereto has been~~
24 ~~approved or disapproved by the department of ecology.))~~

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

30 (4) The board shall base its decision on the record developed by
31 the city~~((,))~~ or county~~((, or the state))~~ and supplemented with
32 additional evidence if the board determines that such additional
33 evidence would be necessary or of substantial assistance to the board
34 in reaching its decision.

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

1 **Sec. 4.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to
2 read as follows:

3 (1) The superior court may directly review a petition for review
4 filed under RCW 36.70A.290 if all parties to the proceeding before the
5 board have agreed to direct review in the superior court. The
6 agreement of the parties shall be in writing and signed by all of the
7 parties to the proceeding or their designated representatives. (~~The~~
8 ~~agreement shall include the parties' agreement to proper venue as~~
9 ~~provided in RCW 36.70A.300(5).~~) The parties shall file their
10 agreement with the board within ten days after the date the petition is
11 filed, or if multiple petitions have been filed and the board has
12 consolidated the petitions pursuant to RCW 36.70A.300, within ten days
13 after the board serves its order of consolidation.

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

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

29 (4)(a) Except as otherwise provided in (b) and (c) of this
30 subsection, the provisions of RCW 36.70A.280 through (~~36.70A.330~~)
31 36.70A.3201, which specify the nature and extent of board review, shall
32 apply to the superior court's review.

33 (b) The superior court:

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

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

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

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

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

12 (6) The superior court shall transmit a copy of its decision and
13 order on direct review to the board, the department, and the governor.
14 If the court has determined that a county or city is not in compliance
15 with the provisions of this chapter, the governor may impose sanctions
16 against the county or city (~~((in the same manner as if a board had
17 recommended the imposition of sanctions))~~) as provided in RCW
18 (~~((36.70A.330))~~) 36.70A.340.

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

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

25 (~~(1) ((The board shall issue a final order that shall be based
26 exclusively on whether or not a state agency, county, or city is in
27 compliance with the requirements of this chapter, chapter 90.58 RCW as
28 it relates to adoption or amendment of shoreline master programs, or
29 chapter 43.21C RCW as it relates to adoption of plans, development
30 regulations, and amendments thereto, under RCW 36.70A.040 or chapter
31 90.58 RCW.~~

32 ~~(2))~~(a) Except as provided in (b) of this subsection, the ~~((final
33 order))~~ board shall ~~((be issued))~~ issue a decision within one hundred
34 eighty days of receipt of the petition for review, or, if multiple
35 petitions are filed, within one hundred eighty days of receipt of the
36 last petition that is consolidated.

37 (b) The board may extend the period of time for issuing a decision
38 to enable the parties to settle the dispute if additional time is

1 necessary to achieve a settlement, and (i) an extension is requested by
2 all parties, or (ii) an extension is requested by the petitioner and
3 respondent and the board determines that a negotiated settlement
4 between the remaining parties could resolve significant issues in
5 dispute. The request must be filed with the board not later than seven
6 days before the date scheduled for the hearing on the merits of the
7 petition. The board may authorize one or more extensions for up to
8 ninety days each, subject to the requirements of this section.

9 ~~((3))~~ (2) In ~~(the final order)~~ rendering its decision, the
10 board shall ~~((either))~~:

11 (a) Find that the ~~((state agency,))~~ county~~((,))~~ or city is in
12 compliance with the requirements of ~~((this chapter,))~~ chapter 90.58 RCW
13 as it relates to the adoption or amendment of shoreline master
14 programs, or chapter 43.21C RCW as it relates to adoption of plans,
15 development regulations, and amendments thereto, under RCW 36.70A.040
16 or chapter 90.58 RCW; or

17 (b) Find that the county or city either has, or has not, taken the
18 action by the time such action is required to have been taken; or

19 (c) Find that the ~~((state agency,))~~ county~~((,))~~ or city ~~((is not in~~
20 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~
21 ~~it relates to the adoption or amendment of shoreline master programs,~~
22 ~~or chapter 43.21C RCW as it relates to adoption of plans, development~~
23 ~~regulations, and amendments thereto, under RCW 36.70A.040 or chapter~~
24 ~~90.58 RCW, in which case))~~ either has, or has not, addressed relevant
25 issues associated with an action required under this chapter, but may
26 not consider the adequacy of the actions taken by the county or city.
27 If the board finds that the county or city has not addressed the
28 relevant issues, the board shall ~~((remand the matter to the affected~~
29 state agency, county, or city. The board shall)) specify a reasonable
30 time not in excess of one hundred eighty days, or such longer period as
31 determined by the board in cases of unusual scope or complexity, within
32 which the ~~((state agency,))~~ county~~((,))~~ or city and the person or
33 persons appealing the action shall ~~((comply with the requirements of~~
34 this chapter. The board may require periodic reports to the board on
35 the progress the jurisdiction is making towards compliance.

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

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

5 (d) Find that the comprehensive plans either are, or are not,
6 coordinated or consistent, as required under RCW 36.70A.100. If the
7 board finds that the comprehensive plans are not coordinated or
8 consistent, the board shall mediate between the affected counties or
9 cities to resolve the lack of coordination or lack of consistency.

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

15 (4) Any party aggrieved by a final decision of the hearings board
16 may appeal the decision directly to the court of appeals for assignment
17 by the chief presiding judge.

18 **Sec. 6.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to
19 read as follows:

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

32 **Sec. 7.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to
33 read as follows:

34 (1) ((Except as provided in subsection (5) of this section,))
35 Comprehensive plans and development regulations, and amendments
36 thereto, adopted under this chapter are presumed valid upon adoption.

1 (2) Except as otherwise provided in subsection (4) of this section,
2 the burden is on the petitioner to demonstrate that any action taken by
3 a state agency, county, or city under this chapter is not in compliance
4 with the requirements of this chapter.

5 (3) In any petition under this chapter, the board, after full
6 consideration of the petition, shall ~~((determine whether there is
7 compliance with the requirements of this chapter. In making its
8 determination, the board shall consider the criteria adopted by the
9 department under RCW 36.70A.190(4). The board shall find compliance
10 unless it determines that the action by the state agency, county, or
11 city is clearly erroneous in view of the entire record before the board
12 and in light of the goals and requirements of this chapter))~~ render its
13 decision.

14 (4) A county or city ~~((subject to a determination of invalidity))~~
15 aggrieved by a final decision made under RCW 36.70A.300 ~~((or~~
16 ~~36.70A.302))~~ has the burden of demonstrating that the ordinance or
17 resolution it has enacted in response to the ~~((determination of~~
18 ~~invalidity))~~ final decision will no longer substantially interfere with
19 the fulfillment of the goals of this chapter ~~((under the standard in~~
20 ~~RCW 36.70A.302(1))~~).

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

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

26 ~~((Upon receipt from the board of a finding that a state agency,~~
27 ~~county, or city is in noncompliance under RCW 36.70A.330, or as a~~
28 ~~result of failure to meet the requirements of))~~ If sanctions are
29 imposed under RCW 36.70A.210, 36.70A.295, or 36.70A.345, the governor
30 may either:

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

33 (2) Notify and direct the state treasurer to withhold the portion
34 of revenues to which the county or city is entitled under one or more
35 of the following: The motor vehicle fuel tax, as provided in chapter
36 82.36 RCW; the transportation improvement account, as provided in RCW
37 47.26.084; the urban arterial trust account, as provided in RCW
38 47.26.080; the rural arterial trust account, as provided in RCW

1 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the
2 liquor profit tax, as provided in RCW 66.08.190; and the liquor excise
3 tax, as provided in RCW 82.08.170; or

4 (3) File a notice of noncompliance with the secretary of state and
5 the county or city, which shall temporarily rescind the county or
6 city's authority to collect the real estate excise tax under RCW
7 82.46.030 until the governor files a notice rescinding the notice of
8 noncompliance.

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

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

13 (2) RCW 36.70A.330 (Noncompliance) and 1997 c 429 s 21, 1995 c 347
14 s 112, & 1991 sp.s. c 32 s 14.

15 NEW SECTION. **Sec. 10.** RCW 36.70A.340 is recodified to appear
16 immediately after RCW 36.70A.345.

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