
HOUSE BILL 1978

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66th Legislature

2019 Regular Session

By Representatives Maycumber, Walsh, Kretz, Chapman, and Eslick

Read first time 02/08/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to providing assistance to victims of government
2 actions originating as part of the implementation of the growth
3 management act by the state or local governments; amending RCW
4 36.70A.290; reenacting and amending RCW 43.79A.040 and 42.56.240;
5 adding a new section to chapter 43.10 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10
8 RCW to read as follows:

9 (1) The position of growth management act ombuds is created in
10 the consumer protection division of the office of the attorney
11 general. The ombuds will be considered an advocate for owners of
12 property impacted by restrictions arising from the growth management
13 act, chapter 36.70A RCW; local government's comprehensive plans,
14 development regulations, or actions implementing the growth
15 management act; and appellate court decisions interpreting the growth
16 management act or local governments' comprehensive plans or
17 development regulations. The ombuds must be a member in good standing
18 of the Washington state bar association.

19 (2) The attorney general is directed to assemble an advisory
20 panel and obtain the advisory panel's approval prior to hiring a

1 specific person to the position of growth management act ombuds. The
2 advisory panel must include:

3 (a) At least two members of the legislature of differing
4 political affiliations that serve on a policy committee with
5 jurisdiction over the office of the attorney general;

6 (b) A Washington state licensed attorney in private practice with
7 extensive knowledge of land use and constitutional takings
8 jurisprudence that resides to the east of the crest of the Cascade
9 mountain range; and

10 (c) A Washington state licensed attorney in private practice with
11 extensive knowledge of land use and constitutional takings
12 jurisprudence that resides to the west of the crest of the Cascade
13 mountain range.

14 (3)(a) The growth management act ombuds is to administer the
15 payments from the growth management act victims and response account.
16 The money in the account is to be used for the purpose of ensuring
17 that the implementation of the growth management act does not violate
18 constitutional protections and respond to claims arising from court
19 decisions interpreting the growth management act that started as
20 petitions for review before the growth management hearings board and
21 meet the requirements in (b) and (c) of this subsection.

22 (b) The person requesting the growth management act ombuds'
23 review of a claim must:

24 (i) Pay a review fee of one hundred dollars to be retained by the
25 office of the attorney general. The office of the attorney general
26 may waive the review fee for a person whose income is at or below
27 fifty percent of median income, adjusted for household size, for the
28 county where the property is located;

29 (ii) Identify the growth management hearings board decision or
30 court case opinion and how it impacts the person's property; and

31 (iii) Present substantiated claims that satisfy the legal
32 requirements for inverse condemnation; deprivation of economically
33 viable use of property; extractions or government requirements that
34 do not meet the requirements of nexus and proportionality; violations
35 of the fifth amendment of the United States Constitution; violations
36 of Article I, section 16 of the Washington state Constitution; or
37 claims arising when counties have required property owners to do the
38 county's duty to find legal availability of water by having the
39 property owners establish legal availability of water for a permit
40 exempt well as authorized in RCW 90.44.050.

1 (c) If the ombuds determines the person's claim satisfies the
2 legal and factual requirements for inverse condemnation; deprivation
3 of economically viable use of property; extractions or government
4 requirements that do not meet the requirements of nexus and
5 proportionality; violations of the fifth amendment of the United
6 States Constitution; violations of Article I, section 16 of the
7 Washington state Constitution; or a county has shifted its legal duty
8 onto the property owner seeking to rely on a permit exempt well
9 pursuant to RCW 90.44.050 for a building permit, the ombuds must take
10 at least one if not more of the following actions:

11 (i) Advocate on the person's behalf to the local government for
12 correction of the violation;

13 (ii) Participate in court actions seeking relief for the claims;

14 (iii) Provide the claimant with the ombuds' legal recommendation
15 of the presented claim; or

16 (iv) Pay amounts from the growth management act victims and
17 response account at the discretion of the ombuds in a manner to
18 facilitate the resolution of claims set forth in this subsection. No
19 payment may exceed five thousand dollars and may not be made to
20 corporations, companies, businesses, organizations, associations,
21 government agencies, or any legal entity that is not a natural
22 person.

23 (d) The attorney general must create a form for claimants to use
24 to seek the growth management act ombuds' review. The form must
25 identify the current legal requirements that would be needed to
26 satisfy the claims identified in (b) of this subsection if filed in a
27 Washington state court of law.

28 (e) The attorney general may limit the intake of the amount of
29 claims for review to no more than thirty per month to be addressed by
30 the ombuds.

31 (f) The attorney general and ombuds shall not obligate or
32 disperse amounts that are not available in the growth management act
33 victims and response account.

34 **Sec. 2.** RCW 36.70A.290 and 2011 c 277 s 1 are each amended to
35 read as follows:

36 (1) All requests for review to the growth management hearings
37 board shall be initiated by filing a petition that includes a
38 detailed statement of issues presented for resolution by the board.
39 The board shall collect an assessment of two hundred fifty dollars

1 from the requester of the review to be remitted to the state
2 treasurer and placed in the growth management act victims and
3 response account. The board shall render written decisions
4 articulating the basis for its holdings. The board shall not issue
5 advisory opinions on issues not presented to the board in the
6 statement of issues, as modified by any prehearing order.

7 (2) All petitions relating to whether or not an adopted
8 comprehensive plan, development regulation, or permanent amendment
9 thereto, is in compliance with the goals and requirements of this
10 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty
11 days after publication as provided in (a) through (c) of this
12 subsection.

13 (a) Except as provided in (c) of this subsection, the date of
14 publication for a city shall be the date the city publishes the
15 ordinance, or summary of the ordinance, adopting the comprehensive
16 plan or development regulations, or amendment thereto, as is required
17 to be published.

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

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

25 (c) For local governments planning under RCW 36.70A.040, promptly
26 after approval or disapproval of a local government's shoreline
27 master program or amendment thereto by the department of ecology as
28 provided in RCW 90.58.090, the department of ecology shall publish a
29 notice that the shoreline master program or amendment thereto has
30 been approved or disapproved. For purposes of this section, the date
31 of publication for the adoption or amendment of a shoreline master
32 program is the date the department of ecology publishes notice that
33 the shoreline master program or amendment thereto has been approved
34 or disapproved.

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

1 (4) The board shall base its decision on the record developed by
2 the city, county, or the state and supplemented with additional
3 evidence if the board determines that such additional evidence would
4 be necessary or of substantial assistance to the board in reaching
5 its decision.

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

9 NEW SECTION. **Sec. 3.** The growth management act victims and
10 response account is created in the custody of the state treasury. All
11 receipts from the assessment in RCW 36.70A.290 must be deposited into
12 the account. Only the attorney general or the growth management act
13 ombuds may authorize expenditures from the account. Expenditures from
14 the account must be used only for the purposes identified in section
15 1 of this act. The account is subject to allotment procedures under
16 chapter 43.88 RCW, but an appropriation is not required for
17 expenditures. The account is subject to audit by the state auditor.

18 **Sec. 4.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
19 2018 c 127 s 6 are each reenacted and amended to read as follows:

20 (1) Money in the treasurer's trust fund may be deposited,
21 invested, and reinvested by the state treasurer in accordance with
22 RCW 43.84.080 in the same manner and to the same extent as if the
23 money were in the state treasury, and may be commingled with moneys
24 in the state treasury for cash management and cash balance purposes.

25 (2) All income received from investment of the treasurer's trust
26 fund must be set aside in an account in the treasury trust fund to be
27 known as the investment income account.

28 (3) The investment income account may be utilized for the payment
29 of purchased banking services on behalf of treasurer's trust funds
30 including, but not limited to, depository, safekeeping, and
31 disbursement functions for the state treasurer or affected state
32 agencies. The investment income account is subject in all respects to
33 chapter 43.88 RCW, but no appropriation is required for payments to
34 financial institutions. Payments must occur prior to distribution of
35 earnings set forth in subsection (4) of this section.

36 (4)(a) Monthly, the state treasurer must distribute the earnings
37 credited to the investment income account to the state general fund
38 except under (b), (c), and (d) of this subsection.

1 (b) The following accounts and funds must receive their
2 proportionate share of earnings based upon each account's or fund's
3 average daily balance for the period: The 24/7 sobriety account, the
4 Washington promise scholarship account, the Gina Grant Bull memorial
5 legislative page scholarship account, the Washington advanced college
6 tuition payment program account, the Washington college savings
7 program account, the accessible communities account, the Washington
8 achieving a better life experience program account, the community and
9 technical college innovation account, the agricultural local fund,
10 the American Indian scholarship endowment fund, the foster care
11 scholarship endowment fund, the foster care endowed scholarship trust
12 fund, the contract harvesting revolving account, the Washington state
13 combined fund drive account, the commemorative works account, the
14 county enhanced 911 excise tax account, the toll collection account,
15 the developmental disabilities endowment trust fund, the energy
16 account, the fair fund, the family and medical leave insurance
17 account, the fish and wildlife federal lands revolving account, the
18 natural resources federal lands revolving account, the food animal
19 veterinarian conditional scholarship account, the forest health
20 revolving account, the fruit and vegetable inspection account, the
21 future teachers conditional scholarship account, the game farm
22 alternative account, the GET ready for math and science scholarship
23 account, the Washington global health technologies and product
24 development account, the grain inspection revolving fund, the growth
25 management act victims and response account, the Washington history
26 day account, the industrial insurance rainy day fund, the juvenile
27 accountability incentive account, the law enforcement officers' and
28 firefighters' plan 2 expense fund, the local tourism promotion
29 account, the low-income home rehabilitation revolving loan program
30 account, the multiagency permitting team account, the northeast
31 Washington wolf-livestock management account, the pilotage account,
32 the produce railcar pool account, the regional transportation
33 investment district account, the rural rehabilitation account, the
34 Washington sexual assault kit account, the stadium and exhibition
35 center account, the youth athletic facility account, the self-
36 insurance revolving fund, the children's trust fund, the Washington
37 horse racing commission Washington bred owners' bonus fund and
38 breeder awards account, the Washington horse racing commission class
39 C purse fund account, the individual development account program
40 account, the Washington horse racing commission operating account,

1 the life sciences discovery fund, the Washington state heritage
2 center account, the reduced cigarette ignition propensity account,
3 the center for childhood deafness and hearing loss account, the
4 school for the blind account, the Millersylvania park trust fund, the
5 public employees' and retirees' insurance reserve fund, the school
6 employees' benefits board insurance reserve fund, (~~(the)~~) the
7 public employees' and retirees' insurance account, (~~(the)~~) the
8 school employees' insurance account, and the radiation perpetual
9 maintenance fund.

10 (c) The following accounts and funds must receive eighty percent
11 of their proportionate share of earnings based upon each account's or
12 fund's average daily balance for the period: The advanced right-of-
13 way revolving fund, the advanced environmental mitigation revolving
14 account, the federal narcotics asset forfeitures account, the high
15 occupancy vehicle account, the local rail service assistance account,
16 and the miscellaneous transportation programs account.

17 (d) Any state agency that has independent authority over accounts
18 or funds not statutorily required to be held in the custody of the
19 state treasurer that deposits funds into a fund or account in the
20 custody of the state treasurer pursuant to an agreement with the
21 office of the state treasurer shall receive its proportionate share
22 of earnings based upon each account's or fund's average daily balance
23 for the period.

24 (5) In conformance with Article II, section 37 of the state
25 Constitution, no trust accounts or funds shall be allocated earnings
26 without the specific affirmative directive of this section.

27 **Sec. 5.** RCW 42.56.240 and 2018 c 285 s 1 and 2018 c 171 s 7 are
28 each reenacted and amended to read as follows:

29 The following investigative, law enforcement, and crime victim
30 information is exempt from public inspection and copying under this
31 chapter:

32 (1) Specific intelligence information and specific investigative
33 records compiled by investigative, law enforcement, and penology
34 agencies, and state agencies vested with the responsibility to
35 discipline members of any profession, the nondisclosure of which is
36 essential to effective law enforcement or for the protection of any
37 person's right to privacy;

38 (2) Information revealing the identity of persons who are
39 witnesses to or victims of crime or who file complaints with

1 investigative, law enforcement, or penology agencies, other than the
2 commission, if disclosure would endanger any person's life, physical
3 safety, or property. If at the time a complaint is filed the
4 complainant, victim, or witness indicates a desire for disclosure or
5 nondisclosure, such desire shall govern. However, all complaints
6 filed with the commission about any elected official or candidate for
7 public office must be made in writing and signed by the complainant
8 under oath;

9 (3) Any records of investigative reports prepared by any state,
10 county, municipal, or other law enforcement agency pertaining to sex
11 offenses contained in chapter 9A.44 RCW or sexually violent offenses
12 as defined in RCW 71.09.020, which have been transferred to the
13 Washington association of sheriffs and police chiefs for permanent
14 electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

15 (4) License applications under RCW 9.41.070; copies of license
16 applications or information on the applications may be released to
17 law enforcement or corrections agencies;

18 (5) Information revealing the identity of child victims of sexual
19 assault who are under age eighteen. Identifying information means the
20 child victim's name, address, location, photograph, and in cases in
21 which the child victim is a relative or stepchild of the alleged
22 perpetrator, identification of the relationship between the child and
23 the alleged perpetrator;

24 (6) Information contained in a local or regionally maintained
25 gang database as well as the statewide gang database referenced in
26 RCW 43.43.762;

27 (7) Data from the electronic sales tracking system established in
28 RCW 69.43.165;

29 (8) Information submitted to the statewide unified sex offender
30 notification and registration program under RCW 36.28A.040(6) by a
31 person for the purpose of receiving notification regarding a
32 registered sex offender, including the person's name, residential
33 address, and email address;

34 (9) Personally identifying information collected by law
35 enforcement agencies pursuant to local security alarm system programs
36 and vacation crime watch programs. Nothing in this subsection shall
37 be interpreted so as to prohibit the legal owner of a residence or
38 business from accessing information regarding his or her residence or
39 business;

1 (10) The felony firearm offense conviction database of felony
2 firearm offenders established in RCW 43.43.822;

3 (11) The identity of a state employee or officer who has in good
4 faith filed a complaint with an ethics board, as provided in RCW
5 42.52.410, or who has in good faith reported improper governmental
6 action, as defined in RCW 42.40.020, to the auditor or other public
7 official, as defined in RCW 42.40.020;

8 (12) The following security threat group information collected
9 and maintained by the department of corrections pursuant to RCW
10 72.09.745: (a) Information that could lead to the identification of a
11 person's security threat group status, affiliation, or activities;
12 (b) information that reveals specific security threats associated
13 with the operation and activities of security threat groups; and (c)
14 information that identifies the number of security threat group
15 members, affiliates, or associates;

16 (13) The global positioning system data that would indicate the
17 location of the residence of an employee or worker of a criminal
18 justice agency as defined in RCW 10.97.030;

19 (14) Body worn camera recordings to the extent nondisclosure is
20 essential for the protection of any person's right to privacy as
21 described in RCW 42.56.050, including, but not limited to, the
22 circumstances enumerated in (a) of this subsection. A law enforcement
23 or corrections agency shall not disclose a body worn camera recording
24 to the extent the recording is exempt under this subsection.

25 (a) Disclosure of a body worn camera recording is presumed to be
26 highly offensive to a reasonable person under RCW 42.56.050 to the
27 extent it depicts:

28 (i) (A) Any areas of a medical facility, counseling, or
29 therapeutic program office where:

30 (I) A patient is registered to receive treatment, receiving
31 treatment, waiting for treatment, or being transported in the course
32 of treatment; or

33 (II) Health care information is shared with patients, their
34 families, or among the care team; or

35 (B) Information that meets the definition of protected health
36 information for purposes of the health insurance portability and
37 accountability act of 1996 or health care information for purposes of
38 chapter 70.02 RCW;

39 (ii) The interior of a place of residence where a person has a
40 reasonable expectation of privacy;

1 (iii) An intimate image;
2 (iv) A minor;
3 (v) The body of a deceased person;
4 (vi) The identity of or communications from a victim or witness
5 of an incident involving domestic violence as defined in RCW
6 10.99.020 or sexual assault as defined in RCW 70.125.030, or
7 disclosure of intimate images as defined in RCW 9A.86.010. If at the
8 time of recording the victim or witness indicates a desire for
9 disclosure or nondisclosure of the recorded identity or
10 communications, such desire shall govern; or
11 (vii) The identifiable location information of a community-based
12 domestic violence program as defined in RCW 70.123.020, or emergency
13 shelter as defined in RCW 70.123.020.
14 (b) The presumptions set out in (a) of this subsection may be
15 rebutted by specific evidence in individual cases.
16 (c) In a court action seeking the right to inspect or copy a body
17 worn camera recording, a person who prevails against a law
18 enforcement or corrections agency that withholds or discloses all or
19 part of a body worn camera recording pursuant to (a) of this
20 subsection is not entitled to fees, costs, or awards pursuant to RCW
21 42.56.550 unless it is shown that the law enforcement or corrections
22 agency acted in bad faith or with gross negligence.
23 (d) A request for body worn camera recordings must:
24 (i) Specifically identify a name of a person or persons involved
25 in the incident;
26 (ii) Provide the incident or case number;
27 (iii) Provide the date, time, and location of the incident or
28 incidents; or
29 (iv) Identify a law enforcement or corrections officer involved
30 in the incident or incidents.
31 (e) (i) A person directly involved in an incident recorded by the
32 requested body worn camera recording, an attorney representing a
33 person directly involved in an incident recorded by the requested
34 body worn camera recording, a person or his or her attorney who
35 requests a body worn camera recording relevant to a criminal case
36 involving that person, or the executive director from either the
37 Washington state commission on African-American affairs, Asian
38 Pacific American affairs, or Hispanic affairs, has the right to
39 obtain the body worn camera recording, subject to any exemption under
40 this chapter or any applicable law. In addition, an attorney who

1 represents a person regarding a potential or existing civil cause of
2 action involving the denial of civil rights under the federal or
3 state Constitution, or a violation of a United States department of
4 justice settlement agreement, has the right to obtain the body worn
5 camera recording if relevant to the cause of action, subject to any
6 exemption under this chapter or any applicable law. The attorney must
7 explain the relevancy of the requested body worn camera recording to
8 the cause of action and specify that he or she is seeking relief from
9 redaction costs under this subsection (14)(e).

10 (ii) A law enforcement or corrections agency responding to
11 requests under this subsection (14)(e) may not require the requesting
12 individual to pay costs of any redacting, altering, distorting,
13 pixelating, suppressing, or otherwise obscuring any portion of a body
14 worn camera recording.

15 (iii) A law enforcement or corrections agency may require any
16 person requesting a body worn camera recording pursuant to this
17 subsection (14)(e) to identify himself or herself to ensure he or she
18 is a person entitled to obtain the body worn camera recording under
19 this subsection (14)(e).

20 (f)(i) A law enforcement or corrections agency responding to a
21 request to disclose body worn camera recordings may require any
22 requester not listed in (e) of this subsection to pay the reasonable
23 costs of redacting, altering, distorting, pixelating, suppressing, or
24 otherwise obscuring any portion of the body worn camera recording
25 prior to disclosure only to the extent necessary to comply with the
26 exemptions in this chapter or any applicable law.

27 (ii) An agency that charges redaction costs under this subsection
28 (14)(f) must use redaction technology that provides the least costly
29 commercially available method of redacting body worn camera
30 recordings, to the extent possible and reasonable.

31 (iii) In any case where an agency charges a requestor for the
32 costs of redacting a body worn camera recording under this subsection
33 (14)(f), the time spent on redaction of the recording shall not count
34 towards the agency's allocation of, or limitation on, time or costs
35 spent responding to public records requests under this chapter, as
36 established pursuant to local ordinance, policy, procedure, or state
37 law.

38 (g) For purposes of this subsection (14):

39 (i) "Body worn camera recording" means a video and/or sound
40 recording that is made by a body worn camera attached to the uniform

1 or eyewear of a law enforcement or corrections officer while in the
2 course of his or her official duties; and

3 (ii) "Intimate image" means an individual or individuals engaged
4 in sexual activity, including sexual intercourse as defined in RCW
5 9A.44.010 and masturbation, or an individual's intimate body parts,
6 whether nude or visible through less than opaque clothing, including
7 the genitals, pubic area, anus, or postpubescent female nipple.

8 (h) Nothing in this subsection shall be construed to restrict
9 access to body worn camera recordings as otherwise permitted by law
10 for official or recognized civilian and accountability bodies or
11 pursuant to any court order.

12 (i) Nothing in this section is intended to modify the obligations
13 of prosecuting attorneys and law enforcement under *Brady v. Maryland*,
14 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v.*
15 *Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and
16 the relevant Washington court criminal rules and statutes.

17 (j) A law enforcement or corrections agency must retain body worn
18 camera recordings for at least sixty days and thereafter may destroy
19 the records in accordance with the applicable records retention
20 schedule;

21 (15) Any records and information contained within the statewide
22 sexual assault kit tracking system established in RCW 43.43.545;

23 (16)(a) Survivor communications with, and survivor records
24 maintained by, campus-affiliated advocates.

25 (b) Nothing in this subsection shall be construed to restrict
26 access to records maintained by a campus-affiliated advocate in the
27 event that:

28 (i) The survivor consents to inspection or copying;

29 (ii) There is a clear, imminent risk of serious physical injury
30 or death of the survivor or another person;

31 (iii) Inspection or copying is required by federal law; or

32 (iv) A court of competent jurisdiction mandates that the record
33 be available for inspection or copying.

34 (c) "Campus-affiliated advocate" and "survivor" have the
35 definitions in RCW 28B.112.030;

36 (17) Information and records prepared, owned, used, or retained
37 by the Washington association of sheriffs and police chiefs and
38 information and records prepared, owned, used, or retained by the
39 Washington state patrol pursuant to chapter 261, Laws of 2017;

40 ((and))

1 (18) Any and all audio or video recordings of child forensic
2 interviews as defined in chapter 26.44 RCW. Such recordings are
3 confidential and may only be disclosed pursuant to a court order
4 entered upon a showing of good cause and with advance notice to the
5 child's parent, guardian, or legal custodian. However, if the child
6 is an emancipated minor or has attained the age of majority as
7 defined in RCW 26.28.010, advance notice must be to the child.
8 Failure to disclose an audio or video recording of a child forensic
9 interview as defined in chapter 26.44 RCW is not grounds for
10 penalties or other sanctions available under this chapter; and

11 (19) All records submitted to the attorney general's office for
12 review by the growth management act ombuds as part of a claim under
13 section 1(3) of this act, and any records created by the department
14 of commerce related to the claim; except that information detailing
15 activity in the growth management act victims and response account
16 must be disclosed, including the name of any person receiving a
17 payment from the account, the amount of the payment, the
18 determination made by the ombuds justifying and authorizing the
19 payment, and any settlement or agreement connected to a payment from
20 the account.

21 NEW SECTION. **Sec. 6.** This act shall be known and cited as the
22 growth management act victims response act.

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