
HOUSE BILL 2014

State of Washington

54th Legislature

1995 Regular Session

By Representative Benton

Read first time 02/21/95. Referred to Committee on Government Operations.

1 AN ACT Relating to environmental appeals; and amending RCW
2 43.21B.170, 43.21B.180, 36.70A.300, 75.20.140, 76.09.230, and
3 90.58.180.

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

5 **Sec. 1.** RCW 43.21B.170 and 1970 ex.s. c 62 s 47 are each amended
6 to read as follows:

7 All proceedings, including both formal and informal hearings,
8 before the hearings board or any of its members shall be conducted in
9 accordance with such rules of practice and procedure as the hearings
10 board may prescribe. The rules must include the following provisions:
11 (1) The department must furnish the hearings board and the party
12 appealing the department's decision a copy of all evidence relied upon
13 by the department in making its decision. The party appealing the
14 department's decision must be provided this information at least one
15 day prior to the hearing before the hearings board; (2) the department
16 may only submit evidence to the hearings board which supports the
17 findings set forth in the department's decision being appealed; and (3)
18 if the department relied upon the observations of individuals in making
19 its decision, those individuals must be identified and made available

1 for examination and cross-examination before the hearings board. The
2 department has the burden of proof in all proceedings before the
3 hearings board that its decision is justified, including the burden of
4 moving forward with the evidence. The hearings board shall publish
5 such rules and arrange for the reasonable distribution thereof.

6 **Sec. 2.** RCW 43.21B.180 and 1994 c 253 s 6 are each amended to read
7 as follows:

8 Judicial review of a decision of the hearings board may be obtained
9 only pursuant to RCW 34.05.510 through 34.05.598, except that judicial
10 review of a decision of the hearings board in superior court shall be
11 de novo with the burden of proof placed on the department. The
12 director shall have the same right of review from a decision made
13 pursuant to RCW 43.21B.110 as does any person.

14 **Sec. 3.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended
15 to read as follows:

16 (1) The board shall issue a final order within one hundred eighty
17 days of receipt of the petition for review, or, when multiple petitions
18 are filed, within one hundred eighty days of receipt of the last
19 petition that is consolidated. Such a final order shall be based
20 exclusively on whether or not a state agency, county, or city is in
21 compliance with the requirements of this chapter, or chapter 43.21C RCW
22 as it relates to plans, regulations, and amendments thereto, adopted
23 under RCW 36.70A.040. In the final order, the board shall either: (a)
24 Find that the state agency, county, or city is in compliance with the
25 requirements of this chapter; or (b) find that the state agency,
26 county, or city is not in compliance with the requirements of this
27 chapter, in which case the board shall remand the matter to the
28 affected state agency, county, or city and specify a reasonable time
29 not in excess of one hundred eighty days within which the state agency,
30 county, or city shall comply with the requirements of this chapter.

31 (2) Any party aggrieved by a final decision of the hearings board
32 may appeal the decision to Thurston county superior court within thirty
33 days of the final order of the board. Judicial review of any decision
34 of the hearings board shall be de novo.

35 **Sec. 4.** RCW 75.20.140 and 1989 c 175 s 161 are each amended to
36 read as follows:

1 (1) In all appeals over which the hydraulic appeals board has
2 jurisdiction, a party taking an appeal may elect either a formal or
3 informal hearing. Such election shall be made according to the rules
4 of practice and procedure to be adopted by the hydraulic appeals board.
5 In the event that appeals are taken from the same decision, order, or
6 determination, by different parties and only one of such parties elects
7 a formal hearing, a formal hearing shall be granted.

8 (2) In all appeals, the hydraulic appeals board shall have all
9 powers relating to administration of oaths, issuance of subpoenas, and
10 taking of depositions, but such powers shall be exercised in conformity
11 with chapter 34.05 RCW.

12 (3) In all appeals involving a formal hearing, the hydraulic
13 appeals board, and each member thereof, shall be subject to all duties
14 imposed upon and shall have all powers granted to, an agency by those
15 provisions of chapter 34.05 RCW relating to adjudicative proceedings.

16 (4) All proceedings, including both formal and informal hearings,
17 before the hydraulic appeals board or any of its members shall be
18 conducted in accordance with such rules of practice and procedure as
19 the board may prescribe. Such rules shall be published and
20 distributed.

21 (5) Judicial review of a decision of the hydraulic appeals board
22 shall be de novo (~~(except when the decision has been rendered pursuant~~
23 ~~to the formal hearing, in which event judicial review may be obtained~~
24 ~~only pursuant to RCW 34.05.510 through 34.05.598)) with the burden of
25 proof placed upon the department.~~

26 **Sec. 5.** RCW 76.09.230 and 1994 c 253 s 9 are each amended to read
27 as follows:

28 (1) In all appeals over which the appeals board has jurisdiction,
29 upon request of one or more parties and with the consent of all
30 parties, the appeals board shall promptly schedule a conference for the
31 purpose of attempting to mediate the case. The mediation conference
32 shall be held prior to the hearing on not less than seven days' advance
33 written notice to all parties. All other proceedings pertaining to the
34 appeal shall be stayed until completion of mediation, which shall
35 continue so long as all parties consent: PROVIDED, That this shall not
36 prevent the appeals board from deciding motions filed by the parties
37 while mediation is ongoing: PROVIDED, FURTHER, That discovery may be
38 conducted while mediation is ongoing if agreed to by all parties.

1 Mediation shall be conducted by an administrative appeals judge or
2 other duly authorized agent of the appeals board who has received
3 training in dispute resolution techniques or has a demonstrated history
4 of successfully resolving disputes, as determined by the appeals board.
5 A person who mediates in a particular appeal shall not participate in
6 a hearing on that appeal or in writing the decision and order in the
7 appeal. Documentary and other physical evidence presented and evidence
8 of conduct or statements made during the course of mediation shall be
9 treated by the mediator and the parties in a confidential manner and
10 shall not be admissible in subsequent proceedings in the appeal except
11 in accordance with the provisions of the Washington rules of evidence
12 pertaining to compromise negotiations.

13 (2) In all appeals the appeals board shall have all powers relating
14 to administration of oaths, issuance of subpoenas, and taking of
15 depositions, but such powers shall be exercised in conformity with
16 chapter 34.05 RCW.

17 (3) In all appeals the appeals board, and each member thereof,
18 shall be subject to all duties imposed upon and shall have all powers
19 granted to, an agency by those provisions of chapter 34.05 RCW relating
20 to adjudicative proceedings.

21 (4) All proceedings before the appeals board or any of its members
22 shall be conducted in accordance with such rules of practice and
23 procedure as the board may prescribe. The appeals board shall publish
24 such rules and arrange for the reasonable distribution thereof.

25 (5) Judicial review of a decision of the appeals board may be
26 obtained only pursuant to RCW 34.05.510 through 34.05.598, except that
27 judicial review of a decision of the appeals board shall be de novo
28 with the burden of proof placed upon the department.

29 **Sec. 6.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read
30 as follows:

31 (1) Any person aggrieved by the granting, denying, or rescinding of
32 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
33 review from the shorelines hearings board by filing a request for the
34 same within thirty days of the date of filing as defined in RCW
35 90.58.140(6).

36 ((Concurrently with)) Within seven days of the filing of any
37 request for review with the board as provided in this section
38 pertaining to a final order of a local government, the requestor shall

1 ~~((file a copy))~~ serve copies of his or her request ~~((with))~~ on the
2 department and the attorney general. ~~((If it appears to the department~~
3 ~~or the attorney general that the requestor has valid reasons to seek~~
4 ~~review, either the department or the attorney general may certify the~~
5 ~~request within thirty days after its receipt to the shorelines hearings~~
6 ~~board following which the board shall then, but not otherwise, review~~
7 ~~the matter covered by the requestor. The failure to obtain such~~
8 ~~certification shall not preclude the requestor from obtaining a review~~
9 ~~in the superior court under any right to review otherwise available to~~
10 ~~the requestor.))~~ The department and the attorney general may intervene
11 to protect the public interest and insure that the provisions of this
12 chapter are complied with at any time within fifteen days from the date
13 of the receipt by the department or the attorney general of a copy of
14 the request for review filed pursuant to this section. ~~((The~~
15 ~~shorelines hearings board shall initially schedule review proceedings~~
16 ~~on such requests for review without regard as to whether such requests~~
17 ~~have or have not been certified or as to whether the period for the~~
18 ~~department or the attorney general to intervene has or has not expired,~~
19 ~~unless such review is to begin within thirty days of such scheduling.~~
20 ~~If at the end of the thirty day period for certification neither the~~
21 ~~department nor the attorney general has certified a request for review,~~
22 ~~the hearings board shall remove the request from its review schedule.))~~

23 (2) The department or the attorney general may obtain review of any
24 final order granting a permit, or granting or denying an application
25 for a permit issued by a local government by filing a written request
26 with the shorelines hearings board and the appropriate local government
27 within thirty days from the date the final order was filed as provided
28 in RCW 90.58.140(6).

29 (3) The review proceedings authorized in subsections (1) and (2) of
30 this section are subject to the provisions of chapter 34.05 RCW
31 pertaining to procedures in adjudicative proceedings. Judicial review
32 of such proceedings of the shorelines hearings board is governed by
33 chapter 34.05 RCW, except that judicial review of a decision by the
34 board shall be de novo with the burden of proof on the department.

35 (4) A local government may appeal to the shorelines hearings board
36 any rules, regulations, or guidelines adopted or approved by the
37 department within thirty days of the date of the adoption or approval.
38 The board shall make a final decision within sixty days following the
39 hearing held thereon.

1 If the board determines that the rule, regulation, or guideline:
2 (a) Is clearly erroneous in light of the policy of this chapter; or
3 (b) Constitutes an implementation of this chapter in violation of
4 constitutional or statutory provisions; or
5 (c) Is arbitrary and capricious; or
6 (d) Was developed without fully considering and evaluating all
7 material submitted to the department by the local government; or
8 (e) Was not adopted in accordance with required procedures;
9 the board shall enter a final decision declaring the rule, regulation,
10 or guideline invalid, remanding the rule, regulation, or guideline to
11 the department with a statement of the reasons in support of the
12 determination, and directing the department to adopt, after a thorough
13 consultation with the affected local government, a new rule,
14 regulation, or guideline. Unless the board makes one or more of the
15 determinations as hereinbefore provided, the board shall find the rule,
16 regulation, or guideline to be valid and enter a final decision to that
17 effect.
18 (5) Rules, regulations, and guidelines shall be subject to review
19 in superior court, if authorized pursuant to RCW 34.05.570(2). No
20 review shall be granted by a superior court on petition from a local
21 government unless the local government shall first have obtained review
22 under subsection (4) of this section and the petition for court review
23 is filed within three months after the date of final decision by the
24 shorelines hearings board.

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