

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6637

54th Legislature
1996 Regular Session

Passed by the Senate March 7, 1996
YEAS 41 NAYS 8

President of the Senate

Passed by the House March 7, 1996
YEAS 68 NAYS 30

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6637** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6637

AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Haugen, Sheldon, Winsley, Hale, Wood and Long)

Read first time 02/02/96.

1 AN ACT Relating to limitations on growth management hearings board
2 discretion; and amending RCW 36.70A.270, 36.70A.280, 36.70A.300,
3 36.70.320; adding a new section to chapter 36.70A RCW; and declaring an
4 emergency.

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 board may appoint one or more hearing examiners to assist
26 the board in its hearing function, to make conclusions of law and
27 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 within one hundred eighty
39 days of board receipt of a petition.

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

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

17 (8) A board member or hearing examiner is subject to
18 disqualification ~~((for bias, prejudice, interest, or any other cause~~
19 ~~for which a judge is disqualified))~~ under chapter 34.05 RCW. The joint
20 rules of practice of the boards shall establish procedures by which a
21 party to a hearing conducted before the board may file with the board
22 a motion to disqualify, with supporting affidavit, against a board
23 member or hearing examiner assigned to preside at the hearing.

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

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

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

31 (a) That a state agency, county, or city planning under this
32 chapter is not in compliance with the requirements of this chapter,
33 chapter 90.58 RCW as it relates to the adoption of shoreline master
34 programs or amendments thereto, or chapter 43.21C RCW as it relates to
35 plans, development regulations, or amendments, adopted under RCW
36 36.70A.040 or chapter 90.58 RCW; or

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

4 (2) A petition may be filed only by: (a) The state, or a county or
5 city that plans under this chapter((7)); (b) a person who has ((either
6 appeared)) participated orally or in writing before the county or city
7 regarding the matter on which a review is being requested ((or)); (c)
8 a person who is certified by the governor within sixty days of filing
9 the request with the board((7)); or (d) a person qualified pursuant to
10 RCW 34.05.530.

11 (3) For purposes of this section "person" means any individual,
12 partnership, corporation, association, state agency, governmental
13 subdivision or unit thereof, or public or private organization or
14 entity of any character.

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

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

22 If adjusted by a board, a county growth management planning
23 population projection shall only be used for the planning purposes set
24 forth in this chapter and shall be known as a "board adjusted
25 population projection". None of these changes shall affect the
26 official state and county population forecasts prepared by the office
27 of financial management, which shall continue to be used for state
28 budget and planning purposes.

29 **Sec. 3.** RCW 36.70A.300 and 1995 c 347 s 110 are each amended to
30 read as follows:

31 (1) The board shall issue a final order within one hundred eighty
32 days of receipt of the petition for review, or, when multiple petitions
33 are filed, within one hundred eighty days of receipt of the last
34 petition that is consolidated. Such a final order shall be based
35 exclusively on whether or not a state agency, county, or city is in
36 compliance with the requirements of this chapter, chapter 90.58 RCW as
37 it relates to adoption or amendment of shoreline master programs, or
38 chapter 43.21C RCW as it relates to plans, development regulations, and

1 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.
2 In the final order, the board shall either: (a) Find that the state
3 agency, county, or city is in compliance with the requirements of this
4 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
5 of shoreline master programs; or (b) find that the state agency,
6 county, or city is not in compliance with the requirements of this
7 chapter or chapter 90.58 RCW as it relates to the adoption or amendment
8 of shoreline master programs, in which case the board shall remand the
9 matter to the affected state agency, county, or city and specify a
10 reasonable time not in excess of one hundred eighty days within which
11 the state agency, county, or city shall comply with the requirements of
12 this chapter.

13 (2) A finding of noncompliance and an order of remand shall not
14 affect the validity of comprehensive plans and development regulations
15 during the period of remand(~~(, unless the board's)~~). In addition, the
16 board may issue a determination of invalidity as part of its final
17 order (~~(also)~~) of noncompliance which shall:

18 (a) ~~Include(~~(s)~~)~~ a determination, supported by findings of fact and
19 conclusions of law, that the continued validity of the plan or
20 regulation would substantially interfere with the fulfillment of the
21 goals of this chapter; and

22 (b) (~~(Specifies)~~) Specify the particular part or parts of the plan
23 or regulation that are determined to be invalid, the geographic area or
24 areas where the determination of invalidity is applicable, if
25 appropriate, and the reasons for their invalidity.

26 (3) A determination of invalidity shall(~~(+~~
27 ~~(a))~~) not take effect until at least ninety days after the
28 determination of invalidity was made, during which period the board
29 shall review the progress of the county or city. If, after holding a
30 hearing on the matter, the board finds that the county or city is
31 making substantial progress toward adopting a plan or regulations or
32 taking other actions under this chapter, relating to the order, that
33 would not be determined to be invalid under subsection (2) of this
34 section, the board shall extend the ninety-day period for a reasonable
35 period and continue its jurisdiction over the matter. If, after
36 holding a hearing on the matter, the board finds that substantial
37 progress is not being made, the board shall enter an order effectuating
38 the determination of invalidity. The hearing must be held prior to the
39 ninetieth day. Another hearing shall be held prior to the end of any

1 extension granted by the board. Any order effectuating the
2 determination of invalidity shall be prospective in effect and shall
3 not extinguish rights that ((vested)) vest under state or local law
4 before or after the date of the board's order(~~and~~

5 ~~(b) Subject))~~ effectuating the determination of invalidity. Any
6 order effectuating the determination of invalidity shall not affect the
7 validity of the comprehensive plan, development regulations, or other
8 actions taken under this chapter, except that any ((development))
9 application for the division of land under chapter 58.17 RCW, in any
10 geographic area or areas where the determination of invalidity is
11 applicable, that would otherwise vest after the date of the board's
12 order effectuating the determination of invalidity, shall vest to the
13 local ordinance or resolution that ((both is enacted in response to the
14 order of remand and determined by the board pursuant to RCW 36.70A.330
15 to comply with the requirements of this chapter)) the county or city
16 adopts in response to the order effectuating the determination of
17 invalidity after the board determines that the response would not be
18 invalidated under subsection (2) of this section. Boundary line
19 adjustments that do not increase the number of lots are not affected by
20 an order effectuating a determination of invalidity. The board shall
21 hold a hearing before removing the order effectuating its determination
22 of invalidity.

23 (4) ~~((If the ordinance that adopts a plan or development regulation~~
24 ~~under this chapter includes a savings clause intended to revive prior~~
25 ~~policies or regulations in the event the new plan or regulations are~~
26 ~~determined to be invalid, the board shall determine under subsection~~
27 ~~(2) of this section whether the prior policies or regulations are valid~~
28 ~~during the period of remand.))~~ A county or city for which a
29 determination of invalidity was made prior to the effective date of
30 this act may petition the board for a stay of the determination of
31 invalidity, based on a showing under the procedures of subsection (3)
32 of this section that it is making substantial progress toward adopting
33 a plan or development regulations, or taking other actions under this
34 chapter, relating to the order, that would not otherwise be declared
35 invalid under subsection (2) of this section. After holding a hearing,
36 the board shall enter an order rescinding, staying, modifying, or
37 continuing the prior determination of invalidity.

38 (5) Any party aggrieved by a final decision of the hearings board
39 may appeal the decision to superior court as provided in RCW 34.05.514

1 or 36.01.050 within thirty days of the final order of the board. The
2 court shall conduct an independent review of the board's legal
3 conclusions.

4 NEW SECTION. Sec. 4. A new section is added to chapter 36.70A RCW
5 to read as follows:

6 The court shall provide expedited review of a determination of
7 invalidity or an order effectuating a determination of invalidity made
8 or issued under RCW 36.70A.300. The matter must be set for hearing
9 within sixty days of the date set for submitting the board's record,
10 absent a showing of good cause for a different date or a stipulation of
11 the parties.

12 Sec. 5. RCW 36.70A.320 and 1995 c 347 s 111 are each amended to
13 read as follows:

14 (1)(a) Except as provided in subsection (2) of this section,
15 designations, comprehensive plans ((and)), development regulations, and
16 other actions required by this chapter, and amendments thereto, adopted
17 under this chapter are presumed valid upon adoption. In any petition
18 under this chapter, the board, after full consideration of the
19 petition, shall determine whether there is compliance with the
20 requirements of this chapter. In recognition of the broad range of
21 discretion that may be exercised by counties and cities consistent with
22 the requirements of this chapter, the board shall not substitute its
23 judgment for that of a county or city regarding the exercise of such
24 discretion. In making its determination, the board shall consider the
25 criteria adopted by the department under RCW 36.70A.190(4). The board
26 has no discretion to prioritize, balance, or rank the goals set forth
27 in RCW 36.70A.020, all of which shall be used by counties and cities as
28 provided in RCW 36.70A.020.

29 (b) The burden of proof shall be on the petitioner. The board
30 shall find compliance unless it finds ~~((by a preponderance of the~~
31 ~~evidence that the state agency, county, or city erroneously interpreted~~
32 ~~or applied this chapter))~~ that: (i) The state agency, county, or city
33 erroneously interpreted this chapter; or (ii) the action of the state
34 agency, county, or city is not supported by evidence that is
35 substantial when reviewed in light of the whole record before the
36 board.

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.

4 NEW SECTION. **Sec. 6.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.

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