

2 ESB 5185 - S AMD - 578

3 By Senators Horn and McCaslin

4

5 Strike everything after the enacting clause and insert the  
6 following:

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.

19 (2) Each board member shall receive reimbursement for travel  
20 expenses incurred in the discharge of his or her duties in accordance  
21 with RCW 43.03.050 and 43.03.060. If it is determined that the review  
22 boards shall operate on a full-time basis, each member shall receive an  
23 annual salary to be determined by the governor pursuant to RCW  
24 43.03.040. If it is determined that a review board shall operate on a  
25 part-time basis, each member shall receive compensation pursuant to RCW  
26 43.03.250, provided such amount shall not exceed the amount that would  
27 be set if they were a full-time board member. The principal office of  
28 each board shall be located by the governor within the jurisdictional  
29 boundaries of each board. The boards shall operate on either a part-  
30 time or full-time basis, as determined by the governor.

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

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

9 (5) ~~((The))~~ Each board may appoint one or more hearing examiners to  
10 assist the board in its hearing function, to make ~~((conclusions of law~~  
11 ~~and))~~ findings of fact and, if requested by the board, to make  
12 recommendations to the board for decisions in cases before the board.  
13 Such hearing examiners must have demonstrated knowledge of land use  
14 planning and law. The boards shall specify in their joint rules of  
15 practice and procedure, as required by subsection (7) of this section,  
16 the procedure and criteria to be employed for designating hearing  
17 examiners as a presiding officer. Hearing examiners selected by a  
18 board shall meet the requirements of subsection (3) of this section.  
19 The findings and conclusions of the hearing examiner shall not become  
20 final until they have been formally approved by the board. This  
21 authorization to use hearing examiners does not waive the requirement  
22 of RCW 36.70A.300 that ~~((final orders be issued))~~ decisions be made  
23 within one hundred eighty days of board receipt of a petition. Each  
24 board may mediate disputes between counties or cities, over whether  
25 their comprehensive plans are coordinated or consistent, by using one  
26 or more of its own members, hiring staff to provide mediation, or  
27 contracting for the provision of mediation.

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

33 (7) All proceedings before the board, any of its members, or a  
34 hearing examiner appointed by the board shall be conducted in  
35 accordance with such administrative rules of practice and procedure as  
36 the boards jointly prescribe. All three boards shall jointly meet to  
37 develop and adopt joint rules of practice and procedure, including  
38 rules regarding expeditious and summary disposition of appeals. The  
39 boards shall publish such rules and decisions they render and arrange

1 for the reasonable distribution of the rules and decisions. Except as  
2 it conflicts with specific provisions of this chapter, the  
3 administrative procedure act, chapter 34.05 RCW, and specifically  
4 including the provisions of RCW 34.05.455 governing ex parte  
5 communications, shall govern the practice and procedure of the boards.

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

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

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

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

19 (a) That a (~~state agency,~~) county(~~(,)~~) or city planning under  
20 this chapter is not in compliance with the requirements of this  
21 chapter, chapter 90.58 RCW as it relates to the adoption of shoreline  
22 master programs or amendments thereto, or chapter 43.21C RCW as it  
23 relates to (~~plans, development regulations, or amendments, adopted~~  
24 ~~under RCW 36.70A.040 or chapter 90.58 RCW~~) the shoreline master  
25 programs or amendments thereto;

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

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

34 (d) That the comprehensive plan of a county or city adopted under  
35 this chapter is not coordinated with, or consistent with, the  
36 comprehensive plan of another county or city, as required under RCW  
37 36.70A.100; or

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

4 (2) A petition alleging that a county or city has not addressed  
5 issues associated with an action required under this chapter, or that  
6 the comprehensive plan of a county or city is not coordinated with or  
7 consistent with another comprehensive plan as required under RCW  
8 36.70A.100, may be filed only by: (a) The state, or a county or city  
9 that plans under this chapter; (b) a person who has participated orally  
10 or in writing before the county or city regarding the matter on which  
11 a review is being requested; (c) a person who is certified by the  
12 governor within sixty days of filing the request with the board; or (d)  
13 a person qualified pursuant to RCW 34.05.530. A petition alleging that  
14 a county or city has not taken an action required under this chapter,  
15 by the time such action is required to have been taken, may be filed by  
16 any person. A petition alleging that the shoreline master program or  
17 amendments thereto, or chapter 43.21C RCW as it relates thereto, may be  
18 filed by a person with standing under chapter 43.21C RCW.

19 (3) For purposes of this section "person" means any individual,  
20 partnership, corporation, association, state agency, governmental  
21 subdivision or unit thereof, or public or private organization or  
22 entity of any character.

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

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

30 ~~If adjusted by a board, a county growth management planning~~  
31 ~~population projection shall only be used for the planning purposes set~~  
32 ~~forth in this chapter and shall be known as a "board adjusted~~  
33 ~~population projection". None of these changes shall affect the~~  
34 ~~official state and county population forecasts prepared by the office~~  
35 ~~of financial management, which shall continue to be used for state~~  
36 ~~budget and planning purposes.))~~

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

1 (1) All requests for review to a growth management hearings board  
2 shall be initiated by filing a petition that includes a detailed  
3 statement of issues presented for resolution by the board. The board  
4 shall render written decisions articulating the basis for its holdings.  
5 The board shall not issue advisory opinions on issues not presented to  
6 the board in the statement of issues, as modified by any prehearing  
7 order.

8 (2) All petitions relating to whether or not an adopted  
9 comprehensive plan, development regulation, or permanent amendment  
10 thereto, is in compliance with the goals and requirements of (~~this~~  
11 ~~chapter or~~) chapter 90.58 or 43.21C RCW must be filed within sixty  
12 days after publication by the legislative (~~bodies~~) authority of the  
13 county or city. All petitions relating to whether or not a county or  
14 city has addressed relevant issues associated with an action required  
15 under this chapter must be filed within sixty days after publication by  
16 the legislative authority of the county or city. All petitions  
17 relating to whether or not comprehensive plans are coordinated or  
18 consistent, as required under RCW 36.70A.100, must be filed within  
19 sixty days after publication by the legislative authority of the county  
20 or city adopting or amending its comprehensive plan that is alleged not  
21 to be coordinated or consistent with another comprehensive plan.  
22 Petitions relating to whether a county or city has not taken an action  
23 required under this chapter by the time such action is required to have  
24 been taken may be filed at any time.

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

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

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

37 (~~(c) For local governments planning under RCW 36.70A.040, promptly~~  
38 ~~after approval or disapproval of a local government s shoreline master~~  
39 ~~program or amendment thereto by the department of ecology as provided~~

1 in RCW 90.58.090, the local government shall publish a notice that the  
2 shoreline master program or amendment thereto has been approved or  
3 disapproved by the department of ecology. For purposes of this  
4 section, the date of publication for the adoption or amendment of a  
5 shoreline master program is the date the local government publishes  
6 notice that the shoreline master program or amendment thereto has been  
7 approved or disapproved by the department of ecology.))

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

13 (4) The board shall base its decision on the record developed by  
14 the city((~~7~~)) or county((~~7~~, ~~or the state~~)) and supplemented with  
15 additional evidence if the board determines that such additional  
16 evidence would be necessary or of substantial assistance to the board  
17 in reaching its decision.

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

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

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

34 (2) Within ten days of receiving the timely and complete agreement  
35 of the parties, the board shall file a certificate of agreement with  
36 the designated superior court and shall serve the parties with copies  
37 of the certificate. The superior court shall obtain exclusive  
38 jurisdiction over a petition when it receives the certificate of

1 agreement. With the certificate of agreement the board shall also file  
2 the petition for review, any orders entered by the board, all other  
3 documents in the board's files regarding the action, and the written  
4 agreement of the parties.

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

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

15 (b) The superior court:

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

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

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

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

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

32 (6) The superior court shall transmit a copy of its decision and  
33 order on direct review to the board, the department, and the governor.  
34 If the court has determined that a county or city is not in compliance  
35 with the provisions of this chapter, the governor may impose sanctions  
36 against the county or city in the same manner as if a board had  
37 recommended the imposition of sanctions as provided in RCW 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 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~  
8 ~~it relates to adoption or amendment of shoreline master programs, or~~  
9 ~~chapter 43.21C RCW as it relates to adoption of plans, development~~  
10 ~~regulations, and amendments thereto, under RCW 36.70A.040 or chapter~~  
11 ~~90.58 RCW.~~

12 ~~(2))~~(a) Except as provided in (b) of this subsection, the ~~((final~~  
13 ~~order))~~ decision shall be issued within one hundred eighty days of  
14 receipt of the petition for review, or, if multiple petitions are  
15 filed, within one hundred eighty days of receipt of the last petition  
16 that is 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))~~ (2) In ~~((the final order))~~ rendering its decision, the  
28 board shall ~~((either))~~:

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

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

37 (c) Find that the ~~((state agency,))~~ county~~((,))~~ or city ~~((is not in~~  
38 ~~compliance with the requirements of this chapter, chapter 90.58 RCW as~~

1 ~~it relates to the adoption or amendment of shoreline master programs,~~  
2 ~~or chapter 43.21C RCW as it relates to adoption of plans, development~~  
3 ~~regulations, and amendments thereto, under RCW 36.70A.040 or chapter~~  
4 ~~90.58 RCW, in which case)) either has, or has not, addressed relevant~~  
5 ~~issues associated with an action required under this chapter, but may~~  
6 ~~not consider the adequacy of the actions taken by the county or city.~~  
7 ~~If the board finds that the county or city has not addressed the~~  
8 ~~relevant issues, the board shall ((remand the matter to the affected~~  
9 ~~state agency, county, or city. The board shall)) specify a reasonable~~  
10 ~~time not in excess of one hundred eighty days, or such longer period as~~  
11 ~~determined by the board in cases of unusual scope or complexity, within~~  
12 ~~which the ((state agency,)) county((,)) or city and the person or~~  
13 ~~persons appealing the action shall ((comply with the requirements of~~  
14 ~~this chapter. The board may require periodic reports to the board on~~  
15 ~~the progress the jurisdiction is making towards compliance.~~

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

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

24 ~~(d) Find that the comprehensive plans either are, or are not,~~  
25 ~~coordinated or consistent, as required under RCW 36.70A.100. If the~~  
26 ~~board finds that the comprehensive plans are not coordinated or~~  
27 ~~consistent, the board shall mediate between the affected counties or~~  
28 ~~cities to resolve the lack of coordination or lack of consistency.~~

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

34 ~~(4) Any party aggrieved by a final decision of the hearings board~~  
35 ~~may appeal the decision directly to the court of appeals for assignment~~  
36 ~~by the chief presiding judge.~~

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

1 A request for review by the state to a growth management hearings  
2 board under RCW 36.70A.280(1) may be made only by the governor, or with  
3 the governor's consent the head of an agency, or by the commissioner of  
4 public lands as relating to state trust lands ~~((, for the review of  
5 whether: (1) A county or city that is required or chooses to plan  
6 under RCW 36.70A.040 has failed to adopt a comprehensive plan or  
7 development regulations, or county wide planning policies within the  
8 time limits established by this chapter; or (2) a county or city that  
9 is required or chooses to plan under this chapter has adopted a  
10 comprehensive plan, development regulations, or county wide planning  
11 policies, that are not in compliance with the requirements of this  
12 chapter))~~.

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

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

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

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

31 (4) A county or city subject to a determination of invalidity made  
32 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that  
33 the ordinance or resolution it has enacted in response to the  
34 determination of invalidity will no longer substantially interfere with  
35 the fulfillment of the goals of this chapter under the standard in RCW  
36 36.70A.302(1).

1       (~~(5) 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       **Sec. 8.** RCW 36.70A.340 and 1991 sp.s. c 32 s 26 are each amended  
5 to read as follows:

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

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

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

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

26       NEW SECTION. **Sec. 9.** RCW 36.70A.330 and 1997 c 429 s 21, 1995 c  
27 347 s 112, & 1991 sp.s. c 32 s 14 are each repealed.

28       NEW SECTION. **Sec. 10.** RCW 36.70A.340 is recodified to appear  
29 immediately after RCW 36.70A.345."

30 **ESB 5185** - S AMD - 578  
31 By Senators Horn and McCaslin

32  
33 On page 1, line 1 of the title, after "boards;" strike the  
34 remainder of the title and insert "amending RCW 36.70A.270, 36.70A.280,

1 36.70A.290, 36.70A.295, 36.70A.300, 36.70A.310, 36.70A.320, and  
2 36.70A.340; adding a new section to chapter 36.70A RCW; recodifying RCW  
3 36.70A.340; and repealing RCW 36.70A.330."

--- **END** ---