
SENATE BILL 5162

State of Washington

61st Legislature

2009 Regular Session

By Senators Hobbs, Swecker, Fairley, Pridemore, Hatfield, Shin, Jacobsen, and Haugen

Read first time 01/15/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to appeals under the growth management act;
2 amending RCW 36.70A.290; adding new sections to chapter 43.330 RCW; and
3 adding a new section to chapter 36.70A RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.330 RCW
6 to read as follows:

7 (1) The director shall develop, by rule, a program for the loan of
8 city costs associated with the appeal of a critical areas ordinance
9 under chapter 36.70A RCW. The one-time per appeal loan is for cities
10 with a population under thirty thousand and is limited to an appeal
11 from a decision of a growth management hearings board to a superior
12 court. The program is also subject to the following limitations:

- 13 (a) The loan amount may not exceed one hundred thousand dollars;
14 (b) The loan must be repaid within ten years and is subject to an
15 interest rate of four percent; and
16 (c) Loan repayment does not begin until the superior court renders
17 its decision.

18 (2) The director shall report to the legislature in November 2013
19 on the use of the loan program. The report must include (a) who uses

1 the program, (b) the amounts of the loans awarded, (c) the frequency of
2 the award of attorneys' fees under section 4 of this act, (d) the
3 sufficiency and distribution of the filing fee, and (e) any other
4 program information the director considers appropriate.

5 **Sec. 2.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
6 read as follows:

7 (1) All requests for review to a growth management hearings board
8 shall be initiated by filing (a) a petition that includes a detailed
9 statement of issues presented for resolution by the board, and (b) a
10 four hundred dollar filing fee. One hundred dollars of the filing fee
11 is for the operation of the board. Three hundred dollars of the filing
12 fee is for deposit into the growth management appeals legal assistance
13 account created under section 3 of this act. The board shall render
14 written decisions articulating the basis for its holdings. The board
15 shall not issue advisory opinions on issues not presented to the board
16 in the statement of issues, as modified by any prehearing order.

17 (2) Any individual, by reason of financial hardship, may request
18 the filing fee be waived as set forth in this subsection. The fee may
19 be waived by the board upon a showing of direct impact by the board's
20 decision and acceptance by the board of an affidavit regarding
21 financial hardship.

22 (3) All petitions relating to whether or not an adopted
23 comprehensive plan, development regulation, or permanent amendment
24 thereto, is in compliance with the goals and requirements of this
25 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
26 after publication by the legislative bodies of the county or city.

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

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

35 Except as provided in (c) of this subsection, for purposes of this
36 section the date of publication for a county shall be the date the

1 county publishes the notice that it has adopted the comprehensive plan
2 or development regulations, or amendment thereto.

3 (c) For local governments planning under RCW 36.70A.040, promptly
4 after approval or disapproval of a local government's shoreline master
5 program or amendment thereto by the department of ecology as provided
6 in RCW 90.58.090, the local government shall publish a notice that the
7 shoreline master program or amendment thereto has been approved or
8 disapproved by the department of ecology. For purposes of this
9 section, the date of publication for the adoption or amendment of a
10 shoreline master program is the date the local government publishes
11 notice that the shoreline master program or amendment thereto has been
12 approved or disapproved by the department of ecology.

13 ~~((+3))~~ (4) Unless the board dismisses the petition as frivolous or
14 finds that the person filing the petition lacks standing, or the
15 parties have filed an agreement to have the case heard in superior
16 court as provided in RCW 36.70A.295, the board shall, within ten days
17 of receipt of the petition, set a time for hearing the matter.

18 ~~((+4))~~ (5) The board shall base its decision on the record
19 developed by the city, county, or the state and supplemented with
20 additional evidence if the board determines that such additional
21 evidence would be necessary or of substantial assistance to the board
22 in reaching its decision.

23 ~~((+5))~~ (6) The board, shall consolidate, when appropriate, all
24 petitions involving the review of the same comprehensive plan or the
25 same development regulation or regulations.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.330 RCW
27 to read as follows:

28 The growth management appeals legal assistance account is created
29 in the custody of the state treasurer. All receipts from the fee
30 imposed under RCW 36.70A.290 and the repayment of loans under section
31 1 of this act must be deposited into the account. Expenditures from
32 the account may be used only for the program under section 1 of this
33 act. Only the director of community, trade, and economic development
34 or the director's designee may authorize expenditures from the account.
35 The account is subject to allotment procedures under chapter 43.88 RCW,
36 but an appropriation is not required for expenditures.

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

3 (1) When a court declares that an appeal regarding a critical areas
4 ordinance is frivolous and the city has followed all the requirements
5 regarding public notices and meetings necessary for the development of
6 that ordinance, the city may sue the complainant and receive up to
7 twice its attorneys' fees.

8 (2) When a city receives attorneys' fees under subsection (1) of
9 this section, one-half of the award must be deposited into the growth
10 management appeals legal assistance account created in section 3 of
11 this act.

--- END ---