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HOUSE BILL 3120

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Sullivan and Morris

Read first time 01/28/2004. Referred to Committee on Local Government.

1            AN ACT Relating to petitions for review by the state under the  
2 growth management act; amending RCW 36.70A.280, 36.70A.290, 36.70A.295,  
3 and 36.70A.310; and providing an effective date.

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

5            **Sec. 1.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read  
6 as follows:

7            (1) Except as provided in RCW 36.70A.295 and 36.70A.310, a growth  
8 management hearings board shall hear and determine only those petitions  
9 alleging either:

10            (a) That a state agency, county, or city planning under this  
11 chapter is not in compliance with the requirements of this chapter,  
12 chapter 90.58 RCW as it relates to the adoption of shoreline master  
13 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
14 plans, development regulations, or amendments, adopted under RCW  
15 36.70A.040 or chapter 90.58 RCW; or

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

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

7 (3) For purposes of this section "person" means any individual,  
8 partnership, corporation, association, state agency, governmental  
9 subdivision or unit thereof, or public or private organization or  
10 entity of any character.

11 (4) To establish participation standing under subsection (2)(b) of  
12 this section, a person must show that his or her participation before  
13 the county or city was reasonably related to the person's issue as  
14 presented to the board.

15 (5) 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. 2.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to  
30 read as follows:

31 (1) All requests for review to a growth management hearings board  
32 shall be initiated by filing a petition for review that includes a  
33 detailed statement of issues presented for resolution by the board.  
34 The board shall render written decisions articulating the basis for its  
35 holdings. The board shall not issue advisory opinions on issues not  
36 presented to the board in the statement of issues, as modified by any  
37 prehearing order.

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

7 (a) Except as provided in (c) of this subsection, the date of  
8 publication for a city shall be the date the city publishes the  
9 ordinance, or summary of the ordinance, adopting the comprehensive plan  
10 or development regulations, or amendment thereto, as is required to be  
11 published.

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

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

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

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

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

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

4 **Sec. 3.** RCW 36.70A.295 and 1997 c 429 s 13 are each amended to  
5 read as follows:

6 (1)(a) The superior court may directly review a petition for review  
7 filed under RCW 36.70A.290 if all parties to the proceeding before the  
8 board have agreed to direct review in the superior court. The  
9 agreement of the parties shall be in writing and signed by all of the  
10 parties to the proceeding or their designated representatives. The  
11 agreement shall include the parties' agreement to proper venue as  
12 provided in RCW 36.70A.300(5). The parties shall file their agreement  
13 with the board within ten days after the date the petition is filed, or  
14 if multiple petitions have been filed and the board has consolidated  
15 the petitions pursuant to RCW 36.70A.300, within ten days after the  
16 board serves its order of consolidation.

17 ~~((+2))~~ (b) Within ten days of receiving the timely and complete  
18 agreement of the parties, the board shall file a certificate of  
19 agreement with the designated superior court and shall serve the  
20 parties with copies of the certificate. The superior court shall  
21 obtain exclusive jurisdiction over a petition when it receives the  
22 certificate of agreement. With the certificate of agreement the board  
23 shall also file the petition for review, any orders entered by the  
24 board, all other documents in the board's files regarding the action,  
25 and the written agreement of the parties.

26 (2)(a) The superior court shall directly review a petition for  
27 review filed according to RCW 36.70A.310. Any petition for review  
28 filed according to RCW 36.70A.310 shall be filed in superior court  
29 within sixty days after publication by the legislative body of the  
30 county or city. A copy of the petition for review shall be filed with  
31 the board within sixty days after publication by the legislative body  
32 of the county or city. For the purposes of this section, the date of  
33 publication shall be determined as provided in RCW 36.70A.290(2).

34 (b) The board shall file with the superior court a certificate of  
35 removal to superior court for any petition or petitions filed with the  
36 board according to RCW 36.70A.280 that involve the review of the same  
37 comprehensive plan or the same development regulation or regulations as

1 the petition for review filed in superior court according to RCW  
2 36.70A.310 and this subsection. The board shall file the certificate  
3 of removal within ten days after receiving the copy of the petition for  
4 review filed with the superior court according to RCW 36.70A.310 and  
5 this subsection. The board shall file with the certificate of removal  
6 all petitions for review identified in the certificate as well as any  
7 orders entered by the board and other documents in the board's files  
8 regarding the action or actions. The superior court shall obtain  
9 exclusive jurisdiction over the petition or petitions when it receives  
10 the certificate of removal.

11 (3) For purposes of a petition that is subject to direct review,  
12 the superior court's subject matter jurisdiction shall be equivalent to  
13 that of the board. Consistent with the requirements of the superior  
14 court civil rules, the superior court may consolidate a petition  
15 subject to direct review under this section with a separate action  
16 filed in the superior court.

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

21 (b) The superior court:

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

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

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

29 (c) An aggrieved party may secure appellate review of a final  
30 judgment of the superior court under this section by the supreme court  
31 or the court of appeals. The review shall be secured in the manner  
32 provided by law for review of superior court decisions in other civil  
33 cases.

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

1 (6) The superior court shall transmit a copy of its decision and  
2 order on direct review to the board, the department, and the governor.  
3 If the court has determined that a county or city is not in compliance  
4 with the provisions of this chapter, the governor may impose sanctions  
5 against the county or city in the same manner as if a board had  
6 recommended the imposition of sanctions as provided in RCW 36.70A.330.

7 (7) After the court has assumed jurisdiction over a petition for  
8 review under this section, the superior court civil rules shall govern  
9 a request for intervention and all other procedural matters not  
10 specifically provided for in this section.

11 **Sec. 4.** RCW 36.70A.310 and 1994 c 249 s 32 are each amended to  
12 read as follows:

13 (1) A ((request)) petition for review by the state ((to a growth  
14 management hearings board)) according to this chapter may be ((made))  
15 filed only by the governor, or with the governor's consent the head of  
16 an agency, or by the commissioner of public lands as relating to state  
17 trust lands, for the review of whether:

18 ((+1)) (a) A county or city that is required or chooses to plan  
19 under RCW 36.70A.040 has failed to adopt a comprehensive plan ((or))  
20 development regulations, or county-wide planning policies within the  
21 time limits established by this chapter; or

22 ((+2)) (b) A county or city that is required or chooses to plan  
23 under this chapter has adopted a comprehensive plan, development  
24 regulations, or county-wide planning policies, that are not in  
25 compliance with the requirements of this chapter.

26 (2) All petitions for review by the state under this section shall  
27 be filed in the superior court according to RCW 36.70A.295.

28 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2004, and  
29 applies to all petitions for review filed according to chapter 36.70A  
30 RCW on or after July 1, 2004.

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