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SENATE BILL 5308

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State of Washington

58th Legislature

2003 Regular Session

By Senators Mulliken, T. Sheldon, Morton and McCaslin

Read first time 01/22/2003. Referred to Committee on Land Use & Planning.

1 AN ACT Relating to growth management hearings board review of plan  
2 and regulation compliance; and amending RCW 36.70A.280, 36.70A.290,  
3 36.70A.302, 36.70A.320, and 90.58.190.

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

5 **Sec. 1.** RCW 36.70A.280 and 1996 c 325 s 2 are each amended to read  
6 as follows:

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

9 (a) That a state agency, county, or city planning under this  
10 chapter is not in compliance with the procedural requirements of this  
11 chapter as they relate to the adoption of comprehensive plans and  
12 development regulations, chapter 90.58 RCW as it relates to the  
13 adoption of shoreline master programs or amendments thereto, or chapter  
14 43.21C RCW as it relates to the adoption of plans, development  
15 regulations, or amendments(~~(, adopted)~~) under RCW 36.70A.040 or chapter  
16 90.58 RCW; or

17 (b) That the twenty-year growth management planning population  
18 projections adopted by the office of financial management pursuant to  
19 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) When considering a possible adjustment to a growth management  
12 planning population projection prepared by the office of financial  
13 management, a board shall consider the implications of any such  
14 adjustment to the population forecast for the entire state.

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

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

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

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

34 (2) All petitions relating to whether (~~or not an adopted~~) the  
35 adoption of a comprehensive plan, development regulation, or permanent  
36 amendment thereto, is in compliance with the goals and requirements of

1 this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty  
2 days after publication by the legislative bodies of the county or city.

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

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

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

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

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

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

35 (5) The board, shall consolidate, when appropriate, all petitions  
36 involving the review of the same comprehensive plan adoption or the  
37 same development regulation or regulations adoption.

1           **Sec. 3.** RCW 36.70A.302 and 1997 c 429 s 16 are each amended to  
2 read as follows:

3           (1) A board may determine that part or all of a comprehensive plan  
4 or development regulations are invalid if the board:

5           (a) Makes a finding of noncompliance and issues an order of remand  
6 under RCW 36.70A.300;

7           (b) Includes in the final order a determination, supported by  
8 findings of fact and conclusions of law, that the ~~((continued validity  
9 of part or parts of the plan or regulation would substantially  
10 interfere with the fulfillment of the goals of))~~ adoption of the plan  
11 or regulation was not in compliance with this chapter; and

12           (c) Specifies in the final order the particular ~~((part or parts of  
13 the plan or regulation))~~ adoption actions that are determined to be  
14 invalid, and the reasons for their invalidity.

15           (2) A determination of invalidity is prospective in effect and does  
16 not extinguish rights that vested under state or local law before  
17 receipt of the board's order by the city or county. The determination  
18 of invalidity does not apply to a completed development permit  
19 application for a project that vested under state or local law before  
20 receipt of the board's order by the county or city or to related  
21 construction permits for that project.

22           (3)(a) Except as otherwise provided in subsection (2) of this  
23 section and (b) of this subsection, a development permit application  
24 not vested under state or local law before receipt of the board's order  
25 by the county or city vests to the local ordinance or resolution that  
26 is determined by the board not to substantially interfere with the  
27 fulfillment of the goals of this chapter.

28           (b) Even though the application is not vested under state or local  
29 law before receipt by the county or city of the board's order, a  
30 determination of invalidity does not apply to a development permit  
31 application for:

32           (i) A permit for construction by any owner, lessee, or contract  
33 purchaser of a single-family residence for his or her own use or for  
34 the use of his or her family on a lot existing before receipt by the  
35 county or city of the board's order, except as otherwise specifically  
36 provided in the board's order to protect the public health and safety;

37           (ii) A building permit and related construction permits for

1 remodeling, tenant improvements, or expansion of an existing structure  
2 on a lot existing before receipt of the board's order by the county or  
3 city; and

4 (iii) A boundary line adjustment or a division of land that does  
5 not increase the number of buildable lots existing before receipt of  
6 the board's order by the county or city.

7 (4) If the ordinance that adopts a plan or development regulation  
8 under this chapter includes a savings clause intended to revive prior  
9 policies or regulations in the event the new plan or regulations are  
10 determined to be invalid, the board shall determine under subsection  
11 (1) of this section whether the prior policies or regulations are valid  
12 during the period of remand.

13 (5) A county or city subject to a determination of invalidity may  
14 adopt interim controls and other measures to be in effect until it  
15 adopts a comprehensive plan and development regulations that ~~((comply))~~  
16 are adopted in compliance with the requirements of this chapter. A  
17 development permit application may vest under an interim control or  
18 measure ~~((upon determination by the board that the interim controls and  
19 other measures do not substantially interfere with the fulfillment of  
20 the goals of this chapter))~~.

21 (6) A county or city subject to a determination of invalidity may  
22 file a motion requesting that the board clarify, modify, or rescind the  
23 order. The board shall expeditiously schedule a hearing on the motion.  
24 At the hearing on the motion, the parties may present information to  
25 the board to clarify the ~~((part or parts of the))~~ comprehensive plan or  
26 development regulations adoption actions to which the final order  
27 applies. The board shall issue any supplemental order based on the  
28 information provided at the hearing not later than thirty days after  
29 the date of the hearing.

30 (7)~~((a))~~ If a determination of invalidity has been made and the  
31 county or city has enacted an ordinance or resolution ~~((amending))~~  
32 adopting the invalidated ~~((part or parts of the))~~ plan or regulation or  
33 establishing interim controls on development affected by the order of  
34 invalidity, after a compliance hearing, the board shall modify or  
35 rescind the determination of invalidity if it determines under the  
36 standard in subsection (1) of this section that the plan ~~((or))~~  
37 regulation, ~~((as amended or made subject to such))~~ or interim

1 controls(~~(, will no longer substantially interfere with the fulfillment~~  
2 ~~of the goals of)) adoption complies with the requirements of this  
3 chapter.~~

4 ~~((b) If the board determines that part or parts of the plan or~~  
5 ~~regulation are no longer invalid as provided in this subsection, but~~  
6 ~~does not find that the plan or regulation is in compliance with all of~~  
7 ~~the requirements of this chapter, the board, in its order, may require~~  
8 ~~periodic reports to the board on the progress the jurisdiction is~~  
9 ~~making towards compliance.))~~

10 **Sec. 4.** RCW 36.70A.320 and 1997 c 429 s 20 are each amended to  
11 read as follows:

12 (1) Except as provided in subsection (5) of this section,  
13 comprehensive plans and development regulations, and amendments  
14 thereto, adopted under this chapter are presumed valid upon adoption.

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

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

27 (4) A county or city subject to a determination of invalidity made  
28 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that  
29 the ordinance or resolution it has enacted in response to the  
30 determination of invalidity (~~(will no longer substantially interfere~~  
31 ~~with the fulfillment of the goals of)) was adopted in compliance with  
32 this chapter under the standard in RCW 36.70A.302(1).~~

33 (5) The shoreline element of a comprehensive plan and the  
34 applicable development regulations adopted by a county or city shall  
35 take effect as provided in chapter 90.58 RCW.

1       **Sec. 5.** RCW 90.58.190 and 1995 c 347 s 311 are each amended to  
2 read as follows:

3       (1) The appeal of the department's decision to adopt a master  
4 program or amendment pursuant to RCW 90.58.070(2) or 90.58.090(4) is  
5 governed by RCW 34.05.510 through 34.05.598.

6       ~~(2)((a) The department's decision to approve, reject, or modify a  
7 proposed master program or amendment adopted by a local government  
8 planning under RCW 36.70A.040 shall be appealed to the growth  
9 management hearings board with jurisdiction over the local government.  
10 The appeal shall be initiated by filing a petition as provided in RCW  
11 36.70A.250 through 36.70A.320.~~

12       ~~(b) If the appeal to the growth management hearings board concerns  
13 shorelines, the growth management hearings board shall review the  
14 proposed master program or amendment for compliance with the  
15 requirements of this chapter and chapter 36.70A RCW, the policy of RCW  
16 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it  
17 relates to the adoption of master programs and amendments under chapter  
18 90.58 RCW.~~

19       ~~(c) If the appeal to the growth management hearings board concerns  
20 a shoreline of statewide significance, the board shall uphold the  
21 decision by the department unless the board, by clear and convincing  
22 evidence, determines that the decision of the department is  
23 inconsistent with the policy of RCW 90.58.020 and the applicable  
24 guidelines.~~

25       ~~(d) The appellant has the burden of proof in all appeals to the  
26 growth management hearings board under this subsection.~~

27       ~~(e) Any party aggrieved by a final decision of a growth management  
28 hearings board under this subsection may appeal the decision to  
29 superior court as provided in RCW 36.70A.300.~~

30       (3)) (a) The department's decision to approve, reject, or modify a  
31 proposed master program or master program amendment by a local  
32 government ((not planning under RCW 36.70A.040)) shall be appealed to  
33 the shorelines hearings board by filing a petition within thirty days  
34 of the date of the department's written notice to the local government  
35 of the department's decision to approve, reject, or modify a proposed  
36 master program or master program amendment as provided in RCW  
37 90.58.090(2).

1 (b) In an appeal relating to shorelines, the shorelines hearings  
2 board shall review the proposed master program or master program  
3 amendment and, after full consideration of the presentations of the  
4 local government and the department, shall determine the validity of  
5 the local government's master program or amendment in light of the  
6 policy of RCW 90.58.020 and the applicable guidelines.

7 (c) In an appeal relating to shorelines of statewide significance,  
8 the shorelines hearings board shall uphold the decision by the  
9 department unless the board determines, by clear and convincing  
10 evidence that the decision of the department is inconsistent with the  
11 policy of RCW 90.58.020 and the applicable guidelines.

12 (d) Review by the shorelines hearings board shall be considered an  
13 adjudicative proceeding under chapter 34.05 RCW, the Administrative  
14 Procedure Act. The aggrieved local government shall have the burden of  
15 proof in all such reviews.

16 (e) Whenever possible, the review by the shorelines hearings board  
17 shall be heard within the county where the land subject to the proposed  
18 master program or master program amendment is primarily located. The  
19 department and any local government aggrieved by a final decision of  
20 the hearings board may appeal the decision to superior court as  
21 provided in chapter 34.05 RCW.

22 (~~(+4)~~) (3) A master program amendment shall become effective after  
23 the approval of the department or after the decision of the shorelines  
24 hearings board to uphold the master program or master program  
25 amendment, provided that the board may remand the master program or  
26 master program adjustment to the local government or the department for  
27 modification prior to the final adoption of the master program or  
28 master program amendment.

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